

Neither Healthy nor Safe: Insufficient Regulation of Occupational Health and Safety for Migrant Farmworkers in Europe

Ni sain ni sûr : une réglementation insuffisante en matière de sécurité et de santé au travail pour les travailleurs agricoles migrants en Europe

Weder gesund noch sicher: Unzureichende Regulierung des Arbeitsschutzes für ausländische Saisonarbeitskräfte in der europäischen Landwirtschaft

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Despite the centrality of Occupational Health and Safety (OSH) within the EU's legislative and institutional architecture, its limited development leaves specific sectors and groups unprotected at its margins. The absence of specific directives for agriculture, together with what we consider to be a somehow narrow focus, as it is limited to the regulation of situations that occur within the workplace, leaves certain groups, like migrant workers, unprotected and potentially exposed to severe hazards to their health and safety. As we will argue in this article, not only are legal developments required for the sector, but they must also broaden their scope to tackle specific problems that, although they occur outside the workplace, only exist because of the labour conditions they derive from.

To develop these arguments and offer some tools for a European debate on this issue, this article will be structured as follows: we will first analyse the European OSH framework, pointing out its coverage and shortcomings. Then we will quantify the relevance of migrant workers in the European agricultural sector. Next we will indicate some of the main safety and health problems they suffer. And finally, we will discuss the inadequacy of the European regulatory framework for

OSH to respond to these issues. We propose some solutions in the conclusions.

Regulating OSH in Europe

The 1989 Framework Directive 89/391 of the European Economic Community introduced OSH into European legislation 'to encourage improvements in the safety and health of workers at work'. It mainly established general guidelines such as preventing risks or providing adequate information to workers. Also, it instructed Member States to take every step needed to ensure that working conditions within their territory adapted to those new standards. In general terms, this Directive focuses on hazards workers are exposed to at the workplace, during worktime, and/or caused by their work tasks, as well as how to reduce their harm.

EU legislation on OSH has expanded and diversified in the decades since 1989. Twenty-four individual Directives have been introduced to add stricter and more specific requirements for critical sectors (like mining), groups (like pregnant workers), or settings (like mobile worksites). Such profusion of individual Directives is foreseen in the 1989 Framework Directive, which

included an Annex listing the essential topics for work-related safety and/or their hazardous characteristics that could be regulated. Those foreseen areas include 'workplaces', 'work equipment', 'visual display units', 'handling of heavy loads', or 'fisheries and agriculture'. Most have been developed into one or several individual Directives; agriculture has not.

“ L'exposition systématique des travailleurs agricoles migrants à des risques graves pour leur santé et leur sécurité nécessite de toute urgence une réponse institutionnelle européenne. ”

Since 2002, the European Commission has successfully articulated this legislation in sequential strategic plans to provide

Migrant farmworkers' shantytown in Huelva (Spain). No public waste-collection service in places with years-long continuous habitation leads to extremely unsanitary situations. In the background, a young African man carries heavy bottles of water for his daily personal use in front of the strawberry fields where he works.



© Picture taken by Juan Castillo-Rojas-Marcos when conducting fieldwork.

OSH-related policies with further coherence. From the 2002–2006 Community Strategy to the 2021–2027 Strategic Framework, each plan has established specific goals, encouraging legal acts and policies to solve priority issues. The 2021–2027 plan has grouped its goals into three main lines of work: 1- anticipating and adapting to changes in the economy that might become relevant for OSH; 2- enhancing prevention of workplace accidents and illness before they happen; and 3- building on the lessons from the Covid-19 pandemic for improving preparedness before other potential health emergencies. The first line of work is the most innovative one. For example, for the first time, it also calls for consideration of workplace hazards to mental health. Nonetheless, the underlying definition of OSH remains the same, even if its scope is broadened: impacts on workers' health and safety caused by events affecting them at the workplace. Also, it encourages legislation and policy to focus on the OSH needs of innovative and growing employment sectors, like 'Green Jobs', but, again, agriculture is not among the sectors considered here.

