European Union Agency for Fundamental Rights’ submission

*Call for input - Report on how to expand and diversify regularization mechanisms and programs to enhance the protection of the human rights of migrants*

1. **Please indicate how can regularization processes facilitate the enjoyment of human rights by migrants as well as their cultural, social and economic integration into the host communities, taking into account that migrants in an irregular situation live in constant fear of detention or deportation, becoming excluded from the social protection system as a result of a change affecting the regularity of their residence in the country**
2. FRA [findings](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-severe-labour-exploitation-workers-perspectives_en.pdf) of a 2019 project based on interviews with more than 237 exploited EU and third-country national workers show that vulnerability linked to residence status, including being in an irregular situation, is the main risk factor for labour exploitation. Regularisation processes can facilitate migrants’ enjoyment of human rights since they encourage migrants to leave exploitative jobs situations (FRA (2019), [Protecting migrant workers from exploitation in the EU: workers’ perspectives](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-severe-labour-exploitation-workers-perspectives_en.pdf), p. 18-20).
3. Other key obstacles to migrant workers being empowered to fight for their rights are the fact that third-country national workers’ visas are often tied to one specific employer in order to acquire or keep legal residency, that residence permits are tied to the existence of an employment contract, and regularisation schemes which require workers to spend a set amount of time in an employment relationship. These instances can lead to situations in which the worker will accept exploitative work conditions in order to acquire or renew legal residence or regularise his or her status (FRA (2019), [Protecting migrant workers from exploitation in the EU: workers’ perspectives](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-severe-labour-exploitation-workers-perspectives_en.pdf), p. 18-20).

Regularisation schemes should not be tied to a certain employer or apply only to certain economic sectors or when a specific amount of time spent in an employment relationship. As documented in FRA research on exploitation of migrant workers, in Belgium, in 2009, irregular immigrants could gain a residence permit by presenting a work contract that fulfilled certain conditions. One of the conditions was that the workers had to have a contract with a minimum duration of one year. However, in order to renew the residence permit, the person had to have worked during the first year. In practice, the workers interviewed by FRA ended up staying with the same employer, no matter what the work conditions were, for at least one year. The regularisation programme was described by a worker as ‘an invitation to exploitation and abuse of power’(FRA (2019), [Protecting migrant workers from exploitation in the EU: workers’ perspectives](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-severe-labour-exploitation-workers-perspectives_en.pdf), p. 68-69). Migrant domestic workers raised the issue of not being able to apply for a residence permit given the high prevalence of undeclared work in this sector and the difficulty to find an employer willing to sign a contract. This compounds their vulnerability to severe labour exploitation (FRA (2010), [Out of sight: migrant women exploited in domestic work](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-migrant-women-labour-exploitation-domestic-work_en.pdf), p. 7-8).

In a number of Member States, including Belgium, Italy and Portugal, migrant workers in an irregular situation can regularise their residence if an employer signs a contract. This increases the dependence of the worker on the employer. Workers might accept exploitative working conditions, hoping that the employer will at some point regularise their status (FRA (2019), [Protecting migrant workers from exploitation in the EU: workers’ perspectives](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-severe-labour-exploitation-workers-perspectives_en.pdf), p. 68).

According to FRA, the EU and EU Member States should avoid issuing residence permits or visas which are tied to a single employer, especially in economic sectors which have a history of abuse against migrant workers. Instead, Member States could consider providing sector-based permits (rather than employer-specific permits) so as to allow migrant workers to leave an exploitative employment relationship to take up a job with another employer and use available complaint mechanisms without fear of losing their residence status (FRA (2019), [Protecting migrant workers from exploitation in the EU: workers’ perspectives](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-severe-labour-exploitation-workers-perspectives_en.pdf), p. 20). National authorities could follow the same approach when designing regularisation schemes.

1. Regularisation schemes are also key to enable exploited worker’s access to justice. In the interviews conducted by FRA in 2015 to 616 experts from various professional groups working in the field of labour exploitation, 58 % of the respondents indicated that the fear of having to leave the country because of their irregular situation is the main reason for exploited migrant workers not seeking justice (FRA (2010), [Severe labour exploitation: workers moving within or into the European Union](https://fra.europa.eu/sites/default/files/fra-2015-severe-labour-exploitation_en.pdf), p. 78).

Article 13 (4) of the Employers Sanctions Directive ([2009/52/EC](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009L0052)) requires EU Member States to define, in national law, the conditions under which they may grant, on a case-by-case basis, permits of limited duration linked to the length of the relevant national proceedings to migrants in an irregular situation who are victims of particularly exploitative working conditions. FRA findings show that more than half of the Member States have domestic legislation establishing temporary residence permits for victims of particularly exploitative working conditions, in accordance with Article 13 (4) of the Employers Sanctions Directive. The remaining Member States provide for this only for victims of trafficking in human beings. In these Member States, victims have to meet the definition of “trafficking in human beings” to be granted a residence permit (unless they can apply for a residence permit on other grounds provided by national law) (FRA (2010), [Protecting migrants in an irregular situation from labour exploitation – role of the Employers’ Sanctions Directive](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-employers-sanctions-directive-report_en.pdf), p. 43-44).

