



## Designing labour migration policies to promote decent work

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# Executive Summary

## Current work permit provisions do not reflect real needs of workers or employers

National migration policies across Europe continue to offer decent labour migration opportunities largely to workers with offers for highly-paid employment or for very specific skills shortages. Accessible and decent labour migration pathways across various occupations remain very limited, despite labour market demand. Mechanisms such as quotas, shortage occupation lists, and labour market tests are implemented in a way that blocks - or creates over-burdensome administrative hurdles to - the employment of migrant workers in key occupations.

Those pathways that are available often provide work permits with restrictions on workers' labour market mobility and rights. The multiplication of rules, permits and statuses creates a complex regulatory framework for authorities, employers and workers to navigate. It leads to fragmentation of the labour market and contributes to undeclared work.

Single employer-tied permits are of particular concern, creating the conditions for dependency and exploitation. They also hinder flexibility in the labour market and workforce to adapt to employers' and workers' needs. The lack of attention to migrant workers' perspectives, autonomy and investments in their labour migration projects also leads to blind spots in policy-making and limits positive outcomes for all involved.

In this context, there is a vast decent work deficit with high levels of wage theft, workplace accidents and labour exploitation, as well as risks of debt bondage and trafficking in human beings. Gender, class and racial inequalities and discrimination are being reproduced.

## Key tendencies in how labour migration is organised risk exacerbating these issues

While temporary labour migration programmes, bilateral labour migration agreements and private employment and recruitment agencies are not new, their role and importance in how labour migration is organised continues to increase across Europe. These key tendencies risk further segmenting labour markets, layering administrative complexity, and degrading working conditions.

Temporary or "circular" labour migration programmes have been found to significantly increase risks of labour exploitation, debt bondage and reliance on labour market intermediaries. They also jeopardise sustainable workforce planning in both

countries of origin and countries of destination, and can result in limited employment opportunities and social rights for migrant workers in their countries of origin. Temporary migration programmes should be replaced by labour migration policies that include the essential characteristics set out in this report, with initial permits of a reasonable duration and pathways to settlement.

Bilateral labour migration agreements can increase the complexity of rules and undeclared work, as well as discrimination, with different workers having different rights and segmentation of particular nationalities and genders in particular jobs. Analysis

has found major shortcomings in the rights and outcomes for migrant workers. In addition, EU migration policy increasingly seeks to link labour migration agreements with cooperation on irregular migration. This is both highly problematic, and not yet translating into meaningful and decent labour migration pathways. Bilateral labour migration agreements that are developed should have the essential characteristics set out in this report. Comprehensive labour migration policies which provide permits for workers regardless of their nationality contribute to better regulation and governance of both migration and labour markets.

The more complex labour migration rules and procedures are, the more employers and workers rely on labour market intermediaries. Employment through private employment and recruitment agencies has been associated with practices such as broken contracts, unauthorised recruitment fees, abusive working conditions and wages, and debt bondage. Private employment and recruitment agencies should be better monitored and regulated.

### **Broader socio-economic trends: Just transition in COVID-19 recovery**

Europe is undergoing major socio-economic challenges and transitions, in which migrant workers are vital actors. Yet migrant workers risk being both among those hardest hit, and blamed, during climate and digital transitions in European economies. This is even more the case post-COVID-19. There needs to be greater recognition and discussion about how both the labour of migrant workers and the resources extracted from their countries of origin are key drivers in the wealth and growth of European economies.

Measures to improve working conditions for all workers, and provide decent permits to migrant workers, must be an integral part of just transition, COVID-19 policy responses and wider economic reforms. It is essential for labour migration and human mobility to form part of broader efforts to reform sectors to be economically, environmentally and socially sustainable and resilient.

## The way forward

When labour migration is well managed, it has positive impacts for everyone. Providing job security and decent work, information and choices to workers is the best way to encourage job and skill matching and labour migration which contributes to thriving economies and communities globally.

Well-designed, comprehensive labour migration policies provide a clear regulatory framework and

promote a sustainable and ethical level-playing field, with decent work and conditions for all workers, including migrant workers. They form part of broader employment and social policies that strive for equal opportunities and access to the labour market, fair working conditions, and social protection and inclusion.

## Policy Recommendations

We have identified several characteristics which are essential for labour migration and work permit policies to be successful, whether on national, bilateral/multilateral or EU level.

Labour migration and work permit policies should have streamlined and efficient procedures, providing work permits of a reasonable duration based on an offer of employment in any occupation with minimal administrative requirements. Workers should be able to apply themselves, from within the country or outside, and have mobility within the labour market and independence from employers. Migrant workers should be guaranteed equal treatment, social and family rights, pathways to settlement, and protections against exploitation. Complementary labour market policies are vital to ensure enforcement of labour rights for all. Policies should also be developed in structured dialogue with stakeholders, including migrant workers' representatives.

To provide a practical tool, Annex 1 provides some indicators and Annex 2 a case study, to demonstrate how the list of essential characteristics and indicators can be used to assess existing policies. Sweden's "demand-driven" model has been selected as an example including many of the essential characteristics, and having some space to improve on some aspects.

## Introduction

This policy brief addresses the question: How should labour migration policies and related work permits be designed in order to effectively promote declared and decent work and social inclusion?

It begins with a brief analysis of the gaps and shortcomings in current schemes across Europe, in three main sections. Section 1 outlines how systems of limiting work permits to certain occupations and using labour market tests are not reflecting the reality of needs of employers, workers and communities. They are contributing to workers having precarious or irregular status and working conditions, and to an environment where undeclared work, exploitative practices and discrimination thrive. Section 2 considers how some key tendencies in how labour migration is organised risk to exacerbate these issues, and Section 3 gives some broader context, situating labour migration in broader socio-economic trends, in particular just transition and COVID-19 recovery.

This analysis also points the way forward with concluding remarks and policy recommendations. While there is no one-size-fits-all labour migration policy, we have identified several characteristics which are essential for successful labour migration and work permit policies. These are relevant for all countries, and at EU level.

To provide a practical tool, an annex with some suggested indicators is also provided, together with a case study, to demonstrate how the list of essential characteristics and indicators can be used to assess existing policies. Sweden's "demand-driven" model has been selected as an example including many of the essential characteristics, and having some space to improve on some aspects.

# 1. Current work permit provisions do not reflect real needs of workers or employers

National migration policies across Europe, and at EU level, continue to offer decent labour migration opportunities largely to workers with offers for highly-paid employment or for very specific skills shortages. While there is variation between countries, it is currently extremely difficult or impossible in many European countries for people from outside the EU to work regularly and retain decent employment in sectors such as hospitality, restaurants and catering; construction; and domestic work.

Rules regarding which jobs can qualify for a work permit are often complex, at times resulting in numerous different types of work permits and procedures for different workers, and involving to a greater or lesser extent, mechanisms such as quotas,<sup>1</sup> shortage occupation lists and labour market tests. The result does not reflect the real needs of workers, employers or communities, and reproduces inequalities.

## Shortage occupation lists

Many countries – including EU member states<sup>2</sup> – collect and analyse gender-disaggregated data on labour shortages and labour surpluses on national and sectoral labour markets. Shortages span across sectors, occupations, wage levels and skill sets.

For example, the following occupations were reported in shortage in several EU member states in 2019 by EURES National Coordination Offices (NCOs):

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- 1 For example, in Italy, a decree is published every year that establishes the number/ quota of work permits available for each category of non-EU worker permitted to enter Italy with a relevant work permit, the timing for the submission of the work permit request, and the terms and conditions for applying for a work permit. While approximately 1.8 million work permits have been issued under the 23 quota decrees since 1998, the system is very complicated, with different quotas for different types of work and different nationalities, and no real planning has gone into setting the limits for permits for employment purposes since 2011; the numbers do not reflect real needs of workers or employers (Open Society European Policy Institute (2020), [Towards an EU Toolbox for Migrant Workers](#), Open Society Foundations, citing Interior Ministry data). For details of the quotas for 2020, see the "[decreto del Presidente del Consiglio dei ministri 7 luglio 2020](#)".
  - 2 This is required by Article 30 EURES Regulation 2016/589/EU. Indicators are largely based on public employment services (PES) administrative data, such as ratio of jobseekers to vacancies and time to fill vacancies. Analysis of European Labour Force Survey (LFS) data can be more comprehensive, as for example, some professions do not use PES (John McGrath, [Analysis of shortage and surplus occupations based on national and Eurostat Labour Force Survey data. Shortages and surpluses 2019](#), DG Employment and Social Inclusion, November 2019, Brussels: European Commission). There are also major limitations in the accuracy and relevancy of shortage occupation lists, depending on how often they are updated and the role of different social partners in their development.



