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STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**DRAFT RECOMMENDATION OF THE COMMITTEE OF MINISTERS
TO MEMBER STATES ON PREVENTING AND COMBATING
TRAFFICKING IN HUMAN BEINGS FOR THE PURPOSE OF LABOUR
EXPLOITATION**

Recommendation CM/Rec(2022)... of the Committee of Ministers to member States on preventing and combating trafficking in human beings for the purpose of labour exploitation

(adopted by the Committee of Ministers on ..., at the .. meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe, under the terms of Article 15.b of the Statute of the Council of Europe (ETS No. 1),

Considering that the aim of the Council of Europe is to achieve greater unity among its member States by, *inter alia*, promoting common standards in the field of human rights;

Recalling member States' obligation to secure to everyone within their jurisdiction, the rights and freedoms defined in the European Convention on Human Rights (ETS No. 5, the Convention) and its protocols, as interpreted in the case law of the European Court of Human Rights, according to which trafficking in human beings falls within the scope of Article 4 of the Convention;

Recognising that social rights, as set out in the European Social Charter (ETS No. 35) and the European Social Charter (revised) (ETS No. 163), are an integral part of human rights and are essential for preventing trafficking in human beings and enabling the social and economic (re)integration of people who fall victim to it;

Reaffirming the resolve of the Council of Europe to combat trafficking in human beings by following a comprehensive approach encompassing prevention, protection of victims' rights, access to remedies, prosecution and sanctioning of perpetrators, international co-operation and partnerships with civil society, as reflected in the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197);

Considering that trafficking in human beings for the purpose of labour exploitation was identified as one of the major challenges for Europe in the 2019 report of the then Secretary General of the Council of Europe, "Ready for future challenges – Reinforcing the Council of Europe";

Taking into account the Secretary General's "Roadmap on strengthening action against trafficking in human beings for the purpose of labour exploitation" adopted with a view to implementing the decision taken at the 129th Session of the Committee of Ministers in Helsinki on 17 May 2019, to continue analysing the protection provided by existing European standards and examine ways of strengthening action against trafficking in human beings;

Deeply concerned that trafficking in human beings for the purpose of labour exploitation causes severe harm and has been on the rise across Council of Europe member States, affecting an increasing number of women, men and children;

Emphasising that trafficking in human beings is a grave violation of a person's dignity, reducing human beings to commodities and is linked to labour law violations and other illegal activities, such as tax evasion, social benefit and social security fraud and money laundering;

Acknowledging that trafficking in human beings for the purpose of labour exploitation is facilitated by global economic disparities, armed conflicts resulting in displacement of people, failure to uphold economic and social human rights, multiple and intersecting forms of discrimination and risks, the lack of labour market regulations and effective inspection mechanisms, increasing market pressure for cost reductions and the attempt to maximise profits through the underpayment, overwork and exploitation of workers;

Recalling that trafficking in human beings for the purpose of labour exploitation takes place both transnationally and internally within the same State, and that it is often associated with labour migration and situations where people are unable to access legal labour migration pathways that ensure decent work or have restricted access to the labour market as a result of their immigration or asylum status;

Considering the challenges in the detection of cases of trafficking in human beings for the purpose of labour exploitation, including the lack of public awareness of this phenomenon; the reluctance or inability of victims to come forward due to their immigration status or the risk of reprisals, punishment or loss of job, residency or accommodation; psychological dependence on the traffickers; a lack of awareness of rights; a lack of workplace representation and the absence of legal assistance, as well as a lack of training and resources of those responsible for the identification of victims;

Taking into account that trafficking in human beings for the purpose of labour exploitation may occur, in all sectors of the economy, at different stages of businesses' supply chains, as a consequence of public procurement practices, as well as in private households;

Stressing that combating trafficking for the purpose of labour exploitation requires international and multilateral co-operation, including between law-enforcement agencies, the judiciary and other institutions, as well as co-ordinated action between States, businesses, anti-trafficking and migrant rights non-governmental organisations (NGOs) and trade unions, and support of free media;

Recalling the International Labour Organization (ILO) Forced Labour Convention (1930) and the 2014 protocol thereto, according to which States should criminalise forced labour and prosecute the perpetrators of such offences, take effective measures to prevent forced labour, provide victims with protection and access to remedies, such as compensation, and take specific action against trafficking in persons for forced labour, and recalling also other ILO standards, in particular the Minimum Age Convention (1973), the Worst Forms of Child Labour Convention (1999), the Domestic Workers Convention (2011), the Labour Inspection Convention (1947), the Freedom of Association and Protection of the Right to Organise Convention (1948), the Right to Organise and Collective Bargaining Convention (1949), and the Violence and Harassment Convention (2019);

Bearing in mind the recommendations of the Committee of Ministers of the Council of Europe to member States: CM/Rec(2006)8 on assistance to crime victims, CM/Rec(2008)10 on improving access of migrants and persons of immigrant background to employment, CM/Rec(2015)3 on the access of young people from disadvantaged neighbourhoods to social rights and CM/Rec(2016)3 on human rights and business;

