



DH-TET(2021)R1
05/10/2021

STEERING COMMITTEE FOR HUMAN RIGHTS

(CDDH)

DRAFTING COMMITTEE ON TRAFFICKING FOR THE PURPOSE OF
LABOUR EXPLOITATION

(DH-TET)

MEETING REPORT

1st meeting

4-5 October 2021 via videoconference

ITEMS 1 AND 2: OPENING OF THE MEETING, ADOPTION OF THE AGENDA AND THE ORDER OF BUSINESS

1. The Drafting Committee on Trafficking for the purpose of Labour exploitation (DH-TET) held its 1st meeting in Strasbourg from 4 to 5 October 2021 by video-conference due to the measures related to the COVID-19 pandemic. The meeting was chaired by Mr Morten RUUD (Norway). The list of participants appears in Appendix I.
2. The Drafting Committee adopted the agenda (see Appendix II) and the order of business (see Appendix III).
3. Mr Daniele CANGEMI, Head of Department for Human Rights, Justice and Legal Co-operation Standard-setting activities, welcomed the participants and underlined the importance of the drafting group's work in this field.

ITEM 3: PRESENTATIONS BY MEMBERS, PARTICIPANTS AND OBSERVERS

4. A tour de table of the members, participants and observers highlighted the great level of expertise and the diversity of experience across many different fields related to the area of combating trafficking for the purpose of labour exploitation.

ITEM 4: DISCUSSION AND AMENDMENT OF THE PRELIMINARY DRAFT RECOMMENDATION

5. On the first day of its meeting, the Drafting Committee engaged in a general discussion of the preliminary draft recommendation. In particular, it discussed the content of the preamble, the structure of the recommendation and its relationship to the appendix.
6. To ensure coherence, the Drafting Group decided to review the structure and content of the draft recommendation and its appendix. It agreed to re-order the substantive elements of the recommendation so that they correspond to the structure of the appendix. A number of proposals were made on how to enhance the content and clarity of the draft.
7. The discussion on the second day delved into greater detail into the various parts of both the draft recommendation and the appendix. Although a decision was made to engage in a more detailed drafting exercise during the second meeting (to be held on 29-30 November), a useful discussion was held on the need to clarify important concepts, and some concrete drafting proposals were shared.

ITEM 5: GENDER EQUALITY

8. Based on the CDDH'S decision at its 93rd meeting (14-16 December 2020) inviting its subordinate bodies to consider the gender equality dimension of its work according to the relevant thematic form (CDDH(2020)13), the DH-TET has considered this question at the present meeting. It considers that its activities allow for the equal participation. No other aspect of its analysis and work raises gender equality issues.

ITEM 6: ORGANISATION OF FUTURE WORK

9. The Drafting Committee considered a road map for its future work. The deadline for sending in writing proposals for amendments communicated orally at the meeting, as well as any new comments relating to the draft recommendation and/or its appendix, to the DH-TET Secretariat was set on 26 October 2021. The Drafting Committee agreed to the Chair's proposal to send the draft Recommendation to the Secretariat for re-drafting in view of the next meeting.

ITEM 7: ANY OTHER BUSINESS

10. No other business was discussed.

ITEM 8: ADOPTION OF THE MEETING REPORT

11. At the end of its meeting, the Drafting Committee adopted the present meeting report in English and in French.

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Appendix I**List of participants****MEMBERS**

Austria	Mag. Dr. Wolfgang SPADINGER Senior expert in the field of combatting and preventing human trafficking
Bosnia and Herzegovina	Mr Samir RIZVO Assistant Minister in the Ministry of Security of Bosnia and Herzegovina and the State Coordinator for Trafficking in Human Beings
Cyprus	Ms Tania CHARALAMBIDOU Administrative Officer Civil Registry and Migration Department Ministry of Interior of the Republic of Cyprus
Finland	Ms Venla ROTH Expert on behalf of the CDPC Ministerial adviser Department of Criminal Policy and Criminal Justice Ministry of Justice Ms Alexandra HILTUNEN Legal Officer Unit for Human Rights Courts and Conventions, Legal Service Ministry for Foreign Affairs
France	M^{me} Elisabeth MOIRON-BRAUD Experte au nom du CDDH Secrétaire générale de la Mission interministérielle pour la protection des femmes contre les violences et la lutte contre la traite des êtres humains (MIPROF) Capitaine Angélique MIET Commandant le groupe relations internationales, documentation, analyse et formation de l'Office central de lutte contre le travail illégal (OCLTI) M^{me} Jessica GOURMELEN Chargée de mission lutte contre la traite des êtres humains à la MIPROF