Table: Top thirty shortages occupations reported by NCOs

Occupation	Number of reporting NCOs	Occupation	Number of reporting NCOs
Heavy Truck & Lorry Drivers	15	Butchers, Fishmongers & Related	8
System Analysts	14	Chefs	8
Welders & Flame Cutters	14	Civil Engineers	8
Agricultural & Industrial Machinery Mechanics	13	Software & Applications Develop./Analysts	8
Building & Related Electricians	12	Software Developers	8
Carpenters & Joiners	12	Accountants	7
Plumbers & Pipe Fitters	12	Advertising & Marketing Professionals	7
Cooks	11	Air Conditioning, Refrigeration Mechanics	7
Concrete Placers, Concrete Finishers & Related	10	Electrical Engineering Technicians	7
Metal Working Machine Tool Setters/Operators	10	Electrical Mechanics & Fitters	7
Motor Vehicle Mechanics & Repairers	10	Electronics Engineering Technicians	7
Nursing Professionals	10	Industrial & Production Engineers	7
Bricklayers & Related Workers	9	Plasterers	7
Bus & Tram Drivers	9	Shop Sales Assistants	7
Electrical Engineers	9	Waiters	7
Generalist Medical Practitioners	9	Web & Multimedia Developers	7
Structural Metal Preparers & Erectors	9		

Source: John McGrath, [Analysis of shortage and surplus occupations based on national and Eurostat Labour Force Survey data. Shortages and surpluses 2019](#), DG Employment and Social Inclusion, November 2019, Brussels: European Commission

However, most EU member states do not adjust their labour migration schemes in relation to the resulting lists of shortage occupations.<sup>3</sup> In those that do, the resulting policy adjustments focus on very specific, narrowly-defined shortage occupations. Even then, permits may be subject to quotas, some form of labour market test and/or other specific obligations.

For example, in the Netherlands, there is a specific scheme for cooks at level 4 to 6 (specialised cook, sous chef/ all-round cook or chef) to work in restaurants serving one or more of the following cuisines: Chinese, Indian, Indonesian, Japanese, Korean, Malaysian, Thai, Tibetan and Vietnamese. Previously there was a quota on how many permits could be issued under this scheme. As of 1 October 2019,

<sup>3</sup> European Migration Network (2015), [Determining labour shortages and the need for labour migration from third countries in the EU. Synthesis Report for the EMN Focussed Study 2015](#), Brussels: EMN.

this has been replaced<sup>4</sup> by the requirement that the employer report an available vacancy at least three weeks before filing the application for the combined residence and work permit. The employer must also provide training for a different worker, who does not need a permit, during the duration of the work permit. Permits are not available for kitchen assistants, basic chefs or simple dishes cooks (positions at levels 1 to 3).<sup>5</sup>

Even if other measures are being taken to address the shortage, such as investments in training to increase the local workforce, or mechanisation to reduce the workforce needed, these can take time to have impact and a combination of measures is needed.

## Labour market tests

The concept of labour market tests is to give citizens privileged access to the labour market. In the EU and European Economic Area, employers may be required to demonstrate that they have searched locally, and no citizen of these countries is a suitable candidate, as part of the application for a work permit. What this labour market test consists of varies.

In some European countries, to pass the labour market test, the employer must have advertised the vacancy for a certain period of time. After that time period has passed, they can apply for a work permit for the position. However, in many European member states, labour market tests are implemented in a way that drastically limits possibilities for migrant workers from third countries to work regularly across various sectors of the economy, in particular, in jobs that are currently classified as low or medium-skilled, and subjected to low and medium levels of wages.

In many cases, for jobs that are considered low-skilled, the presence of any registered unemployed person means the position fails the labour market test, and it is not possible to get a work permit to hire a migrant worker. It is considered that any unemployed person could do the job, regardless of whether or not they could in practice, whether or not they would want to take the job, or whether or not the employer would hire them.<sup>6</sup> This also reveals highly classist presumptions around the value of, and skills involved in, different types of work in our societies and who should have choices about what type of work they do.

In addition, requiring labour market tests often adds a significant layer of complexity to labour migration governance. Many European countries exempt the recruitment of certain groups of third-country nationals from having to pass a labour market test; applying a labour market test to the recruitment of residents is discriminatory and counterproductive to their labour market inclusion. Other situations may

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4 Immigration and Naturalisation Service (INS), "[Changed regulation for the Asian catering industry as of 1 October 2019](#)", 4 October 2019.

5 For more information see the [regulation](#) and the Dutch Immigration and Naturalisation Service (INS) [website](#) and [werk.nl](#) (only in Dutch). Civil society in the Netherlands report situations of exploitation associated with this pathway, due in particular to the linking of the permit to a particular employer and job, creating a high level dependency of workers on employers (Correspondence with FairWork, 3 December 2020).

6 For example, a 2019 analysis of shortage occupations based on national and Eurostat Labour Force Survey data underlines multiple factors contributing to shortages, including insufficient numbers of jobseekers with the appropriate skills and qualifications to fill vacancies; a shortage of jobseekers willing to take up relatively unskilled employment; a significant over-employment and under-employment of a particular gender; and a limited number of matching possibilities across frontiers and regions (John McGrath, [Analysis of shortage and surplus occupations based on national and Eurostat Labour Force Survey data. Shortages and surpluses 2019](#), DG Employment and Social Inclusion, November 2019, Brussels: European Commission).

also be exempt, to facilitate labour market inclusion of other groups of people or for particular jobs.

For example, in Poland, citizens of Ukraine, Georgia, Russia, Moldova, Belarus and Armenia have facilitated access to the Polish labour market and are allowed to work for 6 months in every 12 month period without a work permit, but on the basis of an employer's declaration of "intent to employ". Such a declaration may be valid for all types of work that are not seasonal, as long as they meet the minimum wage. If the employment is extended, a work permit is required, but the labour market test is not applied. However, if the worker and employer opt to apply for a work permit from the outset, the labour market test does apply.

There are also several other situations where the issuing of work permits in Poland does not require a labour market test. This includes: jobs that are included on local shortage occupation lists; work permit renewals for the same position; foreign students that graduated in the last three years from university in the EU, EEA or Switzerland or are carrying out doctoral studies in Poland; people who have had uninterrupted regular residence in Poland for the three years prior; and certain procurement activities.<sup>7</sup>

While exemptions from having to pass the labour market test are positive to facilitate employment of particular groups, this can lead to highly complicated rules for employers, workers and authorities to manage, and raises questions around the real impacts or relevance of imposing labour market tests in the other situations.

## Diverse occupations and workers

Even if occupations are not included in existing work permit schemes, migrant workers often meet labour market demands, but have to do so in an irregular situation.

Sectors of the economy where undocumented migrant workers frequently work include agriculture, forestry and fishery; hospitality and tourism; transportation and storage; construction; and personal services.<sup>8</sup> In these sectors, there is often a diverse workforce, including some national

workers, EU mobile workers, and migrant workers with and without authorisation to do the work. It is not uncommon for there to be job segmentation in a particular workplace, with workers with the most secure residence status holding the better paid jobs with more responsibility, and the more precarious workers, the lower-paid jobs.

There are particular trends in the different European countries regarding the nationalities<sup>9</sup> and statuses of workers in particular occupations. PICUM

7 For more information, see Polish Office for Foreigners [website](#), and for the list of exemptions from the labour market test, see [here](#). Recruitment of people who meet the conditions for not needing a work permit, is also exempt from the labour market test. The Minister of Labour may issue an ordinance exempting other particular groups of workers.

8 See for example, PICUM (2020) [A Worker is a Worker: How to Ensure that Undocumented Migrant Workers Can Access Justice](#), Brussels: PICUM; Emilio Reyneri (2001), "[Migrants' involvement in irregular employment in the Mediterranean countries of the European Union](#)", International Migration Papers (IMP) working paper series, Geneva: International Labour Organisation.