Bearing in mind the relevant work of the Parliamentary Assembly of the Council of Europe, and in particular Recommendation 2011 (2013) "Trafficking of migrant workers for forced labour" and Recommendation 2171 (2020) "Concerted action against human trafficking and the smuggling of migrants";

Taking into account the work of the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) and in particular its Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation and Guidance Note on preventing and combating human trafficking for the purpose of labour exploitation;

Recalling the ILO Declaration of Fundamental Principles and Rights at Work (1998), as amended in 2022;

Recalling the United Nations Guiding Principles on Business and Human Rights, according to which States should “respect, protect and fulfil human rights and fundamental freedoms” and “consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights”, and to ensure appropriate and effective remedies in case of human rights violations;

Recognising and building on the work of other intergovernmental organisations and agencies active in the field of combating trafficking in human beings and forced labour,

Recommends that the governments of the member States:

1. adopt national laws, policies and strategies for combating trafficking in human beings which address trafficking for the purpose of labour exploitation and take a human rights-based and victim-centred approach. They should be supported by adequate funding to ensure their implementation and co-ordinated, monitored and evaluated by specific mechanisms, without prejudice to cross-cutting means. The purpose of these policies should be to prevent trafficking in human beings for the purpose of labour exploitation, to protect the rights of victims and guarantee their access to effective remedies, including compensation, to punish those responsible for the offences, and to promote international and multi-agency co-operation and co-ordination. They should also ensure that businesses and public organisations act with due diligence and map and tackle the risks of trafficking in human beings in their supply chains and procurement;
2. ensure that the measures and principles set out in this Recommendation are implemented and followed in relevant national law and practice, in the light of the further guidance contained in the explanatory memorandum. The effectiveness of the measures taken should be assessed by the relevant public authorities at regular intervals, in close co-operation with all relevant stakeholders;
3. ensure, by appropriate means and action, a wide dissemination of this Recommendation and its explanatory memorandum among the competent authorities and stakeholders at national, regional and local levels, and including other intergovernmental organisations;
4. examine, within the Committee of Ministers, in co-operation with other relevant bodies of the Council of Europe and with the participation of relevant stakeholders, the implementation of this Recommendation no later than five years after its adoption, taking into account prior national assessments.

Explanatory memorandum

I. Prevention

1. To prevent trafficking in human beings for the purpose of labour exploitation¹, member States should provide a social rights compliant environment that shields potential victims from vulnerability and protects them from the risk of falling victim to trafficking. Member States should protect persons from communities vulnerable to trafficking in human beings through intensified efforts towards the progressive realisation of social rights provided for in the European Social Charter. In particular, member States should empower such persons through access to public education, protection from poverty, decent work, health care, decent housing, and quality social welfare services that are inclusive, and proactively reach out to those who are furthest behind.

2. Based on empirical research and available data, and in consultation with experts and frontline responders, member States should identify vulnerable groups and sectors at risk of trafficking for labour exploitation. Member States should regularly assess and address risk factors, such as precarious migrant status, lack of access to public benefits, inadequate community support systems, not speaking the local languages, or working in isolation. Addressing these risk factors should be done in a manner which takes into account cultural and other relevant factors.

3. Member States should ensure that the first-hand experiences of victims of trafficking in human beings as well as individuals at risk of trafficking, including migrant workers, inform the design, delivery, evaluation and reform of policy and practice aimed at preventing trafficking in human beings for the purpose of labour exploitation. This should include engagement with trade unions, migrant community and support organisations, and anti-trafficking organisations.

4. Member States, in partnership with support organisations, should develop information for individuals at risk of trafficking in human beings, using communication means and messages that are accessible to them, in a language which they can understand. Such information should include key indicators of trafficking in human beings for labour exploitation and recruitment methods, outline the range of labour laws, collective agreements and protections that apply in different high-risk labour sectors, set out employers' legal obligations towards workers and legal support which can be accessed in case of abuse and exploitation, and highlight contacts of trade unions, health care providers, support and community organisations, labour inspection authorities and other reporting channels. The information should be disseminated at workplaces, in places where vulnerable workers gather outside of the workplace, at community centres and as part of immigration procedures, with a particular focus on individuals entering or residing in a member State on tied and temporary visas. Member States should also consider setting up counselling centres for migrant workers and mobile drop-in centres, and conduct online and offline outreach work, where information is delivered in a language that workers can understand.

5. Countries of origin should consider the appointment of labour attachés at embassies in countries of destination, while countries of destination should consider the appointment of labour or migration attachés in countries of origin who can provide information about working in countries of destination prior to migrant workers' departure.

¹ Trafficking for the purpose of labour exploitation as a term is used to differentiate between trafficking for the purpose of sexual exploitation, and trafficking for exploitative purposes in any economic sectors, both in the formal and informal economy. The concept of "labour exploitation" in the context of human trafficking is taken to cover, at a minimum, forced labour or services, slavery or practices similar to slavery, and servitude. While human trafficking for the purpose of labour exploitation concerns all people, including children, it has a gender dimension, men and women being affected in different ways.

