

# **Social Fieldwork Research (FRANET)**

## **Severe forms of Labour Exploitation**

### **Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States**

**Germany, 2014**

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## Categories of interviewees:

Nine categories of experts working in the context of labour exploitation took part in the interviews and focus groups:

M – Monitoring bodies (such as labour inspectorates, health and safety bodies)

P – Police and law enforcement bodies

S – Victim support organisations

J – Judges and prosecutors

L – Lawyers

R – Recruitment and employment agencies

W – Workers' organisations, trade unions

E – Employers' organisations

N – National policy experts at Member State level.

FG – Focus Group

Throughout this report, references to these groups as 'M', 'P' etc. are to be understood as referring to the above-named 9 categories.

Where [M(X)] appears, this denotes the group from which the referenced interviewee came, in addition to the number of interviewees from that group referenced (for example, if a statement is supported by references to three interviewees from the M group, two from the S group and one from the J group, the reference will read '[M(3); S(2); J(1)]'. Likewise, if a statement is supported by statements from interviewees who participated in focus groups (in the following example, a lawyer), the reference will read '[FG(L)]'.

For data protection reasons, no names of interviewees have been mentioned.

# 1. Introduction, including short description of fieldwork

For the purpose of this study, 40 individual interviews (two of them were conducted with two persons at the same time) and two focus groups were conducted between February and May 2014. All experts were recruited via a personal email invitation to participate in the fieldwork. The interviewees were identified based on existing contacts and using snowball sampling during the interviews. In a comprehensive call for interviewees, about 100 local and regional courts were contacted by email and mail to recruit criminal judges.

Overall, the response rate was very good although some targeted groups were less responsive to the invitations and call for participants than others. The focus of the work of the interviewed support services clearly is on EU citizens; none of the organisations that explicitly support irregular migrants agreed to be interviewed. Due to this limited scope of the support services, the interviewees do not have extensive experience with residence law-related issues and therefore exclusively focus on issues such as prosecution based on irregular immigration or residence. Identifying potential interview partners working with employers' liability insurance associations (Berufsgenossenschaft), which are also involved in the prevention of occupational health and safety risks, and employers' associations was rather difficult. Despite all efforts to recruit experts from employers' associations and employers' liability insurance associations representing different economic sectors, only representatives of the construction sector were responsive. For instance, the Federation of German Employers was invited to take part in the interviews but declined, as according to their representatives, labour exploitation is not an issue for any of their members. The recruitment of criminal lawyers and criminal judges also proved difficult. The majority of our invitations sent to over 100 courts remained without reply and those who did reply denied participation because labour exploitation does not fall under their responsibility.

Most of the interviewees are located in two regions: Berlin (18) and Baden-Württemberg (9). The other 13 interviewees are based across Germany. One additional interview was conducted with an expert in another EU Member State because we also wanted to shed light on recruitment agencies working abroad that are specialised in placing workers in German companies. Fifteen participants were interviewed on the telephone as the tight project schedule did not allow for extensive and time-consuming travelling of the researchers. However, no significant differences were noticed compared to the interviews that were carried out on a face-to-face basis. In total, four experts of monitoring bodies, six police officials, 12 associates of support services, one judge, two public prosecutors, three lawyers, three representatives of recruitment agencies, three officials of workers and employer organisations respectively, and five national policy experts (in the area of anti-trafficking) at federal and state level were interviewed. About 55 per cent of the interviewees were women (mostly experts of the support services, organisations representing the rights of workers, employment and recruitment organisations as well as lawyers and judges). Men were overly represented in the interviews with the monitoring bodies and the police. The number of years of expertise on labour exploitation varies between zero (no personal expertise) and 37. About two-thirds of the participants claimed to have 10 or more years of expertise on labour exploitation. The duration of the interviews also varies: four interviews are under 45 minutes, 16 interviews are between 45 and 60 minutes long, 10 are between 60 and 75 minutes long, and 10 interviews are longer than 75 minutes.

In addition, to the individual interviews, two focus groups were organised. One focus group consisted of seven experts, namely one lawyer, one judge, one police official, two national policy experts, and one representative of a support service and workers organisation respectively. One official of a monitoring body had to cancel their participation on short notice.

The eight participants that attended the second focus group represented the police, public prosecution, a monitoring body, support services, and a workers organisation. About two-third of all participants were men. Since in the individual interviews many participants compared the measures in the fight against labour exploitation with the efforts in the area of sexual exploitation and explained that the authorities and non-governmental organisation have long-standing experience in fighting sexual exploitation, as an additional theme the question about best practices and what can be learnt from that expertise was raised during the focus groups.

In total, 15 case studies were collected between February and May 2014. These cases occurred in the construction sector, in agriculture, manufacture of beverages, gastronomy, steam and air conditioning supply, sorting and distribution of leaflets, and in domestic work and nursing in private and diplomatic households. Most of the cases were provided by experts working with support services (five) and trade unions (five). The police also helped with the collection and documentation of three cases. Two further cases were contributed by a lawyer and a public prosecutor.

## 2. Legal framework

This section focuses on criminal law-related aspects regarding human trafficking, labour exploitation, and regulations on minors. Depending on their profession and the needs of the victims, in the interviews the experts also covered other fields like residence and social law as well as labour or occupational safety regulations which are referred to in the relevant sections. Little change has occurred in the German criminal law since submitting the ad hoc information request in 2013. No changes have been made to the relevant criminal law provisions. In order to transpose Directive 2011/36/EU, the German government still needs to amend the Criminal Code. At the time of writing, no new draft law proposal has been published. The following legislation currently relates to forced labour, labour exploitation, and human trafficking for the purpose of labour exploitation.

### Human trafficking

Section 233 German Criminal Code (*Strafgesetzbuch*, StGB) criminalises human trafficking for the purpose of labour exploitation. An important aspect of this punishable act is that someone takes advantage of another person's predicament of any kind or helplessness arising from being in a foreign country for the purpose of subjecting her to slavery, servitude, forced labour or labour exploitation. The penalty is imprisonment of six months to ten years.<sup>1</sup> Section 233 German Criminal Code criminalises human trafficking for labour exploitation in general; it applies also when children are exploited. The only difference to adult victims is that, according to Section 233 (3) German Criminal Code, the minimum penalty is higher when the victim is a child (currently under 14 years of age (Section 232 in conjunction with Section 176 StGB)).

A draft legislation proposal by the Federal Ministry of Justice was presented in 2013, planning to transpose Directive 2011/36/EU and include forced begging and forced criminal acts into Section 233 (1) German Criminal Code.<sup>2</sup> Due to termination of the election period, the proposal is no longer valid and a new one is expected in the course of 2014. Employers who employ foreigners in violation with Sections 232 (human trafficking for the purposes of sexual exploitation) and 233 (human trafficking for the labour exploitation) German Criminal Code are imposed a fine or prison sentence of up to three years (Section 10 (a) Act to Combat Illegal Employment). Section 233a German Criminal Code criminalizes assisting in human trafficking and prohibits assistance to acts falling under Section 233 German Criminal Code by recruiting, transporting, referring, harbouring or sheltering another person.<sup>3</sup> Section 266 German Criminal Code prohibits child trafficking and defines this as permanently leaving a person under 18 years of age with a third person or taking such person for material gain and in violation of a duty to care. Depending on the severity, penalty ranges from a fine to imprisonment of ten years.<sup>4</sup>

### Labour Exploitation

Labour exploitation is not explicitly included in the criminal code as a crime, however, it is punishable under the following provisions: Section 10 (1) Act to Combat Illegal Employment

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<sup>1</sup> Germany, German Criminal Code (*Strafgesetzbuch*, StGB) Section 233, available at: <http://dejure.org/gesetze/StGB/233.html> (04 June 2014).

<sup>2</sup> Germany, Federal Parliament (Bundestag), BT-Drs.17/13706, 04 June 2013, available at: <http://dip21.bundestag.de/dip21/btd/17/137/1713706.pdf> (04 June 2014).

<sup>3</sup> Germany, German Criminal Code (*Strafgesetzbuch*, StGB) Section 233a, available at: <http://dejure.org/gesetze/StGB/233a.html> (04 June 2014).

<sup>4</sup> Germany, German Criminal Code (*Strafgesetzbuch*, StGB) Section 236, available at: <http://dejure.org/gesetze/StGB/236.html> (04 June 2014).

(*Schwarzarbeiterbekämpfungsgesetz, SchwarzArbG*)<sup>5</sup>, which criminalises employment of persons without a permit or residence title to conditions that are in clear discrepancy to those of German workers carrying out the same or comparable work. Contravening Section 10 SchwarzArbG is punishable with a fine or imprisonment of up to three years. In particularly severe cases, *inter alia* in which an offender acts professionally or for serious self-interest, the penalty ranges from six months to five years imprisonment.<sup>6</sup> Section 11 (1) No. 3 Act to Combat Illegal Employment criminalizes the employment of illegally staying persons under the age of 18, irrespective of whether they have been exploited.<sup>7</sup> Section 15a (1) Law on Labour Leasing (*Arbeitnehmerüberlassungsgesetz, AÜG*)<sup>8</sup> contains the same provisions as Section 10 (1) SchwarzArbG, but applies to leased labourers.<sup>9</sup> Another provision dealing with exploitation is Section 291 Criminal Code: usury. Here the punishable act is taking advantage of someone's predicament or weakness by requiring payments or compensation that are in clear discrepancy to the value of a service the offender provided, e.g. accommodation to workers for overpriced rent. The penalty is a fine or imprisonment of up to three years, in particularly severe cases imprisonment between six months and ten years.<sup>10</sup>

### Further provisions for minors

Sections 58 (1) and 59 (1) German Law for the Protection of Children and Youth (*Gesetz zum Schutz der arbeitenden Jugend, JArbSchG*)<sup>11</sup> determine administrative offences which apply when an employer intentionally or with gross negligence violates the provisions of the Youth Health and Safety at Work Act, for example employs children under the age of 15 in violation of the general prohibition of child labour according to Section 5 Youth Health and Safety at Work Act. Section 58 (5), (6) Youth Health and Safety at Work Act further define that the administrative offences become criminal ones when due to the violations of the Youth Health and Safety at Work Act the health of the minor employee has been jeopardised.

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<sup>5</sup> Act to Combat Illegal Employment (*Schwarzarbeiterbekämpfungsgesetz, SchwarzArbG*) Section 10 (1), available at: [www.gesetze-im-internet.de/schwarzarbg\\_2004/](http://www.gesetze-im-internet.de/schwarzarbg_2004/) (30 June 2014).

<sup>6</sup> Germany, Act to Combat Illegal Employment (*Schwarzarbeiterbekämpfungsgesetz, SchwarzArbG*) Article 10, available at: [www.gesetze-im-internet.de/schwarzarbg\\_2004/\\_10.html](http://www.gesetze-im-internet.de/schwarzarbg_2004/_10.html) (04 June 2014).

<sup>7</sup> Germany, Act to Combat Illegal Employment (*Schwarzarbeiterbekämpfungsgesetz, SchwarzArbG*) Section 11, available at: [www.gesetze-im-internet.de/schwarzarbg\\_2004/\\_11.html](http://www.gesetze-im-internet.de/schwarzarbg_2004/_11.html) (04 June 2014).

<sup>8</sup> Germany, Law on Labour Leasing (*Arbeitnehmerüberlassungsgesetz, AÜG*) Section 15a, available at: [www.buzer.de/gesetz/4422/a61125.htm](http://www.buzer.de/gesetz/4422/a61125.htm) (04 June 2014).

<sup>9</sup> The Law on Labour Leasing applies to third-countries and Croatia for whose citizens an interim arrangement exists until 30 June 2015. During this time, freedom of movement of Croatians in Germany is subject to the work permit process.

<sup>10</sup> Germany, German Criminal Code (*Strafprozessordnung, StGB*) Section 291, available at: [www.gesetze-im-internet.de/stgb/\\_291.html](http://www.gesetze-im-internet.de/stgb/_291.html) (04 June 2014).

<sup>11</sup> Germany, German Law for the Protection of Children and Youth (*Gesetz zum Schutz der arbeitenden Jugend, JArbSchG*) Sections 5, 58 and 59 available at: [www.gesetze-im-internet.de/jarbschg/](http://www.gesetze-im-internet.de/jarbschg/) (04 June 2014).

### 3. Labour exploitation and the institutional setting

#### 3.1 Tasks of institutions involved in preventing labour exploitation and in enabling victims to access justice

This section gives an overview of the institutional mechanisms in place at the national and regional level to prevent and fight against labour exploitation. The section looks into the responsibilities of several actors, including the occupational safety and health authorities, police, public prosecution, lawyers and judges, employment and recruitment agencies, employers' associations, and youth welfare services. Those institutions, however, neither have a particular approach towards labour exploitation nor internal regulations or policy plans that specifically address the issue. Rather than that, it is individual actors that are committed to combat labour exploitation and who incorporate these efforts in their general strategy. The section further sheds light on the inter-institutional cooperation at federal and state level, focusing particularly on cooperation between state and non-governmental actors such as support services and workers organisations. The working groups and networks at state level are organised differently. As examples, the reference regions Berlin and Baden-Wurtemberg are highlighted here. While in Berlin inter-institutional cooperation is under the auspices of the Senate for labour, integration and women, in Baden-Wurtemberg cooperation is not formalised but works on an operational level.

##### Occupational health and safety authorities

The functions of occupational safety and health authorities (Gewerbeaufsicht) are performed by over 100 local administrative entities<sup>12</sup> of the federal states, which each have a different scope of action (including health or environmental perspectives) and different names. The basis of the occupational health and safety authorities is the German Occupational Safety and Health Act (*Arbeitsschutzgesetz*, ArbSchG)<sup>13</sup> and the Act on Working Hours (*Arbeitszeitgesetz*, ArbZG)<sup>14</sup>. Their officials are responsible for monitoring and ensuring compliance with the different regulations in the area of work environment and working time. Prevention of exploitation of labour is not in the terms of their references. They also exclude some areas of employment such as domestic work<sup>15</sup>.

Labour inspections that monitor labour conditions extensively, e.g. the wages of employees, seem to exist in other EU member states but not in Germany. Cases of labour exploitation, however, can be detected as part of the controls of occupational safety standards. A crucial indicator in this field are the working hours which, however, are difficult to control, as Section 16 (2) Act on Working Hours<sup>16</sup> only obliges employers to record working times that exceed the legally bound working time of an employee on a workday (8 hours), which can temporarily be extended to up to 10 hours if within 6 months, or within 24 weeks 8 hours average per workday are not exceeded. Moreover, employers are not obliged to record the working time of the following occupational groups: executive employees, civil servants, employees who live in a joint household with the person entrusted to their education, care, and attendance (Section 18

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<sup>12</sup> For a list of all agencies, see [www.baua.de/cae/servlet/contentblob/677886/publicationFile/](http://www.baua.de/cae/servlet/contentblob/677886/publicationFile/) (06 June 2014)

<sup>13</sup> Germany, German Occupational Safety and Health Act (*Arbeitsschutzgesetz*, ArbSchG), available at: [www.gesetze-im-internet.de/arbschg/](http://www.gesetze-im-internet.de/arbschg/) (23 June 2014).

<sup>14</sup> Germany, Act on Working Hours (*Arbeitszeitgesetz*, ArbZG), available at: [www.gesetze-im-internet.de/arbzg/](http://www.gesetze-im-internet.de/arbzg/) (23 June 2014).

<sup>15</sup> Germany, German Occupational Safety and Health Act (*Arbeitsschutzgesetz*, ArbSchG) Section 1 (2), available at: [www.jusline.de/index.php?cpid=ba688068a8c8a95352ed951ddb88783e&lawid=198&paid=1](http://www.jusline.de/index.php?cpid=ba688068a8c8a95352ed951ddb88783e&lawid=198&paid=1) (06 June 2014).

<sup>16</sup> Germany, Act on Working Hours (*Arbeitszeitgesetz*, ArbZG) Section 18 (1), available at: [www.gesetze-im-internet.de/arbzg/\\_16.html](http://www.gesetze-im-internet.de/arbzg/_16.html) (18 August 2014).



(1) ArbZG)<sup>17</sup>. Occupational health and safety authorities have the same authority as local police departments.<sup>18</sup> They investigate and make enquiries. If during inspection the inspectors find irregularities, they ask for them to be remedied. If this does not happen, they can impose a fine on the employer. Once they discover a crime, this is referred to either the police or the public prosecutor. Due to personnel deficits, inspections are not carried out on a regular basis. They divide work with insurance companies and the ministry of employment where each institution focuses on certain sectors respectively [M(4)]. An interviewee from professional group M emphasises that the Berlin Department of Occupational and Safety is authorised to inspect any firm at any time. Private households, on the contrary, are more difficult to inspect: they are not allowed to violate a person's basic rights [M(1)]. Employees can also avail themselves to the inspectors to inform themselves about occupational safety standards. As one interviewee [M(1)] points out, together with the staff council and the employee representatives, they advocate for the rights of the employees as part of the statutory accident insurance according to Social Security Code VII (*Sozialgesetzbuch VII (SGB VII)*)<sup>19</sup>. But they do not focus their work on migrant workers in particular [M(1)].

## Police

The Police in Germany fall under the sole jurisdiction of, and are funded and operated by, the states of Germany. Each federal state regulates the structure of its police authorities. All 16 State Offices of Criminal Investigation (*Landeskriminalamt, LKA*)<sup>20</sup> were contacted in writing on the 14.02.2013 and again on the 14.05.2014. These are specialised police authorities that are subordinate to the respective state ministry of the interior (higher police authorities). The State Offices of Criminal Investigation supervise police operations aimed at preventing and investigating criminal offences, and coordinate investigations of serious crime involving more than one regional headquarters. They can take over investigative responsibility in cases of serious crime, e.g. drug trafficking, organized crime etc. The received 13 responses can be summed up as followed: there are no specialised units dealing exclusively with labour exploitation. Instead, one unit deals with various elements of crime of which labour exploitation is only one or the different aspects of labour exploitation are divided between different units.

In nine of the 13 federal states responses, general local police offices or directorates are responsible for dealing with labour exploitation (lower police authorities). In four of these federal states, however, the responsibility goes to the State Office of Criminal Investigation, if labour exploitation occurs within organised crime, if the crime has a superregional or international impact, or if there are a lot of victims concerned. In the other four federal states, the State Offices of Criminal Investigation are directly responsible for labour exploitation. Internal units are respectively responsible for prosecuting smuggling, human trafficking migration, labour market crimes, or organised crime.

The Federal Police is responsible for police investigations in the event of illegal entry and smuggling of migrant workers who area then being exploited in Germany. The Residence Act (*Aufenthaltsgesetz, AufenthG*)<sup>21</sup> serves as a basis for the police investigations. Information on the cases or the whole case is referred to the State Offices of Criminal Investigation or to customs authority which are responsible if the cases are based on the residence of the victims

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<sup>17</sup> Germany, Act on Working Hours (*Arbeitszeitgesetz, ArbZG*) Section 18 (1), available at: [www.gesetze-im-internet.de/arbzg/\\_18.html](http://www.gesetze-im-internet.de/arbzg/_18.html) (18 August 2014)

<sup>18</sup> Germany, Trade Code (*Gewerbeordnung, GewO*) Section 139b (1), available at: [http://www.gesetze-im-internet.de/gewo/\\_139b.html](http://www.gesetze-im-internet.de/gewo/_139b.html) (18 August 2014)

<sup>19</sup> Germany, Social Security Code VII (*Sozialgesetzbuch VII (SGB VII)*), available at: [www.gesetze-im-internet.de/sgb\\_7/](http://www.gesetze-im-internet.de/sgb_7/) (30 June 2014)

<sup>20</sup> See full list at: [www.polizei.de/Polizei/DE/Home/homepage\\_node.html?nnn=true](http://www.polizei.de/Polizei/DE/Home/homepage_node.html?nnn=true) (06 June 2014)

<sup>21</sup> Germany, Residence Act (*Aufenthaltsgesetz, AufenthG*): Sections 95 (Penal provisions), 96 (Smuggling of foreigners into the federal territory) and 97 (Smuggling of foreigners into the federal territory resulting in death; smuggling for gain and as organised gangs), available at: [http://www.gesetze-im-internet.de/englisch\\_aufenthg/index.html](http://www.gesetze-im-internet.de/englisch_aufenthg/index.html) (06 June 2014).

in Germany. Usually, the Federal Police only handles cases that are directly related to the physical border crossing [P(1)].

The Federal Criminal Police Office (BKA)<sup>22</sup> is a national investigative police agency in Germany and falls directly under the Federal Ministry of the Interior. As law enforcement in Germany is vested in the states, the BKA only becomes involved in cases of international organised crime or when requested by the respective federal state authorities or the federal minister of the interior. The relevant unit at the BKA is the one for Human Trafficking/Pimping/Child Trafficking.

## Financial Control of Undeclared Employment

Financial Control of Undeclared Employment (*Finanzkontrolle Schwarzarbeit*, FKS)<sup>23</sup> is part of customs and coordinated by the Federal Financial Directory West<sup>24</sup>. It acts in accordance with Section 1 Act to Combat Illegal Employment (SchwarzArbG) to prevent undeclared employment. According to Section 2 (1) Act to Combat Illegal Employment<sup>25</sup>, it verifies compliance with the social security provisions. While inspectors check if foreign employees are legally staying persons and if they are employed under more unfavourable conditions compared to German workers, they only do this for the purpose of ensuring that all social securities regulations have been followed. Financial Control of Undeclared Employment does not work to specifically prevent or detect labour exploitation. The authority operates 43 Main Custom Offices in Germany<sup>26</sup>.

## Public prosecution

The legal framework for public prosecution as regards labour exploitation comprises, amongst others, trafficking in human beings for the purpose of labour exploitation (Section 233 German Criminal Code), child trafficking (Section 266 German Criminal Code), wage usury (Section 291 German Criminal Code), and elements of crime punishable under the Act to Combat Illegal Employment as well as Section 15a (1) Law on Labour Leasing as outlined in Section 2 of this study. As with any other offence, it is the prosecutor's responsibility to investigate in cases of labour exploitation should there be any initial suspicion and to help detect and investigate any criminal activities. Usually the police, customs authorities, trade unions, support services or workers themselves make the department for public prosecution aware of abuses at the workplace. In crimes concerning forced prostitution, the department of public prosecution cooperates with supporting bodies to make sure that the victim is provided with counselling and support. However, in the area of labour exploitation, this referral mechanism does not exist yet. In some of the prosecution offices in Germany, there are units that are specialised in labour exploitation (e.g. in Berlin and Stuttgart). In Berlin, public prosecution takes part in round tables where actors from different authorities discuss cases of sexual exploitation. In Stuttgart, the public prosecutors try to contact trade unions as soon as it becomes obvious that support is needed in those cases where referral between police or support services and vice has not taken place; e.g. for accommodation [J(2)].

## Lawyers and judges and prosecution

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<sup>22</sup> Germany, Federal Criminal Police Office (*Bundeskriminalamt*, BKA), available at: [www.bka.de/EN/Home/homepage\\_node.html?\\_nnn=true](http://www.bka.de/EN/Home/homepage_node.html?_nnn=true) (06 June 2014).

<sup>23</sup> Germany, Financial Control of Undeclared Employment (*Finanzkontrolle Schwarzarbeit*, FKS), available at: [www.zoll.de/DE/Privatpersonen/Arbeit/arbeit\\_node.html](http://www.zoll.de/DE/Privatpersonen/Arbeit/arbeit_node.html) (06 June 2014).

<sup>24</sup> For a full list, see [http://www.zoll.de/DE/Der-Zoll/Struktur/Bundesfinanzdirektionen/Abteilung-Zentrale-Facheinheit/abteilung-zentrale-facheinheit\\_node.html](http://www.zoll.de/DE/Der-Zoll/Struktur/Bundesfinanzdirektionen/Abteilung-Zentrale-Facheinheit/abteilung-zentrale-facheinheit_node.html) (09 July 2014).