9 Trends regarding which nationalities more frequently migrate to one particular European country compared to another are shaped by various factors, such as historical, former colonial, and linguistic links; and bilateral labour migration agreements or measures to provide preferential access to the labour market for certain nationalities. In some countries, there are also trends regarding which particular jobs are done by people of particular nationalities, which are shaped by factors such as labour migration rules, recruitment practices, racial and gender discrimination, and prejudices around particular cultures and work ethics.

members work predominantly with migrant workers with precarious or irregular status in the following occupations (categorised with reference to the International Standard Classification of Occupations (ISCO-08)<sup>10</sup>:

- personal services workers - in particular cooks; waiters and bartenders; beauticians; domestic housekeepers (sub-major group 51);
- sales workers – in particular shop sales assistants (sub-major group 52);
- personal care workers – in particular childcare workers; home-based personal care workers (sub-major group 53);
- security guards (5414);
- building and related trades workers including electricians (sub-major group 71 and minor group 741);
- sewing, embroidery and related workers (7533);
- drivers and mobile plant operators – in particular car, van and motorcycle drivers; heavy truck and lorry drivers; ships' deck crews and related workers (sub-major group 83);
- cleaners and helpers (sub-major group 91);

- agricultural, forestry and fishery labourers (sub-major group 92);
- labourers in mining, construction, manufacturing and transport (sub-major group 93);
- food preparation assistants (sub-major group 94);
- street and related sales and services workers (sub-major group 95);
- refuse workers and other elementary workers (sub-major group 96).

In countries where work permits are only provided for certain jobs or profiles, possibilities to access a work permit to carry out these jobs are extremely limited or non-existent. There are few possibilities for this work to be declared and subject to appropriate tax and social security contributions. When possible for undocumented workers to declare their income, they do, but they are unable to receive the contribution-based entitlements into which they and their employers have paid.<sup>11</sup> Several of these occupations were also among those reported as shortage occupations in several EU member states in 2019 (see table on page 9).

## Single employer-tied permits

Those work permits that are available for work considered low or medium skilled usually tie the migrant worker to a specific job with a particular employer and are only valid for a short period of time. If a worker wants or needs to change their employer, they have to apply for a new permit, a lengthy and complicated process with insecure outcomes for both the prospective employer and the

worker. In some cases, such as for seasonal workers, it should be possible to change employer on the same permit,<sup>12</sup> but it is extremely difficult to do in practice, because permits are of such a short duration and not renewable (See more on temporary worker schemes below in section 2). If the worker loses their job, their residence and work permit will become invalid, in some cases, immediately.

10 See International Labour Organisation, [ISCO-08 Structure, index correspondence with ISCO-88](#), ISCO International Standard Classification of Occupations, updated 21 June 2016.

11 For example, in Portugal, it is possible for an undocumented worker or their employer to register an employment relationship with Social Security, and pay social security contributions, with a valid contract and valid passport/ travel document. A work permit is not required because working and paying social security contributions for 12 months can be the basis for regularisation under [Article 88 Paragraph 2 of the Foreigners' Act](#). However, the worker cannot receive any social security benefits until they are regularised.

12 The EU 'Seasonal Workers' Directive' requires Member States to allow seasonal workers to extend their stay – within the defined maximum period of stay for seasonal workers, which can be a maximum of nine months in a 12-month period - to be employed with a different employer, provided that the admission criteria continue to be met (Articles 14.1 and 15.3 Directive 2014/36/EU).

For example, changes to the Overseas Domestic Workers' visa in the United Kingdom (UK) show clearly the impacts of restricting workers' possibilities to change employer and renew or extend their permits. From 1998 to 2012 migrant domestic workers going to the UK were able to apply for annual extensions of their visa, as long as they were in full time employment as a domestic worker, for any employer. In April 2012, the right to change employer was removed and the length of the visa was reduced to a maximum period of 6 months, non-renewable. Since April 2016, the right to change employer has been reintroduced, but only within the 6-month time period, so it is incredibly difficult for domestic workers to find alternative employment within this time in practice.<sup>13</sup> An organisation providing support to migrant domestic workers in the UK, Kalayaan, has compared data<sup>14</sup> on abuse reported to them during each of those time periods. They found that during the period from 2012-2016, following the changes made in April 2012, there was a significant increase in the percentage of domestic workers reporting physical abuse, psychological abuse, sexual abuse, food deprivation, lack of a bedroom/ private space and even no bed at all, no day off, working over 15 hours a day, not being allowed out, a weekly salary of less than 50 pounds, and passports being kept from the worker. Since April 2016, even though the right to change employer

was reintroduced - but the non-renewable 6-month permit maintained - rates of abuse have remained consistent, and in some cases increased.<sup>15</sup>

While there may be a range of other permits provided for under national law, work permits often have to be applied for from outside the country, or if they can be applied for in country, only when a person is regularly residing. Some people are also restricted from changing the type of permit or status they have, or find that months and years of residence and work are not counted for the purposes for applying for a settled or long-term residence permit.

This creates a situation of dependency of workers on employers as everything depends on keeping a particular job. It means that job loss and labour exploitation push people into irregular residence and undeclared work, and block them there, as there are few opportunities to re-enter the labour market and regularise.

It also prevents the kind of mobility in the labour market which facilitates professional development and job growth, fair competition, effective job and skills matching, and adaptations to workers' and employers' needs.

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13 For more information, see Kalayaan (2019), [Briefing on Overseas Domestic Workers for the Modern Slavery Strategy and Implementation Group \(MSSIG\) Prevent meeting](#), 11 September 2019.

14 Kalayaan and Anti-Slavery International (2018), Submission to the UN Special Rapporteur on Contemporary forms of Slavery, Questionnaire on Domestic Servitude of Migrant Domestic Workers, May 2018.

15 Ibid; Kalayaan (2019), [Briefing on Overseas Domestic Workers for the Modern Slavery Strategy and Implementation Group \(MSSIG\) Prevent meeting](#), 11 September 2019.

## Migrant workers' perspectives

Policy approaches on labour migration are largely developed from a logic of meeting labour market needs. The lack of attention to migrant workers' perspectives, autonomy and investments in their labour migration projects leads to blind spots in policy-making and limits positive outcomes for all involved. For example, the reasoning behind employer-tied permits, is a recognition of the investment made by employers in the process of hiring a migrant worker. However, this overlooks the significant investments made by migrant workers, their families and communities. Contributing your labour to work in and grow the economy of another country costs time, money and social capital.

While international guidance<sup>16</sup> stipulates that migrant workers should not be charged directly or indirectly for recruitment fees or related costs, in practice, workers bear various costs and make significant financial investments in labour migration. Costs which migrant workers may incur in practice include medical costs, insurance costs, costs for skills and qualification tests, costs for training and orientation, equipment costs, travel and lodging costs, and administrative costs, as well as fees for recruitment services.

In addition, migrant workers are required to learn the language, customs and social and legal structures of another country. They may do so without a social network in the country they move to and have to build a social support network on arrival and over the course of years. People are separated from family members and communities in their countries of origin or prior habitual residence, while often supporting them financially.

As such, migrant workers are powerful actors of social and economic development. Yet, permit restrictions that make migrant workers' status dependent on particular individuals and jobs ignore this investment, as well as create risks of exploitation as described above. People may have shorter or longer-term objectives in mind when they embark on a new labour migration project,<sup>17</sup> and change their outlook over time, but it is not reasonable to expect that a migrant worker will leave after a short period of time if the conditions of their job are not as expected.

Considering migrant workers' perspectives,<sup>18</sup> the stakes in successful labour migration for migrant workers, their families and communities, and potential vulnerabilities people may face as newcomers, are crucial to promoting decent and declared work.

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16 ILO (2019), [General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs](#), Geneva: International Labour Organisation.

17 See for example: Dovelyn Rannveig Mendoza (2020), [Shifting Labour Frontiers: The recruitment of South Asian migrant workers to the European Union](#), in collaboration with Izabela Florczak and Rameshwar Nepal, October 2020, FNV Mondiaal.

18 For research on migrant workers' perspectives, see for example: Fundamental Rights Agency (2019), [Protecting migrant workers from exploitation in the EU: workers' perspectives](#), Luxembourg: Publications Office of the European Union.

