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# NATIONAL POLICY REPORT

## ON RESEARCH CARRIED OUT IN SPAIN

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The policy report corresponding to the research carried out in Spain is based on the contents of the national report. This is the result of a desktop analysis, a phase of research through online surveys and focus group and individual interviews, as well as the national workshop held in Madrid on 6 March 2024, which served to analyse and refine the proposals for "good practices towards migrant workers" initially presented.

This policy report has thus become a catalogue of good practices and recommendations. It aims to reduce the impact on migrant workers of such fundamental aspects as the working conditions in their host countries, their need for information, advice and representation in order to have access to the defence of their rights and other measures related to their social protection.

### I. Introduction. The situation of migrant workers in Spain: Starting point for defining our action policy

First of all, we will briefly mention some data on the labour market in Spain (taken from EURES and from Informe del Mercado de Trabajo Estatal, prepared by Observatorio de las Ocupaciones del Servicio Público de Empleo Estatal in Spain, 2022).

Spain has a foreign working population of almost 2.7 million people, 13% of the total number of workers, of whom 1.8 million are non-EU workers, 67%. Most of them come from Morocco, Colombia and the United Kingdom among the non-EU countries, and from Romania, Italy and Germany among the EU countries.

In terms of the nature of these workers, Spain has cross-border workers (workers who work in the territory of one Member State and reside in the territory of another Member State to which they return every day or at least once a week) with France and Portugal (in the case of EU workers) and with Gibraltar, a territory of the United Kingdom, and with Morocco (from the cities of Ceuta and Melilla) in the case of non-EU workers.

Seasonal workers in Spain (or temporary workers, i.e. those employed in production activities that are seasonal or intensify at certain times of the year) are mainly employed in the agricultural sector, with various agricultural campaigns that usually last from mid-April to the

end of October (and, to a lesser extent), in the tourism sector (hotels, restaurants, sports, leisure, cultural activities, etc.).

Working conditions, particularly in the agricultural sector, are characterised by precarious employment (lack of employment contracts and situations of semi-exploitation), high physical and mental demands due to peaks of activity, long working hours and high work load, lack of decent working conditions (wages, working hours, breaks, overcrowded accommodation, etc.) and a higher rate of accidents in the workplace); and with a higher rate of occupational health and safety accidents (musculoskeletal disorders, accidents at work, infections and mental health risks due to difficulties in having a regular emotional and family life), mood disorders (anxiety, depression), high consumption of psychoactive substances (alcohol, cannabis, cocaine), etc.

Finally, the other migrant workers, who usually fill vacancies in sectors with a high demand for labour that is not covered by the national labour market through circular migration with third countries, are subject to the same labour regulations as national workers (according to the provisions of Law 45/1999 on the posting of workers, which states that they "enjoy the same employment conditions as national workers, being subject to the Workers' Statute and the collective agreement applicable to their sector") and are recruited in their country of origin through the Gecco programme (Programme for the Management of the Labour Market), which allows the recruitment of foreign workers who are not in Spain or who are not resident in Spain, in accordance with the annual employment needs forecast in our country, thus establishing an organisation of migratory flows and articulating channels of dialogue with third countries.

## II-Policy positioning: Good practices and recommendations for improving the employment conditions of migrant workers in Spain

As indicated in the introduction to this document, we have drawn up these good practices and recommendations in three different blocks with the aim of providing solutions to the challenges identified in our research, which can be summarised as follows:

- lack of knowledge of the rules applicable to their employment situation and where to go to obtain this information and advice;
- situation of social vulnerability of migrant workers in terms of access to social services or the guarantee of a legal employment relationship;
- lack of information on employment conditions, social security system, social security contributions or affiliation to a specific collective bargaining agreement regulating these working conditions;
- possible breaches of employment conditions (including health and safety at work) of migrants, especially those referring to seasonal workers, which could lead to the existence of situations of “semi-exploitation” of labour and the “black economy”.

### Regarding information and advice

The information available to migrant workers is neither complete nor agile, nor accessible, mainly due to language problems, since this information, if it exists, is usually only available in Spanish and English. Therefore, the following recommendations are proposed:

- guarantee the translation of the documentation, basically in terms of labour rights, which a migrant worker should be aware of, into their mother tongue;
- centralise the basic information from the different sources of governments, administrations and companies and make it available to workers on their own website;
- provide the social partners with information from the competent administrative bodies in each country on the contracts concluded with migrant workers, so they are aware of the contracts that exist in each country, their functions and the place where the services are provided, thus facilitating their direct attention in terms of information, advice and defence of their labour rights;
- unify the computerisation of contracting procedures both in the country of origin and in the country where services are provided if they already reside there;
- establish greater clarity in the contents of Community Directives and national regulations to facilitate their understanding and avoid confusion in their application;
- strengthen trade union action in support of migrant workers, through agreements and support for migrant workers' petitions; improving information on rights and legislation; providing immediate assistance and individual and collective representation; and enabling fair treatment and access to collective bargaining.

### Regarding employment conditions

The main challenges identified are situations of job insecurity, ranging from the lack of work contract to high physical demands with long working hours and heavy work regimes, to non-compliance with working conditions and higher levels of occupational health and safety accidents, reaching in some cases situations of "semi-exploitation" of labour. The proposals in this area are:

- extending the guarantees of the European directives on the posting of workers in the framework of the transnational provision of services and of collective agreements and national legislation to migrant workers, in view of the influx of this type of labour movement;
- improve working conditions through collective bargaining in sectoral collective agreements and ensure their application to all migrant workers in their workplace;
- establish specific regulations for migrant workers in sectors with high employment and a particular lack of protection, such as agriculture, tourism or health and care professionals, which are increasing due to the ageing population;
- strengthen the control of the fraud of irregular recruitment in professional categories lower than those actually occupied by the worker, as an alternative to its detection and eradication;

- strengthen the labour inspectorates to detect situations of contractual irregularities and impose severe penalties on those who do not comply with them.

### Regarding social protection

The definition of migrants' rights is subject to the policies defined by each Member State and, in particular, everything related to access to the labour markets of each country.

In this respect, it should be noted that the Charter of Fundamental Rights lists the fundamental rights that both the European Union and the Member States must respect. Our proposals for improvement in this area are as follows:

- ensure respect for the fundamental rights set out in the Charter: dignity; freedom; equality and non-discrimination; solidarity (recognising the right to fair and equitable working conditions and the right to social security and health protection); citizenship; and justice;
- guarantee the necessary comprehensive health care for all; to establish the emergency character, the essential character (to be examined by a doctor or to receive the necessary medicines), the health care for pregnant women and the health care and education for minors in an irregular situation, under the same conditions as nationals;
- establish a sense of justice, understood as a mechanism that allows migrant workers to make claims and receive compensation in the event of injury (accident at work, occupational disease, etc.);
- provide guarantees for access to basic services such as health care, education or access to justice for migrant workers in an irregular situation, who are more vulnerable and subject to situations of abuse and exploitation in the workplace. Pay particular attention to women who may be discriminated against on the basis of their gender, race or ethnicity, and to gender-based and sexual violence;
- include in collective bargaining instruments to improve the social protection of migrant workers, in particular with regard to their social and health care.