

Manifesto 2 – WP3.2

In the new cycle, the EU must develop a holistic approach to situations of irregularity and step up efforts to combat the exploitation of irregular migrant workers

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Core Reflections:

- > With the new European Commission in office, the attention of the European Union (EU) has shifted to developing a “[new common approach on returns](#)”. EU efforts to strengthen return policies should not distract from the complexity of irregularity and overshadow the protection of migrant workers, including those in irregular situations.
 - > Shortcomings in implementing existing legislative frameworks have weakened their protective elements, leaving precarious working and living conditions rife in Farm to Fork (F2F) sectors.
 - > Achieving a holistic approach to the governance of persons in an irregular situation, including in F2F sectors, requires evidence-based policies supported by robust data.
 - > A clearer understanding of irregularity dynamics, including non-return scenarios, can guide responsive policymaking aligned with fundamental rights, labour market needs and supply-chain realities, exposing the limits of a return-focused approach.
 - > Addressing information gaps must go hand-in-hand with operational and legislative measures that strengthen protections for migrant workers, ensure dignified conditions, and impose meaningful sanctions against exploitative employers.
- > These measures will also benefit compliant employers, reducing the risk of unfair competitive advantages deriving from inconsistent enforcement.
 - > Without structural solutions, including access to residence permits, irregular migrant workers will bear the brunt of supply chain imbalances contributing to precarious working and living conditions, as highlighted in the [first DignityFIRM Manifesto](#).

Introduction

The new European Commission took office in December 2024, with migration high on its agenda. Under pressure from [member states](#), the Commission is expected to propose a reform of the [Return Directive](#) in its first 100 days, in large part to respond to what are perceived as low rates of returning persons in a situation of irregularity.

While the Commission considers “[modern rules](#)” key in that regard, a return-centric approach risks overlooking the complex reality of irregularity. It sidelines the situation of those with an irregular status who cannot be returned, as well as the prevalence of irregular migrant workers in sectors such as EU Farm to Fork (F2F), and their struggle to access safe and dignified working conditions.

Other than proposing new rules on return, the newly appointed Commissioner for Interior Affairs and Migration, [Magnus Brunner](#), has also been tasked with tackling the exploitation of irregular migrant workers. This provides an opportunity to adopt a holistic approach to the governance of irregularity, reconciling priorities and addressing the exploitation of irregular migrant workers, with labour market needs and supply chain dynamics in mind. This Manifesto outlines the steps needed to enhance safeguards for migrant workers, including through access to permits, improve the functioning of the F2F sector, and promote evidence-based policy making.

Political focus on returns

Since irregular arrivals peaked in 2015, the EU has pursued [stricter return policies](#). In 2018, the [European Commission](#) proposed reforming the [Return Directive](#), but concerns over fundamental rights and the [lack](#) of an [impact assessment](#) contributed to stalling the negotiations.

With rising right-wing parties and [restrictive migration agendas](#), the European Commission will put a fresh reform proposal forward as a matter of priority. This is expected to “[enable simpler and faster returns](#)”, define “[clear obligations of cooperation for the returnee](#)” and make “[provision for the mutual recognition of return decisions](#)”.

While it remains to be seen how the proposal will try to achieve the above goals, there is a risk that it will prioritise return and overlook other gaps and needs. Illustrating this, many persons cannot be returned. The [reasons](#) for non-return are diverse, including overriding human rights concerns, medical and practical considerations, and limited cooperation with third countries.

Persons who cannot be returned end up in a protracted state of legal limbo, with the current rules also failing to set clear [state obligations](#) towards such persons. While national authorities may grant residence permits to irregular migrants, this remains largely [discretionary](#), creating a [fragmented policy landscape](#). Current frameworks also limit [rights](#) pending return, further increasing vulnerabilities and the risk of exploitation.

Addressing the exploitation of irregular migrant workers

In addition to developing “[a new common approach](#)” on return, Magnus Brunner’s mission letter includes a commitment to preventing the “[exploitation of workers in Europe with an irregular status](#).” Although it is not yet clear what this implies, the Commissioner’s mandate calls for an assessment of current challenges, and for the development of appropriate measures to address exploitation.