## Reproducing inequalities

Discrimination – on personal, institutional and structural levels – is a major barrier to accessing high income employment. For example, on a personal level, stereotypes and prejudices about gender, and based on nationality or religion continue to play significant roles in recruitment and hiring practices.<sup>19</sup> On a statistical level, more first time permits for remunerated activities (highly-skilled, seasonal, researchers and others) were granted by the EU 28 member states in 2018 to citizens of the United States of America than to the citizens of all the African countries put together.<sup>20</sup>

When decent and stable work permits, with the possibilities to bring family, are only available for people who secure high-paying jobs, it entrenches gender, racial and class inequalities across Europe.

Many of the jobs in which migrant workers either have to work irregularly or on very precarious permits are categorised as 'low-skilled', including in the ISCO classifications, where they are largely associated with skill levels one and two.<sup>21</sup> For the ISCO methodology, skill is measured considering

the nature of the work performed, the characteristic tasks and duties of the occupation; the level of formal education and training required; and the amount of informal on-the-job training or previous experience in the job required. However, these occupations entail a range of technical and interpersonal skills and competences. Far from neutral descriptions, this characterisation reflects and entrenches a value bias over what jobs should be well paid and have job security, career trajectories, and decent working conditions.

In the context of the COVID-19 pandemic, there has been some recognition of the essential role of certain workers performing jobs that are categorised as low-skilled, such as those ensuring that supermarkets can stay open, that there is food on the shelves, and that public transport continues running.<sup>22</sup> The recovery from the COVID-19 pandemic provides an opportunity to recalibrate the value framework to recognise the distinct and important role of all workers in communities and societies, and the need to ensure equal opportunities and decent work for all.

19 For example, as highlighted in the [EU anti-racism action plan 2020-2025](#), 'discrimination at work or when looking for work is widespread; it can take many forms and affects certain groups more than others. People of African descent, for example, see a particularly strong disconnect between the quality of their employment and their level of education, manifesting in a lower paid work rate among those with a tertiary degree compared to the general population. There is evidence that candidates who openly identify as Muslim in their curriculum vitae receive fewer invitations to job interviews compared to equally qualified candidates with a 'religiously neutral' curriculum vitae (European Commission Communication [A Union of equality: EU anti-racism action plan 2020-2025](#), COM(2020) 565 final, Brussels, 18.9.2020).

20 Data on first time permits issued for remunerated activities reasons (highly-skilled, seasonal, researchers and others) in the EU 28 member states in 2018, shows that citizens of the 55 countries coded as Africa account for only 5% of permits (38,099). Citizens of the 35 countries coded as America account for 13% (93,018) with 38,500 of those permits granted to citizens of the United States of America, slightly more than to the citizens of all the African countries put together. Citizens of the 10 countries coded as Central and Eastern Europe account for 51% (368,032) of the total (analysis based on Eurostat data on [First permits issued for remunerated activities by reason, length of validity and citizenship](#), last updated 22 October 2019).

21 International Labour Organisation, [ISCO-08 Part 1: introductory and methodological notes](#), ISCO International Standard Classification of Occupations, updated 21 June 2016.

22 See for example: [Council Conclusions on improving the working and living conditions of seasonal and other mobile workers](#), 9 October 2020; European Commission press release on 16 July 2020 "[Coronavirus: European Commission calls for action in protecting seasonal workers](#)"; European Parliament press release on 25 May 2020 "[COVID-19: No free movement of critical workers without adequate protection](#)"; lists of essential workers/ occupations in the context of COVID-19 restrictions in [the Netherlands](#) and [Belgium](#).

### Key takeaways regarding current work permit provisions

The lack of labour migration pathways, and prevalence of very restrictive work permits, despite ongoing demand across sectors and occupations, pulls workers into irregular and informal work.

Current policies prevent, or create over-burdensome administrative hurdles to, the employment of migrant workers in key occupations. They also hinder flexibility in the labour market and workforce to adapt to employers' and workers' needs.

In this context, there is a vast decent work deficit with high levels of wage theft, workplace accidents and labour exploitation, as well as risks of debt bondage and trafficking in human beings.<sup>23</sup> Gender, class and racial inequalities and discrimination are being reproduced.

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<sup>23</sup> For more information on barriers to exercising labour rights and effective complaints mechanisms for migrant workers, see PICUM (2020) [A Worker is a Worker: How to Ensure that Undocumented Migrant Workers Can Access Justice](#), Brussels: PICUM; PICUM (2020) [PICUM Key messages and recommendations on Human trafficking](#), October 2020, Brussels: PICUM.



## 2. Key tendencies in how labour migration is organised risk exacerbating these issues

From this general situation, there are some key tendencies which risk further segmenting labour markets, layering administrative complexity, and degrading working conditions. While temporary labour migration programmes, bilateral labour

migration agreements and employment and recruitment agencies are not new, their role and importance in how labour migration is organised continue to increase across Europe. For each tendency, policy responses are suggested.

### Temporary migration programmes

Temporary or “circular migration” programmes allow workers to remain for only a very short period of time, frequently less than a year, and then require them to return to their country of origin for a period of time before migrating to work again. They are sometimes justified as a way to avoid the emigration of essential workers from countries of origin (so-called “brain drain”), as well as taking a utilitarian approach to employer demand for migrant workers.

Such programmes have been found to significantly increase risks of labour exploitation, debt bondage and reliance on labour market intermediaries.<sup>24</sup> Even when workers have labour rights protections, the short time period, dependence on their employer – often for housing as well as income – and often

isolated living and working conditions, make it very difficult for workers to get access to information, familiarise themselves with administrative and legal procedures, organise and bargain collectively, or revendicate their rights through formal complaints mechanisms. This is particularly evident when considering the widespread exploitation of EU/EEA mobile workers working in very short-term labour arrangements, for example in agriculture<sup>25</sup> or elder care<sup>26</sup> in some countries.

At the EU level, the ‘Seasonal Workers’ Directive<sup>27</sup> sets conditions of entry and stay and rights for the purpose of seasonal work, defined as an activity dependent on the passing of the seasons. However, such short-term permits are not only used for work

24 See for example FLEX, [The Risks of Exploitation in Temporary Migration Programmes: A FLEX response to the 2018 Immigration White Paper](#), May 2019.

25 See for example, Open Society European Policy Institute and European University Institute (2020), [Are Agri-Food Workers Only Exploited in Southern Europe? Case studies on migrant labour in Germany, the Netherlands and Sweden](#), Open Society Foundations.

26 For example, in German-speaking part of Switzerland, workers from central and eastern EU countries, such as Poland, are recruited by agencies to work for elderly people in extreme conditions on short term contracts and permits. They work 24 hours a day, 7 days a week for up to 3 months. The agencies guarantee to the family that there will be continuity for family but the workers themselves are only getting short-term work in exploitative conditions. For more information see for example Sarah Schilliger, [Self-organised struggles of migrant care workers](#), Open Democracy, 20 September 2016. Similar practice is also of major concern in Germany, see for example, Daniel Kirch, [Razzia in der häuslichen Pflege im Saarland](#), Saarbrücker Zeitung, 25 November 2020; and in Austria, see for example, Paula Erizanu, [Stranded or shunned: Europe's migrant workers caught in no-man's land](#), The Guardian, 16 April 2020.

27 Directive 2014/36/EU.

which has a particularly seasonal nature; seasonal work permits are also being issued to work, for example, in manufacturing; construction; wholesale and retail trade; and repair of motor vehicles and motorcycles.<sup>28</sup> Further, even when work is directly linked to the seasons, such as in agriculture, the need for workers does not necessarily decrease, as workers often work across seasons and regions with different produce.

Such temporary labour migration programmes actually jeopardise sustainable workforce planning in both countries of origin and countries of destination. Meeting long-term labour needs through temporary migration means the labour force has to be continually replaced and trained. The precarious situation of temporary migrant workers can also result in limited employment opportunities and access to social protection and other socio-economic rights in their countries of origin.

### Suggested policy responses regarding temporary migration programmes

Temporary migration programmes should be replaced by labour migration policies that include the essential characteristics set out in this report (see Recommendations and Annex 1), with initial permits of a reasonable duration and pathways to settlement.

To address concerns about workforce in countries of origin, labour migration policies should focus on general work permit schemes that are open to workers from all nationalities, rather than bilateral agreements with certain countries of origin. This ensures diversity and does not rely on workers from particular countries.

In addition, providing migrant workers with a secure status is a direct way to promote mobility by choice and not coercion, enabling migrant workers to invest and participate in their countries of origin, without any risk of losing their residence, rights and investments in the European country.