According to FRA findings, in the majority of Member States exploited third-country nationals must participate in criminal proceedings against the employer to be granted a residence permit. A promising practice has been established in Greece where a residence permit for humanitarian reasons may be granted to migrant workers in an irregular situation even when they do not cooperate with the authorities, when it is considered that their lack of cooperation is due to threats against family members, either in Greece or elsewhere (Greece, Law No. 4052/2012 ([Νόμος 4052/2012](https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/98905/117830/F1727376380/GRC98905%20Grk.pdf)), Article 89).

A promising practice can be identified in Spain, where third-country nationals in an irregular situation who are victims, witnesses or persons harmed by crime who denounce the perpetrator or cooperate with law enforcement to fight against human smuggling, labour or sexual exploitation can access five-year residence and work permits (Spain, Law 4/2000 of 11 January ([Ley 4/2000, de 11 de enero](https://www.boe.es/buscar/act.php?id=BOE-A-2000-544)), Art. 59; Royal Decree 557/2011 of 20 April ([Real Decreto 557/2011, de 20 de abril](https://www.boe.es/eli/es/rd/2011/04/20/557/con)), Art. 135-137).

1. **Please share examples of national and regional solutions to legalize the stay for migrants in irregular situations**
2. During the covid-19 pandemic, several Member States allowed certain third country nationals whose residence expired during the covid-19 measures to remain legally in the country until the end of the pandemic, including [Croatia](https://mup.gov.hr/vijesti/obavijest-stranim-drzavljanima-trecih-zemalja/286130), [Finland](https://www.finlex.fi/fi/laki/alkup/2020/20200208), [Lithuania](https://migracija.lrv.lt/en/news/legal-status-of-foreigners-in-the-republic-of-lithuania-during-the-quarantine), [Italy](https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg), [France](https://www.legifrance.gouv.fr/loda/article_lc/LEGIARTI000042008174) and [Hungary](https://njt.hu/jogszabaly/2020-58-00-00) (FRA (2020), [Coronavirus pandemic in the EU – Fundamental rights implication #2](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-coronavirus-pandemic-eu-bulletin-may_en.pdf), p.30; FRA (2020), [Quarterly Migration Bulletin 3 – 2020](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-migration-bulletin-3_en.pdf), p. 9).

Poland adopted measures allowing foreigners staying in Poland, including failed asylum seekers, returnees under voluntary return schemes and later other categories of foreigners with expired permits, to remain legally in Poland during the covid-19 epidemic and 30 days after its end (FRA (2020), [Quarterly Migration Bulletin 3 – 2020](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-migration-bulletin-3_en.pdf), p. 3).

1. Some Member States introduced measures to regularise the situation of irregularly staying third country nationals during the covid-19 pandemic.

On 27 March, Portugal [regularised](https://www.publico.pt/2020/03/28/sociedade/noticia/governo-regulariza-imigrantes-pedidos-pendentes-sef-1909791) the situation of all foreigners with requests pending with the Immigration and Borders Service under the Immigration Law and the Asylum Law on the date the state of emergency was declared (18 March 2020) (FRA (2020), [Coronavirus pandemic in the EU – Fundamental rights implication #2](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-coronavirus-pandemic-eu-bulletin-may_en.pdf), p. 30).

In Spain, [Royal Decree-Law 13/2020](https://www.boe.es/boe/dias/2020/04/08/pdfs/BOE-A-2020-4332.pdf), of 7 April, introduced urgent and temporary measures for the employment in the agricultural sector, giving priority to the employment of young third-country nationals as well as migrant workers whose work permit has expired. Under [Royal Decree-Law 19/2020](https://www.boe.es/buscar/act.php?id=BOE-A-2020-5315), of 26 May, those hired pursuant to Royal Decree-Law 13/2020 will receive a two-year residence permit, renewable for another two years (FRA (2020), [Quarterly Migration Bulletin 3 – 2020](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-migration-bulletin-3_en.pdf), p. 4).

Another regularisation scheme was introduced in [Italy](https://www.gazzettaufficiale.it/eli/id/2020/05/19/20G00052/sg) on May 2020 for the benefit of third-country nationals irregularly residing in Italy and who are employed in agriculture, care, and as domestic workers with the exclusion of persons considered a threat for public security, those who have received a return order, as well as those involved in criminal proceedings. The residence permit is valid for six months. Employers have to pay a EUR 400 fee and further EUR 160 for the administrative costs of the procedure. ASGI sent a [formal letter](http://www.asgi.it/wp-content/uploads/2020/06/2020_Ispettorati_Lavoro_Emersione.pdf) to the Ministry of Labour and Social Policies, and to the Italian National Labour Inspectorate, reporting that many employers are refusing to regularise irregular workers in the concerned economic sectors and that the legislation should require the worker, instead of the employer, to apply (FRA (2020), [Quarterly Migration Bulletin 3 – 2020](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-migration-bulletin-3_en.pdf), p. 3).