Germany	Ms Nilgün Öksüz Expert on behalf of the CDDH Deputy Head of Division VIb4 OECD, OSCE, Council of Europe, Combatting Trafficking for the purpose of Labour Exploitation ESF- and FEAD Certifying Authority Federal Ministry of Labour and Social Affairs
Greece	Dr. Heracles MOSKOFF Expert on behalf of the CDDH National Rapporteur of Greece on Trafficking in Human Beings - Ministry of Foreign Affairs
Ireland	Mr Deaglán Ó BRIAIN Head of Community Safety Policy unit Department of Justice
Luxembourg	Mr Joseph FABER Chair of the Governmental Committee of the European Social Charter and the European Code of Social Security
Malta	Dr Lynn CHIRCOP FAURE Senior Manager (Human Rights Directorate) Ministry for Equality, Research and Innovation Dr Deborah AZZOPARDI Manager II (Research) (Human Rights Directorate) Ministry for Equality, Research and Innovation
Netherlands	Mr Boris KYUCHOUKOV Expert on behalf of the CDPC Ministry of Social Affairs and Employment
Norway	Mr Morten RUUD (Chair) Special adviser, Legislation Department, Norwegian Ministry of Justice and Public Security
Poland	Mr Paweł KACZOR Ministry of Justice of Poland
Portugal	Mr Manuel ALBANO Vice-Président de la Commission pour l'égalité de genre et Rapporteur national pour la Traite des êtres-humains
Romania	Ms Irina DIN The National Agency Against Trafficking in Personas Victim monitoring, assessment and coordination Department
Spain	Ms Alicia VILLASECA BALLESCÁ State Attorney

	State Attorney Office of the Ministry of Justice
Switzerland	<p>Mr Boris MESARIC Expert on behalf of the CDPC Chef du service de lutte contre la traite des êtres humains et le trafic de migrants (SETT) - Département fédéral de justice et police - Office fédéral de la police – fedpol</p>
Turkey	<p>Ms Hilal KOÇALI Deputy to the Permanent Representative (legal matters)</p> <p>Ms Eda AYRANCI GÜNER Rapporteur Judge, Ministry of Justice</p>
United Kingdom	<p>Mr Darryl DIXON Expert on behalf of the CDPC Head of GLAA Single Enforcement Body Programme Gangmasters and Labour Abuse Authority (GLAA)</p>
Independent experts designated by the Secretary General of the Council of Europe	<p>Ms Zuzanna MUSKAT GORSKA (Belgium) Independent expert designated by the Secretary General of the Council of Europe Legal Officer at the <i>International Trade Union Confederation</i> (ITUC)</p> <p>Ms Kamelia DIMITROVA (Bulgaria) Independent expert designated by the Secretary General of the Council of Europe Executive Director of the Dignita Foundation</p> <p>Ms Annabel CANZIAN (France) Independent expert designated by the Secretary General of the Council of Europe Coordinatrice du service juridique du Comité contre l'esclavage moderne (CCEM)</p> <p>Prof. Zbigniew LASOČIK (Poland) Independent expert designated by the Secretary General of the Council of Europe University of Warsaw, Human Trafficking Studies Centre</p> <p>Ms Caroline ROBINSON (United Kingdom) Independent expert designated by the Secretary General of the Council of Europe</p>