6. Furthermore, awareness raising on trafficking for the purpose of labour exploitation should be integrated into the training curricula of relevant professional groups, mentioned in paragraphs 36 and 46, illustrating key indicators and recruitment methods, including the ways in which information and communication technologies are misused to recruit, control and exploit victims.

7. Member States should also conduct information and awareness-raising campaigns for the general public which aim at increasing knowledge about drivers of trafficking in human beings for the purpose of labour exploitation, thereby building intolerance to it and discouraging demand for products and services derived from the exploitation of victims of trafficking in human beings. Awareness-raising campaigns and public reporting mechanisms should not stigmatise victims and vulnerable communities, and to this end, victims of trafficking in human beings and representatives of migrant communities should be involved in their design and delivery. The general public should be provided with clear and accessible mechanisms for reporting suspected cases of trafficking in human beings for the purpose of labour exploitation.

Labour market regulation

8. Member States should acknowledge that a failure to scrutinise potentially irregular labour market practices prevents effective regulation and enables trafficking in human beings for the purpose of labour exploitation to flourish. The role of labour inspectorates is therefore critical to prevent an environment where wider and more severe offences against workers may become more pervasive. Member States should provide labour inspectors with a comprehensive mandate, training and sufficient human and financial resources to enable them to be regularly and proactively present in all economic sectors within their jurisdiction, prioritising workplace inspections in economic sectors which are most prone to exploitation. Workplace inspections should, when appropriate, be conducted without prior warning in order to ensure that all workers are present upon arrival and to enable labour inspectors to identify cases of abuse and exploitation.

9. Assessing violations of labour rights becomes more challenging as businesses may intentionally use obscure constructions and deceptive and fraudulent recruitment methods. This may include online platforms based outside the jurisdiction where recruitment is targeted, to avoid hiring persons as workers since the rights of workers are quite extensive and protected by national and international legal instruments. With a view to minimising labour costs and maximising profits, businesses may, for example, abuse existing legal constructions such as self-employment, recruitment agencies, letter-box companies in other countries, payrolling, sub-contracting via other countries or posting of workers. Where abuses of these constructions occur, remuneration of workers is often far below the minimum wage in the country in which the work is performed. Established economic, labour and social rights are neither upheld nor enforced in these situations. Member States should clearly indicate that abusing such constructions to avoid labour, social and financial standards is unacceptable, as it can result in labour exploitation, and should make sure that such abuse is prohibited under criminal, labour and/or administrative law.

10. Member States should regulate and monitor employment and recruitment agencies. Workers, including migrant workers, are often not employed directly by the business for which they work, but via a recruitment agency and/or are subcontracted. Employment through recruitment agencies or a subcontractor creates complex legal situations that can make it unclear which labour laws apply, whom to address in situations of labour law violations, or what remedies are available to workers. Member States should ensure that avoidance practices are not tolerated through regulation of all stages of the recruitment process (including in relation to advertisements, selection, transport and placement into employment) and of all recruiters for all kinds of work, in line with the ILO General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs. Recruitment fees and related costs should not be borne by workers or jobseekers.

11. Different costs, such as accommodation, private meals and transportation, cannot be automatically deducted from the salary, and should either be regulated or prohibited. Re-charging abusive costs, disguised or pretended costs from salaries should be prohibited. Member States should adopt legislative and other measures to ensure that contracts and payslips are clear and transparent, indicate who the employer is, and prohibit the practice of contract substitution, where one contract is given at the point of recruitment and then substituted with another contract upon the migrant worker's arrival in the country of work. Member States should ensure that employers provide the employment terms, contracts and payslips in a language understood by the workers.

12. Member States should ensure that all workers are covered by minimum remuneration or income frameworks and/or collective bargaining agreements. This should include workers in a factual employment relationship, regardless of the contractual construction used or the lack of contract in case of non-standard forms of employment (such as temporary employment, part-time work, temporary agency work, fixed-term contracts or disguised employment). Regulations should also address workload and expected productivity as well as productivity related pay calculations. Furthermore, member States should create or empower existing regulatory bodies with the remit to ensure compliance with statutory remuneration levels.

13. Genuinely self-employed workers in principle decide themselves on their own remuneration. However, workers who are not genuinely self-employed, especially in jobs at the low paid end of the labour market, are sub-contracted or working in the platform economy or the gig economy, where payments are fixed and below a minimum living wage, and working hours are not fixed. It is important that member States classify types of employment correctly. Member States should prevent false classification of workers as self-employed persons by individuals and businesses to ensure the affected workers receive the correct legal remuneration and protections.