The challenges are significant in low-wage, seasonal sectors like F2F, which rely [structurally on migrant workers](#), including those in an irregular situation. Due to limited bargaining power and systemic vulnerabilities, irregular migrant workers face [obstacles](#) in accessing [safe and dignified working conditions](#) as well as persistent, and sometimes [fatal](#), risks of abuse in F2F.

[Existing EU frameworks](#), such as the [Employer Sanctions Directive](#) (ESD), the recast Anti-Trafficking Directive and the [Victims’ Rights Directive \(VRD\)](#), as well as EU employment law, offer some protections. The ESD prohibits irregular migrant work through sanctions on employers but also specifies certain rights for workers

in an irregular situation. The Anti-Trafficking Directive criminalises trafficking in human beings, including forced labour, and provides minimum rights for victims, while the VRD sets out minimum protection standards for all victims of crime.

However, [weak implementation and shortcomings in transposition](#) have rendered safeguards ineffective.

For example, [complaints mechanisms](#) are underutilised, among others, due to the absence of firewall protections which would enable safe reporting without immigration enforcement risks. Irregular residence or employment status is often identified during [labour inspections](#), which can draw attention away from poor or exploitative [working conditions](#).

[Sanctions and penalties](#) vary across member states and are often insufficient to deter [repeated exploitation](#). [Prosecution rates](#) also tend to be low, undermining accountability. Some rights and remedies under the ESD also only address criminal exploitation and violence, while not all instances of sub-standard working conditions or unfair treatment may reach the necessary threshold.

Irregular migrant workers also struggle to secure [compensation](#) or backpay, which is further complicated [by complex labour relationships](#) involving subcontracting or labour intermediaries.

Meanwhile, [third parties](#), such as social partners and civil society organisations, play a crucial role in monitoring and safeguarding the rights of irregular migrant workers. Unable to access the workplace or file [complaints](#) on behalf of migrants in all member states, however, they also face barriers, and lack resources, to support workers' complaints.

Towards a holistic governance of persons in an irregular situation

In the new cycle, the Commission should achieve a more holistic governance of situations of irregularity. This should consider the structural and institutional causes of irregularity, improving access to residence and work permits (see also Box 1).

While structural solutions are to be found, the Commission should also pursue targeted operational and legislative actions addressing exploitation. Initiatives should focus on closing implementation gaps that leave room for the exploitation of irregular migrants, irrespective of whether they are subject to return procedures.

[Labour inspectorates](#) should be adequately resourced to uphold standards, identify and address violations. The [European Labour Authority](#) (ELA) is mandated to support national labour authorities in enforcing EU law concerning mobile workers in the EU, including in [F2F sectors](#). [Calls](#) to extend ELA's mandate to [additional frameworks](#) concerning non-EU workers should be further considered, with a focus on creating safe reporting environments that enable irregular migrants to report workplace violations, and have access to remedies, without fear of deportation. This highlights the importance of firewall protections that clearly separate, in law and practice, between immigration authorities on the one hand and criminal and labour authorities on the other.

The implementation of existing provisions on [safe and confidential reporting and complaints procedures](#) should also be closely monitored, including under the ESD, [Seasonal Workers' Directive](#), recast Anti-Trafficking Directive and [Single Permit Directive](#). The [European Commission](#) has put forward a limited [firewall](#) in its proposed reform of the VRD, which co-legislators should strengthen during its negotiations. The Commission should continue to include such measures in future legislative proposals.

Penalties against exploitative employers must be sufficiently severe to deter repeated violations. To this end, the Commission should systematically monitor enforcement, including the effectiveness of complaints mechanisms and sanctions, as well as recovery of backpay and taxes and, where appropriate, prosecution to combat exploitation.

Existing legislative provisions, such as the ESD provision that excludes employers from public procurement contracts and foresees the withholding of public benefits, including agricultural subsidies, should be actively utilised.

Box 1: The importance of stable and decent permits for a holistic approach aligned with labour market dynamics

[Analysis](#) finds there to be mismatch between labour migration policies and the realities of the labour market. Often, it is impossible for migrant workers to access a work permit for their job, due to legal, procedural or practical barriers. Issues with work permits and associated procedures also mean that many workers are unable to maintain or renew existing permits, including in cases of employer misconduct.