Therefore, OSH matters are regulated through four different levels of EU policies and legal acts: the 2021–2027 Strategic Framework, the original Framework Directive, individual EU Directives, and EU guidelines (non-compulsory policy recommendations by the Commission to Member States). Reinforcing this legal apparatus, the European Agency for Safety and Health at Work (EU-OSHA) has, since 1994, been the agency in charge of centralising the information and the otherwise dispersed efforts made at the EU level to protect OSH. Additionally, OSH matters are sometimes laterally covered in legal acts related to other issues. They would be too numerous and diverse to mention exhaustively, but most significant for the focus of this paper is Regulation 2021/2115, which sets the framework for the Common Agricultural Policy (CAP) for the period 2023–2027. It includes the new mechanism of Social Conditionality, which states that starting in 2025, CAP direct (and other minor) payments to agricultural employers can be reduced if farmworkers' fundamental labour rights are not respected. It explicitly states that the 1989 OSH Framework Directive is among the legal acts

whose infringement would entail a reduction of CAP payments. In that sense, Regulation 2021/2115 doesn't expand OSH requirements in specific ways in agriculture; it just introduces a new sanction for this sector's employers who don't abide by the dispositions of the original OSH Framework Directive. Again, EU legislation approaches the agri-food sector without considering its specific needs. Applying the same precautions in force in the rest of the economy appears to be considered sufficient.

In summary, the 1989 Framework Directive is still in force, and every other EU policy or legal act about OSH is derived from it. Some might have even widened its scope, as the 2021–2027 Strategic Framework has done by starting also to consider mental health impacts. However, none has altered the approach to what can be labelled as an 'occupational safety and health problem': hazards that workers are exposed to at the workplace, during worktime, and/or caused by their work tasks. It is still the case that no alternative definition of OSH has been considered. No type of work-derived danger that doesn't fit that definition is designated as

problematic by OSH European authorities, legislation and policy. As we will see in the following sections, there is a need to expand the OSH framework by considering not only the specific conditions of the agriculture sector but also the concrete problems faced by migrant farmworkers, a collective suffering particular issues that the current OSH legislation does not help to tackle.

Migrant workers in EU agriculture

Since the 1990s, immigrant workers in the primary sector have grown exponentially in Europe. Processes like the industrialisation of agriculture (which requires a salaried workforce), the rural exodus, or the ageing of non-urban populations, get combined with the unattractiveness of the sector: in terms of remuneration, the arduousness of the tasks, its instability and precariousness, etc. These factors have led to chronic difficulty for European agricultural entrepreneurs in finding a stable workforce. The solution to this problem came from migrants, who decided to work in European agriculture mainly because of the economic differential between wages at origin and destination, the lack of job opportunities in their hometowns, or because it served to settle in a more developed economy. In addition, technical factors in certain

enclaves (changes in the regional distribution of crops; regional specialisation leading to peaks in temporary needs for harvesting, pruning...) significantly increase the workforce needs for some weeks without stabilising job opportunities during the rest of the year – thus generating job niches best adapted to mobile populations. According to estimates by the European Economic and Social Committee (EESC), about 2,420,000 migrants work in European agriculture (2023), which is nearly 25 per cent of the total agricultural workforce in the continent, estimated at 9.4 million workers (Eurostat, 2024). However, although virtually all countries have some migrant presence in their sector, approximately 3/4 of the foreigners employed in agriculture are located in Italy (34%), Spain (18%), France (11%) and Germany (11%), according to calculations based on the same EESC estimates.

The States of origin and the migratory modalities followed by these workers vary not only between States but also within them, depending on factors like the type of crop predominating in each enclave. Although the majority tend to come from Eastern Europe (notably Romania), in some enclaves others predominate, like workers of sub-Saharan origin (as is the case in parts of southern Italy). There are also various situations where specific groups are

recruited at source, such as the considerable presence of Moroccan female seasonal workers in Huelva (Spain) or Thai workers in Sweden. Far from being problem-free, the insertion of migrants in the various European agricultural enclaves has been accompanied by numerous issues linked to multiple labour and residential factors (Morcillo Martínez, 2022). In the next section, we will address the most relevant ones.