<sup>25</sup> Germany, Act to Combat Clandestine Employment (*Schwarzarbeitsbekämpfungsgesetz*, SchwarzArbG), available at: [www.gesetze-im-internet.de/schwarzarbg\\_2004/2.html](http://www.gesetze-im-internet.de/schwarzarbg_2004/2.html) (06 June 2014).

<sup>26</sup> For a full list, see: [www.powerplus-systeme.de/stepone/data/downloads/9a/00/00/hauptzollaemter-deutschland.pdf](http://www.powerplus-systeme.de/stepone/data/downloads/9a/00/00/hauptzollaemter-deutschland.pdf) (06 June 2014).

In Germany, lawyers can specialise in different aspects of law such as labour law, criminal law, or social law. Currently, there are about 20 specialties for which lawyers can qualify through extensive training and practical experience.<sup>27</sup> A specialisation in labour exploitation, in turn, does not exist. Rather than that, lawyers explain that they need to cover various legal aspects that come with a case of labour exploitation, namely criminal law, labour law, social law, or residence law. Depending on the individual situation and needs of their clients, their work can get very complex and difficult. The same applies to judges. While they can specialise in different aspects of law like labour or criminal law, a further specialisation in human trafficking or labour exploitation does not exist.

## **Employment and recruitment agencies**

Employment and recruitment agencies are a very diverse group of actors. In Germany, workers are recruited through state authorities such as the Federal Employment Agency (*Bundesagentur für Arbeit*, BA) and the International Placement Services (*Zentrale Auslands- und Fachvermittlung*, ZAV) and private agencies which appear to dominate the recruitment of migrant workers. For private recruitment agencies, standards that are supposed to guarantee occupational safety and prevent labour exploitation are based on voluntary commitment. A legal obligation to certificates, as far as the interviews inform us, does not exist. Voluntary systems of certification do exist in some economic sectors, as the au-pair scheme shows (see section 4.1).

Moreover, it needs to be differentiated between private recruitment agencies based in Germany and those that operate abroad. While the former can be controlled and prosecuted by German law enforcement authorities, the latter are outside the sphere of influence of German authorities. What is more, some private recruitment agencies that operate abroad seem to have partner agencies in Germany, whereby the contractual relationship between the agencies, the employees and, for instance in the care sector, the person that is in need of care is unclear. This has been confirmed by interview partners who are experts in the field of labour exploitation in the care sector. To them, it is difficult to understand the contractual relationship between the different actors. As such, individuals that are in need of care and employees in this sector are also supposed to have difficulties see through these complex employment structures. Finally, it is difficult to discover which ethical standards the agencies abroad comply with and what responsibilities the partner agencies in Germany, in particular with a view to monitoring the on-site working conditions in which they place employees, assume.

To reflect on this heterogeneity, for the purpose of this study, state actors like the Federal Employment Agency and the International Placement Services, as well as charitable and private associations as the Quality Control Association Au-Pair e.V, are analysed. In addition, a recruitment agency that posts Polish workers in Germany was examined. However, the opinions of experts in Germany and Poland on the agency's contractual relationship, ethical standards, and the responsibility of the so-called coordinating partners in Germany are very divergent and their actual strategy towards preventing labour exploitation could not be clarified. As a consequence, further information about that recruitment agency is not integrated into the report.

## **State employment and recruitment agencies**

It is the Federal Employment Agency's responsibility to bring employers and workforce together. Before a job applicant is placed in a firm, the agency checks whether job offers are lawful and comply with agreements on minimal wages, tariffs or local wages. Job seekers shall

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<sup>27</sup> For more information on the different specialisations and their requirements, see: [www.brak.de/w/files/02\\_fuer\\_anwaelte/berufsrecht/fao\\_stand\\_01.11.12.pdf](http://www.brak.de/w/files/02_fuer_anwaelte/berufsrecht/fao_stand_01.11.12.pdf) (08 July 2014).

not be placed in jobs with unethical wages (sittenwidrige Löhne)<sup>28</sup>. The legal basis for the Federal Employment Agency's recruitment work is the Social Security Code III (*Sozialgesetzbuch III*, SGB III)<sup>29</sup> that determines the procedures of labour promotion, German Law for the Protection of Children and Youth, German Occupational Safety and Health Act as well as the General Act on Equal Treatment (*Allgemeines Gleichbehandlungsgesetz*, AGG)<sup>30</sup> and court decisions of the Labour Courts.

Handbooks and internal tools help the staff of the Federal Employment Agency to decide what job offers comply with labour law and wage agreements. The Federal Employment Agency is involved in contracting – controlling what working conditions are contracted. But once a contract is established, they have fulfilled their functions and are no longer involved. This means that they do not control the factual working conditions following later in the course of the contract's implementation. As part of its recruitment policy, the Federal Employment Agency can ban employment advertisements from its vacancy database if there is substantial reason to believe or evidence that an employer exploits his or her employees. As an interviewee from professional group R elaborates, this ban is usually only temporary because the social courts consider permanent bans disproportionate. IG Metall, Germany's largest trade union, recently criticised the Federal Employment Agency for its non-transparent measures of calculating local wages as a benchmark for assessing unethical remuneration. According to IG Metall, in the past this led to a miscalculation of local wages and paved the way for unethical remuneration.<sup>31</sup> Moreover, as the interviewees explain, data protection regulations do not allow the Federal Employment Agency to forward information on employers that exploit their employees to other institutions and therefore they cannot be holistically outlawed for their misbehaviour. That means employers that are banned from the vacancy database can still advertise their job offers in newspapers or on other platforms. Apart from that, the Federal Employment Agency is responsible for the issuance of labour supply permissions and, thus, controls temporary labour. To be granted a labour supply permission, an employer needs to prove expertise in employing workers, a sufficient organisational structure and solvency of at least 2,000 Euro for each employed temporary worker [R(1)].

Third country nationals who want to work in Germany need to apply for a residence title at a German embassy abroad or, if they already are in possession of a visa, at a foreigners' authority in Germany. The approval for taking up employment is granted by the foreigners' authority with the residence title if the International Placement Services<sup>32</sup> at the Federal Employment Agency has consented to the employment. Therefore, the following requirements must be met: one, a legislative provision grants access to the German labour market; two, a specific job offer exists; three, no preferential employees are available for the specific occupation, and the working conditions are comparable to those of domestic employees (Section 39 (2) Residence Act<sup>33</sup> and Section 284 (3) Social Security Code III<sup>34</sup>). The basis is provided by collective agreements or local conditions of employment. To do so, ZAV examines

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<sup>28</sup> Germany, Security Code III (*Sozialgesetzbuch III*, SGB III) Section 36 (1), available at: [www.gesetze-im-internet.de/sgeb\\_3/](http://www.gesetze-im-internet.de/sgeb_3/) (18 August 2014).

<sup>29</sup> Germany, Security Code III (*Sozialgesetzbuch III*, SGB III), available at: [www.gesetze-im-internet.de/sgeb\\_3/](http://www.gesetze-im-internet.de/sgeb_3/) (23 June 2014).

<sup>30</sup> Germany, General Act on Equal Treatment (*Allgemeines Gleichbehandlungsgesetz*, AGG), available at: [www.gesetze-im-internet.de/agg/index.html](http://www.gesetze-im-internet.de/agg/index.html) (23 June 2014).

<sup>31</sup> For more information on IG Metall's criticism, see: [http://www.igmetall-nienburg-stadthagen.de/uploads/media/SOPOINFO-2013-09-Ausgabe18-web\\_Sittenwidriger\\_Lohn\\_Kritik\\_an\\_Praxis\\_der\\_Arbeitsagentur.pdf](http://www.igmetall-nienburg-stadthagen.de/uploads/media/SOPOINFO-2013-09-Ausgabe18-web_Sittenwidriger_Lohn_Kritik_an_Praxis_der_Arbeitsagentur.pdf) (19.08.2014).

<sup>32</sup> For more information on the Federal Employment Agency (*Bundesagentur für Arbeit*, BA), see: [www.arbeitsagentur.de/web/content/DE/service/Ueberuns/WeitereDienststellen/ZentraleAuslandsundFachvermittlung/VersionsDEEN/DeutscheVersion/Arbeitsmarktzulassung/RechtlicheBestimmungenundMerkblaetter/Detail/index.htm?dfContentId=L6019022DSTBAI521651](http://www.arbeitsagentur.de/web/content/DE/service/Ueberuns/WeitereDienststellen/ZentraleAuslandsundFachvermittlung/VersionsDEEN/DeutscheVersion/Arbeitsmarktzulassung/RechtlicheBestimmungenundMerkblaetter/Detail/index.htm?dfContentId=L6019022DSTBAI521651) (10 July 2014).

<sup>33</sup> Germany, Residence Act (*Aufenthaltsgesetz*, AufenthG) Section 39 (2), available at <http://dejure.org/gesetze/AufenthG/39.html> (06 June 2014).

<sup>34</sup> Germany, Social Security Code III (*Sozialgesetzbuch III*, SGB III) Section 284 (3), available at: [http://dejure.org/gesetze/SGB\\_III/284.html](http://dejure.org/gesetze/SGB_III/284.html) (06 June 2014).

the draft employment contracts that the workers submit. There are no on-the-spot visits at the actual working place.

### **Private recruitment agencies**

As au-pairs are a particular vulnerable group and prone to labour exploitation because they work in private households, we also included au-pair agencies in our analysis. According to an interviewee [R(1)], one can differentiate between au-pair agencies that voluntarily commit to mechanisms of standard-setting (e.g. as promoted by Quality Control Association Au-Pair e.V.<sup>35</sup>) and those who do not. The former commit to standard employment contracts, fair terms of working conditions and continuously monitor the employer-employee relationship and participate in frequent audits<sup>36</sup>. Currently, there are about 40 au-pair agencies that commit themselves to the standards and control mechanisms of Quality Control Association Au-Pair e.V.<sup>37</sup>. For the rest of the au-pair agencies, monitoring and support for the juveniles cannot be guaranteed because law enforcement bodies are not authorised to control private households without any reasonable suspicion of a crime, as the interviewee explains [R(1)]. Beyond that there are a vast number of further private recruitment agencies, in particular in the area of private care, that partly operate in Germany and partly recruit workers in their home countries and place them in German families. In this area in particular, criminal structures that promote labour exploitation are suspected.

### **Employers' associations**

With regard to employers' associations, it was difficult to recruit interview partners. They either explained that labour exploitation is not an issue in Germany or did not respond to invitations for participation. In total, only three experts who work at regional level and national level were interviewed. Their views on the mandate and tasks of their respective organisations are illustrated in the following passages.

A Federation of the Construction Industry in one Federal State speaks for 150 companies in the region and seeks to create the best business environment for this economic sector to grow. As an employers' federation, it is responsible to its members not to employees or migrant workers in particular. It tries to promote a level playing field for all construction companies. To do so, the Federation negotiates collective agreements with trade unions that determine federal minimum wages and together with regional federations it discusses working conditions. Once determined, collective agreements are binding for the members of the Federation of the Construction Industry in that state. But in the case of the Land Berlin, the Federation achieved that this agreement was declared generally binding at state level by the Berlin Senate department for economy, technology and research. What the Federation of the Construction Industry in Berlin-Brandenburg does not do is inspect the companies and check whether they comply with agreed regulations [E(1)].

Section 1 of the Chamber of Industry and Commerce Act<sup>38</sup> determines that the said organisation (Deutscher Industrie- und Handelskammertag) represents and supports the interest of all its members (industrialists of all branches and companies). In so doing, it has to guarantee the decency and morals of the respectable businessman. However, the Chamber of Industry and Commerce has no supervisory authority and, hence, cannot administer audits in companies. As an expert from professional group E points out, the organisation does not consider itself responsible for combating labour exploitation and supporting victims [E(1)].

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<sup>35</sup> For more information on the Quality Control Association Au-Pair e.V., see: [www.guetegemeinschaft-aupair.de/wai1/showcontent.asp?ThemaID=10](http://www.guetegemeinschaft-aupair.de/wai1/showcontent.asp?ThemaID=10) (30 June 2014).

<sup>36</sup> For terms of reference for au-pair agencies that place incoming au-pairs in Germany, see [www.guetegemeinschaft-aupair.de/wai1/showcontent.asp?ThemaID=16](http://www.guetegemeinschaft-aupair.de/wai1/showcontent.asp?ThemaID=16) (06 June 2014).

<sup>37</sup> For a full list, see [www.guetegemeinschaft-aupair.de/wai1/showcontent.asp?ThemaID=4563](http://www.guetegemeinschaft-aupair.de/wai1/showcontent.asp?ThemaID=4563) (06 June 2014)

<sup>38</sup> For more information, see [www.dihk.de/wir-ueber-uns/wer-wir-sind/dihk](http://www.dihk.de/wir-ueber-uns/wer-wir-sind/dihk) (23 June 2014).

The Global Compact Network Germany was founded in 2002 as a national network of the UN Global Compact. Its work is based on 10 principles that focus on human rights, labour rights, environmentalism, and fight against corruption. In the area of labour exploitation the principles 3 to 6 are important: freedom of association, the right to collective bargaining, abolishment of all forms of forced labour and of child labour, and non-discrimination as regards recruitment and employment. Its members self-commit to these principles while the Global Compact Network, in turn, operates awareness raising and capacity building campaigns. The Global Compact Network Germany addresses companies that maintain branch offices abroad and focusses on their corporate social responsibility strategy. The network closely cooperates with the Association for International Cooperation (*Gesellschaft für Internationale Zusammenarbeit*, GIZ) and the Federal Ministry for Economic Cooperation and Development (*Bundesministerium für Wirtschaftliche Zusammenarbeit und Entwicklung*, BMZ) and as such has a focus on corporate policies outside Germany. In Germany, the network developed foundation trainings that focus on human rights education in the corporate environment – an area where awareness and capacity is still underdeveloped. Issues that are discussed during these trainings are the following: effects of corporate business on human rights, corporate responsibility for human rights, and integration into management systems (strategies and complaints mechanisms). Labour exploitation is addressed as one particular issue of human rights offenses, as one of their representatives explains [E(1)].<sup>39</sup>

## Youth welfare services

Youth welfare is provided according to the Social Security Code VIII (SGB VIII)<sup>40</sup> by the local youth welfare agencies of the federal states. There are over 600 youth welfare agencies, each for every district and for every bigger city<sup>41</sup>. Youth welfare provides suitable labour positions for those under the age of 18, who do not fall under the prohibition of child labour<sup>42</sup>. Exceptions from the child labour prohibition of Section 5 German Law for the Protection of Children and Youth (JArbSchG) may be made by the Occupational Safety and Health Authorities<sup>43</sup>. What is more, youth welfare services are obliged to take any child into custody either if the child's well-being is in danger (Section 42(1) No. 2 a Social Security Code VIII) or if it is an unaccompanied foreign child with no parents holding custody within Germany or with the parents not being reachable (Section 42 (1) No. 3 Social Security Code VIII), which covers most of the cases of child trafficking. As a next step, a guardian which is often the youth welfare service is appointed. As discovered when researching for the FRA Report on Guardianship systems for child victims of trafficking, there are no documented insights on the guardianship of children who have become victims of human trafficking or labour exploitation.

## Support structures

There are now some 40 specialised counselling centres in Germany for women who have been trafficked; they identify trafficked women and provide counselling and services depending on their individual funding organisations, orientations, and affiliations. Their activity substantially includes accommodation for women in shelters, support during criminal proceedings, psychosocial counselling, and guidance and assistance for retraining. As the criminal phenomenon of human trafficking for the purposes of sexual exploitation with a view

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<sup>39</sup> For more information on the training, see: [www.globalcompact.de/sites/default/files/flyer\\_2tagescoaching\\_septfrankfurt\\_d\\_140717\\_v8\\_screen.pdf](http://www.globalcompact.de/sites/default/files/flyer_2tagescoaching_septfrankfurt_d_140717_v8_screen.pdf) (02 September 2014).

<sup>40</sup> Germany, Social Security Code VIII (*Sozialgesetzbuch VIII*, SGB VIII), available at: [www.sozialgesetzbuch-sgb.de/sgbviii/1.html](http://www.sozialgesetzbuch-sgb.de/sgbviii/1.html).

<sup>41</sup> List [www.infodienstnet.de/index.php?kategorie=jugendamt&show=start.htm](http://www.infodienstnet.de/index.php?kategorie=jugendamt&show=start.htm) (06 June 2014).

<sup>42</sup> Germany, Social Security Code VIII (*Sozialgesetzbuch VIII*, SGB VIII), Section 11, available at: [www.sozialgesetzbuch-sgb.de/sgbviii/11.html](http://www.sozialgesetzbuch-sgb.de/sgbviii/11.html) (06 June 2014).

<sup>43</sup> Germany, Youth Health and Safety at Work Act (*Gesetz zum Schutz der arbeitenden Jugend*, JArbSchG), Section 6, available at: [www.gesetze-im-internet.de/jarbschg/\\_6.html](http://www.gesetze-im-internet.de/jarbschg/_6.html) (06 June 2014).

to the support practice cannot be easily distinguished from sexual exploitation, those counselling centres offer their services to both groups of victims. In recent years, some of them have started to extend their scope to trafficking of women for the purpose of labour exploitation and to labour exploitation respectively. Only a few also provide counselling for men.

In the past five years, German trade unions have launched individual initiatives to deal with labour exploitation of both regular and irregular migrants. Fair Mobility (Faire Mobilität), funded by the Federal Ministry of Labour and Social Affairs, the European Social Fund and the German Trade Union Confederation, supports the enforcement of fair wages and living conditions across national borders. Six advisory centres offer counselling on labour and social law issues to migrant workers from Central and Eastern Europe (EU and associated countries). Each advisory centre has a specific thematic area of expertise: care sector (Berlin), industry-related services (Dortmund), construction and cleaning industry (Frankfurt), meat industry (Hamburg), posting of workers and contract work (Munich), and transport and logistics (Stuttgart).<sup>44</sup>

Support services in Hamburg, Berlin, Frankfurt, Munich, and Cologne concentrate on assisting undocumented migrants in exercising their rights at work. They are funded by several trade unions such as German Trade Union Confederation, ver.di (Vereinte Dienstleistungsgesellschaft)<sup>45</sup>, Industrial Union of Metalworkers, or the Industrial Union for Construction, Agriculture and Environment.<sup>46</sup> These individual initiatives can serve as a driving force for the establishment of a structure for providing assistance. Due to limited resources, they have not yet become permanent.

General counselling centres for migrants or refugees rarely work with an explicit emphasis on assistance in exercising rights at work in cases of labour exploitation. They often concentrate on initial advisory services for regular migrants with the aim of integrating new immigrants, on advisory services for refugees with an emphasis on advice about laws on asylum and immigration laws, and on advisory services for ethnic German repatriates (Spätaussiedler).

### **Inter-institutional cooperation**

A federal level, a joint federal and state-government working group on trafficking in women was founded in 1997 that monitors national trends in human trafficking in Germany, analyses weak areas, and provides an impetus for changes in practice, for instance through advanced training materials.<sup>47</sup> In the beginning of 2013, the working group's mandate of trafficking in women has been extended to human trafficking for the purpose of labour exploitation. However, until today this can only be regarded a formal change and none of the actors that are relevant to the field of labour exploitation have been included in the working group which is why the factual focus is still on sexual exploitation. Currently the network lacks representatives of the Ministry of Finance as the supervisory body of the Financial Control of Undeclared Employment. Currently, the majority of the NGOs that are involved in the working groups are active in the field of trafficking for the purpose of sexual exploitation.

On the federal level and in 14 out of 16 federal states, there are inter-institutional cooperative alliances of state and civil society actors who are concerned with the issue of human trafficking. The working groups at state level are predominantly engaged in the field of trafficking in women.

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<sup>44</sup> For more information on Fair Mobility, see: [www.faire-mobilitaet.de/en/](http://www.faire-mobilitaet.de/en/) (30 June 2014).

<sup>45</sup> For more information on ver.di, see: [www.verdi.de/](http://www.verdi.de/) (09.09.2014).

<sup>46</sup> For more information, see exemplary: <http://migrar-ffm.de/about/> (30 June 2014).

<sup>47</sup> For further information, see: [www.bmfsfj.de/BMFSFJ/gleichstellung.did=73008.html](http://www.bmfsfj.de/BMFSFJ/gleichstellung.did=73008.html) (16 June 2014).

In the two reference regions that are the subject of this study, networks focussing on the issue of labour exploitation do exist at state level. However, the institutional framework in which they operate differentiates. In Berlin, inter-institutional cooperation is under the auspices of the Senate for labour, integration and women and thus cooperation in this area is proactively fostered by state authorities. In Baden-Wurtemberg cooperation is not formalised but works on an operational level – without the participation of officials of the ministerial administration.

In Baden-Wurtemberg, two prominent cooperation structures seem to be active. Firstly, the so called Network “Stuttgart 21” assembles support services, trade unions, lawyers, rail chaplaincy services, social welfare stations, the employment agency, police, customs authorities, prosecution, occupational safety and health authorities that meet three times a year. The network was founded by a catholic organisation and trade union responsible for the construction sector to respond to forms of labour exploitation that occur at Stuttgart’s largest construction site – the reconstruction of the central station. Representatives of the ministerial administration do not participate in the network. Rather than that, it is meant to facilitate the mutual exchange of information about incidents of labour exploitation and about conferences and other events where the issue is discussed which shall help the members make further contacts at operational level. It shall further create a mutual understanding of the responsibilities and limits of each institution and shall increase the level of knowledge about support measures like accommodation and counselling and about instruments of compensation. The members also introduced passports for the construction site to make inspections of the customs authorities and occupational safety and health authorities easier [P(1); S(1)]. Secondly, support organisations, civil society actors, and public bureaucrats are involved in the Alliance for Fair Work Migration. They meet annually and do joint public relations campaigns, organise information events and talk to political decision-makers to inform them about on-the-ground expertise gathered through the counselling of victims of labour exploitation [S(1)].

In Berlin, a network of practitioners exists that comprises of support services, workers organisations, law enforcement authorities, and the Berlin Senate for labour, integration and women under whose auspices it operates. It started off as a network focussing on human trafficking for the purpose of sexual exploitation and has a longstanding experience in inter-institutional cooperation. Unlike similar networks on human trafficking for sexual exploitation that exist in almost all states of Germany, the Berlin network was the first to expand its scope to trafficking for labour exploitation and labour exploitation. Its members are committed to improving the public structures and the referral between state and non-state actors to combat human trafficking and exploitation more effectively. Customs authorities and public prosecution do not get very involved in inter-institutional cooperation in Berlin. Their absence from the network is regarded critically by the members (according to discussions in the first focus group). The police, in particular, complain about the fact that after reporting a case where they suspect human trafficking for labour exploitation to prosecution, they usually do not hear back from them and do not know whether this means that the case does not fulfil the requirements of human trafficking or whether their investigations were unsatisfactory [P(1)]. While the majority of law enforcement authorities [P(2); M(2)] consider the inter-institutional cooperation effective, representatives of support organisation still attest to the public authorities a lack of information and complain about the missing central focal point that is responsible for labour exploitation [S(2)].