PARTICIPANTS

<p>Group of Experts on Action against Trafficking in Human Beings (GRETA)</p>	<p>Mr Peter VAN HAUWERMEIREN Member of GRETA (Belgium)</p> <p>Ms Conny RIJKEN Member of GRETA (The Netherlands)</p> <p>Ms Ia DADUNASHVILI Member of GRETA (Georgia)</p> <p>Ms Petya NESTOROVA Executive Secretary of the Council of Europe Convention on Action against Trafficking in Human Beings</p> <p>Ms Jackie RENAUDIN-SIDDALL Assistant, Secretariat of the Council of Europe Convention on Action against Trafficking in Human Beings</p>
<p>European Committee of Social Rights</p>	<p>Ms Miriam KULLMANN Representative of the European Committee of Social Rights</p>
<p>United Nations Human Rights Office of the High Commissioner</p>	<p>Ms Youla HADDADIN OHCHR Senior Advisor on Trafficking in Persons Office of the High Commissioner for Human Rights</p>
<p>United Nations High Commissioner for Refugees</p>	<p>Mr Andreas WISSNER UNHCR Representative to the European Institutions in Strasbourg</p> <p>Ms Delphine LENEUTRE Legal Associate UNHCR Representation to the European Institutions in Strasbourg</p> <p>Ms Florine CASIER Intern UNHCR Representation to the European Institutions in Strasbourg</p>
<p>United Nations Human Rights Council (UN OHCHR)</p>	<p>Prof Siobhán MULLALLY United Nations Special Rapporteur on Trafficking in Persons, especially women and children Special Procedures of the United Nations</p>
<p>Organisation for Security and Co-operation in Europe</p>	<p>Dr. Ingo (Alexander) TRAUTRIMS Senior Adviser Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings</p>
<p>European Union Agency for Fundamental Rights</p>	<p>Ms Ludovica BANFI Project Manager, Social Research, Research and Data Unit European Union Agency for Fundamental Rights</p>

Council of the Baltic Sea States (CBSS)	Mr Edi MUJAJ Adviser to the Task Force against Trafficking in Human Beings
International Organization for Migration	Mr Daniel REDONDO Senior Regional Migrant Protection & Assistance Specialist (Assistance to Vulnerable Migrants)
International Labour Organisation	Ms Deepa RISHIKESH Head of the Child Labour and Forced Labour Unit ILO International Labour Standards Department
European Institute for Crime Prevention and Control (HEUNI)	Ms Anniina JOKINEN Senior programme officer European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI)
United Nations Office on Drugs and Crime (UNODC)	Mr Martin FOWKE Team Leader, Normative and Policy Team Human Trafficking and Migrant Smuggling Section Organized Crime Branch, Division for Treaty Affairs United Nations Office on Drugs and Crime (UNODC)

OBSERVERS

La Strada International	Ms Suzanne HOFF International Coordinator
Platform for International Cooperation on Undocumented Migrants (PICUM)	Ms Lilana KEITH Senior advocacy officer Labour rights and Labour migration

SECRETARIAT

DGI – Human Rights and Rule of Law Council of Europe F-67075 Strasbourg Cedex	Ms Jennifer SCHUETZE-REYMANN Administrator Task Force on Transversal Challenges and Multilateral Projects Mr Nicolas DOMAGALSKI Assistant lawyer Human Rights Intergovernmental Cooperation Division
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INTERPRETERS

Ms Corinne McGEORGE Mr Nicolas GUITTONNEAU Mr Didier JUNGLING

Appendix II**Annotated Agenda**

Opening of the meeting	
1.	<i>The Chairperson, Mr Morten RUUD (Norway), will open the meeting.</i>
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2.	Adoption of the annotated agenda and order of business
	DH-TET(2021)OJ1
	DH-TET(2021)OT1
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3.	Presentations by DH-TET members, participants and observers
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	Discussion and amendment of the preliminary draft
4.	Recommendation
	DH-TET(2021)01
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Gender equality	
5.	<i>The Drafting Committee will be invited to discuss follow-up to the decision of the CDDH inviting all its subordinate groups to address questions related to the thematic form on gender equality in the context of the implementation of their mandates.</i>
	CDDH(2020)13
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Organisation of future work	
6.	<i>The Drafting Committee will be invited to discuss and take all the necessary decisions regarding the organisation of its future work.</i>
	DH-TET(2021)RM01
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7.	Any other business
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8.	Approval of the meeting report
	DH-TET(2021)R1

Reference documents

Terms of reference of the DH-TET

[CDDH\(2021\)05](#)

Guidance Note on preventing and combatting trafficking in human beings for the purpose of labour exploitation

[GRETA\(2020\)12](#)

Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation

[GRETA\(2020\)08](#)

Overview of the relevant provisions of the Social Charter and ECSR case-law

[Link](#)