14. Member States should adopt measures to guarantee the right to organise (form and join trade unions), collective bargaining and the collective defence of common interests in all sectors of activity. They should be particularly vigilant in sectors where there is a heightened risk of trafficking in human beings for the purpose of labour exploitation, for example agriculture, construction, fishing, hospitality and domestic work. They should also ensure the effectiveness of the rights of all workers to information and consultation, including following their migration journey, as well as to take part in the determination and improvement of the working conditions and working environment.

15. Member States should consider enhancing the availability and flexibility of pathways for regular migration, including for jobs considered lower skilled, so that labour migrants can take up employment legally. Regular pathways should be accompanied and characterised by decent work and decent working conditions for all workers with full respect of established economic and social rights. Member States should regularise labour migration, with measures in which essential rights are guaranteed, ensuring transparent procedures, with minimal administrative requirements, and taking into account migrant workers' perspectives. The protection of the labour rights of workers should be adequately monitored and enforced including via cross-border co-operation for labour inspectors, and other relevant actors as appropriate.

16. Member States should ensure that residence and work permits practically enable migrant workers to leave an employment relationship, to take up a job with another employer, and to use available complaint mechanisms without fear of losing their residence status. To reduce the risk of trafficking in human beings and labour law violations arising from the workers' dependency on the employer, member States should consider continuing a residence permit of a third-country worker if the job is lost. To this end, member States could issue permits that provide for a period of unemployment and change of employer on the same permit, provide workers possibilities to apply for a new residence/work permit with a new employer with a simple administrative procedure from within the country, make use of transitional or bridging

permits, or grant a permit to look for work. The ability of migrant workers to transfer employment in practice should be closely monitored by an independent body to ensure workers do not face barriers to transfer.

II. Protection

Victim identification

17. Member States should reinforce and prioritise the detection of cases of trafficking in human beings for the purpose of labour exploitation and the identification of victims. Failure to identify victims of human trafficking may lead to a violation of Article 4 of the European Convention on Human Rights, as illustrated by the case-law of the European Court of Human Rights.² In order to comply with the duty to identify victims, member States should adopt a National Referral Mechanism (NRM) or equivalent mechanism for the identification and referral to assistance of victims of trafficking in human beings, which defines the roles and responsibilities of all relevant actors, including labour inspectors, trade unions and other civil society actors. Member States should evaluate and adapt their NRM at regular intervals and ensure adequate resources for their effective application.

18. In some cases, identification of cases of trafficking in human beings for the purpose of labour exploitation is hampered by the lack of mandate or resources for labour inspectors or other competent national authorities to receive and process individual complaints from all workers, and be able to initiate and strategise inspection activities specifically aimed at detecting labour trafficking situations. Labour inspections should include safe and confidential interviews with workers, using interpreters and/or cultural mediators, if required. Labour inspectorates should conduct their own inspections or, in appropriate cases, jointly with anti-trafficking police units and other relevant actors. Labour inspectorates should clearly define objectives when conducting inspections jointly or concurrently with law enforcement agencies, to ensure coherence and support all workers to access remedy, and to secure evidence of offences with a view to supporting prosecutions and effective, proportionate and dissuasive sanctions.

19. Member States should pay specific attention to the identification of potential victims of trafficking amongst at-risk groups, such as undocumented persons, seasonal workers, temporary agency workers, domestic workers, workers hired through recruitment agencies, posted workers, persons in presumed bogus self-employment, asylum seekers, refugees and persons with temporary immigration or dependent status. Member States should co-operate with specialised NGOs, trade unions and employers to achieve this goal.

20. Member States should recognise that a lack of reporting by potential victims is an important factor contributing to the impunity of traffickers. Lack of reporting to the authorities, trade unions, employers or NGOs occurs because workers do not self-identify as victims of an offence, because they are unaware of their rights, or because the potential benefits of reporting are outweighed by the costs and risks, such as their wages not being paid or facing other reprisals, including detention and deportation. Fear of having to leave the country when reporting exploitation or seeking help is another important reason not to come forward and report a crime. Consequently, member States should take measures aimed at increasing the propensity amongst trafficked persons to self-identify, including establishing safe reporting and effective complaint mechanisms, and concrete possibilities of regularisation of the trafficked person's residence status and access to the labour market, the provision of targeted and tailored support services, including information about their rights, and a realistic chance of receiving compensation and back pay.

² *Rantsev v. Cyprus and Russia*, application No. 25965/04, judgment of 7 January 2010; *L.E. v. Greece*, application No. 71545/12, judgment of 21 January 2016; *Chowdury and Others v. Greece*, application no. 21884/15, judgement of 30 March 2017; *V.C.L and A.N. v. United Kingdom*, judgement of 16 February 2021.