1. Certain Member States have opted for the regularisation of migrants who had been denied international protection or who had spent a long period in the asylum process.

In 2019, in Bulgaria, following an amendment to the Foreigners in the Republic of Bulgaria Act ([Закон за чужденците в Република България](https://www.parliament.bg/bg/laws/ID/156869)), unaccompanied or abandoned children who have not requested or have been denied international protection can be granted continuous residence until they reach adulthood, and afterwards, if humanitarian reasons exist (FRA (2019), [Quarterly Migration Bulletin 3 - 2019](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-migration-bulletin-3_en.pdf), p. 27).

[Spain](https://www.acnur.org/noticias/press/2019/3/5c794bee4/acnur-da-la-bienvenida-a-la-residencia-por-razones-humanitarias-para-venezolanos.html) introduced a one-year humanitarian residence permit, which includes the right to work, for Venezuelans in Spain whose asylum claims were rejected before February 2019.

In Germany, the Law on Toleration for Apprenticeship and Employment ([Gesetz über Duldung bei Ausbildung und Beschäftigung](https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&start=//*%5b@attr_id=%27bgbl119s1021.pdf%27%5d" \l "__bgbl__%2F%2F*%5B%40attr_id%3D%27bgbl119s1021.pdf%27%5D__1580203847769)), adopted on 8 July 2019, entitles third-country nationals and their spouses with a ‘toleration’ status (Duldung) to extend this status as long as they are in vocational training or in employment. Toleration status is a temporary protection permit granted to rejected asylum applicants whose deportation has been temporarily suspended. The work permit is only granted if they entered Germany before 1 August 2018, their identity is clarified, they have been tolerated for at least 12 months, they have been employed for at least 18 months, and they speak sufficient German (FRA (2019), [Quarterly Migration Bulletin 1 – 20](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-migration-bulletin-4_en.pdf)20, p. 8). The [Gesetz zur Einführung eines Chancen-Aufenthaltsrechts](https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl122s2847.pdf#__bgbl__%2F%2F*%5B%40attr_id%3D%27bgbl122s2847.pdf%27%5D__1675763943755), a law passed on 21 December 2022, allows persons who have been living in Germany for five years on October 31 2022, on toleration status or on a residence permit, to receive a new status for 18 months, ‘Chancen-Aufenthaltsrecht’, in order to prove within this time that they meet the requirements for a right to long-term residence. If the conditions are not met after 18 months, the persons concerned revert to tolerated status.

In Ireland, in 2021, the [Department of Justice](https://www.gov.ie/en/press-release/bdd61-minister-mcentee-announces-new-landmark-scheme-to-regularise-long-term-undocumented-migrants/) announced a scheme introducing a pathway to regularisation for undocumented migrants and international protection applicants who have been in the asylum process for more than 2 years (FRA (2022), [Quarterly Migration Bulletin 1 – 2022](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2022-migration-bulletin-1_en.pdf), p. 21).

1. In Spain, Article 124 of the [Regulation of Organic Law 4/2000](https://www.boe.es/buscar/act.php?id=BOE-A-2011-7703&b=161&tn=1&p=20220727#a124) allows irregularly staying third-country nationals to obtain a residence permit for social, family or labour roots (*arraigo*). [Royal Decree 629/2022](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2022-12504), of 26 July 2022, introduced several changes. To obtain a residence permit for social roots, third-country nationals are no longer required to show a work contract of at least one year, and employment may be on a part-time basis (20h/week) if the applicant is in charge of a dependent. The permit for family roots has been extended to other categories, including third-country nationals who are in charge of and live with a Spanish national with a disability, as well as partners and certain ascendant and descendant family members of Spanish nationals. The modifications also concern the permit for labour roots. Hereinafter, only irregularly staying third country nationals can apply for the permit and any means of proof are accepted to confirm the employment relationship and its duration. The Royal Decree has also introduced another type of residence permit for training purposes.

Furthermore, the government passed an amendment ([Royal Decree 903/2021](https://www.boe.es/eli/es/rd/2021/10/19/903)) modifying the [Regulation of Organic Law 4/2000](https://www.boe.es/buscar/act.php?id=BOE-A-2011-7703) that benefit the rights of unaccompanied children and their integration. In the case of children aged 16 and over, their residence permits will always be accompanied by a work permit, putting an end to the plight of thousands of undocumented children who were not allowed to work (FRA (2022), [Quarterly Migration Bulletin 1 – 2022](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2022-migration-bulletin-1_en.pdf), p. 24).