## Bilateral labour migration agreements

While bilateral labour migration agreements have long been used as a foreign policy instrument, they are increasingly being seen at EU level as a reward for countries that cooperate with deportations of their nationals, and others who may have transited

through.<sup>29</sup> On the other hand, changes to the EU visa code introduce possible restrictions for people from countries who are assessed as not sufficiently cooperating with readmission processes.<sup>30</sup>

28 [Eurostat data](#) on Authorisations for the purpose of seasonal work by status, length of validity, economic sector and citizenship, disaggregated by NACE Rev. 2 classification of economic activities for the years 2016 to 2019. For example, in Slovakia, in 2019, of 1,978 seasonal work permits issued, 1,412 were for manufacturing, 137 for wholesale and retail trade; repair of motor vehicles and motorcycles, 127 for agriculture, forestry and fishing, 125 for construction, 84 for accommodation and food service activities, 40 for administrative and support service activities, 33 for professional, scientific and technical activities, 6 for real estate activities, 5 for education, 5 for transportation and storage, and 4 for arts, entertainment and recreation.

29 See for example European Commission Communication on a [New Pact on Migration and Asylum](#), COM(2020) 609 final, 23 September 2020.

30 Regulation (EC) No 810/2009 as amended in 2019 by Regulation (EU) 2019/1155. Conditionality for cooperation on return and readmission is also being introduced into other policy areas, including international development cooperation and trade. For more information, see for example: MEDAM (Mercator Dialogue on Asylum and Migration) (2020), [European and African perspectives on asylum and migration policy: Seeking common ground](#), 2020 MEDAM Assessment Report on asylum and migration policies in Europe, Kiel: IfW.

This is counterproductive, as it risks pushing more people into irregularity, and also raises concerns around discrimination and structural racism, and the legitimacy of the EU in diplomatic relations. At the same time, even for nationals of countries cooperating on readmission, the rhetoric around expanding regular migration pathways and mobility has not yet translated into significant and decent opportunities to migrate for work.<sup>31</sup> When corridors are created for a very particular job, recruitment also focuses on particular genders, resulting in very limited opportunities based on nationality and gender, and potentially reinforcing biases around gender roles, nationalities and cultures in the country of immigration.

In addition, when bilateral or multilateral agreements are the basis for labour migration, it

multiplies the different procedures and regulations that need to be navigated by workers, employers and authorities, as well as statuses of workers. As such, these agreements can increase segmentation of the labour market, bureaucratic administration, and undeclared work, as well as discrimination, with different workers having different rights.<sup>32</sup> There is a lack of transparency and lack of democratic oversight of such agreements, particularly when they are developed in close involvement of particular employers. While bilateral labour migration agreements have often been described as a “triple-win” for countries of origin, countries of destination (including employers) and migrant workers themselves, analysis of their implementation over the years has found major shortcomings in the rights and outcomes for migrant workers.<sup>33</sup>

### Suggested policy responses regarding bilateral labour migration agreements

If bilateral labour migration agreements are developed, there are number of standards that should be ensured to improve the outcomes for all involved, including those set out in this report (see Recommendations and Annex 1).

At the same time, comprehensive labour migration policies which provide permits for workers regardless of their nationality contribute to better regulation and governance of both migration and labour markets.

31 MEDAM (Mercator Dialogue on Asylum and Migration) (2020), [European and African perspectives on asylum and migration policy: Seeking common ground](#), 2020 MEDAM Assessment Report on asylum and migration policies in Europe, Kiel: IfW, p.28.

32 Even if the EU ‘Single Permit Directive’ includes several equal treatment provisions, these remain under implemented and insufficient. For example, it can be difficult for workers to establish discriminatory treatment compared to nationals if most of the workers hired to perform a particular role in a particular workplace are migrant workers under a bilateral agreement.

33 See for example: Piyasiri Wickramasekara, [Circular Migration: A Triple Win or a Dead End](#), 2011, Geneva: ILO, 114p. (GURN discussion paper; no.15); Steffen Angenendt (2014), [Triple-Win Migration: Challenges and Opportunities](#), January 2014, Migration Strategy Group on Global Competitiveness.

## Private employment and recruitment agencies

Requirements and procedures for applying for visas, residence and work permits are complex, and difficult to navigate. Together with the frequent requirement that the worker is not already present in the country of future employment, this complexity pushes both workers and employers to rely on intermediaries to facilitate the process. These include private temporary employment and recruitment agencies.

In both cases, employment through such agencies has been associated with practices which circumvent applicable labour and social security regulations. The use of labour intermediaries increases the number of people and organisations involved

and seeking to profit from the recruitment process. In turn, this increases risks of misinformation and challenges to regulate. Recruitment agencies – including licensed labour providers – may also rely on sub-agents and informal brokers.

Migrant workers employed through agencies can face complex employment structures that lack clarity on who their employer is and pose challenges to hold anyone accountable for broken contracts, unauthorised recruitment fees (sometimes charged by multiple brokers), abusive working conditions and wages, debt bondage, and retention of documents, among other abuses.<sup>34</sup>

### Suggested policy responses regarding private employment and recruitment agencies

Private employment and recruitment agencies should be better monitored and regulated, building on the International Labour Organisation Convention No. 181 and General principles and operational guidelines for fair recruitment.<sup>35</sup>

34 See for example: Fundamental Rights Agency (2019), [Protecting migrant workers from exploitation in the EU: workers' perspectives](#), Luxembourg: Publications Office of the European Union; Dovelyn Rannveig Mendoza (2020), [Shifting Labour Frontiers: The recruitment of South Asian migrant workers to the European Union](#), in collaboration with Izabela Florczak and Rameshwar Nepal, October 2020, FNV Mondiaal.

35 ILO (2019), [General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs](#), Geneva: International Labour Organisation; see also resources from [IOM](#) and the [WHO](#) in this area. At EU level, the Temporary Agency Worker Directive (2008/104/EC) addresses equal treatment for temporary agency workers, but does not fully address the situation of migrant workers nor international private recruitment agencies. EU institutions are calling for action on this issue, see for example: [Council Conclusions on improving the working and living conditions of seasonal and other mobile workers](#), 9 October 2020 and [European Parliament resolution on European protection of cross-border and seasonal workers in the context of the COVID-19 crisis](#), 19 June 2020. The European Commission also commissioned in 2011 Shift and the Institute for Human Rights and Business to develop sector-specific [guidance for employment and recruitment agencies on implementing the UN Guiding Principles on Business and Human Rights](#).

### 3. Broader socio-economic trends: Just transition in COVID-19 recovery

The EU's new Industrial Strategy<sup>36</sup> identifies the need for a twin transition towards climate neutrality and digital leadership to keep Europe sustainable and competitive. Within this, the European Green Deal<sup>37</sup> recognises that particular regions, industries and workers will face particular challenges, and additional measures are needed to make the transition more just and inclusive.

Such questions are equally pertinent when looking at digital developments, with a persistent divide in

both access to technologies and risks of negative fundamental rights impacts from digitalisation, mechanisation, artificial intelligence and surveillance.

Trade unions and social movements have underlined how for such transformation to be just and inclusive, they must encompass a range of social interventions to secure workers' rights and livelihoods. Just transition cannot ignore the role of migrant workers nor leave migrant workers behind.

#### Towards decent work for all

Firstly, labour migration cannot be used as a substitute for reforming sectors to ensure decent work. Migrants are often scapegoated for the changes in the labour market resulting from transformations such as globalisation, de-industrialisation, privatisation, and de-regulation.

While restrictive labour migration policies are presented as mechanisms to give preferential treatment to local workers, they can actually end up stoking xenophobia and racism. They block regular labour migration despite there being a demand for workforce and push workers and employers into irregular employment relationships. They perpetuate a narrative that reinforces the idea that these jobs should be 'protected' for local workers and simultaneously blames migrant workers for the poor conditions they are manipulated into accepting.

Migrant workers also risk being both among those hardest hit, and blamed, during climate and digital transitions in European economies. This is even more the case post-COVID-19, where we are likely to see general economic downturn, rising unemployment in certain sectors, further digitalisation and mechanisation, and public funding cuts, at the same time as efforts to ensure greater resilience of essential economic sectors to future shocks.<sup>38</sup>

Measures to improve working conditions for all workers, and provide permits to migrant workers, across sectors and occupations, must be an integral part of policy responses and wider economic reforms.