The recently revised Single Permit Directive takes an important step towards trying to improve possibilities for migrant workers to change employer, although much will depend on transposition and implementation.

Access to and conditions of work permits for F2F sectors vary across the member states, but tend toward short-term permits and visas, especially for work considered 'seasonal'. Lack of access to permits, and seasonal work and 'circular' schemes [increase workers' vulnerability to exploitation](#). Even with protections in place, as per the Seasonal

Workers' Directive, short time periods, dependence on employers and often isolated living and working conditions compound challenges for workers to access information, organise and claim their rights.

Longer-term permits are a more effective way of enabling mobility, investments into countries of employment, residence and origin, and a stable labour force. [Some governments](#) are recognising this by issuing multi-annual permits, including to workers employed in sectors with a 'down' season. Others have established [transitional permits](#), for migrant workers who previously held a permit and faced labour violations to remain in or re-enter the work permit system. Other permits aim to [regularise](#) employment, including through ongoing mechanisms and programmes with criteria linked to residence and training and/or employment, or intend to provide workers the stability to engage with labour complaints mechanisms.

A combination of such policy tools is necessary for a holistic approach to the governance of irregularity as well as labour migration, aligned with labour market dynamics.

As part of this more holistic approach, full implementation of [EU employment law](#) could also provide further reprieve, along structural lines.

These steps would be of added value not only to irregular migrant workers, but also compliant employers who benefit from a stable workforce and lose from inadequate and uneven enforcement. This is especially important as [efforts](#) in the new cycle aim to address supply chain imbalances in F2F sectors. The measures would also build trust in public authorities and help recover important sums of tax and social security income. More broadly, they could foster social cohesion.

Evidence-based policymaking toward better regulation in F2F sectors

Acting on the above recommendations will be essential for achieving a holistic approach to the governance of persons in an irregular situation. Yet, it will also require improved efforts to close information gaps and strengthen evidence-based policymaking.

Illustrating the current challenges, the upcoming reform of the existing rules on return will not be underpinned by comprehensive monitoring and a full evaluation and impact assessment.

The lack of impact assessments has become routine in migration policy reform, contributing to divisive proposals and unpredictable legislative outcomes. This undermines the EU's commitment to '[better regulation](#)' and to uphold the [Rule of Law](#). The upcoming proposal to reform the return framework risks perpetuating these issues.

The start of the new cycle provides an opportunity to draw attention to the risks of such an approach while also promoting evidence-based alternatives, in the interest of all stakeholders.

First, the return rate as the main benchmark for measuring governance effectiveness should be re-evaluated, considering evidence highlighting its [limitations](#). For example, the lack of clear rules on data collection can result in double-counting.

Second, effective governance should extend beyond return benchmarks. A more accurate picture of the dynamics of irregularity, including non-return scenarios and [best practices](#) in integration, should be a priority to ensure evidence-based, responsive and rights-based policymaking. Data on [non-return circumstances](#) is limited, with [varying data collection methods](#) affecting accuracy and comparability.

This is evident in [F2F](#), where [national sectoral estimates](#) on irregular migrant work are only available in some member states.

To address these discrepancies and strengthen evidence-based policymaking, robust, harmonised EU data collection and analysis is crucial. While better data alone may not guarantee constructive, rights-based policymaking, it can clarify the trade-offs of prioritising one goal over another, requiring stronger justification for their human, economic as well as social costs.

A truly sustainable and fair holistic policy must acknowledge labour market realities and protect all workers. Only by embracing evidence-based, holistic solutions can the EU ensure that irregularity is addressed with fairness, effectiveness, and long-term economic and social stability. This requires not only improvements in [migration-related frameworks](#), but also a concerted effort to better understand and tackle [supply chain imbalances](#) without which structural vulnerabilities in sectors like agri-food will persist.

Disclaimer

This is the second of four Manifestos as part of the DignityFIRM project. The [first Manifesto](#) highlighted the role of migrant workers in ensuring food security and the sustainability of the EU's agri-food industry. All current and future DignityFIRM publications can be accessed through the [DignityFIRM website](#).

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About DignityFIRM

Towards becoming sustainable and resilient societies we must address the structural contradictions between our societies' exclusion of migrant workers and their substantive role in producing our food.

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