### 3.2 Forms and frequency of incidents of labour exploitation encountered by experts in their work; economic areas affected

After the different actors in the area of labour exploitation and their respective responsibilities have been outlined, this sub-section looks into the forms and frequency of incidents of labour exploitation that the interviewed experts encounter in their professional life. It further highlights those economic sectors that seem to be particularly prone to labour exploitation. To start with, exploitation of migrant workers under particularly exploitative working conditions appears to be the most frequent form of labour exploitation and the construction sector and restaurants are reported to be most prone to exploitation. It needs to be noted, though, that the counselling centres of trade unions focus on different economic sectors. Some of them such as agriculture are not represented in this study as representatives of these branches could not be recruited for the interviews. A study that was commissioned by the Federal Ministry of Labour and Social Affairs indicates that labour exploitation also occurs in economic sectors that were not listed by the interviewees, e.g. amongst agricultural seasonal workers.<sup>48</sup>

In the majority of cases, the different professional groups appear to agree that exploitation under particularly exploitative working conditions occurs most frequently when migrant workers are concerned. This result is reflected in the interviews conducted with the monitoring bodies, the police, support services, lawyers, staff of the employment and recruitment agencies, and trade unions. The interviews with the judges and prosecutors, as well as those with the experts from employers' associations, have not produced any clear results on the most frequently observed form of labour exploitation. The national policy experts that were interviewed for the purpose of this study indicated that they have observed trafficking for labour exploitation most frequently in the course of their professional life. Two interviewees [M(1); E(1)] explained that they have not encountered any form of labour exploitation as part of their job. If at all, they are informed about forms of labour exploitation in the press. The answers of the interviewees from professional groups S are more balanced. They listed slavery once, forced labour five times, child labour twice, trafficking for labour exploitation eight times, and exploitation under particularly exploitative working conditions eleven times. To better compare the findings across the different professional groups, the following table summarises the answers given by the interviewees.

<b>Forms of labour exploitation according to professional group</b>	<b>S</b>	<b>E</b>	<b>L</b>	<b>R</b>	<b>P</b>	<b>J</b>	<b>M</b>	<b>W</b>	<b>N</b>	<b>Total</b>
Exploitation of a migrant worker under particularly exploitative working conditions (in the terms of the ESD)	11	1	3	2	6	2	2	3	2	<b>32</b>
Forced labour, including bonded labour (e.g. debt bondage)	5	1	0	1	0	2	1	0	0	<b>10</b>
Trafficking for labour exploitation	8	0	2	1	5	1	0	1	3	<b>21</b>
Slavery	1	0	0	0	0	0	0	0	0	<b>1</b>

<sup>48</sup> For more information on the scope of human trafficking for labour exploitation, see: [www.bmas.de/SharedDocs/Downloads/DE/PDF-Meldungen/studie-menschenhandel.pdf;jsessionid=F2C2A15CDADF36B89A3F450273345EE4?blob=publicationFile](http://www.bmas.de/SharedDocs/Downloads/DE/PDF-Meldungen/studie-menschenhandel.pdf;jsessionid=F2C2A15CDADF36B89A3F450273345EE4?blob=publicationFile) (30 June 2014).

Child labour	2	1	0	0	1	0	0	0	0	4
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The findings from the focus groups confirm the perceived predominance of exploitation of a migrant worker under particularly exploitative working conditions among the different forms of labour exploitation as the following quote of the first focus group highlights.

*“If I were to summarise, then I would say that most of the victims haven’t received their wages, either the entire wage or part of it is withheld. So that would be wage fraud. Wage extortionists are the biggest problem. Either with bogus self-employment, non-existent work contracts, non-documented overtime; then in the nursing profession there is the problem of 24-hour care.”*

The same picture is drawn in the case studies that were compiled for this research. While eleven cases were categorised as exploitation of a migrant worker under particularly exploitative working conditions, slavery, bonded labour, and child labour were each only listed once. Three of the cases were also categorised as trafficking for labour exploitation.

According to the interviewees, the professions that are most prone to labour exploitation are the following: construction workers, service personnel in restaurants (waiters, kitchen assistants, and specialty chefs), domestic helps (caretakers of the elderly and child care), cleaning workers, and housekeeping in hotels. While the experts that were interviewed in groups P, R, and W regards service personnel in restaurants as most vulnerable, interviewees of professional groups S and N consider domestic helps as particularly prone to labour exploitation. Moreover, groups J and E appear to list construction workers as the most vulnerable occupations. For groups M and L, on the contrary, no clear-cut results could be derived. Across the professional groups, the three most vulnerable economic sectors are construction in general (15) and building completion and finishing in particular (nine) as well as restaurants (11). The different sub-categories taken together, employees in diplomatic and non-diplomatic households (13) also seem to be particularly prone to labour exploitation.

As the economic sectors that appear to be particularly prone to labour exploitation, the participants of the focus groups reached a similar conclusion. They listed construction, restaurants (specialty chefs and service), care sector (care of the elderly and children), logistics, transportation, IT sector, hotels (maid service), prostitution, cleaning business, meat processing industry and activities in diplomatic households.

Looking at situations where migrant workers are subjected to labour exploitation, across the seven professional groups that were asked about the conduct that might contribute to labour exploitation the following five factors dominate the ranking: no information about entitlements (26), withheld wages or lower wages than legally obliged to (26), no contract in an understandable language or no contract at all (24), dependence on employer beyond the employment (21), and no social security contributions (13). While in group M impaired health conditions are named as most relevant factor, the experts from group P observe low or withheld wages most frequently. In professional groups S and E, interviewees regard the misinformation about entitlements as a crucial conduct that may contribute to labour exploitation. Among the interviewees of J, L, and W, no clear conclusion could be derived. Physical violence or to threats of such violence is the least frequently reported conduct that contributes to labour exploitation (four). The following table summarises the findings from the different professional groups.

Forms of labour exploitation pointed out by the interviewees	S	E	L	R	P	J	M	W	N	Total
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<b>according to the professional group</b>										
Migrant workers do not have a contract written in a language they understand, or do not have a contract at all	10	2	3	-	3	3	1	2	-	<b>24</b>
Migrant workers are not properly informed about their entitlements as concerns wages, working conditions, annual leave etc.	11	3	2	-	3	3	2	2	-	<b>26</b>
Employers withhold wages or pay considerably less than what they are obliged to pay	9	1	3	-	6	3	1	3	-	<b>26</b>
Parts of what is paid flows back to employers, e.g. for fees which the employer owes to recruiters or for food or services provided by the employer	5	0	0	-	2	2	1	2	-	<b>12</b>
The migrant worker depends on the employer beyond the employment contract, e.g. as concerns accommodation or employment of family members	9	1	2	-	5	1	0	3	-	<b>21</b>
Employer does not pay social security contributions	3	1	2	-	2	2	2	1	-	<b>13</b>
Migrant workers are not allowed to go on annual leave	2	0	1	-	2	1	2	1	-	<b>9</b>
Migrant workers are restricted in their movement, either by physical barriers or by practical means, such as withholding travel documents	3	1	0	-	3	0	1	0	-	<b>8</b>
The employer adds to the migrant worker's isolation by impeding communication e.g. communication to representatives of labour unions or to labour inspectors	4	1	2	-	2	0	1	1	-	<b>11</b>
The migrant worker is subjected to physical violence or to threats of such violence	1	0	1	-	1	0	1	0	-	<b>4</b>

The worker's health conditions are impaired, e.g. through labour-intensive work or long hours	5	1	1	-	0	0	4	0	-	<b>11</b>
Other (please specify)	1 psychological violence	0	0	-	0	0	0	0	-	<b>1</b>
Don't know	0	0	0	-	0	0	0	0	-	<b>0</b>

With a view to the frequency that the different experts learn about cases of labour exploitation, the majority of the interviewees (22) indicate that at least once a week comes to their attention. The subsequent table gives a detailed overview of the frequency related findings according to the professional group.

Frequency of learning about cases of labour exploitation according to the professional group										Total
	S	E	L	R	P	J	M	W	N	
Twice or more than twice a week	4	0	1	2	2	1	2	3	1	<b>16</b>
Once a week	3	0	0	0	2	0	0	1	0	<b>6</b>
Less than once a week but at least twice per month	2	0	1	0	0	0	0	0	0	<b>3</b>
Once a month	0	1	0	0	0	0	0	0	1	<b>2</b>
Twice or more per year	2	1	1	1	1	2	0	0	2	<b>10</b>
Once a year or less	0	1	0	0	1	0	1	0	0	<b>3</b>
Other (please specify)	0	1 no case	0	0	0	0	1 no case	0	0	<b>2</b>
Don't know	0	0	0	0	0	0	0	0	0	<b>0</b>

## **4. Risks and risk management**

### **4.1 Identification of common risk factors for labour exploitation**

As part of the risk assessment and the analysis of risk management in Germany, first of all, the common risk factors that were given by the respondents in the open question and then their answers on the closed questions about legal and institutional factors (e.g. low risk of prosecution, punishment, and compensation), personal characteristics (e.g. language barriers and extreme poverty), and about the risk factors at the workplace (e.g. precarious or insecure employment and isolation) are summarised. To finish this sub-section, the role and effectiveness of employment and recruitment agencies in preventing labour exploitation, which are widely regarded as limited, is highlighted. As regards the methodology of the interview survey, it needs to be noted that many of the interviewees found it difficult to prioritise the answers that were given in the closed questions. Thus, tendencies that appear in some answers, or the lack thereof, should be interpreted carefully, as many interviewees added to their answers that in principle all answers are relevant. Moreover, the answers to some questions varied to such a great extent, both within professional groups and across groups, that no clear-cut findings can be derived on the risk factors.

#### **Common risk factors**

Asked about the common risk factors for labour exploitation, the interviewees came up with a wide range of answers that can be categorised in factors prevailing in the home country, personal factors, and factors in Germany. With a view to the home country, the following factors were listed: unstable social and political situation, economic hardship, long-term unemployment, need to provide for family, family coercion, lack of prospects and bad experience with public authorities. Amongst the personal factors that seem to make victims more vulnerable to labour exploitation, the interviewees rank language barriers, low level of education, dependence on the job even if it is precarious, lack of information about the German labour market and requirements, and their entitlements as well as isolation. Germany-related factors on the one hand refer to the assumed prospects to earn a living and on the other hand to the fierce competition in some economic sectors and the unwillingness of the customers to pay more for goods and services.

Finally, the interviewees also consider the lack of an alternative to the irregular residence status in Germany and the consequent dependence on the employer as crucial factors that make some victims more prone to labour exploitation. Looking at the different professional groups separately, the answers are as widely-ranged as when analysing them across the groups. Therefore, for groups M, L, R, W, E, and N, no clear-cut statements can be derived on the factors that appear to be most determining for labour exploitation. In professional groups P and S, in turn, language barriers are regarded as crucial risk factors, whereas the judges and prosecutors list economic hardship as the most relevant factors.

#### **Legal and institutional factors**

Regarding the legal and institutional factors that render some migrant workers vulnerable to labour exploitation, the results from the interviews and case studies are similar. Overall, the interviewees and experts consider the low risk to offenders of being prosecuted and punished (38 interviewees; 12 experts), the lack of effective monitoring of those economic sectors that are prone to labour exploitation (33 interviewees; 13 experts) and the low risk to offenders of having to compensate exploited migrant workers (30 interviewees; 9 experts) as most relevant. With the exception of groups M and E, which do not refer to the latter, those three

factors are listed by all professional groups. In addition, under category others interviewees from group S add a missing legal residence alternative [S(2)] and the lack of preventive programs that inform migrants prior to their departure about the risk of labour exploitation in Germany and about support services [S(1)]. Moreover, experts mention the absence of a minimum wage [L(1)] and the malfunctioning cooperation between authorities with similar responsibilities [R(1)] as important factors of the legal and institutional setting. Corruption in the police and in other parts of administration is not regarded an issue both by public administrates and non-governmental actors. Two experts that helped with compiling the case studies also added strong criminal structures and channels for recruiting and employing people abroad and the missing political willingness to establish institutional structures that deal with labour exploitation beyond human trafficking as legal and institutional factors that promote labour exploitation.

### Personal characteristics as risk factors

Concerning the personal characteristics and the initial situation of the migrant worker, the responses of the interviewees are widely scattered, as the table below illustrates. This is highlighted in the following exemplary quote:

*"[I]t's difficult, (...) to make this – some kind of ranking list. I mean, all of those factors are important" [S(1)].*

If at all, one could say that across the professional groups the fact that incidents where migrant workers do not know the language of the country of workplace (35) and where they have experienced extreme poverty at home (32) are considered most crucial for the likeliness of being exploited. Whereas sexual affiliation and labour exploitation on behalf of the sex (two) has been less frequently given as response. Under section 'others', one S group expert listed financial despair, while another G group expert puts emphasis on the requirement of an employment contract and social insurance in order to be entitled to a residence permit and social benefits. This conditionality makes people, as the interviewee states; accept precarious employment conditions [S(1)]. The findings from the case studies are similar to the ones of the interviews. As most critical factors in the compiled cases, the experts name inadequate German skills (13) and experience with poverty in the home country (11). This is followed by the tendency that nationals of the victim's country of origin are often exploited in Germany (9), the problem that the victim was not allowed enter into legal employment (7) or not have legal residence status (4) or generally had a low level of education (3). As further factors, two experts added the financial responsibility of the victims for their families and the tendency of not perceiving themselves as victims of labour exploitation.

Factors adding to the risk that migrant workers are exploited - as regards the migrant workers' personal characteristics	S	E	L	R	P	J	M	W	N	Total
Migrant worker has a low level of education;	4	1	0	2	1	2	1	1	2	14
Migrant worker does not know the language of the country of workplace;	11	1	3	3	6	2	4	3	2	35
Migrant is not allowed to enter into employment;	5	1	2	1	3	2	2	0	1	17

Worker comes from a country the nationals of which are often exploited in the destination country;	2	0	2	1	1	0	0	1	0	7
Worker is prone to discrimination on behalf of their race or through their identification as belonging to a national minority (such as Roma, Dalit or sub-Saharan African)	2	1	2	0	1	1	0	0	1	8
Worker is prone to discrimination on behalf of their sex	0	0	0	0	0	0	0	1	1	2
Worker has experienced extreme poverty at home;	8	3	1	3	5	2	3	2	4	31
Other (please specify)	3									
	Missing employment contract and social security as requirement for residence permit; financial despair	0	0	0	0	0	0	0	0	3
Don't know	0	0	0	0	0	0	0	0	0	0

### Risk factors at workplace

Focusing on the situation of migrant workers at their workplace, again, all the possible answers are referred to by the interviewees – albeit to varying extents. Based on the responses, across the professional groups, precarious or insecure situation of employment and relative isolated employment situation with few contacts to clients or to people outside the firm appear to be considered the most crucial factors for labour exploitation. On the contrary, the lack of a membership of a trade union (six) and seasonal employment (seven) have been less frequently specified as risk factors. The table below gives a detailed overview of the risk factors that occur at the workplace and allows to compare the findings across the professional groups.

Factors adding to the risk that migrant workers are exploited - as regards the migrant workers' work place	S	E	L	R	P	J	M	W	N	Total
The migrant works in a sector of the economy that is particularly prone to exploitation;	7	2	2	2	3	2	2	1	4	25

The migrant works in relative isolation with few contacts to clients or to people outside the firm;	8	1	3	3	5	0	1	1	3	<b>25</b>
The migrant worker is not a member of a trade union;	3	0	1	0	0	0	0	1	1	<b>6</b>
The migrant works in a precarious or insecure situation of employment, e.g. formally not employed but self-employed;	9	1	2	1	4	3	3	2	4	<b>29</b>
The migrant worker is not directly employed by the business/organisation for which they work, e.g. agency workers, or employees of cleaning or security companies;	3	1	1	0	3	1	2	1	0	<b>12</b>
The migrant worker is employed as a posted worker by a foreign company;	4	1	0	1	2	1	0	3	1	<b>13</b>
The migrant is a seasonal worker;	1	1	0	2	0	1	2	0	0	<b>7</b>
Other (please specify)	0	0	0	0	0	0	0	0	0	<b>0</b>
Don't know	0	0	0	0	0	0	0	0	0	<b>0</b>

The experts that helped compile the case studies only partly confirm the findings from the interviews. As the most crucial factors at the work place, the experts explain that the economic sector in which their cases occurred is particularly prone to exploitation (12) and that the respective victims worked in relative isolation (12). They further regard the missing trade union membership (12) and the precarious or insecure situation of employment (7) important risk factors that led to the exploitation of the migrant workers.

### **Role of recruitment agencies**

To answer the question on the role and effectiveness on employment and recruitment agencies, the views of the professional group R are compared with the opinions of the other interviewees that were posed these questions. To summarise, the Federal Employment Agency seems to check the working conditions of those firms that advertise jobs in their database but only based on the job descriptions that they receive. The same applies to controls of recruitment and temporary employment agencies in Germany, which appear to be carried out predominantly based on document analyses and not on inspections. The majority of the interviewees point to the dark field of employment and recruitment agencies that deliberately seem to place their clients into precarious working conditions. This also applies to agencies that operate in the sending countries; especially in areas where migrant workers are employed in private households for instance as care takers. These agencies are difficult to control and to prosecute. According to the interviewees, in the meat processing and slaughtering industry, workers are employed through companies in their home countries on which German authorities cannot exert any effective power.

The Federal Employment Agency considers their role important because by banning employers that offer precarious or unethical jobs from the vacancy database, the access to migrant workers that would consider these is impeded and the entire recruitment service



becomes safer [R(1)]. Once an employment contract that seemed perfectly lawful is closed, however, the Federal Employment Agency does not follow up on whether the employer actually complies with the contract. What is more, according to one interviewee, the requirements to gain a labour supply permission can easily be fulfilled. This is particularly upsetting because people in temporary employment usually are paid less than those that are directly employed with a company and, thus, could be exposed to labour exploitation. Controlling private recruitment agencies, in his mind, is even more difficult because the agencies usually do not name the employer in their job advertisements [R(1)]. Looking at au-pairs in particular, recruitment agencies could prevent the exploitation of their clients if there was an obligatory quality certificate for all agencies. However, only few au-pair agencies in Germany take part in this certification (47). They are controlled by Quality Control Association Au-Pair e.V. All the other agencies (min. 200) that do not self-commit to these standards are not bound by them and may apply less favourable recruitment procedures [R(1)].

According to the interviewed experts who work with monitoring bodies, temporary employment agencies are bound by law to see if working conditions or health standards are met. But in reality workers are often left without any information about occupational safety and health standards and temporary employment agencies do not check the conditions in the company. Employment and recruitment agencies cannot effectively control the working conditions of the companies in which they place job applicants. What they do is assess the conditions advertised by the employer and bring together employers and adequate applicants. Whether the conditions that the employer claims on paper actually mirror the reality is not assessable without inspections [M(3)].

Interviewees of the professional groups J and L further outlined that employment and recruitment agencies do not carry out inspections. Assessing safety and health conditions as advertised on paper will, therefore, not uncover any violations on the part of the companies. With the achievement of the full free movement of workers for Bulgarians and Romanians in January 2012 and the free movement of workers in the area of seasonal work for Croatians, the International Placement Service (ZAV) does not check the working contracts of migrant workers in these areas any longer<sup>49</sup>. Apart from that, the effectiveness of recruitment agencies is rendered marginal because the majority of migrant workers are not recruited through official employment or recruitment agencies in Germany but through private ones and mostly through agencies in their home countries that are not bound by German standards and, therefore, not controlled by German authorities [J(1); L(2)].

One interviewee of professional group W shares this view. According to this respondent, some private recruitment agencies are part of criminal structures in Germany with excellent contacts to agencies in the sending countries. These agencies make sure that migrant workers are not directly employed by the host family but the agency which determines and controls the terms of the employment. The interviewee further explains:

*“that in the home care sector, this private employment agencies help to start and maintain the exploitative employment relation as long as possible. (...) In the contracts that the women and the families sign with the posting company in the case of posted labour models, yes, there are regulations that prohibit a direct employment relation between the contractor, meaning the family. (...) And again, this is ensured on both sides with a contract. Hence, the family would also have to pay high penalty fees in case it leaves this model und employs the women directly.” [W(1)]<sup>ii</sup>*

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<sup>49</sup> For more information, see:

[www.arbeitsagentur.de/web/content/DE/service/Ueberuns/WeitereDienststellen/ZentraleAuslandsundFachvermittlung/VersionsDEEN/DeutscheVersion/Arbeitsmarktzulassung/RechtlicheBestimmungenundMerkblaetter/Detail/index.htm?dfContentId=L6019022DSTBAI532084](http://www.arbeitsagentur.de/web/content/DE/service/Ueberuns/WeitereDienststellen/ZentraleAuslandsundFachvermittlung/VersionsDEEN/DeutscheVersion/Arbeitsmarktzulassung/RechtlicheBestimmungenundMerkblaetter/Detail/index.htm?dfContentId=L6019022DSTBAI532084) (08.09.20014).

Another problem, according to a trade union representative, seems to be the fact that the Federal Employment Agency currently only feels responsible for applicants with sufficient German skills for which it provides recruitment services. As such, the interviewee suggests to establish a public employment agency in the care sector to which trade unions could refer their clients to protect them from exploitative agencies [W(1)]. In the meat processing and slaughtering industry, agencies do not seem to play any role. The business is organised through companies in the home countries of employees that contract workers and send them to Germany [W(1)].

Theoretically, the Federal Employment Agency collects complaints against temporary employment agencies that disrespect labour law and this can result in the withdrawal of the labour supply permission. In the interviewee's opinion, the effectiveness of this measure is doubtful, as the interviewee's organisation forwarded several complaints to the Federal Employment Agency but never received any information on the result of the procedures [W(1)]. The work and safety conditions of the care workers and au-pairs are usually not controlled by public authorities because inspections in private households are only possible under strict conditions [W(1)].

The employers' associations paint a diverse picture of the role and the effectiveness of employment and recruitment agencies. While one interviewee [E(1)] ascribes the official agencies an important role in creating or preventing situations of vulnerability of migrant workers to labour exploitation, another respondent [E(1)] believes that their role is marginal as migrant workers are recruited elsewhere. In the construction sector, as the respondent further elaborates, supply of temporary workers between construction firms is legally forbidden altogether.<sup>50</sup> Yet another representative of that professional group puts emphasis on the need to develop and provide training to recruitment agencies based on the UN Guiding Principles on Business and Human Rights to ensure that human rights and labour rights standards are complied with [E(1)].

National policy experts at state and federal level support the views of experts from the groups L and W that since the Federal Employment Agency only monitors the work of official temporary employment agencies, labour exploitation as organised crime at the bottom of the labour market remains undiscovered because workers are usually recruited through private agencies [N(2)]. Furthermore, temporary employment agencies, according to Section 10 (4) AÜG,<sup>51</sup> have to ensure that their employees that are leased to a company are employed under the same conditions (working conditions and remuneration) as workers that are directly employed with the company and who carry out comparable work. As another expert emphasises, statistics show that temporary workers are more often affected by occupational accidents and diseases than employees in regular employment situations.

The issue of temporary employment is addressed specifically in the Common German Occupational Safety Strategy to which the occupational safety and health authorities are bound. However, according to the interviewee, the only effective measure in fighting labour exploitation in temporary employment situations would be to better value temporary workers, as the interviewee thinks it is done in France where temporary workers are better paid than normal workers. This would prevent a race to the bottom as regards wages and working conditions [N(1)]. Another national policy expert re-establishes the argument of one representative of a recruitment agency that the au-pair scheme is currently deregulated without clear and binding standards and restrictions. In the respondent's view, there is a definite need for effective institutions whose primary responsibility is the regulation, instigation and upholding of certain standards [N(1)].

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<sup>50</sup> For more information, see [www.gesetze-im-internet.de/a\\_g/\\_1b.html](http://www.gesetze-im-internet.de/a_g/_1b.html) (20.08.2014).

<sup>51</sup> Germany, Law on Labour Leasing (Arbeitnehmerüberlassungsgesetz, AÜG) Section 10 (4), available at: [www.gesetze-im-internet.de/a\\_g/\\_10.html](http://www.gesetze-im-internet.de/a_g/_10.html) (04.09.2014).