Migrant farmworkers' health and safety

The increasingly prolific academic literature on the conditions under which migrants perform agricultural work in Europe consistently points to common structural problems in several dimensions (Rye and Scott, 2018). At the level of working conditions, migrant employment has been characterised by high precariousness, offering minimal remuneration, discontinuity of working hours and working time, as well as, in many enclaves, elements of exploitative labour. Sadly, non-payment of wages, under-reporting of hours worked to social security, or abusive conditions of all kinds have been reported in numerous investigations. In this context, those who have fared worse are migrants in an irregular situation, on whom these issues tend to be aggravated.

As for the performance of agricultural work, the already well-known dangerousness of the profession, added to the migrant condition of workers, leads to migrant workers being more likely to suffer an occupational accident than native workers (Urrego-Parra *et al.*, 2022). This is due to a diversity of factors: from pictorials that are not adapted to the linguistic and cultural understanding of workers, to a reduced interest on the part of employers in offering OSH training to employees they consider temporary and who, precisely because of this, are often exposed to more dangerous situations than natives. Although this has been happening for decades, the extraordinary visibility of this group during the pandemic revealed how

Recently burnt-down migrant farmworkers' shantytown in Huelva (Spain), in the process of reconstruction. Clusters of makeshift houses built with highly flammable material (pallets, cardboard, plastic) in hot, dry weather and with no safety measures get burnt frequently. When this happens, the migrant farmworkers who live there lose it all and risk their lives.



© Picture taken by Juan Castillo-Rojas-Marcos when conducting fieldwork.

some companies do not provide equipment to protect these workers from breathing chemical products, cuts or falls (Molinero-Gerbeau, 2021). Sadly, the result of this context is a high incidence of physical and mental problems among migrant workers whose work in deplorable conditions leads to illnesses, sometimes fatal (Urrego-Parra *et al.*, 2022). However, European migrant farmworkers don't face hazards exclusively within the workplace. They are exposed to a variety of serious health and safety risks, which are a direct consequence of their jobs, hazards they would never face if they were not working in agriculture in an EU Member State, even though they do not occur within the workplace.

A considerable number of health and safety issues for migrant farmworkers come from the lack of access to decent housing, which in turn is caused mainly by their limited income but also by racially motivated denial of rentals. Consequently, many migrants reside in overcrowded spaces and lack access to fundamental services and resources. The literature identifies two main types of substandard housing. On the one hand, we find informal makeshift settlements or shantytowns (Kotsila and Kallis, 2019). Foreign farmworkers with no access to other kinds of accommodation improvise their housing with the poor materials within their reach, agglomerating in the outskirts of agricultural enclaves. In other cases, they reside in abandoned, decaying buildings in the countryside (Hedberg, 2021). Such housing generates hazards to health and safety that are diverse and critical, from exposure to extreme temperatures (from daytime in South Spain's summer to winter nights in Sweden) to limited (or nonexistent) access to drinking water or resources for personal hygiene (Di Gennaro *et al.*, 2021). The sense of isolation, desperation and frustration in the shacks is also a pressing stressor for psychoemotional health.

On the other hand, we find accommodation provided by employers on the farms. In this

model, most of the hazards identified in shantytowns are also present, but to a lesser degree. Member States typically have regulations that compel employers to guarantee fundamental services like running water, electricity, cooking equipment, etc., but these are often not complied with (Molinero-Gerbeau, 2021). This is due to spatial isolation, which creates even thicker barriers to accessing health services when needed and can cause accidents or illnesses to grow more severe if untreated (Bagagiolo *et al.*, 2019). Also, it can generate difficulties in accessing critical products for personal health: food, clothing, medication, or even safety equipment when not provided. Additionally, when workers need those provisions, sometimes they walk long kilometres on the roadsides to the nearest towns, exposing them to being hit by cars, especially after nightfall.