21. Member States should ensure that where labour inspectors, law enforcement or migration officials or other competent authorities identify undocumented migrant workers who are presumed victims of trafficking in human beings, the persons concerned have access to national victim protection frameworks and are not detained or removed from the country subject to victim identification processes and related procedures being completed. All police officers, labour inspectors and other representatives of law enforcement bodies should be under a duty to refer victims to the support services set up within the NRM, and report cases where workers did not wish to enter such mechanisms, but were considered to be victims. Member States should ensure that there are specific mechanisms to process claims whenever the victim requests to remain anonymous in order to safeguard his/her employment, without facing negative repercussions and revictimisation. Practical co-operation and data sharing agreements in accordance with Data Protection Regulations between labour inspection and law enforcement, including specialist anti-trafficking units, should ensure that personal information of workers and victims, whether collected in the course of labour inspections, joint inspections, reporting or complaints mechanisms is used to tackle the organisers of such crimes and associated trafficking offences, to provide services and remedies to the victims and not to punish them (see paragraph 35). No immigration enforcement action should be taken against any presumed victim while identification, investigation and prosecution proceedings are ongoing, and the victim is receiving support and advice to make an application to regularise their stay. This is essential because immigration enforcement action should not be taken against vulnerable victims of crime where even the threat of such action can be detrimental to the victim.

22. Front-line health-care professionals can come into early contact with victims of trafficking in human beings and should be offered training as part of continuous professional development programmes on the signs to watch for and on the assistance that is available for presumed victims. Similarly, public health programmes should be trafficking in human beings and trauma-informed, and sensitised to the risk factors.

Assistance and protection

23. Member States should adopt a victim-centred approach in combating trafficking in human beings in which the rights of the victims are guaranteed and prioritised over economic, financial, law enforcement and migration aims.

24. Member States should ensure that a recovery and reflection period of at least 30 days is provided to presumed victims of trafficking when there are reasonable grounds to believe that a person is a victim, to allow them to recover and escape the influence of traffickers and/or take an informed decision on co-operating with the competent authorities. During this period, it should not be possible to enforce any expulsion order against the persons concerned, and they should be provided with assistance and protection according to their needs. Member States should inform victims about their rights in a language they understand. The granting of a recovery and reflection period is without prejudice to the activities carried out by the competent authorities when investigating and prosecuting the offences concerned.

25. As persons trafficked for the purpose of labour exploitation are sometimes found in large groups, it may be difficult to accommodate them in existing shelters. Member States should therefore develop contingency plans, engaging with civil society organisations and social services, to provide accommodation for large groups of trafficking victims. Member States should ensure that in such situations all victims are treated individually and according to the assessment of their needs. Provisions should be made to respond to the lasting effects of trauma, including post-traumatic stress syndrome (PTSS) and post-traumatic stress disorder (PTSD), and related psycho-social and health-care needs.

26. Furthermore, member States should provide, in co-operation with other relevant actors, including NGOs, trade unions and employers' associations, assistance to trafficked persons with a view to their social inclusion and reintegration. Vocational training, job counselling and

job placement schemes, in particular when based on an assessment of the overall labour market that includes appropriate and safe work opportunities in a wide range of fields, are tools of economic empowerment that member States should deploy to assist trafficked persons.

27. Member States should apply appropriate victim and witness protection measures before, during and after judicial proceedings, in order to prevent intimidation and retaliation by traffickers, and to minimise additional trauma for the victims.

Access to compensation and other remedies

28. According to the United Nations Basic Principles on the Right to an Effective Remedy for Victims of Trafficking in Persons, the right to an effective remedy should include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The provision of effective remedies serves multiple purposes. The remedy of compensation, for instance, for any injury, loss or harm sustained, can provide critical support in victims' recovery and empowerment, help their social inclusion and prevent re-victimisation.

29. Member States should ensure that all identified trafficked persons are systematically informed, in a language that they can understand, following a cross-cultural and trauma-informed approach, of their right to seek remedies and compensation and of the procedures to be followed, irrespective of their immigration status.

30. As court and administrative procedures are often very complex, early access to legal advice and assistance and free legal aid is important to enable victims to claim their rights, including unpaid wages and compensation. Member States should provide legal assistance to all trafficked persons when claiming compensation.

31. Victims' right to compensation consists in a claim against the perpetrators as it is the traffickers who should, in the first place, compensate the victims. Compensation levels should correspond to the financial loss and the physical and moral damages caused. Member States should make use of all measures available to conduct financial investigations linked to investigations into trafficking in human beings cases, carry out property freezing and confiscation of perpetrators' assets, and consider using a proportion of them to fund victim compensation programmes. Barriers to claiming and receiving compensation should be addressed, including through procedures for following up and making sure victims receive back payments and compensation, both when in the country and when they have moved to another country.

32. Even though it is the trafficker who should compensate the victim, in practice there is rarely full compensation because the trafficker has not been found, has disappeared or has declared him/herself bankrupt. In order to safeguard the right to compensation when the perpetrator is unable to pay compensation to the trafficked person, member States should take steps to guarantee compensation of victims by developing accessible procedures for state compensation and the enforcement of compensation claims by the state. State compensation schemes should provide an equitable framework which applies a consistent method to establish an appropriate level of state compensation, and which operates in a manner that does not require expensive legal representation, to prevent that legal costs are deducted from compensation awards. Member States should also consider introducing a system of advance payment of compensation to victims by the State and recovering the money from the perpetrator.