## 4.2 Prevention measures aimed to reduce the risks of labour exploitation and the obligations of specific organisations in this area

In this section, programmes that are carried out in Germany (e.g. display on information and training of public authorities) as well as pre-departure information programmes maintained in the sending countries (mostly central Europe and its eastern neighbourhood) are compiled. The measures that are summarised here reflect different types of organisations and their concepts but the list is not intended to be exhaustive. What is more, the section also lists mechanisms of standard-setting and accreditation that are to prevent labour exploitation as maintained by recruitment agencies and employers' associations. Prevention measures that aim to reduce labour exploitation are multi-layered but at the same time scattered, uncoordinated, and uncontinuous and are predominantly operated by non-governmental actors. The most common prevention measure focusses on the provision of information either through brochures, campaigns, information events, or films. In this section, promising practices are highlighted in boxes.

### Prevention in general

Prevention measures in Germany are multifaceted. They range from displaying information about what to look out for to avoid labour exploitation at the various places that are frequented by migrant workers, educating all the relevant authorities on labour exploitation, to public relation campaigns or advocacy work towards political decision-makers. While support services and workers organisations appear to pursue a diverse prevention strategy, the preventative measures of state actors like the occupational safety and health authorities or the efforts of the employers' associations look less ambitious. What the first and the latter have in common, though, is that their prevention measures do not seem to be coordinated with the other actors in the field and are not continuous because they appear to be project-based. This impression is reflected in the following quote by an interviewee [S(1)]: "I know some but I don't know any concrete programs or their actual content."<sup>iii</sup> During the second focus group, one expert further explained that German society is not informed enough about the phenomenon of labour exploitation. Information and awareness, however, are prerequisites for preventing labour exploitation.

*"Now on the topic of prevention I believe this one thing is important. First of all, people need to understand that labour exploitation happens every day. In presentations all over the region, the people are always – be it in Kahl, Flehenberg, Ludwigsburg, Göppingen or whatever – they are really surprised that people work for three or four euros. That is something that they just don't understand. And they say 'What? This is happening here?'"<sup>v</sup>*

National policy experts in the area of anti-trafficking show a rather broad understanding of prevention measures that can be summarised as follows. First of all, they regard the support of the KOK (German nationwide activist coordination group combating trafficking in women and violence against women in the process of migration) a preventive approach, even though they are not involved in its various advisory centres throughout Germany and concrete measures [N(1)]. Secondly, they consider the publication of their studies on labour exploitation and annual workshops that shall gather all relevant actors and facilitate exchange of experience and ideas as prevention measures [N(1)].

The Federal Employment Agency seeks to prevent labour exploitation by monitoring job advertisements that employers want to have published on the Agency's vacancy database for its lawfulness. Job descriptions that promote unethical wages are banned from the vacancy

database. For those migrant workers that refer to the Federal Employment Agency before they take up a job in Germany, the staff can also provide further information about working regulations, common wages etc. to help applicants assess job descriptions. Information about collective branch agreements and local wages, however, are difficult to gather and calculate [R(1)].

With a view to the occupational safety and health authorities, interviewees from groups M and N are accordant that prevention is not their core responsibility. Instead, they mainly consider their inspections as preventive; in the sense that through the instruction of the employer, future incidents can be prevented or that whenever violations of the safety and health regulations accumulate in one particular sector, they would intensify their inspections to prevent them from reoccurring in the future. Public events, information material and advice (e.g. on working times or the accountability of the main contractor) predominantly address employers [M(3); N(1)]. Awareness could be raised through representatives of the works councils who are supposed to be present during the inspection. However, as one interviewee [N(1)] puts it,

*“the actual problem is that works councils are only organised in well-functioning firms and those firms that are members of the employers association are more likely to comply with the regulations so to say. (...) In these badly run firms that massively exploit labour, unionizing is actively impeded.” [N(1)]<sup>v</sup>*

Employers' associations emphasise that they are responsible to their members, namely companies, and not to their employees and as such do not specifically carry out prevention measures for migrant workers. Rather than that, companies can refer to them when want to inform themselves about what to consider if they want to hire third-country nationals. They further provide leaflets on labour conditions and labour rights. Direct advice for employees is not provided. Third-country nationals who want to become self-employed in Germany, however, can seek advice and it is then checked whether all the conditions for self-employment are met or whether the company hiring the third-country national as a self-employed person just wants to avoid minimum wages determined through collective labour agreements [E(2)].

This outline has shown that only few state actors regard it their responsibility to carry out prevention campaigns and actions. Those that do so seem to be very limited in their scope or in the time frame or reserve information material for employees but only provide them when they are directly approached. What prevention measures are maintained by support services and workers organisations is reflected in the following.

A promising prevention practice pursued by various support services and workers organisations is the low-threshold approach where they reach out to potential victims proactively in their milieu and on internet platforms. As such, they publish information material in several languages to reach different groups of migrant workers. Their brochures are displayed in all the institutions that are frequented by migrant workers such as counselling offices, trade unions, trade licencing offices, customs offices, churches, or welfare offices as well as in shops, at public events, or through a direct outreach to vulnerable workers. A Berlin based support service, for instance, seeks contact with migrant workers on internet platforms and forums. In Baden-Württemberg, one workers organization reaches out to truck drivers at highways, asking them about their labour conditions, educating them about their rights, and offering help with becoming a union member and claiming their rights in court. In Berlin, a NGO designed posters, flyers and give-aways to inform victims of labour exploitations about the institutions where they can seek help. Those information products look like advertising

material without alerting the perpetrators. On soap packages or jelly bears bags that were displayed in restaurants, bistros, bars and bank branches, the campaign informed victims of labour and sexual exploitation in various languages about organisations that provide help. Another interesting outreach approach is films that inform about the risk of labour exploitation in Germany. They are currently produced by two support services and are shown at public events and in so-called integration courses<sup>52</sup> and as such address newly arrived migrants [S(6); W(1); N(1)].

However, as an interviewee from professional group S explains, even though the low-threshold outreach approach is highly appreciated by the federal government, support services and workers organisations need better funding to operate further offices. Currently, only few regions are covered but labour exploitation is a widespread phenomenon:

*“We are funded through the Ministry of Labour, through the Federal Ministry of Labour and Social Affairs. And I think that the ministry understands the problem and wants to continue to fund the project. And well, the approach is there but the number of counselling offices is small. Well, we are unable to meet the demand.” [S(1)]<sup>vi</sup>*

A confederation of workers organisations further provides forms for work schedules in several languages. They are supposed to help the migrant workers record their working hours, so that in case they need to, they can prove the amount of hours they have worked [S(1)].

A private recruitment agency organises public talks where they inform potential employers (families in need of private caretakers) of the characteristics and consequences of labour exploitation and help them with the paper work, filling in application forms for a working permit or contact lawyers or tax consultants for them. Those women who have become victims and are looking for a new job are provided with advice on appropriate employment contracts to prevent further victimisation. Through the networking with other associations and authorities, they also try to raise the awareness of the wider public [S(1)].

Another promising practice is advocacy work that especially workers organisations have included in their repertoire. Their advocacy work is three-folded. Firstly, they address works councils and employee representatives sharing information with them, sensitising them for the problems of migrant colleagues, and asking them to spread information about labour exploitation among the staff. Secondly, they represent the interests of migrant workers towards political institutions such as the Bavarian state government’s integration commissioner, as one interviewee reports. Another confederation explains that they provide state authorities that might come across labour exploitation in their professional work such as foreigners’ authorities, social and pension offices, migration and social services, the police, or occupational safety and health authorities with training on the phenomenon of labour exploitation and in this way advocate for the interests of victims. Thirdly, they inform the media about incidents of labour exploitation to make the situation of migrant workers better known among the public and foster public debate [S(5)].

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<sup>52</sup> Integration courses are classes where recent immigrants can learn German and learn basic aspects about Germany, available at: [www.bamf.de/EN/Willkommen/DeutschLernen/Integrationskurse/integrationskurse-node.html;jsessionid=B0D139F2E7513755BD0AA866267960EE.1\\_cid383](http://www.bamf.de/EN/Willkommen/DeutschLernen/Integrationskurse/integrationskurse-node.html;jsessionid=B0D139F2E7513755BD0AA866267960EE.1_cid383) (13 June 2014).

## Pre-departure information programmes

In the area of pre-departure information programmes, the fieldwork findings reveal that non-governmental organisations appear to be more active than public institutions. Above all, it is support services and workers organisations that carry out these kinds of programmes. The lack of commitment by the state is heavily criticised. The majority of the non-governmental actors explained that they do not know of any state-run pre-departure information programmes [S(5); W(1)], while others emphasised that there is a need for more publicly funded programmes [S(3)] or more effective public programmes [S(1); W(1)].

One of the few state actors that commit to pre-departure information programmes is the Federal Foreign Office that disseminates leaflets for employees working in diplomatic households through its embassies abroad. They contain information about common wages and working standards, according to interviewees from the N group. As another interviewee points out, the Federal Foreign Office also carries out a project at the German embassy in Sofia, where Bulgarians are provided with information on how to find safe work in Germany. On the outreach of this campaign, however, the interviewee remains sceptic: “this is only accessible for people who have information about such sources. Not everybody will look for information at the German embassy’s website”<sup>vii</sup> [S(1)]. Apart from the information work through the embassies, the German government together with EURES – the European job mobility portal – informs people in Rumania who are interested in working in Germany about job opportunities and their requirements, according to interviewees from the R group.

The focus of the support services’ effort clearly is on Germany’s neighbouring countries in the East. They for instance cooperate with trade unions in Bulgaria and Romania and through their channels spread information to those who are interested in working in Germany [S(3)]. For example, one support service had published a handbook for people from Bulgaria and Romania who consider coming to Germany to work. The handbook informs the reader about safe access to the German labour market, labour rights, and addresses of focal points (e.g. trade unions) in Germany. 15,000 copies were printed and are distributed through partner organisations in the two countries [FG(S)].<sup>53</sup> In cooperation with the office for accommodation and migration in a large German city, another service operates an exchange program with two towns in Bulgaria. In this context, the interviewee visited Bulgaria last year and reported about the situation for migrant workers in the large German city and provided information about the rights and obligations of migrant workers in Germany. [S(1)]. Pre-departure programmes that inform about the risk of labour exploitation for those migrant workers who come to Germany are generally regarded as very helpful and overdue.

*“Thank god, yes. Since this year, [anonymised] and a trade union in Bulgaria have taken that matter to heart and issued a comprehensive and well written brochure. What do I need to attend when I go to work in Germany?” [S(1)]<sup>viii</sup>*

Another interesting approach is a project called “Open for young women”<sup>54</sup> that is currently carried out by support services that specialise in supporting minors, juveniles, and women. Through partner organisations in Romania, the Ukraine, and Russia, they inform individuals about possibilities to come to Germany and work or as an au-pair or as a volunteer in the German federal programme voluntary social year (*Freiwilliges Soziales Jahr*, FSJ). These women are also taught where they can find safe and legal work, how to prevent labour exploitation and how to contact support services [S(2)]. One organisation also cooperates with a project in Bulgaria that addresses juveniles as a particularly vulnerable group, especially

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<sup>53</sup> For more information on the handbook, see: [http://issuu.com/fairem/docs/dgb\\_fair\\_wissen\\_dt\\_ii\\_logoweb/1?e=9858989/8146583](http://issuu.com/fairem/docs/dgb_fair_wissen_dt_ii_logoweb/1?e=9858989/8146583) (20.08.2014).

<sup>54</sup> For more information on the project, see: [www.open-for-young-women.org/](http://www.open-for-young-women.org/) (21.08.2014).

Roma, and enables them to go to school and to receive professional training. Throughout the project, young people also learn about possibilities to work abroad, their labour rights and obligations [S(1)].

A church organisation raises the awareness of priests in Moldova of the issue of labour exploitation abroad. This is seen as important because many people from rural areas who have decided to immigrate to another country to work there are scared of talking to their relatives or friends about their concerns. Instead, they seek help and advice from priests. Thus, it is important that priests are aware of legal job opportunities abroad and of the downsides of private recruitment agencies [R(1)].

As mentioned above, what these pre-departure prevention programmes have in common is their focus on new EU member states like Bulgaria and Romania as well as on other East European countries like Ukraine, Moldova, or Russia which reflects the statistics on the nationalities that mostly fall prey to human trafficking<sup>55</sup>. Nevertheless, the programmes have a very specific group of addressees and range from juveniles, women and employees working in diplomatic households to people living in rural areas where society is very religious. Due to this and due to the limited funding period of each programme, they cannot reach out to potential victims of labour exploitation in a broad way. What could facilitate the outreach is the inclusion of further actors in the sending countries such as trade unions, employment agencies, monitoring bodies, or the police, as an interviewee points out:

*“Yes, more could be done. Let’s say, there could be done more, e.g. from a labour union perspective, we see that when the unions in the respective countries of origin would help and the employment agencies in the respective countries of origin would help, yes. Control institutions in the respective countries could also be taken on board and it could be attempted to network and inform more and for sure this is a field where much more could be done.” [W(1)]<sup>ix</sup>*

### **Mechanisms of standard-setting and accreditation at national and international level**

Among all the interviewees, only a few representatives from professional groups R and N knew about mechanisms for standard setting and accreditation, namely one as regards the recruitment of skilled workers from developing countries, one concerning the au-pair scheme, the work of the German Global Compact Network, and the public bidding and contracting law.

Together with the Association for International Cooperation, the Federal Employment Agency is involved in the work of the Centre for International Migration and Development (Centrum für internationale Migration und Entwicklung, CIM). The Centre commits itself to high recruitment standards – recruiting only workers from countries where there is no lack of personnel in that area of the labour market. People are then systematically prepared for their work in Germany (language training, contact to company, supervision of employment contract) to ensure that they are prepared for their job in Germany and that the employment standards are complied with. Thereby, CIM focusses its work on selected countries and branches, e.g. nurses from the Philippines [R(1)].

As part of the au-pair scheme in Germany, currently 47 au-pair agencies commit themselves to the recruitment standards<sup>56</sup> set by the Quality Control Association Au-Pair e.V. In the first

<sup>55</sup> For more information on the statistics of the Federal Criminal Police Office, see: [www.bka.de/nr\\_231620/DE/ThemenABisZ/Deliktsbereiche/Menschenhandel/Lagebilder/lagebilder\\_node.html?\\_\\_nnn=true](http://www.bka.de/nr_231620/DE/ThemenABisZ/Deliktsbereiche/Menschenhandel/Lagebilder/lagebilder_node.html?__nnn=true) (23 June 2014).

<sup>56</sup> For more information on the standards of Quality Control Association Au-Pair e.V., see: [www.guetegemeinschaft-aupair.de/downloads/RAL-GZ\\_112.pdf](http://www.guetegemeinschaft-aupair.de/downloads/RAL-GZ_112.pdf) (20.08.2014).

four years of their membership, the au-pair agencies are monitored annually. If no severe irregularities are detected during that time, the agencies will be controlled on a biannual basis. The Quality Control Association Au-Pair e.V. checks whether all the documents are complete and whether only those juveniles aged between 18 and 24 years who have experience in childcare have been placed into families. Au-pairs who have been recruited by the member agencies can also fill in a feedback form for complaints. The association then checks the forms that an agency received and assesses how the agency reacted to them [R(1)].

Up to now, the Ministry of Labour funded Quality Control Association Au-Pair e.V. However, it was announced that in the future the members of the association (all those au-pair agencies that want to have a quality certificate) need to cover the expenses of the association. Without any public support from the ministry, the outreach of the Quality Control Association Au-Pair e.V. to private recruitment agencies and the positive influence that it could have on them might decrease [R(1)].

In the federal state of Berlin, as in all other federal states, public institutions are also bound by public bidding and procurement law in their recruitment policies. Thus, contractors need to comply with the ILO convention on working conditions like the rules on the core working time. Moreover, the Federal Ministry for Economic Affairs and Energy determines the terms and regulations of the public procurement law and ensures that they are in line with the respective EU legislation. In so doing, labour exploitation in the public sector, as one interviewee explains, should be prevented [N(1)].

In their statements, the interviewees also addressed the question of effectiveness. First of all, according to one expert [N(1)], standards need to be made visible for customers. Therefore, labels should be developed that lay open the conditions under which a product is produced or services are offered. In doing so, the customers are made aware of incidents of labour exploitation or the impairment of the health of workers and based on that knowledge, they can reconsider what products they want to buy or which services to utilise [N(1)]. A representative [R(1)] further highlights that the effectiveness of standard setting depends on the self-commitment of the employers and pressure from the wider public. There is a need for self-driven responsibility towards employees or customers. Ethical standards are followed if they are rewarded with positive image building. If customers ask for ethically produced products and the media singles out black sheep, companies have to react and need to comply with decent standards [R(1)]. Other interviewees are more sceptical and consider mechanisms of standard-setting and accreditation only effective if they are accompanied by regulatory measures such as controls and law enforcement [N(2)].

### **4.3 Protection against (repeat) victimisation: actions undertaken by the police to protect victims against the risk of repeated victimisation, including how the police conduct investigations**

In the course of the fieldwork, the interviewees were also asked about police investigations and the protection against victimisation. Apart from police officials, these questions were also posed to experts from professional groups M, S, J, L, and N. In the subsequent paragraphs the self-reflection of the police officials is, therefore, contrasted with the statements of the other interviewees. To start with, the statements on the role of the police in investigating and protecting victims of labour exploitation diverge. While police officials, for instance, claim that they are legally bound to open criminal proceedings against irregular migrant workers and at



the same time do not have any means to protect and support them, the rest of the respondents criticise the police officials harshly for not being sensitive enough or even ignorant about the rights of migrant workers and rather regard them as criminals that violate the residence or labour law.

### **Self-reflection by police officials**

Before the views of the police officials on the protection against victimization are compiled in this subsection, the legal framework that determines police investigations and further measures is summarized here. First of all, victims of human trafficking and labour exploitation are entitled to a 3-months reflection period (Section 59 Subsection 7 Residence Act<sup>57</sup>) that is supposed to give them time to recover from the exploitation and consider their testimonial. Section 25 Subsection 4 a Residence Act<sup>58</sup> grants potential victims of human trafficking who are willing to testify as witnesses in criminal proceedings a temporary residence permit for at least six months. Section 25 Subsection 4 b Residence Act<sup>59</sup> provides the same right to migrants without a working permit or residence title who are employed under conditions that are in clear discrepancy to those of German workers carrying out the same or comparable work and to illegally staying persons under the age of 18. Prior to deportation, foreigners, who were employed without the entitlement to pursue an economic activity required, shall be notified as to their rights on sanctions and measures against employers of illegally staying third-country nationals (Section 59 Subsection 8 Residence Act<sup>60</sup>).

To begin with, the police officials explained that during investigations both employees and employers are identified and the working conditions are documented verbally and photographically. If they detect any irregularities, proceedings need to be opened [P(2)]. As such, the police investigate into elements of crime related to the fact that persons employ workers who do not have a valid residence or working permit but also related to aspects where migrant workers reside in Germany illegally and are in breach of the Residence Act or commit an administrative offense by working illicitly. That means that one criminal proceeding is opened against the employer and another against the employee [P(1)]. In their work, they are bound to Section 163 Code of Criminal Procedure (*Strafprozessordnung*, StPO)<sup>61</sup> that determines that the police cannot close the proceedings. That is in the realm of responsibility of public prosecution. Rather than that, the police would be liable to prosecution if they did not open proceedings against irregular migrants [P(1)]. But as one police officer puts it:

*“it is absolutely clear that residing illegally here – regarding the level of the crime – is not the most severe crime a foreigner can commit. It is a simple crime simply and is treated as such.”* [P(1)]<sup>x</sup>

Nevertheless, the representatives of the police agree that if a migrant worker does not have a valid visa, residence permit, or work permit, the police would need to arrest her at least temporarily [P(4)] or refer the respective person to the foreigners' authority [P(1)]. Only two of the interviewed police officials refer to the temporary residence permit for potential victims of human trafficking who are willing to testify as witnesses in criminal proceedings [P(2)]. The 3-months reflection period and the right to information about claims for remuneration before deportation, in turn, have not been mentioned by any of the interviewed police officials.

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<sup>57</sup> Germany, Residence Act (*Aufenthaltsgesetz*, AufenthG) Section 59 Subsection 7 Residence Act available at: [www.gesetze-im-internet.de/englisch\\_aufenthg/englisch\\_aufenthg.html#p0775](http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html#p0775) (08 July 2014).

<sup>58</sup> Germany, Residence Act (*Aufenthaltsgesetz*, AufenthG) Section 25 Subsection 4 a Residence Act, available at: [www.gesetze-im-internet.de/englisch\\_aufenthg/englisch\\_aufenthg.html#p0334](http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html#p0334) (01 July 2014).

<sup>59</sup> Germany, Residence Act (*Aufenthaltsgesetz*, AufenthG) Section 25 Subsection 4 b Residence Act, available at: [www.gesetze-im-internet.de/englisch\\_aufenthg/englisch\\_aufenthg.html#p0316](http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html#p0316) (01 July 2014).

<sup>60</sup> Germany, Residence Act (*Aufenthaltsgesetz*, AufenthG) Section 59 Subsection 8 Residence Act available at: [www.gesetze-im-internet.de/englisch\\_aufenthg/englisch\\_aufenthg.html#p0775](http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html#p0775) (08 July 2014).

<sup>61</sup> Germany, Code of Criminal Procedure (*Strafprozessordnung*, StPO) Section 163, available at: [www.gesetze-im-internet.de/englisch\\_stpo/index.html](http://www.gesetze-im-internet.de/englisch_stpo/index.html) (23 June 2014).

In situations where there is suspicion that migrant workers are being exploited, the interviewees are in disagreement on the measures that are taken by the police to put an end to that exploitation and to protect potential victims against further victimisation. While one P group official who works at state level explains that in cases where they only suspect exploitation, they are not allowed to close the company, another one working at federal level [P(1)] maintains that the police could close the company based on the violation of labour rights. They do agree, however, that the police do not have any accommodation facilities for migrant worker to protect them from further victimisation. Instead, they cooperate with trade unions and support services and social welfare offices. Nevertheless, accommodation for large groups of victims seems to be difficult to organise.

In the Code of Criminal Procedure it is determined that the police have to inform victims of crime about support measures that are provided by support services and trade unions [P(1)]. In practice, on the contrary, the police do not appear to routinely refer victims of labour exploitation to support services. Instead, it works the other way around: most of the cases that the police deal with have been referred to them from support services [P(2)] and one interviewee in the first focus group].

In general, the interviewed police officials consider their own effectiveness to be limited. Due to current legislation, police can only achieve a low probative value, meaning that public prosecution cannot conduct proceedings in the area of human trafficking for the purpose of labour exploitation. The reason for this is two-fold: firstly, only a minority of victims seems to be willing to testify against their perpetrators; secondly, public prosecution does not usually charge employers for human trafficking. Instead, they file charges for illegal employment, wage usury, tax fraud, or deception of social security contributions [P(4)].

### **Peer assessment by the other interviewees**

Across the professional groups, the majority of the respondents indicated that if in the course of the investigations the police detects migrant workers without documents, they rather treat them like criminals and not like victims of labour exploitation [S(6); L(1); N(1)]. This appears to be particularly the case in the area of construction, as the following quote of an interviewee [N(1)] indicates.