“ Die systematische Exposition von ausländischen Saisonarbeitern in der Landwirtschaft gegenüber kritischen Risiken für ihre Gesundheit und Sicherheit erfordert dringend eine institutionelle Antwort auf europäischer Ebene. ”

Both models of accommodation are very often overcrowded. As the Covid-19 pandemic has shown, this can facilitate the spread of infectious diseases. This hazard, however, is not only present in times of global pandemic: other cases have been reported before, like the malaria outbreak among South Asian farmworkers in Greece in 2009

(Kotsila and Kallis, 2019). Finally, in the case of female migrant farmworkers, the isolation and invisibility of both types of substandard housing make them potentially vulnerable to forms of sexual violence (Reigada, 2022). Many cases have been reported of abuse from employers and/or middlemen in in-farm accommodations and from other residents in informal settlements. Some migrant women even arrive at the shantytowns as farmworkers and end up coerced into sexual exploitation and human trafficking.

Discussion: Insufficiencies of OSH regulation for European agriculture

Most hazards described in the previous section are not a direct consequence of the specific tasks these migrant workers perform as agricultural labourers. Nor do they necessarily happen within the workplace or during working hours. But they are indeed a consequence of the job itself. The agricultural sector depends on the mobility of thousands of workers whose presence in agricultural enclaves is only understandable because of their work. Once there, their migratory and racial status, their income as farmworkers, and the remoteness of the workplaces all intersect to seclude them in unfit spaces where vulnerabilities spiral, risks abound, and health is damaged.

Being hired as workers on EU farms exposes them to all those heavy burdens on their health and safety. And yet, the EU's legislation and policies on OSH do not offer these workers protection as these risks do not fit the current understanding of what OSH hazards are. Given that these problems are widespread, and migrant workers comprise a vast, ever-growing, and structurally crucial share of the EU's agricultural workforce, it can be concluded that the sector is insufficiently or inadequately covered by the OSH legal apparatus in force. We believe this context is enough to justify actions by the European legislator on

what the Annex to Article 16 of the 1989 OSH Framework Directive has always allowed. That is, recognising agriculture as a sector with unique and most concerning health and safety risks, which pressingly needs specific, stricter legislation.

“ Migrant farmworkers’ systematic exposure to critical risks to their health and safety urgently needs a European institutional response. ”

On the other hand, in the expanded sense we are proposing, OSH hazards have been considered to some extent in other EU policies and legislation. Most saliently, the 2014 Seasonal Workers Directive establishes in Article 20 that workers should get an accommodation allowing for ‘adequate living standards according to national law and/or practice’. This is undoubtedly a positive step, but it has two main problems. First, this Directive only covers a small fraction of migrants working in European agriculture, as it applies only to third-country nationals who don’t reside in the EU and whose access to Europe is through a temporary work programme. This leaves uncovered, among others: intra-EU migrants; third-country nationals who are permanent residents; migrants with an irregular status; those who entered Europe through a different type of programme; or posted workers (who, in turn, are regulated by another Directive, which was not designed to target the agriculture sector). Second, even for those covered migrants, that formulation is insufficient. It does not anticipate the problem of remoteness and isolation, which increases the odds of non-compliance with the standards the Directive sets. And even when these are respected, other

hazards arise, such as the lack of access to healthcare and vital services.

Finally, the 2020 EU guidelines on seasonal workers might be considered a precedent of the policy reforms proposed here or, at least, a step in the right direction. Introduced during the peak of the Covid-19 pandemic, it focused mainly on two issues: managing the border-crossing of workers during confinement and ensuring such workers enjoyed equitable working and living conditions. Within this framework, this guideline tackled expanded OSH matters more than had been done before. It called for measures to prevent infection among migrant farmworkers (not just in workplaces, but in accommodation too), for proper decent housing guaranteeing coverage of basic needs, and for an increase of labour inspections in areas with a high presence of temporary migrants (which might compensate for the invisibility effects of countryside isolation). It even specified that the current Directives on Seasonal and Posted Workers are insufficient because they leave so many uncovered. Its significant shortcoming, however, is its non-compulsory nature. It remained limited to recommendations for well-intentioned stakeholders by being guidelines instead of a Directive. After the end of the pandemic, it has sadly become useless.