Appendix III**Order of business****Monday 4 October 2021**

- 09:30 – 09:45 **Items 1 and 2: Opening of the meeting, adoption of agenda and order of business**
- 09:45 – 12:00 **Item 3: Presentations by experts (*members, participants, observers*)**
 Tour-de-table of the members of DH-TET to present themselves and briefly outline the main challenges in combating trafficking for labour exploitation
 Presentations by participants and observers (in the interest of time, to be limited to 5 minutes)
- 12:00 – 14:00 *Lunch break*
- 14:00 – 16:30 **Item 4: Discussion and amendment of the preliminary draft Recommendation**

Tuesday 5 October 2021

- 09:30 – 12:00 **Item 4: *Continued***
- 12:00 – 14:00 *Lunch break*
- 14:00 – 14:30 **Item 4: *Summary of the discussions and proposals***
- 14:30 – 15:30 **Items 5 and 6: Organisation of future work and any other business**
 Discussion about the organisation of the future work of DH-TET and preparation of the 2nd meeting to be held on 29-30 November 2021.
- 15:30 – 16:00 **Item 7: Approval of the meeting report**

Appendix IV

Preliminary draft 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

A. 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),

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

C. 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) 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 European Convention on Human Rights;

D. 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, 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);

E. Considering that trafficking in human beings for the purpose of labour exploitation was identified as one of the major challenges facing Europe in the 2019 report of the then Secretary General of the Council of Europe, "Ready for Future Challenges - Reinforcing the Council of Europe"¹;

F. Taking into account the Secretary General's "Roadmap on strengthening action against trafficking in human beings for the purpose of labour exploitation"² adopted with a view to implementing the decision taken at the 129th Ministerial Session on 17 May 2019 in Helsinki to continue analysing the protection provided by existing European standards, and to examine ways of strengthening action against trafficking in human beings³;

G. Deeply concerned that human trafficking for the purpose of labour exploitation is on the rise and has become the predominant form of exploitation in many Council of Europe member States, affecting an increasing number of children;

H. Emphasising that human trafficking reduces human beings to commodities and is linked to other illegal activities, such as tax evasion, social benefit and social security fraud and money laundering;

¹ https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168093af03

² [SG/Inf \(2019\)34.](#)

³ [CM/Del/Dec\(2019\)129/2a.](#)

- I. Acknowledging that trafficking for labour exploitation is provoked by global economic disparities, growing demand for cheap products and services, and the desire to maximise profits through the underpayment of workers;
- J. Recalling that trafficking in human beings for the purpose of labour exploitation takes place both transnationally and internally within the same state, and is often associated with labour migration;
- K. Considering the challenges in the detection of cases of trafficking for the purpose of labour exploitation and the reluctance of victims to come forward due to risk of reprisals, punishment, or loss of job, residency or accommodation;
- L. Bearing in mind the disparities between member States in the interpretation and application of labour standards and in defining labour exploitation, and the difficulties in detecting and prosecuting trafficking in human beings for the purpose of labour exploitation;
- M. Taking into account that human trafficking for labour exploitation may occur at different stages of businesses' supply chains and as part of public procurement;
- N. Recalling the UN Guiding Principles on Business and Human Rights, according to which States should consider a smart mix of measures – national and international, mandatory and voluntary – to foster businesses' respect for human rights, including prevention of trafficking for labour exploitation or other exploitative practices;
- O. Stressing that combating trafficking for the purpose of labour exploitation requires co-ordinated action between states, businesses, civil society and trade unions;
- P. Bearing in mind its recommendations to member States on assistance to crime victims (Rec(2006)8), on improving access of migrants and persons of immigrant background to employment (CM/Rec(2008)10), on the access of young people from disadvantaged neighbourhoods to social rights (CM/Rec(2015)3), and on human rights and business (CM/Rec(2016)3);
- Q. Recalling the obligations to enforce the rights of workers arising from international documents and in particular, where relevant, those arising from the European Social Charter (ETS No. 35) and the revised European Social Charter (ETS No. 163);
- R. 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";
- S. Recognising and building on the work of other intergovernmental organisations active in the field of combating human trafficking and forced labour, and in particular the International Labour Organisation (ILO) Forced Labour Convention (No. 29 of 1930) and the 2014 Protocol thereto, the Minimum Age Convention (No. 138) and the Worst Forms of Child Labour Convention (No. 182), as well as the work of the European Union's Fundamental Rights Agency (FRA) on severe labour exploitation and victims' rights;
- T. Taking into account the work of the Council of Europe 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,