*“And the 1 metre 90 tall building site worker is initially not seen as a victim. Yes? Particularly if he is standing in front of you with all his gear.”* [N(1)]<sup>xi</sup>

Only one interviewee states openly that the police would treat migrant workers as victims of labour exploitation irrespective of their actual legal status [S(1)]. One public prosecutor [J(1)] emphasises this and confirms the statements of the police officials that they are required to investigate into all elements of crime, including violations of the residence act of administrative offenses. However, during the interrogations and investigations, the police can decide how to hear witnesses. Rather than treating them primarily as criminals, the interviewee pledges for an open-minded approach in which the victim perspective is also considered and evidence is collected to prove the circumstances:

*“I would ask the police to hear them as witnesses and not as accused of the violation of the Residence Act or so. And then I would examine whether the testimonies, the hearings add up to a greater picture that confirms the initial assumption that this is a case of labour exploitation and this would be the basis to take action against the company.”* [J(1)]<sup>xii</sup>

According to some interviewees, the police investigations would result in imprisonment, fines that the migrant workers need to pay, or deportation [S(2); J(1); L(1)]. Many of the respondents further state that compared to human trafficking for the purpose of sexual exploitation, the

support and referral of persons that have fallen victims of crimes as determined in Section 233 Criminal Code or of labour exploitation to other organisations does not work effectively. The following quote illustrates that in one case the police at first investigated into sexual exploitation and thus initiated referral to support services. If they had investigated into labour exploitation from the very beginning, according to the interviewee, the victim probably would not have been referred to support services:

*“I’ve never heard of people being exploited and then being referred to an aid organisation by the police. If they seek an aid organisation it’s either of their own accord or not at all. In this one case that I had, the hairdresser, towards the beginning of her statement, she implied that prostitution was involved as well. (...) Yes, her statement included both matters. (...) And that’s what got her onto the witness protection programme for the victims of human trafficking.” [L(1)]<sup>xiii</sup>*

A representative [N(1)] adds for consideration that the Federal Criminal Police Office, in a series of seminars and conferences, has trained police officers to identify the victims of exploitation. The key to success or failure, however, lies in the police resources and in the establishment of specialised units, staffed with fully trained officers, which are capable of dealing with a complicated problem like the identification of a victim of labour exploitation [N(1)].

Only a few interviewees responded to the questions regarding the measures that are taken by the police to put an end to labour exploitation and to protect potential victims against further victimisation. Those who did reply paint a rather negative picture ranging from no measures over ignorance about the rights of EU citizens and third-country nationals to the need to learn from cases of sexual exploitation as regards safe accommodation and temporary residence [S(2); J(1)]. With only two exceptions, all the respondents criticise the police for either not being informed about support services and their programmes, not being interested in them – even though they constantly provide them with brochures or even organise training – or for rather referring victims to the foreign authorities. Again, the respondents contrast labour exploitation with the experience from human trafficking for the purpose of sexual exploitation, whereby for the fight of the latter, the police has developed very close cooperation structures and referral mechanisms to the support services [S(5); J(1); L(1); N(1)]. The two interviewees who reported that locally they had had good experience with the cooperation between the police and their organisation, at the same time explained that in other areas of Germany the cooperation looks much worse [S(2)].

On child exploitation and the referral of children, the interviewees generally have little knowledge. As one expert [J(1)] explains:

*“yes, that is an area that is new/ relatively new. I recently had it on my desk. Requirements from the Federal Criminal police Office on child exploitation, child labour. But I don’t have any insights. At least not in this area of crime, whether children are being exploited here or whether child labour is an issue.” [FG(J)]<sup>xiv</sup>*

Finally, the majority of the respondents regard the efforts of the police and public prosecution ineffective. The reasons that they give vary. First of all, they see a problem in the effectiveness of police controls. This seems to be due to the lack of personnel [J(1)] or lack of authorisation as it is the case in private households [S(1)]. Interviewees also seem to have witnessed that employers were somehow informed about controls in advance and told their employees to stay at home that day [S(1)]. One interviewee believes that investigations and prosecution remain unsuccessful because victims of labour exploitation are too afraid of being expelled

and, therefore, are not detected [S(1)], whereas another one refers to the long proceedings that hamper the effectiveness of investigations and prosecution [L(1)].

Yet others point to the discrepancy between the low numbers of detected victims and prosecuted cases and the number of people who consult support services [S(1); J(1)]. Related to the issue of statistics, it is argued that instead of investigating into labour exploitation, other elements of crime are chosen as subjects such as tax fraud or deception of social security contributions because they are easier to prove. In the course of the second focus group, the issue of the low identification rate of victims of human trafficking for labour exploitation was raised and confronted with practices in the area of sexual exploitation where victims' identification seems to work better:

*“And concerning human trafficking, for sexual exploitation, we do witness that the police is really proactive. They suspect human trafficking, pursue a lead, and reach out to victims even if they perhaps at first say ‘no, no, everything is alright’. They really are committed. But as labour exploitation is concerned, it is the complete opposite. (...) Cases are not identified as such and also law enforcement authorities somehow have big/ many question marks on that matter.”<sup>xv</sup>*

As a consequence, victims of labour exploitation are not recognised as such in court and do not get any victim support [S(2); J(1)]. A lawyer paints an even worse picture of work of the police and public prosecution who in the interviewee's view seem to neglect the victims' rights altogether.

*“Come to think of it; I have had experience with the resulting prosecutions after police raids. There's never a word mentioned about exploitation of labour. It's all about catching illegal immigrants and deporting them.”*  
[L(1)]<sup>xvi</sup>

To change that in the future, one expert [J(1)] explains that there is a need for a more practical legislation and a more effective framing of the issue of labour exploitation on the part of the state.

*“Above all, the people need to realise that exploitation, labour exploitation, always goes along with someone who becomes rich. One person is being exploited and another person becomes rich. Thus, this sort of crime can only be effectively encountered, if those perpetrators who have become rich are being divested of the asset that they made.”* [J(1)]<sup>xvii</sup>

## 5. Victim support and access to justice

### 5.1 Victim support, including available support services

On the eligibility criteria for support programmes for victims of labour exploitation, their scope, effectiveness, and outreach, experts from professional groups S, W, P, and N were interviewed. As the more detailed responses were given by those who are actually involved in supporting victims, this sub-section focuses on groups S and W and adds comments of the other interviewees wherever they felt they are able to assess the support services. Overall, the interviewees differentiated in preventive information, advice, and psycho-social care as provided by support services free of charge and social benefits such as accommodation, covering of living costs, or medical care that is provided by state authorities but difficult to access. As illustrated in section 4, victims of human trafficking and labour exploitation, in principle, have a right to a reflection period and temporary residence permit; both instruments, however do not seem to be applied extensively. Particular importance is ascribed to EU citizens in irregular employment situations – a group for which it appears to be extremely difficult to find support.

To start with, the support services and workers organisations [S(11); W(3)] clearly differentiate between the support that they provide free of charge and regardless of the residence status and official recognition as victims of labour exploitation (preventive information, advice, and psycho-social care) and public support like social benefits and certain residence permits for which eligibility criteria need to be met [N(2)]. While support services focus their work on care and psycho-social support, legal advice, and support during appointments and meetings with public authorities as well as during legal proceedings, workers organisations predominantly provide labour law and social law-related consultation.<sup>62</sup> Social benefits such as accommodation, covering of living costs, or medical care, according to the interviewees, are only guaranteed once victims are officially recognised as such by the police or public prosecution. For this purpose, migrants need to provide plausible indications that they have been exploited for their labour (Section 50.2a.1.2 General Administrative Regulations to the Residence Act<sup>63</sup>). Specific indications can be confirmed by the police and public prosecution which can also consider evidence provided by support services.

In practice, recognition varies from case to case. Last year, a sub- group of the joint federal and state-government working group on trafficking in women asked support services from different German Länder about the practice of recognising victims of human trafficking. The majority of the interviewees that participated in this survey indicated that police and/or prosecution are responsible for the recognition. Only four support services reported that they can also recognise victims and that it does not require any verification or confirmation from the law enforcement authorities before the foreigners' authority can then grant a reflection period. In the latest revision of the cooperation agreement between the police and support services in Lower Saxony, it is officially determined that the latter can recognise victims of human trafficking. In other German Länder, the support services are not officially included in the recognition procedure. In Germany, a formalised recognition procedure or a central recognition authority do not exist. In some of the cooperation agreements between the police and support services (see section 3.1), a list of indicators that shall help both parties to identify

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<sup>62</sup> For examples about the range of support provided by support services and workers organisations, see KOOFRA and Faire Mobilität available at: [www.koofra.de/en/koofra.html](http://www.koofra.de/en/koofra.html) and [www.faire-mobilitaet.de/beratungsstellen](http://www.faire-mobilitaet.de/beratungsstellen) (25 June 2014).

<sup>63</sup> Germany, General Administrative Regulations to the Residence Act (Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz, AVwV-AufenthG) Section 50.2a.1.2, available at: [www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/MigrationIntegration/AsylZuwanderung/Aufen thG\\_VwV.pdf?\\_\\_blob=publicationFile](http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/MigrationIntegration/AsylZuwanderung/Aufen thG_VwV.pdf?__blob=publicationFile) (08.09.2014).

and recognise victims are included. As interviewees explain, the recognition of victims of sexual exploitation works well because due to the long-standing experience and the cooperation agreements this mechanism is institutionalised. The recognition of victims of trafficking for labour exploitation and labour exploitation, on the contrary, has apparently not been institutionalised yet and, hence, state law enforcement and support structures are not effective [S(4); P(2)].

*“But first of all, the police, financial control for illicit employment, or public prosecution needs to recognise the respective persons as potential victims. And only then can they benefit from support measures. And yes, everyone is entitled to them as long as there is initial suspicion. But that very point is the problem. Because if they don’t see a reasonable chance of success or if they don’t assess the situation as we do, then the people are not recognized as potential victims and cannot be supported. Well, only through voluntary or structures like these but not institutionalised as the law foresees for victims.” [S(1)]<sup>xviii</sup>*

In their assessment of the access to public support, both state authorities and non-governmental actors exclusively refer to the residence permit for those victims of human trafficking that have decided to testify against their perpetrators in criminal proceedings. The temporary residence permit for victims of labour exploitation and the reflection period for victims of human trafficking and labour exploitation (see section 4) is only mentioned by few interviewees. While one expert [S(1)] explains that their support service has a working cooperation with the respective foreigners’ authority and, thus, is able to obtain residence permits for the reflection period for victims of human trafficking, the other two remain rather sceptical about the functioning of the reflection period as the following quotes show. The first quote indicates that to qualify for the reflection period, the victims already need to report to the police.

*“Altogether the state of evidence, the support and the accommodation of victims of labour exploitation is difficult. Also, if we want to accommodate a victim of labour exploitation, so that the victim receives financial support until the situation has cleared up. To do so, we need the victim’s willingness to provide a testimony, but this happens very rarely. Actually, we can’t offer the victims much as long as their case is not official and there is no testimony.” [S(1)]<sup>xix</sup>*

The second quote also either hints to missing knowledge about the social benefits that victims of human trafficking and labour exploitation are entitled to based on Social Security Code II (*Sozialgesetzbuch II, SGB II*)<sup>64</sup>, and Asylum Seekers’ Benefit Act (*Asylbewerberleistungsgesetz, AsylbLG*)<sup>65</sup> during the reflection period or the difficulties in obtaining the residence permit.

*“There is no system. There are a few legal regulations, whatever, to stay according to rights of residence until wages are sued for or the like. But there is no system. (...) Time for reflection up to 90 days or something like that. But where are they supposed to sleep and so on? (...) No financial support.” [S(1)]<sup>xx</sup>*

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<sup>64</sup> Germany, Social Security Code II (*Sozialgesetzbuch II, SGB II*) available at: [www.gesetze-im-internet.de/sgeb\\_2/](http://www.gesetze-im-internet.de/sgeb_2/) (23 June 2014).

<sup>65</sup> Germany, Asylum Seekers’ Benefit Act (*Asylbewerberleistungsgesetz, AsylbLG*) available at: [www.gesetze-im-internet.de/asylblg/](http://www.gesetze-im-internet.de/asylblg/) (23 June 2014).

So far, third-country nationals are eligible to social benefits according to the Asylum Seekers' Benefit Act, whereas EU citizens are entitled to social benefits based on Social Security Code II [S(1)]<sup>66</sup>. In Germany, the above mentioned reflection period is included in the German Residence Act (Section 59 Subsection 7). As such, the reflection period is a set deadline for leaving the country and comes with social benefits. EU citizens, except Croatians<sup>67</sup>, do not fall under the jurisdiction of the Residence Act and therefore do not benefit from the same combined concept of residence and social benefits as third-country nationals. As a consequence, in practice it is difficult to access social benefits for EU citizens during the reflection period. Those EU citizens who have been employed irregularly, meaning without paying social security contributions, experience difficulties in receiving social benefits. As long as they are looking for a new job, they are not entitled to social benefits according to Section 7 Subsection 1 Social Security Code II. This regulation further determines that EU citizens are banned from social benefits during the first three months of residence in Germany. Both provisions have been discussed in court several times and are currently checked for their lawfulness by the European Court of Justice. Until then, legal uncertainty exists in this area which renders counselling and support difficult and tedious.

Without social security, victims are not able to bring charges against their perpetrators and claim their rights. Instead they have to move on or return home to find a new job. In addition, EU citizens who enjoy unrestricted free movement of workers are only entitled to a reflection period for victims of human trafficking and, as the interviewees explain, EU citizens would need to be recognised as such [S(2); W(1)].

*“Yes, well from our experience, many EU-citizens have severe problems accessing support measures because they are excluded from the group of potential victims e.g. of trafficking (...), in advance. For example, here in Berlin, we have many difficulties to accommodate EU-citizens (...) when they for example become homeless when they quit their job, because (...) they also lived with the employer (...) and s/he puts them on the street from one day to the next, then, we are unable to organise accommodation in a homeless shelter for them. [I]n some cases, we were asked whether they may qualify as asylum seekers. But of course, this is not possible, they are EU-citizens.” [W(1)]<sup>xxi</sup>*

Moreover, EU citizens are not entitled to return and start-up aid as provided by the International Organization for Migration in the Reintegration and Emigration Programme for Asylum-Seekers in Germany.

*“Especially the covering of return costs through other programs such as REAG at the IOM. Well, this means not only return costs but part of their program is also some start-up money, so that people, when they don't have any means at least have some money in their hands when they return home. Up to now, I had difficulties, so that at the state level, we will have to address the people in charge so that for example the state government of lower Saxony will advocate on our behalf so that victims of labour exploitation are supported through these programs. [...] This is the covering of return costs for different groups of refugees and among others also*

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<sup>66</sup> In August 2014, the Federal Ministry of Labour and Social Affairs published a draft bill on the amendment of the Social Security Code and the Asylum Seekers' Benefit Act according to which victims of labour exploitation and human trafficking will both be eligible to social benefits based on the Social Security Code II. For more information, see: [www.bmas.de/SharedDocs/Downloads/DE/PDF-Gesetze/gesetzentwurf-aenderung-asylbewerberleistungsgesetz-sozialgerichtsgesetz.pdf?\\_\\_blob=publicationFile](http://www.bmas.de/SharedDocs/Downloads/DE/PDF-Gesetze/gesetzentwurf-aenderung-asylbewerberleistungsgesetz-sozialgerichtsgesetz.pdf?__blob=publicationFile) (11.09.2014).

<sup>67</sup> For Croatian citizens, the freedom of movement of workers in Germany is suspended until 30 June 2015. Hence, they are required to apply for working permits to take up a job in Germany. For more information, see: <http://ec.europa.eu/social/main.jsp?catId=1067&langId=de> (04 July 2014).

*victims of forced prostitution and trafficking. And yesterday, I had a case of two Romanians that did not receive this funding because they are EU-citizens and the REAG-program is administered through the IOM-Organization, but after consulting the respective state here (...), in their last meeting they had said that there weren't any cases like this here and hence it would not be necessary.” [S(1)]<sup>xxii</sup>*

The views on the outreach of the support programmes to the migrant workers are very divergent. While some representatives believe that their organisations are not well-known in the migrant workers community and they could better be reached by low-threshold social centres in the city centre or near the central train station, another organisation has very closed ties to the Philippine and Thai community [S(3)]. Another interviewee considers the outreach of their organisation adequate as it is very active on internet platforms and forums [S(1)]. Yet another support service also regards its outreach very good and even explains that they need to be careful not to become more known among the migrant community.

*“Basically, the dilemma is a little bit of having to watch out that we are not too well known because otherwise, we won't be able to deal with it all. (...) So, there are not enough support organisations. And those out there – us included – I think: We are pretty well known. Of course, we could be a lot better known. But then, we wouldn't be able to handle all the work so to say. (...) Of course from that point of view, we only serve a small part, which is lucky enough, to know about us, somehow.” [S(1)]<sup>xxiii</sup>*

The interviewed national policy experts believe that the support services do their very best in circulating their information among migrant workers. However, their efforts are limited by their capacities – personnel and funding [N(1)]. Moreover, many of the organisations used to focus exclusively on helping women who were sexually exploited and now have expanded their scope to labour exploitation. Their way of approaching and supporting their clients has remained the same and might not be adequate to reach out to men [N(1)].

*“Many such men, as we have noticed, don't consider themselves to be the victims of human trafficking. Men generally have a different self-perception than women. They don't like to accept help from aid organisations because they feel that it would conflict with the concept that a man must help himself. That is not the case when it comes to sexual exploitation, probably in the face of the other injuries involved. There again we are faced with the challenge of recognising the different needs that victims of different age groups, different backgrounds and different genders have. That is why I firmly believe that we need different advisory centres which can be approached in different ways. It remains important that all of the institutions that address the subject of exploitation be interconnected with each other. They should work together and look out for situations where a victim should be put up in a safe shelter.” [N(1)]<sup>xxiv</sup>*

Finally, as regards the overall effectiveness of support for victims of labour exploitation, the opinions of the interviewees remain rather critical. With a view to the work of support services and workers organisations, the respondents believe that their effectiveness is limited because a comprehensive and systematic approach is missing. Rather than coordinating their efforts, every organisation tries to cope with the local circumstances and migrant workers usually do not know the specialization and approach of the various services not to mention the question of what organisation could respond to their needs best. Overall, the existing services do not appear to be sufficient to handle the high workload with the limited resources that they have [S(3); W(2); N(2)]. The interviewees consider the requirement of being recognised as a victim the most severe problem in order to gain access to support measures. In the majority of the



cases, their clients are not able to prove labour exploitation to the satisfaction of public prosecution [S(4)]. Compared to the support structures available in the area of sexual exploitation, the capacities and infrastructures concerning the support of victims of labour exploitation are underdeveloped. This particularly applies to the provision of accommodation. Victims of sexual exploitation are mostly accommodated in women's shelters. As in the area of labour exploitation, many men and often groups are affected, accommodation seems to be difficult to organise. In Berlin, as long as the numbers of asylum-seekers were low, groups of victims could be accommodated in reception centres but that is no longer possible.

*"The victims had enough to eat and to drink as well as a roof over their heads for the duration of the court proceedings. If you ask me, we did a good job. The situation in Berlin was different then. We had no/ We didn't have a large number of refugees (...), yes? It wasn't optimal because it meant that men were living in a home for refugees, but it was better than nothing; wasn't it? And now it's like this: (...) now there isn't any more room." [FG(S)]<sup>xv</sup>*

The same applies to victimised couples who do not fit the gender-segregated accommodation practices [S(2); N(2)].

Hence, it can be summarized that support services and workers organisations are very active in providing support to victims of labour exploitation. As long as the victims are not officially recognized as such, however, their efforts are limited by their insufficient means and focus on preventive campaigns, psycho-social care and advice. The needs of EU citizens and men as victim groups are currently not adequately accommodated.

## **5.2 Access to Justice and other mechanisms to empower victims**

Claims for damages by victims of labour exploitation can be dealt with by both the civil and criminal justice system. Charges against perpetrators based on unlawful actions can be filed under Section 823 German Civil Code (*Bürgerliches Gesetzbuch*, BGB)<sup>68</sup>. It is possible to do this using the adhesive procedure (*Adhäsionsverfahren*) under sections 403 et seq. German Code of Criminal Procedure (except claiming remuneration) or to take actions in a civil court. The damage that is subject to compensation includes all major material and immaterial (pain and suffering) items. In the following, the effectiveness of the access to justice on the part of victims of labour exploitation is highlighted. Nevertheless, the overall number of court proceedings appears to be low, as access to justice is impeded by lawyers' fees and court costs, the burden of proof and the obligation of one public authority to inform relevant authorities about criminal offences (e.g. inform foreigners authority about violation of the Residence Law), the long duration of the law proceedings, profit skimming and the few incidents where police and prosecution actually investigate in labour exploitation.<sup>69</sup>

### **Civil justice - Claims for unpaid wages**

In general, even though some interviewees describe labour judges as "employee-friendly" [J(1)], "increasingly sensitised" [L(1)], and "extremely committed" [N(1)], the overall verdict

<sup>68</sup> Germany, German Civil Code (*Bürgerliches Gesetzbuch*, BGB) available at: [www.gesetze-im-internet.de/englisch\\_bgb/index.html](http://www.gesetze-im-internet.de/englisch_bgb/index.html) (23 June 2014).

<sup>69</sup> In general, there are only few adhesive procedures in Germany. The latest statistics indicate that in 2012 only 4364 adhesive procedures were closed with a final judgement. For more information, see: [www.destatis.de/DE/Publikationen/Thematisch/Rechtspflege/GerichtePersonal/Strafgerichte2100230127004.pdf?\\_\\_blob=publicationFile](http://www.destatis.de/DE/Publikationen/Thematisch/Rechtspflege/GerichtePersonal/Strafgerichte2100230127004.pdf?__blob=publicationFile) (04.09.2014).

about the effectiveness of the civil justice system in claiming remuneration remains reserved. What is regarded as positive features are the clerk office (Rechtsantragsstelle) and the possibility to apply for legal aid. The staff of the clerk office assist everyone with the formulation of a complaint, court order, or claim free of charge [J(2); N(1)]. However, lawyer's fees and legal bills as they occur in civil proceedings, apply.

To cover the costs of a lawyer, victims of exploitation can apply for legal aid. To do so, as the interviewees from professional groups J, L, S, and W explain, they need to demonstrate their indigence. The decision on legal aid does not seem to be dependent on a regular residence status or the official recognition as a victim of labour exploitation. However, as many victims of labour exploitation are usually employed irregularly and do not have any record of their income, or lack thereof, in practice it appears difficult to provide the documents that are required to apply for legal aid [J(2); L(1); S(4); W(1)]. Besides legal aid, procedures of victims of labour exploitation can also be represented by trade unions if they are members. Hence, this service is not free of charge [W(1)]. In terms of membership, however, the interviewees have diverging views. In theory, legal aid is only covered after three months of membership; in practice, however, this seems to be handled diversely so that migrant workers who have become victims of labour exploitation but have not been members of a trade union may still seek help [S(1)]. Nevertheless, the perpetrators – those who exploit migrant workers – appear to be better set for court proceedings because they are better informed and well-funded [N(1)].

Two problems that have been outlined as the major access barriers to the justice system are the burden of proof and the obligation to inform that public authorities are bound to. In labour courts, the burden of proof is on the plaintiff. That means that employees have to produce proof that they have done the work which they are claiming money for. As such, it is difficult to win a case when victims worked in a relationship that lacks legal regulation and actually committed a criminal felony. In irregular employment relationships, there is rarely a work contract [J(2); L(1); N(1); S(2)]. And even if employees take track of their working hours, the employer can deny it or claim that they never worked for him. This particularly applies to people working in private households.