Concluding remarks

Migrant farmworkers’ systematic exposure to critical risks to their health and safety urgently needs a European institutional response. This could be achieved through different policy strategies: an OSH Directive focused on the specific conditions of agriculture; an OSH Directive on the conditions of mobile workers in the sector; an amendment to the 1989 Framework Directive for expanding the range of recognised OSH hazards for this specific sector; an ambitious and comprehensive inclusion of these matters in the current or future CAP

The hands of a Romanian farmworker in Huelva (Spain). The multiple injuries and rashes on her skin are the result of an allergic reaction to the phytosanitary products applied to the strawberries she picks. The contract she signed entitled her to protective gloves, but her employer denied them to her, even after she started developing this reaction. Situations like this are frequent, and farms’ isolation and lack of monitoring is what makes them possible.



© Image taken by Carlos Ruiz Ramírez, researcher with Oxfam Intermon's team within the Safe Habitus project, while conducting fieldwork jointly with Juan Castillo-Rojas-Marcos.

regulations ... And probably many other options.

There is little doubt that housing policies should play a significant role in the solution. Given everything that has been argued, it would be genuinely welcomed if Member States and/or employers were instructed to allocate funds to develop decent accommodation for migrant farmworkers in every enclave where they are significantly present. Frequent problems like overcrowding or lack of access to essential goods are to be avoided, and the facilities must comply with the same standards of well-being required for the native population. Besides, it would be critical that these new housing solutions are within (or at least on the outskirts of) towns, thus avoiding the problems fuelled by isolation: lack of access to essential goods, dangerous long journeys on foot, lack of transparency, which facilitates exploitation, exposure to different types of violence... It might also be advisable to instruct Member States to fund public transport systems in agricultural enclaves with a significant

density of migrant farmworkers. Connecting country-side production areas with nearby towns through fast, frequent lines might not eliminate isolation, but it would certainly alleviate some of its impacts.

Regarding OSH risks and impacts in the more narrow, traditional sense, some advances can be made just by ensuring the transmission of vital information to workers. Making it compulsory for employers to elaborate understandable pictorials and training workers on OSH in their languages might prove effective, especially if States are compelled to ensure that every significant ethnolinguistic group gets covered.

Finally, the key to the success of all those policies might, after all, be the drastic reinforcement of labour inspections in European agricultural production areas. As has been argued, many of the OSH problems identified in this paper are related to

substandard working and living conditions made possible by isolation, remoteness, and lack of State monitoring. If sizeable funding is allocated to guarantee an EU-wide increase of administrative supervision in farms and their surrounding areas, and if such an increase becomes sustained over time and legally shielded, any OSH-related policy is indeed more likely to be followed. It could be argued that such an increase in inspections could have unintended effects, like making it harder for irregular migrants to find (irregular) jobs in agriculture, thus creating additional difficulties both for them and the employers who rely on their labour. In hypothetical cases where such a problem may become relevant, it is time to open a different public conversation: whether European societies can afford to maintain administratively and socially in the margins large sectors of the population who, at the same time, play a critical role in

agriculture and the economy more broadly.

It might also be advisable to adopt some strategies to reduce the risk of increasing production costs in a way that may disproportionately affect small farms, further increasing the structural advantage of the larger ones. For this purpose, state funding should be prioritised over employer funding, or when the latter is required, a fiscally progressive stance should be adopted: large farms should carry a proportionately bigger share of the costs of the measures.

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Summary


Neither Healthy nor Safe: Insufficient Regulation of Occupational Health and Safety for Migrant Farmworkers in Europe

 Occupational safety and health (OSH) began to be regulated at the EU level with the OSH Framework Directive in 1989. Since then, many other legal acts and policies have followed, enriching the complex European set of legal tools and protections on work-related health and safety. However, they all share the same approach: only eventualities happening to workers in the workplace, during working hours and/or caused by their work tasks can potentially be designated as an OSH impact; and therefore be legally problematised and tackled. This paper argues that such an approach is insufficient for a sector like European agriculture, whose workforce is increasingly composed of migrant labourers. As scientific evidence reveals, migrant farmworkers face another whole set of severe health and safety risks directly linked to their jobs, which nonetheless would not fit in the traditional definition of OSH. From deficient and substandard accommodation to isolation and lack of access to vital services, these people's jobs potentially expose them to potent health stressors. The sector urgently needs a new and more ambitious conception of OSH to develop legislation and/or policies adapted to the needs of all its workers, including migrants.