Recommends that the governments of the member States:

1. Adopt national policies for combating human trafficking which include specific measures to address trafficking for the purpose of labour exploitation, supported by adequate funding to ensure their implementation, and co-ordinated and monitored by dedicated structures. These policies should aim at preventing and eradicating trafficking for the purpose of labour exploitation, including through efforts to:

- a. establish an enabling legal framework which clarifies the elements and scope of the offence of trafficking in human beings and its relation to labour exploitation and other illegal practices;
- b. adopt minimum requirements for work contracts, including wages, working hours and other conditions, and ensure that all workers have a contract that meets these requirements, drafted in a language they understand;
- c. regulate and monitor the activities of private placement and recruitment agencies, including those responsible for facilitating the placement of domestic and care workers, and adopt minimum wages for persons recruited by such agencies as well as self-employed persons;
- d. ensure that labour inspectorates and other agencies supervising work, health and safety conditions are enabled to detect and report cases of trafficking for the purpose of labour exploitation in all parts of the labour market, including on private premises, in co-operation with law enforcement agencies, civil society and trade unions;
- e. create a firewall between labour inspections and migration control to prevent that victims without legal residency are expelled from the country and excluded from victim protection measures;
- f. ensure that adequate legal provisions and other measures are in place to facilitate and guarantee the investigation and prosecution of human trafficking offences, as well as the compensation of victims, including payment of back wages;
- g. adopt legislation requiring businesses to report publicly on measures taken to reduce the risks of human trafficking in their supply chains, as well as guidance for businesses on how to lower the risk of being involved, directly or indirectly, in trafficking for labour exploitation;
- h. conduct awareness raising for the general public and groups at risk on trafficking for labour exploitation and the rights of trafficked persons, as well as regular training of relevant professionals;

2. Ensure that the measures and guidance set out in the Appendix to this recommendation are implemented in relevant domestic law and practice, and their effectiveness is assessed at regular intervals, in close coordination with all relevant stakeholders;

3. Ensure, by appropriate means and action, a wide dissemination of this recommendation among competent authorities and stakeholders at national, regional and local levels;

4. Examine, within the Committee of Ministers, and in co-operation with other relevant bodies of the Council of Europe, the implementation of this recommendation no later than five years after its adoption, with the participation of relevant stakeholders.

Appendix to Recommendation CM/Rec (2022)..

I. Strengthening and clarifying the legal framework

1. There are difficulties in practice to draw a clear line between labour law violations and human trafficking for the purpose of labour exploitation and, as a result, victims of human trafficking are often being denied victim status and the ensuing rights, while perpetrators are acquitted. Exploitation is a fundamental element of the criminalisation of human trafficking. Member States should define the parameters of the concept of exploitation through either law or guidance, in order to avoid inconsistency of interpretation and legal uncertainty, and adopt country-specific guidelines on the interpretation and application of labour exploitation in the context of human trafficking. In general, exploitation is understood as the taking of unfair advantage of another person's vulnerability or state of need, consisting of labour law violations, such as failure to pay a mandated minimum wage, or limitations of other rights and freedoms, for example housing conditions, being locked up, or a combination of those, multiple dependency, single employer-tied permits.

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

- human trafficking and forced labour can take place even if the free movement is not restricted (restriction of free movement is not a 'condition sine qua non');
- being undocumented is relevant to determine a position of vulnerability;
- in case abusive means are used, the consent of the victim becomes irrelevant; likewise, in situations of abuse of a position of vulnerability, voluntariness becomes null and void;
- prior consent to perform the work is not an obstacle for qualification of either forced labour or for human trafficking for labour exploitation. Similarly, if job offers involve misleading or deception, any consent given by the employee cannot be regarded as informed and voluntary.ⁱⁱⁱ

3. Member States should strike a fair balance between the free movement of workers, labour market flexibilisation and profit maximisation, on the one hand, and labour rights and decent work for all, on the other. Making a strong fist against labour exploitation, including when resulting from human trafficking, is a first step to achieve this goal.