33. Furthermore, member States should provide for clear and accessible procedures to obtain residence permits as a form of remedial measure in itself. When a temporary residence status linked to criminal proceedings is provided initially, possibilities to renew the residence permit in order to claim compensation, or otherwise based on the personal situation of the victim or humanitarian grounds, should be made available.

34. Member States should also encourage the use of a grievance mechanism based on UN Guiding Principles for business related human rights violations and as part of public-private partnership.

Non-punishment provision

35. Persons who have been trafficked for the purpose of labour exploitation may on occasion be compelled to perform certain acts in relation to access and stay in a State's territory, as well as in relation to the work performed, that violate national law. In order to ensure that victims are not punished for the conduct of traffickers, member States should, in accordance with their national legislation, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so, through the adoption of a specific legal provision and/or developing, where appropriate, specific guidance on how, at what stage, and to what extent the non-punishment principle is to be applied in practice. In addition to safeguarding the rights of victims, the non-punishment provision encourages victims to report crimes and participate as witnesses in trials against traffickers. The non-punishment provision should be capable of being applied to all types of offences, including administrative, immigration and criminal offences, and should be seen in light of the victim's individual circumstances. When clear evidence emerges that a person was convicted of a crime that was committed as a direct consequence of being a victim of trafficking, convictions should be reviewed.

36. Member States should provide adequate training to police officers, labour inspectors, prosecutors, judges, lawyers, prison and probation staff and other relevant professionals about the application of the non-punishment provision. Training on early victim identification is essential for successfully implementing the non-punishment principle.

Protecting child victims of trafficking in human beings for the purpose of labour exploitation

37. Member States have an obligation to promote, respect and realise children's rights and the principle of the effective abolition of child labour in accordance with ILO's Minimum Age Convention (No. 138) and Worst Forms of Child Labour Convention (No. 182). Children from vulnerable groups, such as children in street situations, children from ethnic minorities, children placed in care institutions, and unaccompanied or separated children, are at heightened risk of being trafficked and subjected to child labour. Member States should raise public awareness of the risks and different manifestations of child trafficking (including for the purposes of forced labour, exploitation in begging or forced criminal activities), and should prioritise the sensitisation and training of relevant professionals (teachers, educational staff, child welfare professionals, social workers, guardians). Member States should not prosecute children for offences committed while being trafficked and should immediately refer them to the NRM and child protection structures.

38. Member States should prevent trafficking for child labour exploitation by, amongst other things, having policies, strategies and action plans in place against child labour, raising the minimum age of work, reducing flexible contracts for children and limiting or abandoning work during weekly hours and night work for children below 16 years of age. Member States should scrutinise and combat policies and practices that facilitate labour exploitation of children, mindful of Article 2, paragraph 3, of the ILO Convention on Minimum Age.

39. Member States should develop mechanisms for thorough risk assessment, including the well-being of the child in case of family reunification and monitoring the long-term reintegration of child victims. Member States should propose and implement durable and sustainable solutions for each child, based on an individual best interests determination, and taking into account the child's views.

III. Prosecution

Understanding the causal link between labour law breaches and trafficking for the purpose of labour exploitation

40. Due to a lack of knowledge and diverse interpretations of trafficking for labour exploitation, there is confusion between labour law violations and trafficking in human beings for the purpose of labour exploitation. As a result, victims of trafficking in human beings for the purpose of labour exploitation are often not recognised as victims and are being denied victim status and the ensuing rights, while perpetrators are not prosecuted or/are acquitted. The aim of exploitation is a fundamental element of human trafficking. In general, labour exploitation is understood as the taking of unfair advantage of another person's vulnerability or state of need, and coercion, consisting of a combination of labour law and criminal law violations and/or other abuses. Examples of possible labour exploitation can include excessive working days or hours; hazardous work; low or no salary; lack of social protection; wage manipulation; limitations of other rights and freedoms, for example poor housing conditions or limiting the freedom of movement; single employer-tied permits; and deceiving workers of their employment or residence status, all of which may be identified by labour inspectors and other law enforcement bodies. Member States should define the parameters of the concept of labour exploitation through either law or guidance, in order to avoid inconsistency of interpretation and legal uncertainty. They should adopt country-specific guidelines on the interpretation and application of labour exploitation in the context of trafficking in human beings, which explain how failures to tackle labour law breaches can facilitate labour exploitation offences, and set out the continuum ranging from decent work to trafficking for labour exploitation.