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<sup>36</sup> See e.g. European Commission, [Factsheet - A new Industrial Strategy for a green and digital Europe](#), 10 March 2020.

<sup>37</sup> European Commission Communication, [The European Green Deal](#), COM(2019) 640 final, Brussels, 11.12.2019.

<sup>38</sup> See e.g. Bridget Anderson, Friedrich Gerd Poeschel, Martin Ruhs (2020). [COVID-19 and systemic resilience: rethinking the impacts of migrant workers and labour migration policies](#), EUI RSCAS, 2020/57, Migration Policy Centre.

## Redressing inequalities in a global economy

Secondly, there are broader questions around racial and social justice, and how the economy is organised. European economies are historically and currently part of global economies, in which wealth is accumulated and resources extracted disproportionately by different countries. This situation contributes directly to the limited livelihood opportunities in some countries of origin, and may even be exacerbated by digital and climate transitions.<sup>39</sup>

It is essential for there to be greater recognition and discussion about how both the labour of migrant workers and the resources extracted from their countries of origin are key drivers in the wealth and growth of European economies.

It is therefore essential for labour migration and human mobility to form part of broader efforts to reform sectors to be economically, environmentally and socially sustainable and resilient.

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<sup>39</sup> See for example: Rhodante Ahlers, Vincent Kiezebrink & Sukhgerel Dugersuren (2020), [Undermining Mongolia: Corporate hold over development trajectory](#), February 2020, Amsterdam: SOMO, in collaboration with OT Watch (Mongolia); Amis de la Terre France, CETIM, Observatoire des multinationales, OMAL and the Transnational Institute, [The EU and the Corporate Impunity Nexus](#), October 2018; Larissa Milo-Dale, [“Unclear EU fishing deals compromise food security and sustainable seafood”](#), 15 November 2019, WWF.

## The way forward

When labour migration is well managed, it has positive impacts for everyone; for communities in countries of origin and destination, for migrant workers and their families, and for employers. Providing job security and decent work, information and choices to workers is the best way to encourage job and skill matching and labour migration which contributes to thriving economies and communities globally.

Well-designed, comprehensive labour migration policies are not overly fragmented, burdensome and complicated by different sectoral and national limitations, different statuses and rights.

They provide a clear regulatory framework and promote a sustainable and ethical level-playing field, with decent work and conditions for all

workers, including migrant workers. They form part of broader employment and social policies that strive for equal opportunities and access to the labour market, fair working conditions, and social protection and inclusion.

To this end, possibilities to access a decent work permit guaranteeing equal treatment, mobility, social, family and residence rights should be greatly expanded and available across all jobs and sectors.

There are different ways that this can be achieved; there is no perfect labour migration policy in all contexts. Nonetheless, there are characteristics that are essential to successful policies,<sup>40</sup> that promote decent work and social inclusion, whether on national, bilateral/ multilateral or EU level.

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<sup>40</sup> Many of the recommendations set out below have also been put forward by others, including the EU Agency for Fundamental Rights (FRA), see in particular [FRA Opinions on Protecting migrant workers from exploitation](#).

# Policy Recommendations: Essential characteristics of successful labour migration and work permit policies

## 1. Streamlined and efficient procedures:

- **Good administration:** Procedures to obtain and renew visas and permits should be streamlined with reasonable administrative requirements. Information about application procedures, requirements, and applicable rules should be provided publicly for potential employers and workers in clear and accessible language.
- **Based on an offer of employment:** An offer of employment, with conditions in line with applicable labour law or collective bargaining agreements, should be sufficient across all jobs and sectors. If some level of preferential access is to be provided to resident workers, the mechanism should ensure resident workers are able to apply for the job, but not prevent employers from selecting their preferred candidate through recruitment procedures.
- **Stability for workers and employers:** Permits should be of a reasonable duration, of at least two years. Permits should be renewable, without requiring workers to leave the country.
- **In-country applications:** People should be able to apply for the various residence and work permits provided for by national law from within the country, regardless of their status, including when undocumented. Restrictions on people changing from one type of status or permit to another should be lifted.
- **Attracting key workers:** Systems which provide people a secure permit on the basis of individual criteria rather than an offer of work (so-called 'supply driven' models) should also be developed.

## 2. Autonomy for workers:

- **Worker-owned procedures:** Workers should be able to apply for permits themselves.
- **Labour market mobility:** Permits should not be tied to one employer. People should be able to change employer, including the type of job and sector, and work for more than one employer, without permission from the employer or labour intermediary.
- **Independence from employers:** Permits should remain valid to provide a reasonable period of time of unemployment to search for alternative work, for workers that lose or leave their job. Financial and practical support should be accessible during this time, at least on the same terms as nationals. Particular attention should be paid to situations where workers' housing was also provided by their employer.



- **Mitigating risks related to employer-provided housing:** Employer-provided housing should be subject to clear rules and monitoring to ensure that housing is decent and salaries not subject to inappropriate deductions.
- **Residence solutions in cases of exploitation:**<sup>41</sup> Transitional permits<sup>42</sup> should be made available for situations where workers experience labour violations or other abuses.

### 3. Equality and family unity:

- **Non-discrimination:** Access to employment and associated permits should be non-discriminatory across all protected grounds under human rights law.<sup>43</sup> If there is preferential treatment, including for certain nationalities, this should be justifiable in relation to pre-existing disadvantage.
- **Family unity:** Migrant workers should be able to enjoy their family life as any other person. Restrictions on migrant workers with low income from bringing their families should be lifted. Spouses/partners should also be provided access to the labour market.
- **Equal treatment:** Migrant workers should be guaranteed equal labour and social rights.

### 4. Complementary labour market policies to enforce labour rights for all:

- **Labour standards:** Gaps in the application of some labour rights and standards - including related to pay, working time, health and safety and social protection – for certain groups of workers should be addressed. Proactive efforts to improve working conditions for all workers in sectors with high levels of informal work and exploitation are needed.
- **Justice for all:** Labour standards monitoring, complaints and redress mechanisms should be well resourced, independent and confidential. Measures should be developed to protect workers from employer retaliation and immigration enforcement as a result of exercising their rights and effectively provide access to justice for migrant workers.<sup>44</sup>

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41 Regarding victims of criminal labour exploitation including trafficking in human beings, see PICUM (2020), [PICUM Key Messages and Recommendations on Human Trafficking, October 2020](#); PICUM (2020), *Insecure Justice? Residence permits for victims of crime in Europe*, Brussels: PICUM.

42 See for example, the [Open work permit for vulnerable workers](#) in Canada and [Reactivation Employment Permit \(REP\) Scheme](#) in Ireland.

43 For more information, see Fundamental Rights Agency and Council of Europe (2018) [Handbook on European non-discrimination law, 2018 edition](#), European Agency for Fundamental Rights and Council of Europe.

44 For more information, see PICUM (2020) [A Worker is a Worker: How to Ensure that Undocumented Migrant Workers Can Access Justice](#), Brussels: PICUM.

- **Empowerment:** Targeted measures should ensure migrant workers have meaningful access to accurate information, NGOs and trade unions, and independent legal advice. Information should be provided in a language that migrant workers can understand, and include, at least, details of relevant regulations, rights and redress mechanisms, and NGOs and trade unions.
- **Regulating intermediaries:** Private employment and recruitment agencies should be regulated and monitored for compliance, including to ensure that recruitment fees and related costs are not paid directly or indirectly by workers.<sup>45</sup>
- **Corporate governance:** Due diligence and joint liability mechanisms should be strengthened to hold employers, general and sub-contractors, including labour intermediaries, accountable along supply and sub-contracting chains.

## 5. Social inclusion:

- **Pathways to settlement:** There should be pathways to settlement after a number of years. All periods of residence should count towards long-term residence status.
- **Social inclusion measures:** Complementary measures to support inclusion of workers and their families regardless of status are crucial. These include non-discriminatory policies on - alongside measures to facilitate - access to education, health care and housing, and pathways to regularise status on various grounds.