4. Flexibilisation of employment relations and globalisation increase labour migration. Following the UN Global Compact on Migration, member States should create legal pathways for labour migrants in low skilled jobs to legally migrate and obtain work permits so that labour migrants can take up employment characterised by decent work and conditions for all workers. Member States should further regularise labour migration, for instance through bilateral labour migration agreements in which essential rights are guaranteed, guaranteeing transparent procedures, with minimal administrative requirements, and taking into account migrant workers' perspectives.^{iv}

5. Member States should further adopt specific measures to address the vulnerabilities of migrant workers who are often in a position of multiple dependency on their employers,

including for their residency, housing and insurances, and due to the fact that they do not speak the language and are unaware of their rights.

II. Transparency

6. Member States should be aware that assessing violations of labour rights becomes more challenging as businesses use obscure constructions to avoid hiring persons as workers since the rights of workers are quite extensive and adopted in international and national legal instruments. To that end, businesses use constructions such as bogus self-employment, establishing recruitment agencies in other countries, payrolling, sub-contracting via other countries or irregular posting of workers to minimise labour costs and maximise profits. Although in such situations wages are far below the minimum wage in the country in which the work is performed, these constructions are often not prohibited by law but permitted because of the flexibilisation of the labour market, free movement of workers and in order to facilitate economic growth. Member States should clearly indicate that such practices, even if they are lawful according to corporate law or civil law, are unacceptable, can be qualified as exploitative and might be prohibited under criminal law and labour law.^v

7. Member States should adopt minimum wages not only for workers but also for self-employed persons and posted workers performing the work on their territory and regardless of the contractual construction that is used.

8. Member States should regulate and monitor employment and recruitment agencies rather than relying on voluntary self-regulation by the recruitment industry. Workers, including migrant workers, are often not employed directly by the business for which they work, but via a recruitment agency or are subcontracted. Employment through recruitment agencies or a subcontractor creates complex legal situations that make it unclear which labour laws apply, who to complain to in situations of labour law violations, or what remedies are available to workers and hence increase the risk of being exploited.^{vi} Member States should ensure that such practices are avoided, through regulation and monitoring, in line with ILO General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs.

9. Member States should adopt legal and other measures to ensure that contracts and payslips are clear and transparent, and in a language understood by the worker. Different costs, such as accommodation, insurances, meals and transportation, cannot be automatically deducted from the salary, otherwise it is hard to determine whether the minimum or agreed wages are being paid.

III. Victim identification

10. Member States should reinforce and prioritise the detection of cases of trafficking for labour exploitation and the identification of victims by addressing the following gaps:

- i. absence of effective workplace inspections, for example because of lack of access to private property in case of agriculture or domestic work, insufficient training or capacity of labour inspectors, or prioritisation of migration management over combating labour exploitation. Therefore, member States should provide labour inspectors with adequate training and sufficient human

and financial resources to enable them to be regularly and proactively present in all economic sectors, focusing workplace inspections on sectors which are most prone to exploitation. Labour inspectors should be able to detect labour trafficking situations during their own inspections or joint inspections with the police. Giving a legal mandate to labour inspectors to investigate human trafficking has proven to be a powerful tool in some countries, and member States should consider expanding the mandate of labour inspectors to this effect.

- ii. lack of proactive interventions by law enforcement agencies in cases of trafficking for labour exploitation due to, amongst other reasons, low priority of such cases or the belief that they are within the remit of the labour inspection. Member States should provide training and clear instructions to law enforcement officials, as well as adequate resources, to ensure that such cases are followed up and properly investigated, in co-operation with other stakeholders.
- iii. reluctance of victims to report situations of exploitation to the authorities and trade unions, either because they do not self-identify as victims of an offence and are unaware of their rights, or because they are afraid that their wages will not be paid or they will face other reprisals. Together with trade unions and civil society organisation, member States should create awareness and provide information about relevant labour standards and available avenues for complaint and protection.
- iv. the attitude of tolerance by the general public vis-a-vis situations in which migrant and low-skilled workers are exploited. Member States should combat such a climate of tolerance, raise awareness among society in general of human trafficking and its severe impact on victims whose human dignity is violated, as well as the applicability of social rights and human dignity for all workers.^{vii}

11. Member States should recognise that lack of reporting by victims is an important factor contributing to the impunity for traffickers. Fear of having to leave the country when reporting is one of the main reasons not to come forward and report a crime. Consequently, member States should create a 'firewall' between labour inspection and migration control, meaning that in case of lack of regular residency, a person found in a situation of labour exploitation is not expelled from the country, but is provided with victim support measures, including a recovery and reflection period of a minimum of 30 days.