41. To further strengthen and clarify the legal framework, member States should make use of international standards and tools, such as the ILO indicators of forced labour. The following lessons from the case-law of the European Court of Human Rights should be taken into account³:

- prior consent to perform the work, e.g. at the time of recruitment, is not an obstacle for qualification of forced labour or trafficking in human beings for the purpose of labour exploitation. When an employer abuses his or her power or profits from the workers' vulnerable situation in order to exploit them, the workers are not offering their labour voluntarily. Similarly, if job offers involve misleading or deception, any consent given by the employee cannot be regarded as informed and voluntary;
- trafficking in human beings and forced labour can take place even if the freedom to move is not restricted (restriction of freedom to move is not a '*condition sine qua non*');
- withholding of wages is a strong indicator of coercion to work;
- being undocumented is relevant to determine a position of vulnerability;
- in case abusive means are used, the consent of the victim to perform the work becomes irrelevant.

Detection, investigation and prosecution

42. The absence of effective workplace inspections can create an inability to secure evidence to identify victims of trafficking for the purpose of labour exploitation, prove offences, and successfully prosecute offenders. This can be due to inadequate human and financial resources and insufficient training of labour inspectors, their lack of access to private property where employment occurs and workers are accommodated, and the lack of mandate to check employment and working conditions of workers in non-standard forms of employment. Giving a legal mandate to labour inspectors to investigate trafficking in human beings has proven to be a powerful tool in some countries, where associated with adequate resources and not at

³ European Court of Human Rights, *Chowdury v. Greece*, 21884/15, 30 March 2017.

the expense of the monitoring and enforcement of labour law. Therefore, member States could consider expanding the mandate of labour inspectors to this effect.

43. Through labour inspections, member States should ensure the effective enforcement of labour law standards in all sectors of the economy, including vis-a-vis undocumented workers. Distinguishing between labour inspection and immigration control is crucial to protect undocumented migrants at risk of exploitation, and for the purpose of enforcing labour standards, detection of labour exploitation and identification of potential victims of trafficking.

44. Member States should consider adopting a specific procedure on the investigation of trafficking for the purpose of labour exploitation, using special investigative techniques (such as surveillance, access to data communications information, forensic computer analysis) and systematically carrying out financial investigations, in order to assist prosecutors and judges in the criminal proceedings and to reduce reliance on trafficked persons' testimony. Special investigative techniques should be used in accordance with respect for fundamental principles, namely the principle of legality, the principle of respect for human rights, the principle of utility and proportionality of these means, as laid out in several Committee of Ministers recommendations on special investigative techniques.⁴ The collection of evidence should facilitate the qualification of cases as trafficking in human beings when there are elements to characterise an offence as trafficking in human beings and not relabel it as other offences which carry lighter penalties, which may deprive trafficked persons from access to protection, compensation and other remedies.

45. The establishment of specialised units within the police and the Prosecutor's Office, the availability of appropriately trained labour inspectors, as well as specialisation amongst judges and lawyers, enables the acquisition of experience and knowledge, and contributes to a higher prosecution and conviction rate. Therefore, member States should encourage specialisation to deal with trafficking in human beings offences.

46. Member States should ensure that the authorities responsible for investigating trafficking cases are adequately resourced and that relevant professionals are trained on the specificities of trafficking for labour exploitation and its modalities, and are equipped with the right tools to prevent, identify and combat the phenomenon. Training should be integrated in the regular training curricula of different professional groups, including labour inspectors, tax and customs authorities, police officers, prosecutors, judges, border guards, migration officials, asylum authorities and others that work with asylum seekers and refugees, consular staff, social workers and child protection professionals.

47. In view of the increase in cases of recruitment through the Internet and social networks, labour inspectorates, law enforcement agencies, and other relevant authorities should develop digital expertise, increase their online presence and perform frequent controls on job advertisement websites. Training on electronic evidence should be made integral to the training curricula of law enforcement officers. Member States should invest in capacity building in the areas of Internet monitoring, cyber-patrols, undercover online investigations (cyber-infiltration), the use of open source intelligence (OSINT) by specialised officers, and the use of automatic searching tools to analyse evidence.

IV. Partnerships and international co-operation

48. Member States should facilitate and encourage multi-agency and cross-border co-operation in the identification and follow-up of cases of trafficking in human beings for the purpose of labour exploitation. A multi-disciplinary, integrated approach involving all relevant organisations enables the sharing of information and intelligence, as well as making it possible

⁴ CM Rec(2005)10, CM Rec(2017)6. "Special Investigative techniques" are defined as: "techniques applied by the competent authorities in the context of criminal investigations for the purpose of preventing, detecting, investigating, prosecuting and suppressing serious crimes, aiming at gathering information in such a way as not to alert the target persons".

for them to complement each other while respecting their different roles and mandates, data protection standards and safeguards. Multi-disciplinary co-operation should include, at a minimum, representatives of relevant ministries and regional authorities, law enforcement agencies, labour inspectorates, the judiciary, victim support services and NGOs. Other relevant actors include municipal authorities, migrant organisations, employers' organisations, and businesses and trade unions. When possible and appropriate, trafficked persons and persons at risk should be encouraged to play a role in the design and monitoring of measures.

49. National human rights institutions, as well as National Rapporteurs on trafficking in human beings and equivalent mechanisms can make an important contribution to the fight against trafficking in human beings for the purpose of labour exploitation and the protection of the rights of victims. Member States should work closely with national human rights institutions to that end.