*“Most of the women cannot prove that they did overtime. And without evidence, no prosecutor – no one – is interested in the case. We had such a case in a cleaning job in Bavaria. The first battle by a lawyer/No, it was a female lawyer, who told us: ‘Hey, take pictures’ and so and so on. When I told the woman / I told that to the woman and said: ‘Did you take a picture? Do you have that and that and that?’ She said: ‘No.’ I said: ‘OK, then you’re staying and working two or three more days and collect evidence.’ And that was clear, the woman says: ‘No, I have to go. I can’t stay here any longer. I can’t do it anymore.’” [S(1)]<sup>xxvi</sup>*

Officially state authorities have the duty to inform the law enforcement agencies about people staying without residence status or working without employment permit, or without being registered with the social security agency. That means if a person is in the country without the entitlement to residence or employment when they state their claim before a civil court, there is a risk that criminal charges are then going to be pressed against them for being in the country illegally. So in addition to the fear of being prosecuted, third-country nationals also fear to be expelled. Others need to move on because they found a new job in another region. For those reasons, only few victims of labour exploitation open a law suit as the following quote illustrates:

*“Well, 99.5 per cent of our counselling clients don’t go to court, not to any court, no matter which.” [S(1)]<sup>xxvii</sup>*

As further issues that hamper access for migrant workers to justice, the interviewees list the following: the long duration of the court proceedings [N(1); S(1); W(1)]; the difficulty of finding experienced lawyers [N(1); S(1)]; the lack of information about the actual employer, as the defendant needs to be named in the complaint, especially in the construction sector where many different sub-contractors are involved [J(1)], and the lack of funding for an interpreter [S(2)]. The following quote of an interviewee from a support service reflects the difficulties that migrant workers face in the need of a new employment:

*“And the duration of the legal procedures, because, well; we’re dealing with migrant workers. As the term indicates they don’t stay in Germany. They want to go home or to another country where they can earn money but a court case demands that they stay in contact. But these people are fighting for survival. So they don’t sit around in Germany until everything is wrapped up. They have to go where the work is, have to go; they have to move on. And that is a big problem for us; I assume for the police as well.”* [FG(S)]<sup>xxviii</sup>

An interviewee from professional group J points to another problem: profit skimming. To the interviewee’s mind, those victims of labour exploitation who are adjudicated the back pay of denied wages often do not get as much as they are entitled to because the employers have claimed insolvency in the meantime.

*“The perpetrators, all perpetrators, even the small fry, defer their profits to their wives, children, parents, friends, or to specially founded legal entities – GmbH – as we have recently noticed. And German law, as interpreted by judges I would say, makes seizing these profits that were earned through exploitation extraordinarily difficult because we would need proof. We would need to prove where the wife got the money from, namely that she directly got it from the perpetrator. So it’s not enough, unfortunately not in practice, to say the wife did not come into inheritance, she never worked a single time in her life, so where else should she have got the money from.”* [J(1)]<sup>xxix</sup>

As a consequence of all these issues that impede access to justice, the majority of migrant workers who have become victims of labour exploitation and want to enforce their claims embark on out-of-court settlements. In doing so, they often agree to much less compensation than they are actually entitled to. “That one person from [a fast food company] would have gotten 17 thousand and something, and he said: He’s happy with five thousand, he can go” [S(1)]<sup>xxx</sup>, one interviewee remembers.

### **Criminal justice claims**

Criminal justice claims do not play a vital role in the area of labour exploitation because few criminal proceedings are opened in this matter. In principle, both victims of labour exploitation and of human trafficking can claim their damages before a criminal court. To facilitate the proceedings for victims of human trafficking, in theory, they also have the right to join actions brought by public prosecution. Here victims can assert their claims for compensation or pain and suffering as part of an adhesive procedure. One huge advantage of an adhesive procedure is that the victim does not have the burden of proof in a criminal court. In a criminal court, the alleged victim is a witness and what a witness says has the status of being evidence [L(1)]. Remuneration claims, as another expert emphasises, cannot be dealt with by the criminal justice system but need to be filed with the labour courts [L(1)]. While some interviewees have heard of such cases in the area of forced prostitution, only few incidents where cases of labour exploitation are concerned were reported. Reasons for this, according to the interviewees, are, firstly, that police and prosecution hardly ever investigate in this

statutory offence and open claims on that matter [J(1)] and, secondly, the complexity of the criminal cases that often do not allow other claims to be added [J(1); L(1); S(1)].

*“You could surely file a suit for something through an adhesive procedure but many courts – or judges – don’t like that very much. So it always depends on the judge whether or not he or she agrees to an adhesive procedure. And depending on how complex the procedure is – in criminal cases regarding human trafficking and sexual exploitation, we often experience – when the procedure is already totally complex, that it is dismissed, to prevent it from getting more comprehensive. And the criminal courts always have a little / are uncertain in this case and say: ‘I cannot make a decision on who is entitled to what claims. That is absolutely not my job’ and are therefore not thrilled about conducting an adhesive procedure.” [S(1)]<sup>xxxii</sup>*

The long list of issues that appear to impede access to the justice system is reflected in the data gathered through the case studies. But to start with, the outcome of the 15 cases is summarised. In seven of the cases, charges were brought against the perpetrator. At the time of writing the report, five cases have already been decided before a labour court and one before a criminal court. With a view to the outcome of the cases that were decided by a labour judge, four of them ended positively for the victims either in the form of settlement or the payment of the denied wages. In one case, the compulsory enforcement of the detained wages failed due to insolvency proceedings. As regards the criminal case, agreement on remuneration was reached out of court – albeit less than the actual union wages – and the subsequent criminal proceeding only dealt with the element of illicit employment. Compensation was not paid because, instead of charging the sub-contractors that actually employed the victims, the main contractors had to face a charge but were not sentenced to pay compensation. Another case is currently discussed before a criminal court. In five of the cases, charges have not been brought against the perpetrator yet. This is either because the police investigations are still ongoing (one case) or because the case is still pending with the public prosecutor (four cases). Finally, in three cases the victims did not file a complaint and this concerns women working in private households. As reasons for not filing a complaint the victims reported that they felt responsible for the perpetrator that they cared for, that they rather wanted to return home, or find a new job instead. As such, the case study analysis confirm the following factors that impede access to the justices system: lack of clarity about the actual employer that can be held responsible for labour exploitation; long duration of the investigation and court procedures; unwillingness of the victims to bring charges against their perpetrator.

Victims of human trafficking who got injured in an accident at work or who suffer from an occupational disease are also entitled to compensations covered by the statutory accident insurance. This applies to employed persons (Section 2 Subsection 1 (1) Social Security Code VII) and workers in employment-like relations (Section 2 Subsection 2 Sentence 1 Social Security Code VI) including those that are illicitly employed and those that are employed by family members. As a study<sup>70</sup> commissioned by the Federal Ministry of Labour and Social Affairs illustrates, amongst others the following benefits are covered by the statutory accident insurance: cash benefits under Social Security Code VII (e.g. injury benefit or dependent’s pension) and allowances in kind (e.g. therapy or home healthcare). However, especially for victims of labour exploitation who are bogusly self-employed and those working in private households of family members proving the employment or employment-like relationship

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<sup>70</sup> For more information on compensations covered by the statutory accident insurance, see: [www.bmas.de/SharedDocs/Downloads/DE/PDF-Meldungen/studie-menschenhandel.pdf;jsessionid=F2C2A15CDADF36B89A3F450273345EE4? blob=publicationFile](http://www.bmas.de/SharedDocs/Downloads/DE/PDF-Meldungen/studie-menschenhandel.pdf;jsessionid=F2C2A15CDADF36B89A3F450273345EE4?blob=publicationFile) (10 July 2014).

appears to be difficult. The experts that have been interviewed for this report did not address the issue of compensation covered by the statutory accident insurance and, hence, the extent to which this form of compensation is accessed in practice cannot be estimated.

### Complaints lodged through third parties

All the interviewees perceived the question regarding the possibility of lodging complaints through third parties a difficult one. This is because the question is formulated in a broad way and too vague for the German justice system. As a consequence, the interviewees interpreted the question differently and gave diffuse estimations. But before their views are reflected, the different forms of representation are summarised. First of all, victims of labour exploitation can be legally represented by a lawyer or trade union or be accompanied to labour court by a trade union representative for assistance (Section 11 German Labour Court Law, *Arbeitsgerichtsgesetz* ArbGG<sup>71</sup>), whereby the victim remains the plaintiff and claims her own right in court. Secondly, a person can assign the claim to a third person (Articles 398 ff German Civil Code, *Bürgerliches Gesetzbuch*, BGB<sup>72</sup>). Thirdly, through a contractual subrogation, a third person in her own name can assert the right of an employee. In labour law proceedings, however, only under narrow conditions can the employee assign its right to a third person. These are the following: the employee authorises the third party to pursue a lawsuit on behalf of her; the right is substantively transferable; the adversary is not unreasonably impaired through the assignment of the right to a third party; and the nominal plaintiff has an own original interest in claiming the right. In particular, the latter condition is difficult to meet in cases of labour exploitation as compensation and remuneration is in the individual interest of the employees that got exploited, who would benefit from the court decision, but does not directly concern a third party.

Against this background, the interviewees explained that victims of labour exploitation can give lawyers or trade unions power of attorney. But they would not necessarily regard lawyers and trade unions as third parties [L(1); N(1); S(2)]. Others highlight that collective law suits or class actions are not permitted in these matters [L(1); N(1)]. Another expert describes that victims of labour exploitation, if they do not want to personally lodge a complaint, can assign their remuneration and indemnity claims to third parties who, in turn, proceed against the employer. In principle, remuneration claims through third parties are only admissible if they concern a monthly net income of at least 1,030 EUR (Section 850 (c) Code of Civil Procedure<sup>73</sup>). However, if the third party pays off her client before the lawsuit, threshold does not apply.

*“Well, for example with remuneration claims it is like that: the person that qualifies for benefit, who the remuneration claim has been assigned to, first has to reimburse the victimised person. Let’s assume that a person assigned a remuneration claim of 1,000 Euro to me, which I now plead in court for the concerned person. So before I can do this I need to place the 1,000 Euro at the person’s disposal. Only then can I act as plaintiff – that’s the way it is with claims for remuneration – only then can I act as plaintiff.”*  
[L(1)]<sup>xxxii</sup>

The illustration of the legal situation shows that lodging complaints through third parties is constrained by high thresholds. The standard procedure clearly is the legal representation through a lawyer or trade union. The variety of answers on the question of third-party

<sup>71</sup> Germany, German Labour Court Law (*Arbeitsgerichtsgesetz*, ArbGG) Section 11 Subsection 6, available at: [www.gesetze-im-internet.de/arbogg/\\_11.html](http://www.gesetze-im-internet.de/arbogg/_11.html) (10 July 2014).

<sup>72</sup> Germany, German Civil Code (*Bürgerliches Gesetzbuch*, BGB) Section 398 ff., available at: <http://dejure.org/gesetze/BGB/398.html> (04.09.2014).

<sup>73</sup> Germany, Code of Civil Procedure (*Zivilprozessordnung*, ZPO), Section 850 (c), available at: [www.gesetze-im-internet.de/englisch\\_zpo/index.html](http://www.gesetze-im-internet.de/englisch_zpo/index.html) (1 July 2014).

complaints also indicates that the lodging of complaints through third parties is only rarely applied in practice, for instance when the victim is a person of public interest as one interviewee suggests [L(1)].

### Measures of improvement

The ideas for facilitated access to the civil and criminal justice system that the interviewees list are multifaceted. Above all, they emphasise that it is necessary to inform victims of labour exploitation about judicial rights – what to claim, how to claim, and where to claim – as most persons concerned do not know these instruments and channels, even from their home countries [J(1); L(1); N(3); S(2); W(1)]. Another group of experts draws on very practical aspects such as accommodation and funding for legal representation through lawyers or trade unions and for help through support organisations as well as for interpreters that would allow victims to concentrate on the court proceedings [J(2); N(1); S(5); W(2)]. Another important issue that was discussed by the respondents is the obligation to inform other authorities of felonies. According to them, the non-disclosure of the irregular residence status to law enforcement authorities or a non-punishment clause for witnesses is absolutely necessary to make the justice system in Germany more effective. Only then would more victims of labour exploitation open a lawsuit against their perpetrators, as they would not need to fear that they are going to be expelled [J(1); L(2); N(1); S(3)].

Moreover, instead of requiring the victim to testify in the criminal proceedings, the interviewees suggest to focus on the enforcement of victims' labour rights and to determine more objective criteria that suffice as proof for labour exploitation and give the victim the benefit of the doubt [L(1); S4)]. One expert even goes beyond that by recommending that victims of labour exploitation should not be the ones that need to go to court but should be able to rely on a third party to claim remuneration or compensation.

*“Yes and basically there is the question: Does it always have to [be] those persons, who are affected by exploitation, who are the weakest link in the chain, seen on an overall scale – have to be the ones, who have to conduct a lawsuit? Or aren't there / Couldn't there be the possibility of using a work inspection or whatever; like the pension fund in regard to taxes<sup>74</sup> – it works there.”<sup>xxxiii</sup> [S(1)]*

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<sup>74</sup> The pension fund is obliged to support the customs authorities in controlling tax payments (Section 2 Subsection 2 (4) Act to Combat Illegal Employment). They run audits to check and prosecute administrative offences regarding the obligation to pay social security contributions.(see Section 111 Social Security Code IV).

## 6. Attitudes

This chapter reflects on the attitudes of all the persons that participated in the empirical research of this study. Firstly, it summarises the views on interventions into situations of labour exploitation. It then highlights the risk factors of labour exploitation and the most relevant factors that significantly account for the fact that not many migrant workers who have been exploited severely come forward. Overall, the factors that seem to hinder victims of labour exploitation from seeking help are the lack of information about rights and support services, mistrust in benefits of cooperating with the authorities, and preference of labour exploitation over unemployment. The chapter further outlines the opinion on what is important to migrant workers once they have become victims of labour exploitation, namely the hope for compensation and respect. Finally, the arguments on the effectiveness of current measures that are supposed to address severe forms of labour exploitation as well as ideas for improvement (e.g. more effective monitoring and inter-institutional cooperation and more practical legislation) are collected and discussed.

### Attitudes on the benefits of interventions

Of all the persons that were asked to comment on the benefits of interventions into situations of labour exploitation, mainly state actors – especially from professional groups J, M, P – responded without any reservation that interventions serve the interest of exploited migrant workers. In so doing, they refer to controls and inspections as the only means to effectively fight labour exploitation. Without them, perpetrators would not be detected and the risk for migrant workers to actually fall prey to labour exploitation would increase. They further justify their response explaining that interventions have a deterrent effect on all other black sheep, meaning exploitative employers, in the market and consequently improve the working conditions for all in the future [E(1); J(2); M(1); P(2); R(2); S(1)]. Two of the respondents emphasise that interventions are particularly beneficial to those victims that are dependent on their employers and exposed to “violence” or “psychological stress” [P(1); M(1)]. The respondents also elaborate that in the course of interventions, victims of labour exploitation are informed about their rights and hence empowered to enforce them; or as one interviewee puts it: “in the end, the persons concerned can trust the authorities that they will lend their support to them.” [P(1)]<sup>xxxiv</sup>

Those of the respondents that only partly consider interventions beneficial to exploited migrant workers list the following concerns. First of all, once monitoring or law enforcement bodies investigate situations of labour exploitation, victims most certainly will lose their jobs. And as they are often reliant on jobs like these, they will have difficulties finding a new one to cover their living costs [E(2); L(1); P(2); S(2)]. Other respondents suggest that some of the victims might not perceive themselves as such and prefer working under these conditions in Germany to even worse conditions in their home countries [M(1); S(3); W(1)]. Yet others emphasise that interventions cannot be in the interest of migrant workers unless adequate support for the time after the interventions as well as access to justice is provided for. And in their view, this is not guaranteed under the present legislation under which no cases on human trafficking are prosecuted [E(1); J(1); L(1); P(1); R(1); S(1); W(1); N(1)]. Finally, as long as irregular migrant workers need to fear that they have to leave the country, interventions cannot serve their interest [J(1); P(1); S(1)].

*“[I]f a police investigation uncovers that a victim of labour protection stays in Germany irregularly, then the intervention is derogating. It brings him abroad and deprives him of any means to claim back denied wages.”*  
[J(1)]<sup>xxxv</sup>

During the second focus group, an interviewee from professional group P draws on a similar argumentation.

*“We have had cases where we suspected that employers/entrepreneurs deliberately called customs authorities to get rid of their illegal workers and not having to pay them. The intervention of state authorities, as explained earlier, often results in the prosecution of workers for statutory violation. For instance the violation of the residence law. And then state authorities make sure that the employers get them off their back.” [FG(P)]<sup>xxxvi</sup>*

### **Attitudes on factors that prevent victims of labour exploitation from coming forward**

From the answers of the interviewees regarding the question on the factors that prevent victims of labour exploitation from coming forward, no clear-cut conclusions can be drawn (except professional groups M and S). Across the groups, all possible answers were listed at least once. The factors that are considered most important in hindering victims of labour exploitation from seeking help are the lack of information about rights and support services (22 times), mistrust in benefits of cooperating with the authorities and of the court proceedings (17 times), and preference of labour exploitation over unemployment (16 times). This result clearly reflects the answers given by experts from professional groups M and S. Shame (2 times) as well as to bureaucratic and expensive court proceedings (3 times), on the contrary, are considered less important factors. During the first focus group, particular emphasis was put on the scepticism of migrant workers from eastern European countries towards governmental bodies that stems from the relationship of these citizens to the state in the past.

*“I can say of the Bulgarians and the Romanians that they are very reluctant to approach governmental institutions. That has its roots in the events of the last 40 years. The same goes for the unions. They have it set in their heads that the unions are an extension of the government which is still the case in the lands in question.”<sup>xxxvii</sup>*

The experts that helped compiling the case studies as part of the empirical research differentiated between factors that enable and those that prevent the victims from coming forward and reporting their situation. Amongst the former, they listed living and working in isolation, pressure and control of the perpetrator, lack of German skills to seek help, extreme poverty, fear of losing the job, desperation as well as thorough trust in employers and hope that someday they will receive their salary. Factors that finally enable the victims to come forward, according to the experts, are the following: far too high living expenses, bad health conditions, job loss as well as the wish to claim unpaid salary and return home.

### **Attitudes on things that are most important to migrant workers after labour exploitation**

As regards the question on the most important factors to migrant workers who have fallen prey to labour exploitation, again, all possible answers from the given range were referred to at least once. Overall, the respondents indicate that obtaining compensation and denied wages from the employers (22 times) as well as being respected and having one's rights taken seriously (20 times) are most important to migrant workers who are victims. A safe return home (3 times), on the contrary, is regarded less crucial to migrant workers after labour exploitation. While this overall result is accordant with the answers given by experts from professional groups M and S, it only partly reflects the answers of the interviewed police officials and judges and prosecutors (as regards the hope for compensation and back pay). For groups W and N, in turn, no clear-cut findings can be derived. Beyond that, a



representative from professional group M summarises the things that appear to be important to third-country nationals.

*“If we assume that someone is from a non-EU country and he is illegally employed here, then of course the right to stay here is quite understandable for this person. Well, I imagine coming from Africa and arriving over the sea in Europe and having found illicit employment somewhere, then it is his absolute priority to be able to stay here after being detected. Compensation and disbursement of course are very, very important. Otherwise the people would probably never have come here. Holding the perpetrators accountable, I believe that is not so important. I rather believe it is the safety and the protection from further victimisation.” [M(1)]<sup>xxxviii</sup>*

### **Attitudes on how effectively severe forms of labour exploitation are addressed in Germany**

Being asked about the effectiveness of measures to prevent and fight severe forms of labour exploitation in Germany, all interviewees seem to be in agreement: the measures in place are not sufficient to address the issue of labour exploitation adequately. First of all, the different interviewees pointed to the need for further funding for their type of organisation in order to operate effectively. In addition to that, the law enforcement authorities emphasised that revised legislation is needed as the current legislation hampers their efforts of prosecuting the persecutors for the crime that they committed: exploiting labour. The discussion on which reforms are needed is illustrated in the following paragraphs.

Above all, the interviewees asked for the revision of the current legislation on human trafficking that as it stands right now is not considered to be enforceable in practice. To change that, the terms labour exploitation and human trafficking would need to be redefined as to cater the actual scale and forms of the criminal phenomenon as it occurs in the 21<sup>st</sup> century [P(4); S(1); J(1); R(1); N(1)]. Especially the law enforcement bodies complain that under the current legislation, their hands are tied. “Well, it really is a pathetic display that of all countries it is Germany where this isn’t working legally sound, right? To my mind, this is really alarming,” [P(1)] one police officer criticises.<sup>xxxix</sup> Another police official from the federal level appears to be more hopeful, saying:

*“I put all my hopes into the coalition agreement and in the transposition of the directive [Directive 2011/36/EU] that then hopefully goes along with the introduction of a more practicable element of crime that is more practicable for the police and not based on the testimony of the victims. Well, in this area certainly a lot can be done.” [P(1)]<sup>xl</sup>*

Moreover, some interviewees criticise that legislation on access to residence status [L(1); J(1)] and labour market [S(1)] is too restrictive and does offer an alternative to irregular employment and precarious conditions.

The need for adequate funding for support services and trade unions in order to strengthen the existing ones with regard to finances and personnel and to open new ones to guarantee all-encompassing support of victims of labour exploitation is regarded equally important by the interviewees [P(1); S(7); J(1); N(1)].

Another reform that, according to the interviewees, would significantly improve the effectiveness of how labour exploitation is addressed in Germany is the increase of funding and personnel of law enforcement bodies and occupational safety and health authorities as only controls and inspections are supposed to fight labour exploitation enduringly [M(2); P(1); E(2); W(1); N(1)]. What is more, there seems to be a need for systematic controls of paid

wages [P(1)], and to cater that need, proper labour inspectorates should be introduced [S(1)]. This issue seems to be particularly pressing, referring to one interviewee, because,

*“[i]n parts, massive influence is exerted politically on the work of the Finance Control of Undeclared Employment and individual economic sectors are deliberately excluded. This is another result, in our discretion, of successful lobbying.” [P(1)]<sup>xli</sup>*

A contradictory statement on the need for more systematic controls is provided by another expert from professional group M.

*“This is an area of conflict between constant control day and night and a certain sense of freedom. As I said, I have a certain understanding of this. The construction sector has always been that way; for example a pool for failed existences for which construction means a new chance. And despite any sympathy for the need to abolish illicit labour, I can understand that if someone has made it to get from Africa to Germany illegally, then I think it is remarkable that he finds a job – even if it is illegal – and at least earns his living. So I always regard inspections a double-edged sword.” [M(1)]<sup>xlii</sup>*

Another issue that the respondents regard as crucial is the introduction of a central authority that is responsible for all aspects of labour exploitation. While most experts have not concluded on what exactly this authority shall look like, other than having a clearly determined responsibility and being transparent [P(1); S(3)], others suggest introducing an ombudsman [M(1)] or a national rapporteur for human trafficking [R(1)].

*“Well, what we need would be, I don’t know how you would say it – ombudsman, so a contact point where employees can go if they are not in a trade union, where they can go and find out about their rights and options. (...) I repeatedly see complaints coming in, complaints from employees from a migrant background, asking who they can turn to. People are not being given holidays; their wages are being withheld and so on. Of course, we have lawyers and so on, but these people don’t go to a lawyer.” [M(1)]<sup>xliii</sup>*

Amongst the other measures for improvement that the interviewees suggested are the following: one, awareness raising of the wider public; two, more systematic information about labour rights and channels to access justice; three, more binding liability for employers (in particular main contractors); four, funds for legal representation and court costs; five, capacity building amongst public authorities; six, introduction of non-disclosure principle as regards irregular employment or residence statuses; seven, improvement of inter-institutional cooperation.

In addition to that, the analysis of the last closed question of the interview survey reflects these findings. The survey reveals that from the given range of answers, the interviewees consider a more effective monitoring of economic sectors that are particularly prone to labour exploitation (19 times), improved measures to inform migrant workers about their rights (18 times), better legislation on labour exploitation and its implementation (17 times), as well as more effective inter-institutional coordination (17 times) the most crucial measures for improvement. Measures to prevent corruption in public administration (not once listed) and to guarantee access to trade unions (twice) as well as the introduction of specialised police forces (twice) are regarded as less important. Across the different professional groups, no similarities as to the most important measure that would improve the way labour exploitation is addressed in Germany can be found. While the interviewed monitoring bodies regard effective monitoring crucial, police officers emphasised that Germany urgently needs better legislation against labour exploitation. Experts from the support services seem to be

agreement that there is a need for improved legislation to allow better access to justice and compensation. The interviewed lawyers are strongly in favour of regularising the situation of certain groups of migrant workers with an irregular status. The interviewed employers' associations, in turn, indicated the need to inform victims of their rights and the national policy experts explained that the responsibilities and procedures of the different authorities need to be better coordinated. From the statements of professional groups J, R, and W, no clear-cut findings can be derived.