Ni sain ni sûr : une réglementation insuffisante en matière de sécurité et de santé au travail pour les travailleurs agricoles migrants en Europe

 La sécurité et la santé au travail (SST) ont commencé à être réglementées au niveau de l'Union européenne avec la mise en œuvre de la directive-cadre sur la SST en 1989. Depuis lors, de nombreux autres actes juridiques et de lois sur la politique ont suivi, enrichissant l'ensemble complexe d'outils juridiques et de protections européens en matière de travail liant santé et sécurité. Cependant, ils partagent tous la même approche : seules les éventualités survenant aux travailleurs sur le lieu de travail, pendant les heures de travail et/ou causées par leurs tâches professionnelles peuvent potentiellement être qualifiées d'impact sur la SST; et donc être problématisées et abordées sur le plan juridique. Cet article soutient qu'une telle approche est insuffisante pour un secteur comme l'agriculture européenne, dont la main-d'œuvre est de plus en plus composée de travailleurs migrants. Comme le révèlent les preuves scientifiques, les travailleurs agricoles migrants sont confrontés à un ensemble supplémentaire de risques graves en matière de santé et de sécurité, directement liés à leur emploi, qui ne correspondent pas à la définition traditionnelle de la SST. Des logements déficients et de qualité inférieure à l'isolement et au manque d'accès aux services vitaux, les emplois de ces personnes les exposent à d'intenses facteurs de stress pour leur santé. Le secteur a besoin de toute urgence d'une conception nouvelle et plus ambitieuse de la SST afin d'élaborer une législation et/ou des politiques adaptées aux besoins de tous ses travailleurs, y compris les migrants.

Weder gesund noch sicher: Unzureichende Regulierung des Arbeitsschutzes für ausländische Saisonarbeitskräfte in der europäischen Landwirtschaft

 Mit der Umsetzung der Rahmenrichtlinie für Sicherheit und Gesundheitsschutz bei der Arbeit im Jahr 1989 begann die Regulierung auf EU-Ebene. Seitdem folgten viele weitere Rechtsakte und politische Maßnahmen, die das komplexe europäische Rechtsinstrumentarium und den Schutz der Gesundheit und Sicherheit am Arbeitsplatz bereichern. Allen gemeinsam ist jedoch der Ansatz, dass nur Ereignisse, die den Arbeitskräften am Arbeitsplatz, während der Arbeitszeit und/oder aufgrund ihrer Arbeitsaufgaben zustoßen, als Auswirkungen auf die Sicherheit und den Gesundheitsschutz bei der Arbeit bezeichnet werden können und daher rechtlich problematisiert und bekämpft werden müssen. Im vorliegenden Beitrag wird argumentiert, dass ein solcher Ansatz für einen Sektor wie die europäische Landwirtschaft die zunehmend auf ausländische Saisonarbeitskräften setzt, unzureichend ist. Wie wissenschaftliche Erkenntnisse zeigen, sind diese in der Landwirtschaft mit einer Reihe zusätzlicher schwerwiegender Gesundheits- und Sicherheitsrisiken konfrontiert, die direkt mit ihrer Arbeit zusammenhängen. Sie fallen nicht unter die klassische Definition von Sicherheit und Gesundheitsschutz bei der Arbeit. Von unzureichenden und minderwertigen Unterkünften bis hin zu Isolation und fehlendem Zugang zu lebenswichtigen Dienstleistungen sind diese Menschen bei ihrer Arbeit starken gesundheitlichen Belastungen ausgesetzt. Der Sektor braucht dringend ein neues und ehrgeizigeres Konzept für Sicherheit und Gesundheitsschutz bei der Arbeit, um Rechtsvorschriften und/oder Maßnahmen zu entwickeln, die den Bedürfnissen aller Arbeitskräfte, einschließlich der Migrantinnen und Migrantinnen, gerecht werden.

summary