50. Member States should also co-operate bilaterally on combatting trafficking in human beings for the purpose of labour exploitation as appropriate (e.g. development of links between countries of origin and countries of destination on human trafficking issues) and support multilateral frameworks for co-operation including in the Council of Europe context. Member States should consider developing transnational referral mechanisms as effective tools to address transnational cases of trafficking for labour exploitation.

V. Action to enable corporate responsibility and enforce corporate liability

51. Businesses have a legal and ethical obligation to guarantee labour rights and to protect persons working for them, whether through direct employment contracts or other arrangements, against exploitative practices, which include trafficking in human beings for the purpose of labour exploitation. Furthermore, they have a responsibility under the UN Guiding Principles on Business and Human Rights to act with due diligence and to take measures against such practices so that they do not take place within their business or in their supply chain or with business partners they work with in the country or abroad, including private recruitment and employment agencies. Businesses also have a responsibility to proactively check and assess terms of employment and compliance of the business relations, including in their operations and supply chains. The role of businesses includes the adoption and implementation of measures to facilitate access to remedies for victims for any harm that occurs. Further, businesses have the potential to help trafficked persons regain economic autonomy.

52. Member States should ensure that businesses undertake due diligence throughout their operations supply chains and remain particularly vigilant when operating in sectors known for exploitative practices. Such due diligence should not be limited to only that part of a supply chain that exists within the national borders of the jurisdiction within which the business is located. To this end, member States should apply such measures as may be necessary, including legislation, requiring businesses domiciled within their jurisdiction to apply human rights due diligence throughout their operations and supply chains, comprising obligations to report publicly about measures taken to reduce the risks of trafficking in human beings. This should include control mechanisms, such as an early warning system, a monitoring and evaluating effectiveness of measures, and a whistle blower protection system that encompasses both in-house and external whistle-blowers, as well as sanctions for non-compliance. The legislation should also ensure that businesses and representatives of businesses can be held liable for the commission of human trafficking offences in their operations and supply chains. Member States should also strengthen the framework for corporate liability, including around several and joint liability across supply chains, and ensure that such legislation is effectively applied in practice in cases of trafficking in human beings for the purpose of labour exploitation.

53. Furthermore, member States should ensure that corporate liability and due diligence legislation is effectively applied in practice in cases of trafficking in human beings for the

purpose of labour exploitation. They should perform periodic assessment of the effectiveness of the legislation and, if necessary, strengthen it. Member States could also encourage businesses to engage with trade unions and other civil society organisations, including those representing and led by migrant workers, to support worker engagement in the oversight of workplace practices, and encourage supply chain accountability and transparency.

54. Member States should provide guidance and tools for businesses, regardless of their size, sector, operational context and ownership, on how to lower the risk of being involved, directly or indirectly, in trafficking for labour exploitation.

55. Member States should work with financial institutions within their jurisdiction to raise awareness of how such institutions, (providing banking, insurance, and managing loan investment and investment in employee pensions schemes), can develop and use leverage to influence business clients and suppliers to comply, where the risk of forced labour and trafficking exists. Furthermore, member States should provide guidance on the potential impact of the removal of financial cover and benefits, for example, regulating legally required insurance, in a way that allows insurers to increase premiums or deductibles, reduce the limit of the policy, or consider cancelling it due to risks directly linked to forced labour and trafficking. Such risks may arise through investigations into the business itself, or investigations into its clients and suppliers in its supply chain, or through other regulatory oversight or complaint. Member States should also encourage financial institutions to explain the benefits of responsible business conduct, for example reducing insurance premiums and attracting investment, to further influence business to exercise greater due diligence and protection of workers from exploitation.

56. Furthermore, member States should be transparent about their own procurement policies and ensure that they themselves do not contribute to exploitative practices. Member States should ensure that when purchasing goods and services, they do not make use of goods and services produced or provided by trafficked persons. Member States should also ensure that businesses proven to be involved in exploitative practices are not contracted or sub-contracted and are excluded from public procurement procedures. Moreover, member States should adopt measures to prevent trafficking in human beings for the purpose of labour exploitation occurring in publicly contracted or subsidised projects, as well as in publicly owned enterprises by ensuring provisions at a minimum similar to those required by private enterprises.

57. Member States should ensure that labels and certificates used by companies to attest ethically or sustainably produced goods are supported by robust evidence and should proactively monitor their issuance. The criteria for issuing labels and certificates should be clearly formulated and easily accessible for consumers, and the compliance of businesses should be publicly available. Member States should consider the accreditation of organisations responsible for issuing labels and certificates to ensure that they have sound knowledge of the risks for labour exploitation, know how to conduct proper monitoring. The organisations should work with member States on the specification of accreditation schemes and the effectiveness of their implementation. In cases of self-regulation, the State should maintain a monitoring role and invest in robust research to analyse the claims made by labels and certification schemes.