## 7. Conclusion

As the data gathered through the empirical research is very rich and various discussions have been reflected in this report, in the concluding remarks the most important findings that the interviewees across the various professional groups raised repeatedly are summarised. First of all, however, issues with the methodology are recapitulated.

### 7.1 Methodological notes

The recruitment of interview partners proved more difficult for some professional groups than others. Due to existing contacts with police authorities, support services, workers association, and policy experts, participants from these professions could easily be recruited. Despite all efforts, public prosecutors, criminal lawyers and criminal judges, customs officials, and employers' associations could only be recruited to limited extents. The respondents indicated a lack of responsibility for the issue of labour exploitation as an explanation for the denied participation. As a consequence, these professions are underrepresented. Moreover, the report does not reflect all the economic sectors in which labour exploitation occurs in Germany. This is because many employers' associations that were contacted did not respond at all or indicated that labour exploitation is not an issue for their member companies. Support services and workers organisations that counsel persons that fall victim to labour exploitation in various economic sectors for time reasons could also only be recruited selectively. As such, experience with sectors like construction, cleaning, and domestic services are much better represented in this reported than the meat industry, logistics, transport, and agriculture. Finally, the focus of the support services and workers organisations clearly is on EU citizens; none of the organisations that explicitly support irregular migrants agreed to be interviewed. Thus, the interviewed experts addressed residence law-related issues to a lesser extent.

### 7.2 Contextual notes

#### **Lack of institutionalised cooperation structures and political commitment against labour exploitation**

For many years, institutionalised structures have existed at federal and state level, which, however, almost exclusively focus on sexual exploitation. At federal level, there is neither an authority that deals with labour exploitation, and as such could be regarded as a national coordinating body, nor does a comprehensive national policy or an action plan on combatting labour exploitation exist. As a consequence, in the 16 federal states with the exception of Berlin (see section 3.1), there is no institutionalised structure of state and non-state actors that aims to systematically improve the cooperation and referral practices in place to facilitate access to justice of victims of labour exploitation or trafficking for labour exploitation. Interviewees complain that as long as state actors from different authorities do not get together to discuss an inter-institutional approach against those two elements of crime, referral mechanisms as they exist in the area of sexual exploitation cannot be developed. As one important prerequisite, the state and non-state actors request that all public authorities that are relevant in the area of labour exploitation such as Financial Control of Undeclared Employment need to assume responsibility and take part in institutionalised cooperation structures, since this is the central law enforcement authority in the combat of labour exploitation. In this context, a switch in emphasis from regarding the victims primarily as irregular residents or workers to acknowledging their helplessness and vulnerability and as such their status as victims seems to have failed so far. Issues with effective law enforcement and victim support are still not handled structurally but are addressed at an operational level whenever support services, as they explain, experience problems with the provision of support

or access to justice. That means that the respective services need to invest a lot of resources in getting victims recognised as such and overcoming barriers that vary from case to case. Few networks have been found at operational level without the support of the respective state ministries (see Baden-Württemberg, section 3.1) in order to exchange views on and experience in certain aspects of labour exploitation and to discuss urgent issues on an individual case basis.

### **Lack of victim identification procedures and support**

Due to the long-standing cooperation and institutionalised networks, victim identification and prompt support with social benefits and accommodation works mostly well in the area of human trafficking for sexual exploitation. Victim identification in the area of labour exploitation, on the contrary, does not work effectively because, as it has been shown above, law enforcement authorities rather regard victims as offenders of the residence and labour law. For example, interviewees from state and non-state institutions point to the problem that groups of construction workers, who from their physical appearance do not match the stereotype picture of vulnerability, are usually not perceived as victims.

With regard to the support of victims, many law enforcement and social welfare officials responsible for labour exploitation are not familiar with the existing victims' rights. As a consequence, victims are not informed about their rights or systematically referred to support services. The interviewees from professional groups S and W complain that administrative procedures that would guarantee prompt and tailored financial support and accommodation have not been established yet. In Germany, there are different obstacles that render the state-funded support of victims of labour exploitation who have lost their job and accommodation difficult.

In principle, third-country nationals are eligible to social benefits according to the Asylum Seekers' Benefit Act, whereas EU citizens are entitled to social benefits based on Social Security Code II. A current draft bill on the amendment of the Social Security Code and the Asylum Seekers' Benefit Act foresees that victims of labour exploitation and human trafficking will both be eligible to social benefits based on the Social Security Code II. Until then, in practice there is the problem that the reflection period that ensures that victims are not expelled and receive social benefits is determined in the German Residence Act (Section 59 Subsection 7) and therefore only affects third-country nationals. For EU citizens who enjoy unrestricted free movement of workers, in turn, a comprehensive support service that automatically grants social benefits as part of the reflection period does not exist. Instead, they fall under the jurisdiction of social law. Hence, those EU citizens who have been employed irregularly, meaning without paying social security contributions, experience difficulties in receiving social benefits. German legislation foresees that during the first three months of their residence in Germany and during the job search, EU citizens are not eligible to social benefits (Section 7 Subsection 1 Social Security Code II). The decision on the lawfulness of this regulation has been discussed in several court proceedings in Germany and is presently pending with the European Court of Justice. Until then, legal uncertainty exists in this area which renders counselling and support difficult and tedious.

Even those persons that are eligible for a reflection period experience difficulties enforcing it due to administrative procedures. In practice, the police and public prosecution are in charge of recognising victims of labour exploitation. As experts from the support services emphasise, only those victims that are willing to report to the law enforcement authorities and are able to provide substantial evidence for labour exploitation or human trafficking, are classified as being eligible to support. Furthermore, across the groups, interviewees are in agreement that victims of labour exploitation do not want to report to the police because they had problems with law enforcement bodies in their home countries, because they are afraid of being prosecuted for illicit work, or do not want to lose their job. As a consequence, only a few victims

can access support under the provisions of the reflection period. Support services and trade unions try to fill the state support gap but are not able to cover funding and accommodation.

Irrespective of the difficulties with the social benefits, there are particular groups of victims for whom support facilities and structures do not exist yet. This includes large groups of male victims that currently cannot be accommodated due to missing facilities (as opposed to the women's shelters that are available for female victims of sexual exploitation) or victimised couples who do not fit the gender-segregated accommodation practices. Interviewees from support services and workers organisations further report challenges in reaching potential victims in their daily counselling practice. Some of the groups seem to try improving their support strategy by pursuing a low-threshold approach, reaching out to potential victims proactively in their milieu and on internet platforms to also address itinerant workers. Nevertheless, this is not a widespread practice yet.

### **Ineffective monitoring of working conditions**

In order to identify victims, labour exploitation needs to be detected. On the law enforcement as well as monitoring bodies, interviewees from state and non-state institutions elaborate that they do not systematically control sectors of the labour market that appear to be predominantly prone to exploitation or, as the occupational safety and health authorities, are not responsible to check whether the wages of the employees comply with legally bound standards. Controls in private households, which would be crucial to detect labour exploitation in the care sector, can only be carried out if there is reasonable suspicion of a crime. Hence, as the interviewees criticise, this is a sector that currently is hardly controlled and where perpetrators do not risk prosecution. The Federal Employment Agency and the International Placement Services are responsible for the formal recruitment of migrant workers. Interviewees from professional groups J, L, and R, however, explain that they only assess job advertisements and employment contracts on paper and do not check the working conditions on the spot and, therefore, the controls are not sufficient. Interviewees from groups R, S, W, J, and L regard private recruitment agencies a crucial problem as they partly operate outside Germany, recruit migrant workers there and, therefore, cannot be controlled by German employment agencies or law enforcement authorities. Hence, as the detection of labour exploitation does not work effectively, neither can the identification of its victims.

### **High access barriers for claiming remuneration and compensation**

In theory, claims by victims of labour exploitation can be dealt with by both the civil and criminal justice system. For both ways of claiming remuneration and compensation, however, the interviewees report immense barriers. This insufficient access is currently assessed as the most severe problem in supporting victims of labour exploitation. As a consequence, only a few victims decide to claim their rights before the labour court. Most of the support services explain that without state support or a new job, and consequently without accommodation and social security for the victims, they usually only have one week until the victims decide to return to their home countries or move on to another region or country in order to find a job there. Thus, in practice many remuneration claims are settled out of court, whereby the victims accept any offers from the employers that help them move on.

For those migrant workers that do decide to claim their rights before the labour court, the access barriers are high. First of all, the interviewees consider the court proceedings too long and too expensive (lawyers' and interpreters' fees, legal bills). Migrant workers, who are dependent on any job they get, as the respondents explain, move from city to city and region to region and cannot participate in proceedings that last several months or years. Legal aid that is supposed to cover all the expenses in connection to lawsuits is difficult to obtain because victims of labour exploitation usually do not have the supporting documents that are required such as a work contracts or pay slips. Moreover, in sectors that are prone to labour

exploitation, firms seem to cooperate with several sub-contractors and it is difficult to identify the right employer that can be made liable for denied wages. And even if the respective employer has been identified, many victims are reported as not having received the salary that they were entitled to because the firms skimmed its profits and claimed insolvency. Finally, interviewees from professional groups J, L, N, and S uncover the burden of proof and the risk that residence related data might be disclosed in the course of the court proceedings as factors that impede access to the civil justice system.

The criminal justice system cannot be regarded as an alternative route and in practice appears even less accessible. This is because, as the interviewees point out, only a few of the victims of labour exploitation are actually recognised as such by the police and claims on the basis of labour exploitation are admitted by prosecution for lack of awareness. Hence the interviewees only recall few incidents where cases of labour exploitation were opened by public prosecution. Besides this, the majority of victims do not want to report to the police. They are not interested in the prosecution of the perpetrators and do not trust the law enforcement bodies. Joint actions brought by public prosecution as part of an adhesive procedure is also not lucrative for victims since they cannot claim remuneration that way. Remuneration can only be claimed before a labour court. In a criminal law suit, only compensation for pain and suffering or material damages can be claimed.

Hence, to sum up, the low recognition rate does not only withhold the opportunity to claim compensation before criminal courts but also has negative consequences for providing support. Against this background, across the different professional groups, the interviewees criticise the current provision on human trafficking for labour exploitation and request its revision, in particular as regards the precondition that the provision only applies to forced employment.

## 8. ANNEX – Quotes

<sup>i</sup> EN: “[I]t’s difficult (...) to make this – some kind of ranking list. I mean, all of those factors are important”. DE: “[S]chwierig, (...) da jetzt so eine Rangliste auch zu machen. Also, es trifft alles zu.” [S(1)].

<sup>ii</sup> EN: “I would say that in the home care sector, this private employment agencies help to start and maintain the exploitative employment relation as long as possible. (...) In the contracts that the women and the families sign with the posting company in the case of posted labour models, yes, there are regulations that prohibit a direct employment relation between the contractor, meaning the family. (...) And again, this is ensured on both sides with a contract. Hence, the family would also have to pay high penalty fees in case it leaves this model und employs the women directly.” DE: “Ich würde sagen in diesem häuslichen Bereich, also (...) häuslicher Pflege diese private Arbeitsvermittlungsagenturen tragen dazu bei, dass das sehr ausbeuterische Arbeitsverhältnis erst mal beginnt und möglichst lange gehalten wird. (...) (I)n den Verträgen, die die Frauen unterschreiben und die auch die Familie unterschreiben, die Verträge, die Frauen unterschreiben mit der Entsenderfirma bei Entsendermodellen, ja, gibt es Regelungen, die ihr untersagen, direkt ein Arbeitsverhältnis mit den Auftragnehmern zu begehren, also sprich mit der Familie, ja. (...) Und wiederum das wird auf einer Seite (...) vertraglich (...) gesichert und auf der anderen Seite ebenfalls. Die Familie muss auch hohe Strafe zahlen, wenn sie (...) dieses Modell (verlässt) und direkt eine Frau bei sich einstellt (...).” [W(1)]

<sup>iii</sup> EN: “I know some but I don’t know any concrete programs or their actual content.” DE: “Ich kenne welche, aber ich kenne da jetzt weder konkrete Namen noch genaue Inhalte.” [S(1)]

<sup>iv</sup> EN: “Now on the topic of prevention I believe this one thing is important. First of all, people need to understand that labour exploitation happens every day. In presentations all over the region, the people are always – be it in Kahl, Flehenberg, Ludwigsburg, Göppingen or whatever – they are really surprised that people work for three or four euros. That is something that they just don’t understand. And they say ‘What? This is happening here?’” DE: “Jetzt zur Prävention, da denke ich, hilft nur eins. Zum einen mal das Wahrnehmen, dass Ausbeutung geschieht tagtäglich. Wenn ich in den Vorträgen bin, landauf, landab, dann machen die Leute immer/ Das heißt, sei es jetzt in Kahl, Flehenberg, Ludwigsburg, Göppingen oder wo auch immer, da machen die Riesenaugen, dass Menschen für drei bis vier Euro arbeiten. Das will bei denen gar nicht in die Köpfe rein. Und die sagen dann: Ja, wie? Das passiert bei uns?” [discussion in second focus group]

<sup>v</sup> EN: “However, the actual problem is that works councils are only organised in well-functioning firms and those firms that are members of the employers association are more likely to comply with the regulations so to say. (...) In these badly run firms that massively exploit labour, unionizing is actively impeded.” DE: “Wobei natürlich das Problem immer ist, dass jetzt sowohl Betriebsräte halt vorwiegend in besser funktionierenden Unternehmen organisiert sind wie auch Unternehmen, die im Arbeitgeberverband eben sozusagen die Regularien eher einhalten. (...) Bei den schlecht geführten Betrieben, die jetzt massiv ausbeuten, das auch aktiv behindert wird, ja, die gewerkschaftliche Organisation.” [N(1)]

<sup>vi</sup> EN: “We are funded through the Ministry of Labour, through the Federal Ministry of Labour and Social Affairs. And I think that the ministry understands the problem and wants to continue to fund the project. And well, the approach is there but the number of counselling offices is small. Well, we are unable to meet the demand.” DE: “Wir werden vom Arbeitsministerium, vom Bundesarbeitsministerium für Arbeit und Soziales finanziert. Und ich denke, dass das Ministerium schon das Problem erkannt hat und das Projekt weiterhin finanzieren möchte.



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Und also, der Ansatz ist schon da, aber die Anzahl der Beratungsstellen ist sehr niedrig. Also, wir können den Bedarf nicht decken.” [S(1)]

vii EN: “But this is only accessible for people who have information about such sources. Not everybody will look for information at the German embassy’s website.” DE: “Aber das ist zugänglich nur für Leute, die Informationen zu solchen Quellen haben. Nicht jeder wird sich auf der Seite von der deutschen Botschaft erkundigen.“ [S(1)]

viii EN: “Thank god, yes. Since this year, [anonymised] and the trade union in Bulgaria have taken that matter to heart and issued a comprehensive and well written brochure. What do I need to attend when I go to work in Germany?” DE: “Gott sei Dank, ja. Seit diesem Jahr hat sich der [anonymised] mit der Gewerkschaft in Bulgarien das endlich zu Herzen gelegt und eine ganz umfangreiche und gut geschriebene Broschüre ausgegeben. Was muss ich beachten, wenn ich nach Deutschland arbeiten gehe?” [S(1)]

ix EN: “Yes, more could be done. Let’s say, there could be done more, e.g. from a labour union perspective, we see that when the unions in the respective countries of origin would help and the employment agencies in the respective countries of origin would help, yes. Control institutions in the respective countries could also be taken on board and it could be attempted to network and inform more and for sure this is a field where much more could be done.” DE: “Ja, man könnte mehr machen, sagen wir so, man könnte mehr machen, wenn zum Beispiel die, also hier von der gewerkschaftlichen Seite sehen wir das, wenn die Gewerkschaften in den jeweiligen Herkunftsländern, ja, mithelfen würden und Arbeitsämter in den jeweiligen Herkunftsländer, ja. Kontrollinstitutionen in den jeweiligen Ländern, ja, könnte man auch mit ins Boot holen und da versuchen, irgendwie das mehr zu vernetzen und sich informieren und (...) auf jeden Fall ein Feld, wo man irgendwie viel machen könnte.” [W(1)]

x EN: “it is absolutely clear that residing illegally here – regarding the level of the crime – is not the most severe crime a foreigner can commit. It is a simple crime simply and is treated as such.” DE: “Und das ist ja ganz klar, dass ein Ausländer, der sich illegal hier aufhält, dass das nicht vom Straftatniveau nicht sag ich mal das höchste ist, was man sich so vorstellen kann. Das ist einfache Kriminalität dann einfach, und das wird dann auch so entsprechend gewürdigt.” [P(1)]

xi EN: “And the 1 metre 90 tall building site worker is initially not seen as a victim. Yes? Particularly if he is standing in front of you with all his gear.” DE: “Und der ein Meter 90 große Bauarbeiter wird erst mal nicht als Opfer wahrgenommen. Ja? Vor allen Dingen wenn er mit voller Montur vor einem steht.” [N(1)]

xii EN: “I would ask the police to hear them as witnesses and not as accused of the violation of the Residence Act or so. And then I would examine whether the testimonies, the hearings add up to a greater picture that confirms the initial assumption that this is a case of labour exploitation and this would be the basis to take action against the company.” DE: “Ich würde darauf drängen, dass die zuständige Polizei sie als Zeugen vernimmt und nicht als Beschuldigte wegen irgendwelcher Verstöße gegen das Aufenthaltsrecht oder sonstiges, und würde dann gucken, ob diese Zeugenaussagen, diese Vernehmungen ein Gesamtbild ergeben, was eben diese Ausgangssituation bestätigt, dass man da eben möglicherweise diese Ausbeutungssituation hat und dann hätte man das Fundament, um gegen die Firma vorzugehen.” [J(1)]

xiii EN: “I’ve never heard of people being exploited and then being referred to an aid organisation by the police. If they seek an aid organisation it’s either of their own accord or not at all. In this one case that I had, the hairdresser, towards the beginning of her statement, she implied that prostitution was involved as well. (...) Yes, her statement included both matters. (...) And that’s what got her onto the witness protection programme for the victims of human

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trafficking.” DE: “Also ich habe noch nie eine Mandantin gehabt, die sozusagen in Kontakt mit der Polizei war und dann sozusagen als Geschädigte behandelt wurde und an Hilfsorganisationen verwiesen wurde, sondern die sind wenn dann immer ohne Polizeikontakt gekommen. Und der einzige Fall, wo ich das hatte, das war eben die Friseurin. Und da war es eben so, dass am Anfang in ihrer Aussage Anhaltspunkte waren, dass es auch um Prostitution geht. (...)Ja. Da hat sie sozusagen zu beidem irgendwie Angaben gemacht. (...)Und deswegen ist sie sozusagen in diese Schutzschiene gekommen für Geschädigte von Menschenhandel.” [L(1)]

<sup>xiv</sup> EN: “Yes, that is an area that is new/ relatively new. I recently had it on my desk. Requirements from the Federal Criminal police Office on child exploitation, child labour. But I don’t have any insights. At least not in this area of crime, whether children are being exploited here or whether child labour is an issue.” DE: “Ja, das ist eine Thematik die neu/ neu relativ neu ist, ich habe das unlängst auf dem Tisch gehabt. Anforderungen vom Bundeskriminalamt was Kinderausbeutung, Kinderarbeit anbelangt, aber ich habe da keine Erkenntnisse. Zumindest in dem Deliktsbereich nicht, dass da bei uns Kinder ausgebeutet werden oder Kinderarbeitskraft eine Rolle spielt.” [comment from second focus group]

<sup>xv</sup> EN: “And concerning human trafficking, for sexual exploitation, we do witness that the police is really proactive. They suspect human trafficking, pursue a lead, and reach out to victims even if they perhaps at first say ‘no, no, everything is alright’. They really are committed. But as labour exploitation is concerned, it is the complete opposite. (...) Cases are not identified as such and also law enforcement authorities somehow have big/ many question marks on that matter.” DE: “Und bei Menschenhandel, sexuelle Ausbeutung ist es auch so, dass wir auch oft die Polizei sehr proaktiv erleben, die haben den Verdacht und gehen dem auch nach und gehen auf Betroffene zu, auch wenn die vielleicht erst mal sagen, nein, nein alles gut. Aber sind da ein bisschen hinterher. Beim Thema Arbeitsausbeutung erlebe ich es eher umgekehrt. (...) Das eben oft die Fälle gar nicht erkannt werden als solche und auch bei den Strafverfolgungsbehörden da irgendwie eine große/ viele Fragezeichen im Raum stehen.” [comment from second focus group]

<sup>xvi</sup> EN: “Come to think of it; I have had experience with the resulting prosecutions after police raids. There’s never a word mentioned about exploitation of labour. It’s all about catching illegal immigrants and deporting them.” DE: “Also ich habe diese Erfahrung, das ist jetzt auch wieder mit dieser Kontrolle, aber ich habe diese Erfahrung schon gemacht mit Strafanzeigen, wo das eben überhaupt nicht mal ein Anfangsverdacht gesehen wurde für Menschenhandel und wo es dann eben in erster Linie darum ging, den Aufenthalt zu beenden.” [L(1)]

<sup>xvii</sup> EN: “Above all, the people need to realise that exploitation, labour exploitation, always goes along with someone who becomes rich. One person is being exploited and another person becomes rich. Thus, this sort of crime can only be effectively encountered, if those perpetrators who have become rich are being divested of the asset that they made.” DE: “Vor allem müsste sich die Erkenntnis durchsetzen, dass es bei Ausbeutung, Arbeitsausbeutung darum geht, dass irgendjemand reich wird. Einer wird ausgebeutet, der andere wird reich, so dass man diese Art Straftat nur dann wirkungsvoll bekämpfen kann, wenn man diesen Tätern, die reich geworden sind, wirklich dieses Vermögen auch wieder entzieht.” [J(1)]

<sup>xviii</sup> EN: “But first of all, the police, financial control for illicit employment, or public prosecution needs to recognise the respective persons as potential victims. And only then can they benefit from support measures. And yes, everyone is entitled to them as long as there is initial suspicion. But that very point is the problem. Because if they don’t see a reasonable chance of success or if they don’t assess the situation as we do, then the people are not recognized as potential victims and cannot be supported. Well, only through voluntary or structures like these but not institutionalised as the law foresees for victims.” DE: “Aber zuerst muss ein Anfangsverdacht seitens der Polizei, der FKS oder der Staatsanwaltschaft ausgesprochen

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werden, dass sie potenzielle Opfer sind, und erst danach kommen sie in Genuss von Unterstützungsangeboten. Und ja, das können alle in Anspruch nehmen, wenn dieser Anfangsverdacht erst mal ausgesprochen wird, aber das ist genau die Schwierigkeit. Weil wenn sie keine Aussichten auf Erfolg sehen oder wenn sie das nicht so sehen, wie wir das sehen, dann wird dieser Anfangsverdacht gar nicht ausgesprochen und dann können die Leute nicht unterstützt werden, also oder nur durch andere ehrenamtliche oder solche Strukturen, aber nicht institutionalisiert, was das Gesetz für Betroffene vorsieht.” [S(1)]

<sup>xix</sup> EN: “Altogether the state of evidence, the support and the accommodation of victims of labour exploitation is difficult. Also, if we want to accommodate a victim of labour exploitation, so that the victim receives financial support until the situation has cleared up. To do so, we need the victim’s willingness to provide a testimony, but this happens very rarely. Actually, we can’t offer the victims much as long as their case is not official and there is no testimony.” DE: “Überhaupt die Beweislage, die Unterstützung und Unterbringung auch von den Betroffenen von Arbeitsausbeutung ist schwierig. Auch wenn wir zum Beispiel einen Betroffenen von Arbeitsausbeutung unterbringen wollen, damit der Betroffene Leistungen bekommt, bis sich die Situation klärt. Dann brauchen wir wieder die Bereitschaft zur Aussage, die ganz selten vorkommt. Eigentlich können wir den Betroffenen nicht viel anbieten, solange es nicht offiziell ist und es keine Aussage gibt.” [S(1)]