## 6. Structured dialogue with stakeholders, including migrant workers' representatives:

- **Involvement of migrant worker representatives:** For policies to be effective, it is crucial to have structured social and civil dialogue with key stakeholders in all stages of labour migration policy development, implementation and monitoring and evaluation. The views of representatives of migrant workers, including trade unions, NGOs and migrant worker associations, should have a clear and direct influence on policy, through social dialogue and extended civil dialogue spaces.
- **Local governance:** Recognising the deep connections between labour migration and local rural and urban development, cities and villages in countries of origin and destination should also be consulted, alongside national level stakeholders.
- **Transparency:** To enable democratic oversight and meaningful engagement of stakeholders, labour migration policies, including bilateral and regional agreements, should be transparent and public.

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<sup>45</sup> For more information, see ILO (2019), [General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs](#), Geneva: International Labour Organisation; see also resources from [IOM](#) and the [WHO](#) in this area.

# Annex 1:

## Indicators framework for the essential characteristics of successful labour migration and work permit policies

1. Streamlined and efficient procedures	Indicators
<p><b>Good administration:</b></p> <ul style="list-style-type: none"> <li>Procedures to obtain and renew visas and permits should be streamlined with reasonable administrative requirements.</li> <li>Information about application procedures, requirements, and applicable rules should be provided publicly for potential employers and workers in clear and accessible language.</li> </ul>	<p>1.1 Number of steps in application procedure</p> <p>1.2 Accessibility of information about procedures and applicable rules</p>
<p><b>Based on an offer of employment:</b></p> <ul style="list-style-type: none"> <li>An offer of employment, with conditions in line with applicable labour law or collective bargaining agreements, should be sufficient across all jobs and sectors.</li> <li>If some level of preferential access is to be provided to resident workers, the mechanism should ensure resident workers are able to apply for the job, but not prevent employers from selecting their preferred candidate through recruitment procedures.</li> </ul>	<p>1.3 Eligibility/ non-eligibility requirements to access a permit with a job offer</p>
<p><b>Stability for workers and employers:</b></p> <ul style="list-style-type: none"> <li>Permits should be of a reasonable duration, of at least two years.</li> <li>Permits should be renewable, without requiring workers to leave the country.</li> </ul>	<p>1.4 Length of permit</p> <p>1.5 In-country renewals</p>
<p><b>In-country applications:</b></p> <ul style="list-style-type: none"> <li>People should be able to apply for the various residence and work permits provided for by national law from within the country, regardless of their status, including when undocumented.</li> <li>Restrictions on people changing from one type of status or permit to another should be lifted.</li> </ul>	<p>1.6 In-country applications including when undocumented</p> <p>1.7 Status/ permit can be converted into another</p>
<p><b>Attracting key workers:</b></p> <ul style="list-style-type: none"> <li>Systems which provide people a secure permit on the basis of individual criteria rather than an offer of work (so-called 'supply driven' models) should also be developed.</li> </ul>	<p>1.8 Requirements to access a permit to search for work or have facilitated access to the labour market and associated permits</p>

2. Autonomy for workers	Indicators
<p><b>Worker-owned procedures:</b></p> <ul style="list-style-type: none"> <li>Workers should be able to apply for permits themselves.</li> </ul>	2.1 Ownership of application process/ worker or employer-made application
<p><b>Labour market mobility:</b></p> <ul style="list-style-type: none"> <li>Permits should not be tied to one employer. People should be able to change employer, including the type of job and sector, and work for more than one employer, on the same permit, without permission from the employer or labour intermediary.</li> </ul>	2.2 Procedure to change employer 2.3 Procedure to change type of job 2.4 Procedure to change sector 2.5 Possibility to work for more than one employer 2.6 Time period to change employer
<p><b>Independence from employers:</b></p> <ul style="list-style-type: none"> <li>Permits should remain valid to provide a reasonable period of time of unemployment to search for alternative work, for workers that lose or leave their job.</li> <li>Financial and practical support should be accessible during this time, at least on the same terms as nationals. Particular attention should be paid to situations where workers' housing was also provided by their employer.</li> </ul>	2.7 Time periods for unemployment/ job search during validity of permit and after the permit has expired 2.8 Available financial and practical support while unemployed
<p><b>Mitigating risks related to employer-provided housing:</b></p> <ul style="list-style-type: none"> <li>Employer-provided housing should be subject to clear rules and monitoring to ensure that housing is decent and salaries not subject to inappropriate deductions.</li> </ul>	2.9 Rules on employer-provided housing 2.10 Monitoring mechanism for employer-provided housing
<p><b>Residence solutions in cases of exploitation:<sup>46</sup></b></p> <ul style="list-style-type: none"> <li>Transitional permits<sup>47</sup> should be made available for situations where workers experience labour violations or other abuses.</li> </ul>	2.11 Availability of transitional permits

<sup>46</sup> Regarding victims of criminal labour exploitation including trafficking in human beings, see PICUM (2020), [PICUM Key Messages and Recommendations on Human Trafficking, October 2020](#); PICUM (2020), [Insecure Justice? Residence permits for victims of crime in Europe](#), Brussels: PICUM.

<sup>47</sup> See for example, the [Open work permit for vulnerable workers](#) in Canada and [Reactivation Employment Permit \(REP\) Scheme](#) in Ireland.

3. Equality and family unity	Indicators
<p><b>Non-discrimination:</b></p> <ul style="list-style-type: none"> <li>• Access to employment and associated permits should be non-discriminatory across all protected grounds under human rights law.<sup>48</sup></li> <li>• If there is preferential treatment, including for certain nationalities, this should be justifiable in relation to pre-existing disadvantage.</li> </ul>	<p>3.1 Restrictions in access to permits on prohibited grounds</p> <p>3.2 Justification for preferential treatment, if applicable</p>
<p><b>Equal treatment:</b></p> <ul style="list-style-type: none"> <li>• Migrant workers should be guaranteed equal labour and social rights.</li> </ul>	<p>3.3 Applicable labour rights</p> <p>3.4 Applicable access to social services and protection</p>
<p><b>Family unity:</b></p> <ul style="list-style-type: none"> <li>• Migrant workers should be able to enjoy their family life as any other person. Restrictions on migrant workers with low income from bringing their families should be lifted.</li> <li>• Spouses/ partners should also be provided access to the labour market.</li> </ul>	<p>3.5 Possibilities to and restrictions on access to permits for family members</p> <p>3.6 Access to the labour market for family members</p>
4. Complementary labour market policies to enforce labour rights for all	Indicators
<p><b>Labour standards:</b></p> <ul style="list-style-type: none"> <li>• Gaps in the application of some labour rights and standards - including related to pay, working time, health and safety and social protection - for certain groups of workers should be addressed.</li> <li>• Proactive efforts to improve working conditions for all workers in sectors with high levels of informal work and exploitation are needed.</li> </ul>	<p>4.1 Coverage/ gaps in coverage of labour law</p> <p>4.2 Measures to improve working conditions in key sectors</p>
<p><b>Justice for all:</b></p> <ul style="list-style-type: none"> <li>• Labour standards monitoring, complaints and redress mechanisms should be well resourced, independent and confidential. Measures should be developed to protect workers from employer retaliation and immigration enforcement as a result of exercising their rights - and effectively provide access to justice for migrant workers.<sup>49</sup></li> </ul>	<p>4.3 Financial and human resources for mechanisms</p> <p>4.4 Measures to protect workers from employer retaliation and immigration enforcement following engagement</p> <p>4.5 Back wages and compensation paid to workers</p>

48 For more information, see Fundamental Rights Agency and Council of Europe (2018) [Handbook on European non-discrimination law, 2018 edition](#), European Agency for Fundamental Rights and Council of Europe.

49 For more information, see PICUM (2020) [A Worker is a Worker: How to Ensure that Undocumented Migrant Workers Can Access Justice](#), Brussels: PICUM.