12. Member States should pay specific attention to the identification of at-risk groups, such as undocumented persons, seasonal workers, temporary agency workers, workers hired through recruitment agencies, persons in bogus self-employment and posted workers. Member States should work together with specialised NGOs to achieve this goal.

13. Member States should adopt a National Referral Mechanism (NRM) for the identification and referral to assistance of victims of human trafficking, which defines the roles and responsibilities of all relevant actors, including labour inspectors, trade unions and civil society. Member States should evaluate and adapt the NRM at a regular interval.

IV. Protection of victims' rights

14. Member States should adopt a victim-centred approach in combating of trafficking in human beings for the purpose of labour exploitation in which the rights of the victims are guaranteed and prioritised over economic, financial, law enforcement and migration aims.
15. Member States should ensure that rights and victim protection apply not only to identified victims of trafficking for labour exploitation, but also to victims of forced labour and labour exploitation, in line with ILO 2014 Protocol to the 1930 Forced Labour Convention.
16. Recognising that many cases of labour exploitation involve groups of victims, member States should ensure that in such situations all victims are treated individually and equally in terms of protection and possibilities for compensation.
17. Member States should create options for class action and third-party interventions to act on behalf of victims, especially taking into account the reluctance of victims to come forward and the lengthy procedures when prosecuting traffickers and claiming compensation.
18. Member States should ensure that a recovery and reflection period of at least 30 days is provided to presumed victims of trafficking regardless of their willingness to file a complaint or the presence of indicators to start criminal proceedings, and irrespective of an obligation to expel the victim under migration law.
19. Member States should take measures aimed at increasing the propensity amongst trafficked persons to self-identify as such, including a concrete possibility 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.
20. Member States should adopt specific legal provisions providing 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, and/or develop specific guidance on how the non-punishment principle is to be applied in practice. Member States should provide training to police officers, labour inspectors, prosecutors, judges, lawyers and other relevant professionals about the application of the non-punishment provision.
21. To prevent trafficking for labour exploitation, member States should address risk factors such as not speaking the local language, working in isolation, lack of information of rights, irregular residence or employment in sectors prone to exploitation. Addressing these risk factors should be done in a manner which takes into account cultural and other relevant factors.
22. Member States, in close collaboration with trade unions and NGOs, should inform migrant workers about their rights. Such actions may involve the setting up of counselling centres for migrant workers, mobile drop-in centres, the appointment of labour attachés at embassies in countries of destination and the appointment of labour officers in source countries who can provide information about working in the host country prior to departure.
23. Member States should further adopt measures enabling trade unions and NGOs to inform workers about their rights. For labour migrants, targeted information campaigns can take place at the places where they are accommodated, but information campaigns targeting local workers are equally important.

V. Protecting child victims of trafficking for labour exploitation

24. Member States have an obligation to promote, respect and realise 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).

25. Member State should prevent trafficking for child labour exploitation and abandon policies and practices that facilitate labour exploitation of children, for instance by raising the minimum age of work, reducing flexible contracts for children and limiting or abandoning work during weekly hours for children below 16 years of age. In addition, member States should uphold Article 2, paragraph 3, of ILO Convention on Minimum Age, stating that: "[...] 3. The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years."

VI. Access to compensation and other remedies

26. Member States should encourage and facilitate strategic litigation by NGOs and trade unions. Strategic litigation can be facilitated via third-party interventions also for compensation claims and payment of unpaid wages.^{viii} The media can play an important role by publicising rulings, raising awareness and sensitising about illegal practices.⁴

27. Member States should ensure that trafficked persons are systematically informed, in a language that they can understand, of their right to seek compensation and the procedures to be followed, and provide legal assistance to all trafficked persons including when claiming compensation.

28. Member States should provide for residency and the possibility to stay after termination of criminal proceedings in case a claim for compensation is ongoing.

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

30. Member States should require law enforcement officials to make use of all measures available to conduct criminal investigations, property freezing and confiscation of assets to be used to compensate trafficking victims.