<sup>xx</sup> EN: “There is no system. There are a few legal regulations, whatever, to stay according to rights of residence until wages are sued for or the like. But there is no system. (...) Time for reflection up to 90 days or something like that. But where are they supposed to sleep and so on? (...) No financial support.” DE: “Es gibt kein System. Es gibt ein paar gesetzliche Regelungen, was weiß ich, aufenthaltsrechtlich zu bleiben, bis der Lohn eingeklagt ist, oder so was. Aber es gibt kein System. (...) Bedenkzeit, bis 90 Tage, oder so. Aber wo sollen sie schlafen, und so? (...) Keine finanzielle Unterstützung.” [S(1)]

<sup>xxi</sup> EN: “Yes, well from our experience, many EU-citizens have severe problems accessing support measures because they are excluded from the group of potential victims e.g. of trafficking (...), in advance. For example, here in Berlin, we have many difficulties to accommodate EU-citizens (...) when they for example become homeless when they quit their job, because (...) they also lived with the employer (...) and s/he puts them on the street from one day to the next, then, we are unable to organise accommodation in a homeless shelter for them. [I]n some cases, we were asked whether they may qualify as asylum seekers. But of course, this is not possible, they are EU-citizens.” DE: “Ja, also aus unserer Erfahrung haben gerade EU-Bürger erhebliche Probleme damit, bei manchen Unterstützungsmaßnahmen zu bekommen, weil sie (...) im Voraus schon von der Gruppe der potenziellen zum Beispiel [von] Menschenhandel Betroffenen (...) ausgeschlossen werden (...). Zum Beispiel in Berlin können wir die EU-Bürger nur wirklich schwierig unterbringen, (...) wenn sie zum Beispiel bei der Beendigung des Arbeitsverhältnisses auch obdachlos werden, weil sie (...) bei dem Arbeitgeber auch gewohnt haben (...) und der setzt sie von einem Tag auf den anderen auf die Straße, dann können wir nicht sofort das durchsetzen, dass sie dann untergebracht werden in Obdachlosenheimen (...). [I]n manchen Fällen hat man uns gefragt, ob man sie als Asylbewerber qualifizieren kann. Natürlich das geht nicht, das sind EU-Bürger.” [W(1)]

<sup>xxii</sup> EN: “Especially the covering of return costs through other programs such as REAG at the IOM. Well, this means not only return costs but part of their program is also some start-up money, so that people, when they don’t have any means at least have some money in their hands when they return home. Up to now, I had difficulties, so that at the state level, we will have to address the people in charge so that for example the state government of lower Saxony will advocate on our behalf so that victims of labour exploitation are supported through these programs. [...] This is the covering of return costs for different groups of refugees and among others also victims of forced prostitution and trafficking. And yesterday, I had a case

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of two Romanians that did not receive this funding because they are EU-citizens and the REAG-program is administered through the IOM-Organisation, but after consulting the respective state here (...), in their last meeting they had said that there weren't any cases like this here and hence it would not be necessary." DE: "Besonders Übernahme von Rückreisekosten durch andere Programme (...) wie REAG bei IOM, da ist eine Lücke und da haben wir keine Unterstützung bekommen für die Ausreise. Also es geht jetzt nicht nur um reine Fahrtkostenübernahme, sondern die haben in dem Programm zum Beispiel solche Starthilfen, dass die Menschen, wenn sie kein Geld haben, wenigstens ein bisschen Geld, wenn sie nach Hause kommen, in der Hand haben. Da hatte ich bis jetzt Schwierigkeiten, da müssen wir auf der Landesebene die Ansprechpartner ansprechen, dass zum Beispiel die niedersächsische Regierung sich dafür einsetzt, Opfer von Arbeitsausbeutung durch diese Programme zu unterstützen. (...) Das ist die Rückreisekostenübernahme für verschiedene Gruppen von Flüchtlingen und unter anderem sind aufgeführt Opfer von Zwangsprostitution und Menschenhandel. Und ich hatte jetzt gerade gestern ein Fall von zwei Rumänen, haben keine Kostenübernahme bekommen, weil man sich gewundert, das sind EU-Bürger und die REAG-Programme sind von dieser IOM-Organisation geführt, aber mit Rücksprache mit jeweiligem Land, also hier (...), hatte damals bei der letzten Sitzung mit der Organisation gesagt, wir haben solche Fälle nicht, also es ist nicht notwendig." [S(1)]

<sup>xxiii</sup> EN: "Basically, the dilemma is a little bit of having to watch out that we are not too well known because otherwise, we won't be able to deal with it all. (...) So, there are not enough support organisations. And those out there – us included – I think: We are pretty well known. Of course, we could be a lot better known. But then, we wouldn't be able to handle all the work so to say. (...) Of course from that point of view, we only serve a small part, which is lucky enough, to know about us, somehow." DE: "Also im Grunde ist ja das Dilemma so ein bisschen, dass man eher aufpassen muss, nicht zu bekannt zu sein, weil man es sonst nicht mehr bewältigen kann. (...) Also es gibt zu wenig Unterstützungsorganisationen. Und die, die es gibt - einschließlich uns - ich denke: Wir sind ganz gut bekannt. Wir könnten natürlich noch viel bekannter sein. Nur dann würden wir es gar nicht mehr schaffen, sozusagen. (...) Von daher bedient man immer nur natürlich einen kleinen Teil, die halt das Glück hatten, von einem zu wissen, irgendwie." [S(1)]

<sup>xxiv</sup> EN: "Many such men, as we have noticed, don't consider themselves to be the victims of human trafficking. Men generally have a different self-perception than women. They don't like to accept help from aid organisations because they feel that it would conflict with the concept that a man must help himself. That is not the case when it comes to sexual exploitation, probably in the face of the other injuries involved. There again we are faced with the challenge of recognising the different needs that victims of different age groups, different backgrounds and different genders have. That is why I firmly believe that we need different advisory centres which can be approached in different ways. It remains important that all of the institutions that address the subject of exploitation be interconnected with each other. They should work together and look out for situations where a victim should be put up in a safe shelter." DE: "Wir wissen auch immer wieder, dass gerade Männer sich häufig von Angeboten von Hilfeunterstützung auch nicht so angesprochen fühlen, weil eine andere Selbstwahrnehmung besteht, auch möglicherweise im Bereich Arbeitsausbeutung die Wahrnehmung, ich muss mir selber helfen. Das ist möglicherweise bei der sexuellen Ausbeutung, weil noch andere Verletzungen da sind, anders. Also auch da besteht die Herausforderung, die Bedarfe, die ausgebeutete Menschen unterschiedlichen Geschlechts, unterschiedlicher Altersgruppen, auch mit unterschiedlichen biographischen Hintergründen haben, diese Bedarfe überhaupt zu erkennen. Deshalb glaube ich fest daran, dass man unterschiedliche Stellen braucht, unterschiedliche Zugangswege, aber dass die Stellen, die es gibt und die sich mit der Thematik beschäftigen vernetzt, sein müssen. Die müssen miteinander arbeiten können und auch schauen, wo besteht das Bedürfnis nach einer sicheren Unterkunft." [N(1)]

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<sup>xxv</sup> EN: “The victims had enough to eat and to drink as well as a roof over their heads for the duration of the court proceedings. If you ask me, we did a good job. The situation in Berlin was different then. We had no/ We didn’t have a large number of refugees (...), yes? It wasn’t optimal because it meant that men were living in a home for refugees, but it was better than nothing; wasn’t it? And now it’s like this: (...) now there isn’t any more room.” DE: “Die Betroffenen hatten für die Dauer des Ermittlungsverfahrens was zu essen und zu trinken und ein Dach über dem Kopf. Das haben wir damals, finde ich, wirklich gut umgestrickt, das war aber auch eine allgemein andere Situation in Berlin. Wir hatten keine/ Wir hatten nicht die hohen Flüchtlingszahlen. (...) Das war nicht optimal, weil es Unterbringung im Flüchtlingswohnheim bedeutete, aber ich meine, besser das als nichts, ja? Und heute ist es halt so: (...) jetzt gibt es keinen Platz mehr.” [comment from first focus group]

<sup>xxvi</sup> EN: “Most of the women cannot prove that they did overtime. And without evidence, no prosecutor – no one – is interested in the case. We had such a case in a cleaning job in Bavaria. The first battle by a lawyer/No, it was a female lawyer, who told us: ‘Hey, take pictures’ and so and so on. When I told the woman / I told that to the woman and said: ‘Did you take a picture? Do you have that and that and that?’ She said: ‘No.’ I said: ‘OK, then you’re staying and working two or three more days and collect evidence.’ And that was clear, the woman says: ‘No, I have to go. I can’t stay here any longer. I can’t do it anymore.’” DE: “Die meisten Frauen können es nicht beweisen, dass sie Überstunden gemacht haben. Und ohne Beweise hat kein Staatsanwalt – niemand - Interesse an dem Fall. Wir hatten bei Reinigung so einen Fall in Bayern. Nur erster Kampf vom Rechtsan/ Nee, das war eine Rechtsanwältin, die uns gesagt hat: ‘Hey, Fotos machen’, und, und, und. Wenn ich die Frau/ Ich habe das der Frau weitererzählt und sage: ‘Hast du Foto? Hast du das und das und das?’ Sagte sie: ‘Nein.’ Ich sage: Ja, dann bleibst du noch und arbeitest zwei Tage oder drei Tage, und sammle Beweise für.’ Und war klar, die Frau sagt: ‘Nein, ich muss jetzt weg. Ich kann hier nicht mehr bleiben. Ich kann nicht mehr.’” [S(1)]

<sup>xxvii</sup> EN: “Well, 99.5 per cent of our counselling clients don’t go to court, not to any court, no matter which.” DE: “Also von unseren Beratungsfällen gehen 99,5 Prozent nicht vor Gericht, vor gar keins, egal, welches.” [S(1)]

<sup>xxviii</sup> EN: “And the duration of the legal procedures, because, well; we’re dealing with migrant workers. As the term indicates they don’t stay in Germany. They want to go home or to another country where they can earn money but a court case demands that they stay in contact. But these people are fighting for survival. So they don’t sit around in Germany until everything is wrapped up. They have to go where the work is, have to go; they have to move on. And that is a big problem for us; I assume for the police as well.” DE: “Und die Dauer der Verfahren, weil, also wir haben meistens mit Arbeitsmigration zu tun, mit sogenannten Wanderarbeiterinnen. Das heißt, typischer Weise bleiben die nicht hier in Deutschland oder haben auch kein Geld und wollen zurück oder gehen woanders hin und um ein Verfahren durchzuführen, da muss ja der Kontakt bestehen. Und diese Leute kämpfen um ihr Überleben. Also die sitzen nicht hier und warten, bis das Gerichtsverfahren irgendwann mal ausgeht, sondern suchen Arbeit, müssen weg, müssen weiterziehen. Und das ist dann auch ein großes Problem. Ich vermute ja auch für die Polizei.” [comment from first focus group]

<sup>xxix</sup> EN: “The perpetrators, all perpetrators, even the small fry, defer their profits to their wives, children, parents, friends, or to specially founded legal entities – GmbH – as we have recently noticed. And German law, as interpreted by judges I would say, makes seizing these profits that were earned through exploitation extraordinarily difficult because we would need proof. We would need to prove where the wife got the money from, namely that she directly got it from the perpetrator. So it’s not enough, unfortunately not in practice, to say the wife did not come into inheritance, she never worked a single time in her life, so where else should she have got the money from.” DE: “Die Täter, alle Täter, selbst bei uns die Kleinen, verschieben dieses Vermögen auf Ehefrauen, Kinder, Eltern, Freunde, neuerdings haben wir festgestellt,

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auch in eigens gegründete juristische Personen, also GmbH, und das deutsche Recht in der Auslegung durch die Richter, sage ich mal, erschwert außerordentlich den Zugriff auf dieses Vermögen aus Ausbeutung, weil der Nachweis erforderlich wäre. Wir müssten beweisen sozusagen, wo die Ehefrau das Geld her hat, und zwar dass sie es direkt vom Täter hat. Also, es genügt nicht, leider in der Praxis nicht, dass wir sagen, die Frau hat nichts geerbt, hat ihr Leben lang nichts gearbeitet, wo soll die das sonst her haben.” [J(1)]

xxx EN: “That one person from McDonald would have gotten 17 thousand and something, and he said: He’s happy with five thousand, he can go.” DE: “Der von McDonald hätte 17 Tausend und etwas gekriegt, und er hat gesagt: Er ist auch mit fünf Tausend zufrieden, er kann gehen.” [S(1)]

xxxii EN: “You could surely file a suit for something through an adhesive procedure but many courts - or judges – don’t like that very much. So it always depends on the judge whether or not he or she agrees to an adhesive procedure. And depending on how complex the procedure is – in criminal cases regarding human trafficking and sexual exploitation, we often experience – when the procedure is already totally complex, that it is dismissed, to prevent it from getting more comprehensive. And the criminal courts always have a little / are uncertain in this case and say: ‘I cannot make a decision on who is entitled to what claims. That is absolutely not my job’ and are therefore not thrilled about conducting an adhesive procedure.” DE: “Und wenn, dann könnte man über Adhäsionsverfahren sicherlich was einklagen, aber viele Gerichte - oder Richter - mögen das halt auch nicht so gerne. Also es hängt ja dann immer noch ab vom Richter, ob der einem Adhäsionsverfahren zustimmt oder nicht. Und je nachdem, wie komplex das Verfahren ist - also wir erleben es oft bei Strafverfahren jetzt Menschenhandel, und sexuelle Ausbeutung - wenn das Verfahren schon komplett komplex ist, wird es abgelehnt, um es nicht größer zu machen. Und die Strafgerichte haben halt immer auch so ein bisschen/ sind da unsicher und sagen: ‘Ich kann das überhaupt nicht beurteilen, wer da wie viel Ansprüche hat. Das ist überhaupt nicht mein Job’, und sind da deswegen auch nicht so erfreut, ein Adhäsionsverfahren zu machen.” [S(1)]

xxxiii EN: “Well, for example with remuneration claims it is like that: the person that qualifies for benefit, who the remuneration claim has been assigned to, first has to reimburse the victimised person. Let’s assume that a person assigned a remuneration claim of 1,000 Euro to me which I now plead in court for the concerned person. So before I can do this I need to place the 1,000 Euro at the person’s disposal. Only then can I act as plaintiff – that’s the way it is with claims for remuneration – only then can I act as plaintiff.” DE: “Also z. B. bei Lohnansprüchen wäre es so, dass die Person, die jetzt plötzlich dadurch anspruchsberechtigt wird, dass hier ein Lohnanspruch abgetreten wurde, da muss schon eine Erstattung an die betroffene Person erfolgt sein. Also angenommen, ich lasse mir einen Lohnanspruch von 1.000 Euro abtreten, den ich jetzt geltend mache für die betroffene Person, dann muss ich diese 1.000 Euro der Person auch zur Verfügung gestellt haben und dann kann ich als klagende Person - bei Vergütungsansprüchen ist es so, nur dann kann ich auftreten als klagende Person.” [L(1)]

xxxiiii EN: “Yes and basically there is the question: Does it always have to [be] those persons, who are affected by exploitation, who are the weakest link in the chain, seen on an overall scale – have to be the ones, who have to conduct a lawsuit? Or aren’t there / Couldn’t there be the possibility of using a work inspection or whatever; like the pension fund in regard to taxes – it works there.” DE: “Ja, und im Grunde ist ja die Frage: Müssen immer die Betroffenen von Ausbeutung, die das schwächste Glied sind, in dem Ganzen - diejenigen sein, die dann da einen Prozess führen müssen? Oder gibt es eben nicht/ Gäbe es nicht auch Möglichkeiten durch eine Arbeitsinspektion oder was weiß ich, was, so wie die Rentenversicherung bei der Steuer - da funktioniert es ja auch.” [S(1)]

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<sup>xxxiv</sup> EN: “[I]n the end, the persons concerned can trust the authorities that they will lend their support to them.” DE: “[W]eil betroffene Personen letztendlich darauf vertrauen können, dass ihnen von behördlicher Seite dann Hilfe zuteilwird.” [P(1)]

<sup>xxxv</sup> EN: “[If] a police investigation uncovers that a victim of labour protection stays in Germany irregularly, then the intervention is derogating. It brings him abroad and deprives him of any means to claim back denied wages.” DE: “[Wenn] ein Polizeieinsatz aufdeckt, dass der Ausgebeutete ausländerrechtlich unerlaubt in Deutschland ist. Dann ist die Intervention für ihn nachteilig. Sie schafft ihn ins Ausland und nimmt ihm jede Möglichkeit, ausstehenden Lohn zu bekommen.”[J(1)]

<sup>xxxvi</sup> EN: “We have had cases where we suspected that employers/entrepreneurs deliberately called customs authorities to get rid of their illegal workers and not having to pay them. The intervention of state authorities, as explained earlier, often results in the prosecution of workers for statutory violation. For instance the violation of the residence law. And then state authorities make sure that the employers get them off their back.” DE: “Wir haben Fälle erlebt, wo wir den Verdacht hatten, dass die Arbeitgeber/Unternehmer gezielt den Zoll gerufen haben, um ihre illegalen Arbeiter loszuwerden, um die nicht bezahlen zu müssen. Die Intervention der staatlichen Behörden, wie vorhin beschrieben, führt häufig dazu, dass die Arbeiter selber beanstandet werden wegen Rechtsverstoß. Zum Beispiel Ausländerrechtsverstoß und dann von Staats wegen dem Arbeitgeber vom Hals geschafft werden.”

<sup>xxxvii</sup> EN: “Part of the problem is, and this only applies to the advice seekers from the eastern European countries, there is a traditional problem with the mentality. For instance I can say of the Bulgarians and the Rumanians that they are very reluctant to approach governmental institutions. That has its roots in the events of the last 40 years. The same goes for the unions. They have it set in their heads that the unions are an extension of the government which is still the case in the lands in question.” DE: “Und ein Teil ist, das kann ich nur für die osteuropäischen Ratsuchenden sagen, es ist auch eine traditionelle Mentalitätsfrage. Zum Beispiel ich kann das für die Bulgaren und für die Rumänen sagen, da ist die Scheu sehr groß, sich überhaupt an staatliche Institutionen zu wenden. Das hat was mit den letzten 40 Jahren zu tun. Und auch an Gewerkschaften. Das ist dann nach wie vor in den Köpfen und das hat auch mit der fortgesetzten Rolle der staatlichen Organe und auch der Gewerkschaften in den Ländern nach wie vor zu tun.” [comment in first focus group]

<sup>xxxviii</sup> EN: “If we assume that someone is from a non-EU country and he is illegally employed here, then of course the right to stay here is quite understandable for this person. Well, I imagine coming from Africa and arriving over the sea in Europe and having found illicit employment somewhere, then it is his absolute priority to be able to stay here after being detected. Compensation and disbursement of course are very, very important. Otherwise the people would probably never have come here. Holding the perpetrators accountable, I believe that is not so important. I rather believe it is the safety and the protection from further victimisation.” G: “Also wir jetzt davon ausgehen, dass jemand aus einem Nicht EU Land kommt, also sagen wir illegal hier beschäftigt war, dann ist natürlich das Bleiberecht/ wird natürlich für die Person nachvollziehbar ein bisschen, also/ Ich stelle mir vor, wenn ich es aus Afrika über die hohe See bis nach Europa geschafft habe und habe dann illegale Beschäftigung irgendwo gefunden, dass der dann die oberste Priorität hat hier bleiben zu dürfen wenn er erwischt wird, ist nachvollziehbar. Entschädigung und Auszahlung ausstehender Löhne ist natürlich sehr, sehr wichtig sonst wären die Leute ja wahrscheinlich auch gar nicht hier her gekommen. Täter zur Verantwortung, ich glaube das ist nicht so, ich glaube eher Sicherheit und Schutz vor weiterer Viktimisierung.” [M(1)]

<sup>xxxix</sup> EN: “Well, it really is a pathetic display that of all countries it is Germany where this isn’t working legally sound, right? To my mind, this is really alarming.” DE: “Also, es ist schon ein

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Armutszeugnis, dass das ausgerechnet in Deutschland es juristisch nicht wirklich einwandfrei läuft, ja? Also das finde ich schon erschreckend.” [P(1)]

<sup>xi</sup> EN: “I put all my hopes into the coalition agreement and in the transposition of the directive that then hopefully goes along with the introduction of a more practicable element of crime that is more practicable for the police and not based on the testimony of the victims. Well, in this area certainly a lot can be done.” DE: “Ich setze meine ganz große Hoffnung auf den Koalitionsvertrag und auf die Umsetzung der Richtlinie, die hoffentlich dann auch damit einhergeht, dass der Straftatbestand praxistauglicher, für die Polizei leichter anwendbar ist und weg von der Opferaussage, also da kann man sicherlich noch mehr machen.” [P(1)]

<sup>xii</sup> EN: “In parts, massive influence is exerted politically on the work of the Finance Control for Illicit Employment and individual economic sectors are deliberately excluded. This is another result, in our discretion, of successful lobbying.” DE: “Es wird teilweise auch politisch stark Einfluss genommen auf die Richtung der Kontrollen der Finanzkontrolle Schwarzarbeit und auch einzelne Wirtschaftszweige ganz bewusst ausgenommen. Auch wieder ein Ergebnis erfolgreicher Lobbyarbeit, nach unserem Ermessen.” [P(1)]

<sup>xiii</sup> EN: “That is an area of conflict between constant control day and night and a certain sense of freedom. As I said, I have a certain understanding of this. The construction sector has always been that way; for example a pool for failed existences for which construction means a new chance. And despite any sympathy for the need to abolish illicit labour, I can understand that if someone has made it to get from Africa to Germany illegally, then I think it is remarkable that he finds a job – even if it is illegal – and at least earns his living. So I always regard controls a double-edged sword.” DE: “Das ist so ein Spannungsfeld zwischen unvermeidlicher Kontrolle Tag und Nacht oder eben noch ein gewisses Freiheitsgefühl. Wie gesagt ich habe auch ein gewisses Verständnis dafür. Der Bau war schon immer so. Beispielsweise Sammelbecken für gescheiterte Existenzen die dann halt auf den Bau wieder eine Chance bekommen haben. Und so ist halt bei allem Verständnis, dass man Schwarzarbeit nicht haben möchte, aber ich kann auch verstehen wenn jemand illegal aus Afrika es geschafft hat bis nach Deutschland zu kommen und dann finde ich das schon beachtenswert wenn er dann illegal sich einen Job besorgt und wenigstens seinen Lebensunterhalt verdient. Also mit der Kontrolle finde ich immer ein bisschen zweiseitig das Schwert.” [M(1)]

<sup>xiiii</sup> EN: “Well, what we need would be, I don’t know how you would say it – ombudsman, so a contact point where employees can go if they are not in a trade union, where they can go and find out about their rights and options. (...) I repeatedly see complaints coming in, complaints from employees from a migrant background, asking who they can turn to. People are not being given holidays; their wages are being withheld and so on. Of course, we have lawyers and so on, but these people don’t go to a lawyer.” DE: “Also was wir bräuchten, wäre so, ich weiß nicht, wie man da sagt, Ombudsmann, also eine Anlaufstelle wo sich Arbeitnehmer hinwenden können wenn sie nicht gewerkschaftlich organisiert sind, wenn sie keine, was sie erfahren über ihre Rechte und Möglichkeiten. (...) Arbeitnehmerbeschwerden gerade auch mit Migrationshintergrund, an wen kann ich mich wenden? Mir wird der Urlaub nicht gewährt, mir wird der Lohn vorenthalten und so weiter. Natürlich haben wir Anwälte und so weiter, aber diese Menschen die gehen ja nicht zu einem Anwalt.” [M(1)]