<p><b>Empowerment:</b></p> <ul style="list-style-type: none"> <li>Targeted measures should ensure migrant workers have meaningful access to accurate information, NGOs and trade unions, and independent legal advice.</li> <li>Information should be provided in a language that migrant workers can understand, and include, at least, details of relevant regulations, rights and redress mechanisms, and NGOs and trade unions.</li> </ul>	<p>4.6 Measures to provide accurate information, and access to NGOs and trade unions</p> <p>4.7 Eligibility for legal aid</p>
<p><b>Regulating intermediaries:</b></p> <ul style="list-style-type: none"> <li>Private employment and recruitment agencies should be regulated and monitored for compliance, including to ensure that recruitment fees and related costs are not paid directly or indirectly by workers.<sup>50</sup></li> </ul>	<p>4.8 Regulations on private employment agencies</p> <p>4.9 Monitoring mechanism for private employment agencies</p>
<p><b>Corporate governance:</b></p> <ul style="list-style-type: none"> <li>Due diligence and joint liability mechanisms should be strengthened to hold employers, general and sub-contractors, including labour intermediaries, accountable along supply and sub-contracting chains.</li> </ul>	<p>4.10 Due diligence and joint liability provisions</p>
<p><b>5. Social inclusion</b></p>	<p><b>Indicators</b></p>
<p><b>Pathways to settlement:</b></p> <ul style="list-style-type: none"> <li>There should also be pathways to settlement after a number of years. All periods of residence should count towards long-term residence status.</li> </ul>	<p>5.1 Residence counts towards long-term residence or settled status</p>
<p><b>Social inclusion measures:</b></p> <ul style="list-style-type: none"> <li>Complementary measures to support inclusion of workers and their families regardless of status are crucial. These include non-discriminatory policies on - alongside measures to facilitate- access to education, health care and housing, and pathways to regularise status on various grounds.</li> </ul>	<p>5.2 Integration measures and non-discriminatory access to services</p> <p>5.3 Procedures to access a residence and work permit when irregularly resident</p>

<sup>50</sup> For more information, see ILO (2019), [General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs](#), Geneva: International Labour Organisation; see also resources from [IOM](#) and the [WHO](#) in this area.

6. Structured dialogue with stakeholders, including migrant workers' representatives	Indicators
<p><b>Involvement of migrant worker representatives:</b></p> <ul style="list-style-type: none"> <li>For policies to be effective, it is crucial to have structured social and civil dialogue with key stakeholders in all stages of labour migration policy development, implementation and monitoring and evaluation.</li> <li>The views of representatives of migrant workers, including trade unions, NGOs and migrant worker associations, should have a clear and direct influence on policy, through social dialogue and extended civil dialogue spaces.</li> </ul>	<p>6.1 Social dialogue/ Involvement of social partners in labour migration policy development, implementation, monitoring and evaluation</p> <p>6.2 Civil dialogue/ Involvement of civil society including migrant worker associations in labour migration policy development, implementation, monitoring and evaluation</p> <p>6.3 Impact on migrant worker representatives' views on policy process</p>
<p><b>Local governance:</b></p> <ul style="list-style-type: none"> <li>Recognising the deep connections between labour migration and local rural and urban development, cities and villages in countries of origin and destination should also be consulted, alongside national level stakeholders.</li> </ul>	<p>6.4 Consultation of regional and local government authorities</p>
<p><b>Transparency:</b></p> <ul style="list-style-type: none"> <li>To enable democratic oversight and meaningful engagement of stakeholders, labour migration policies, including bilateral and regional agreements should be transparent and public.</li> </ul>	<p>6.5 Public access to labour migration agreements</p>

## Annex 2: Case study – Sweden’s labour migration policy

Sweden’s labour migration policy as reformed in 2008 has been described as one of the most liberal labour migration regimes in the region.<sup>51</sup> It has many of the essential characteristics identified in the recommendations of this report, and on some points, could be improved further.

Any worker from any non-EU country can apply for a work permit to work in almost any job or sector, without discrimination based on job type, skill level, or income. However domestic work is excluded.

The requirements are that an employer is willing to provide a contract for work in line with collective agreements. The employer has to advertise the position for 10 days to be eligible to hire a migrant worker for the post.<sup>52</sup>

The permit provided is for 2 years initially, and renewable for another 2 years.<sup>53</sup>

In terms on independence from employers, the worker can apply directly; the work permit is issued on the basis of the offer of employment.<sup>54</sup> During the validity of the first 2-year permit, if the person loses their job, they have three months to be unemployed and search for an alternative employer in the same occupation and sector, and for an alternative work permit to be issued. During the second 2-year permit, the worker can also change their occupation, but still only within the same sector.<sup>55</sup> In order to change sector, the worker can apply for a new permit within the country. This provides a good level of mobility, but some workers continue to be in a situation of dependence on their current employers, reducing their bargaining power and placing them at risk of exploitation.<sup>56</sup>

Normally, applications for work permits have to be submitted from outside Sweden. Exceptions are made for former students, and for former asylum seekers whose asylum application has been refused and who have worked for at least six months under wages and employment conditions in line with collective agreements.<sup>57</sup> When irregularly resident and

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51 OECD (2011), [Recruiting Immigrant Workers: Sweden 2011](#), Paris: OECD Publishing.

52 With reference to the suggested indicators, this meets the recommendations related to non-discriminatory access (3.1). It meets to a large extent the recommendation that an offer of employment should be sufficient across all jobs and sectors (1.3). The requirement that the employer has advertised the position for 10 days, so resident workers have been able to apply does not prevent migrant workers from being hired across different jobs and sectors. However, the exclusion of domestic work from the scope is problematic.

53 With reference to the possible indicators, this meets the recommendations related to initial permits of reasonable duration (1.4), that are renewable in country (1.5).

54 With reference to the suggested indicators, this meets the recommendations related to ownership of the application process (2.1).

55 With reference to the suggested indicators, this only partially meets the recommendations related to the possibility to change employer (2.2) because a new work permit must be issued. Workers are not able to change type of job (2.3) for the first 2 years or sector (2.4) at all. There is a time period for unemployment/ job search (2.7) but it seems to be too short, and would be more protective if it extended for a period of time beyond the expiry of the permit.

56 Frödin, O., & Kjellberg, A. (2018), [Labor Migration from Third Countries to Swedish Low-wage jobs](#), *Nordic Journal of Working Life Studies*, 8(1), 65-85.

57 Ibid.



in possession of a job offer, the authorities will often agree to allow the person to leave Sweden regularly, and not issue an entry ban, to enable them to apply for the permit outside Sweden and return.<sup>58</sup>

After four years, the permit can be converted to a permanent status.<sup>59</sup> Workers are able to bring family members with them immediately, and spouses/partners have access to the labour market.<sup>60</sup>

Sweden has tripartite involvement in labour migration policy-making including the issuing of work permits. However, despite the requirements for employment to meet wages and conditions set in collective agreements and involvement of trade unions, there remain gaps in coverage of collective agreements.<sup>61</sup> There are major challenges for undocumented workers to exercise their labour rights, without risk of immigration enforcement. In addition, structured dialogue with migrant workers' representatives could be strengthened.<sup>62</sup>

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58 With reference to the suggested indicators, this only partially meets the recommendation for in-country applications, as it is only possible in very specific conditions (1.7), and not when irregularly resident (1.6) though the flexibility on departure and entry-bans goes some way in making permits accessible for some undocumented workers.

59 With reference to the possible indicators, this meets the recommendation regarding a clear pathway towards settled status (5.1), although stability for employers and workers would be improved if initial permits were even longer. Indeed, under the previous labour migration system focused on shortage occupations, labour migrants were granted permanent residency immediately (Emilsson, H. et al. (2014), [The World's Most Open Country: Labour Migration to Sweden after the 2008 Law](#), Current Themes in IMER Research;15, Malmö University, Malmö Institute for Studies of Migration, Diversity and Welfare (MIM).

60 With reference to the suggested indicators, this meets the recommendations related to family rights (3.5 and 3.6)

61 Frödin, O., & Kjellberg, A. (2018), [Labor Migration from Third Countries to Swedish Low-wage jobs](#), Nordic Journal of Working Life Studies, 8(1), 65-85. Sex work is also excluded as it is not recognised as a form of work in Sweden (reference indicator 5.1).

62 With reference to the suggested indicators, complementary labour market measures are much needed, including closing of gaps in coverage of collective agreements (4.1), ensuring independence of labour monitoring, complaints and redress mechanisms and no risk of immigration enforcement (4.4, 4.5). Regarding social and civil dialogue, social partners are involved (6.1), but civil dialogue structures could be strengthened (6.2). The example of Sweden also demonstrates how different trade unions can play differing roles regarding labour migration policy, and do not necessarily represent the interests of migrant workers, underlining the need for structured dialogue with organisations directly representing migrant workers as well as trade unions (see e.g. Cerna, L. (2009), [Changes in Swedish Labour Immigration Policy: A Slight Revolution?](#), Working Paper 2009:10, The Stockholm University Linnaeus Center for Integration Studies (SULCIS)).







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