31. Member States should 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.

⁴ A recent good example is the case of FNV (a trade union) starting civil procedure on behalf of Hungarian drivers who were paid in accordance with Hungarian labour law while the labour took place in the Netherlands. The research on these practices started in 2011 while the judicial proceedings started in 2014. Only on 28 July 2021 the case was definitely ruled by the Supreme Court in Arnhem-Leeuwarden to the benefit of the Hungarian chauffeurs, namely that paid wages had to be in conformity with the Dutch labour law and not Hungarian labour law after preliminary questions were answered by the CJEU in the same vein in December 2020. Case C-815/18 FNV v Van den Bosch

VII. Multistakeholder co-operation

32. Member States should facilitate and encourage co-operation in the identification and follow-up of cases of trafficking for the purpose of labour exploitation between public authorities, civil society, trade unions and the private sector, including the carrying out of joint inspections.

33. Member States should ensure that labour inspections and law enforcement, in a coordinated and concerted fashion, use all investigative tools available to combat trafficking for labour exploitation through the combined use of administrative and criminal measures, including, but not limited to, financial investigations, confiscation, closing of business, withdrawing licenses, blacklisting, exclusion from procurement procedures, special investigative techniques, evidence from tax authorities, corporate liability proceedings.

34. 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, and safe reporting for undocumented workers. Distinguishing between labour inspection and immigration control is crucial to protect undocumented migrants at risk of exploitation, and for the purpose of detection of labour exploitation and identification of (possible) victims of trafficking.

35. Member States should ensure 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, consular staff, social workers and child protection professionals.

36. Member States should also work closely with national human rights institutions, which can make an important contribution to the fight against human trafficking for labour exploitation and the protection of the rights of victims.

VIII. Action to enable corporate responsibility and enforce corporate liability

37. Businesses have a legal obligation to guarantee labour rights and to protect their employees against exploitative practices. They furthermore 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 by assuring trafficking for labour exploitation does not take place within their business nor in their supply chain or business partners they work with including private recruitment and employment agencies.^{ix} Businesses also have a responsibility to proactively check and assess terms of employment and compliance of the business relations, including in their supply chains.^x

38. Member States should ensure a transparent and clear system of labels and certificates for various types of infringements and abuses and proactively monitor their issuance. Organisations responsible for issuing labels and certificates should have sound knowledge of the risks for labour exploitation, know how to conduct proper monitoring, and be themselves subjected to an assessment by the State. In cases of self-regulation, the State should maintain a monitoring role.

39. Member States should ensure that businesses undertake due diligence in relations with subcontractors and remain particularly vigilant when operating in sectors known for exploitative practices. To this end, member States should adopt legislation requiring businesses to report publicly about measures taken to reduce the risks of human trafficking in their supply chains. Further, member States should provide guidance for businesses on how to lower the risk of being involved, directly or indirectly, in trafficking for labour exploitation by doing responsible business.

40. Member States should further ensure that they themselves do not contribute to exploitative practices and ensure that when purchasing goods and services, they do not make use of goods and services produced or provided by trafficking victims, and ensure the businesses linked with exploitative practices are not contracted or sub-contracted and excluded from public procurement procedures.^{xi}

41. Member States should also ensure that corporate liability legislation is effectively applied in practice in cases of human trafficking for the purpose of labour exploitation.

ⁱ GRETA Guidance para 52, also https://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang--en/index.htm

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

ⁱⁱⁱ Combating Forced Labour, A Handbook for Employers & Business, Geneva: ILO, 2015, p. 16.

^{iv} For example, see PICUM Report 2021 Annex 1 and Annex 2 and FLOW Project, Normative Framework Guide, Appendix 1 including examples of Contractual Clauses to Mitigate Labour Exploitation and Trafficking, HEUNI Publication Series No. 94, 2020.

^v For examples of bogus self-employment, posted workers. Letterbox companies and sub-contracting see Shady Business.

^{vi} FRA report (2015), p. 17.

^{vii} FRA Report (2015). Rights, p. 94.

^{viii} FRA report (2015), p. 84-85.

^{ix} FLOW Project, Normative Framework Guide, Appendix 1 including examples of Contractual Clauses to Mitigate Labour Exploitation and Trafficking, HEUNI Publication Series No. 94, 2020, p. 25.

^x Institutet for Human Rights and Business, 2016, p. 54. IHRB (2016): Corporate Liability for Forced Labour and Human Trafficking. Available at:

<https://www.ihrb.org/focus-areas/migrantworkers/corporate-liability-for-forced-labour-and-human-trafficking>

^{xi} FRA report (2015), p. 16-17.