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# **ARE AGRI-FOOD WORKERS ONLY EXPLOITED IN SOUTHERN EUROPE?**

**CASE STUDIES ON MIGRANT LABOUR  
IN GERMANY, THE NETHERLANDS, AND SWEDEN**

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**Cover photo:** A foreign guest worker pushes a wheel barrow as green asparagus shoots sprout from the ground on a farm in Beelitz, Germany, on 29 May 2018.

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# INTRODUCTION

In 2018, the Open Society European Policy Institute (OSEPI) and the European University Institute's (EUI) Robert Schuman Centre for Advanced Studies published an exhaustive report entitled "Is Italian Agriculture a "Pull Factor" for Irregular Migration – And, If So, Why?"<sup>1</sup> which analysed the drivers underlying the demand for undeclared and exploitative migrant labour in the agricultural sector in Italy. The study also looked at similar dynamics in Greece and in Spain.

The report highlighted the multiple pressures on the agri-food system resulting from the restructuring of value chains and the interplay of factors pushing farmers to recruit migrant workers irregularly, profiting from their condition of vulnerability. The study focused on the dynamic relationship between the socio-economic context and relevant European Union (EU) and national policies, including those on migration, asylum and labour mobility, together with the EU Common Agricultural Policy (CAP).

However, sub-standard working conditions and the exploitation of migrant workers are by no means confined to Southern Europe. In recent years, several studies have reported on sub-standard and even abusive working conditions that migrant workers experience in Northern EU member states, especially in sectors such as agriculture and food production.<sup>2</sup>

This report therefore focuses on agri-food production in Germany, the Netherlands and Sweden. These three member states also host some of the retail giants with key roles in value chain dynamics. Furthermore, over recent years national policies in these countries have paid attention to the role of migrants in the labour market and to their social inclusion in rural areas.

*The research on which this report and the accompanying policy brief are based was carried out in late 2019 and early 2020, before the outbreak of COVID-19. An update on the impact of the pandemic is being released alongside these two publications.*

# AIM OF THE STUDY AND METHODOLOGY

The aim of this study is to highlight the extent to which migrant labourers<sup>3</sup> experience sub-standard and exploitative working conditions in agri-food production in Germany, the Netherlands and Sweden. Along the lines of the first report, the study also seeks to unpack the interplay of factors underlying or contributing to the demand for low-paid, flexible and exploitative labour in this sector. These factors include the impacts of: EU and national policies on labour mobility, migration and asylum; supply chain dynamics; labour market policies; the CAP and national policies on agriculture and rural development; policies to fight and prevent trafficking and labour exploitation; and additional drivers identified in the different countries. The report also reviews relevant good practices (e.g. protection of victims of exploitation and abuse; promotion and protection of workers' rights; labour intermediation and recruitment; food chain

transparency) which have the potential to be scaled up to the EU level.

In line with other studies, we consider exploitation to be a continuum<sup>4</sup> that covers a spectrum ranging from relatively less severe forms, which may fall under civil/labour law, to situations which may amount to forced labour, slavery or trafficking and accordingly fall under criminal law, as per the framework used by the EU Fundamental Rights Agency.<sup>5</sup>

The study is based on a review of relevant academic literature, reports, policy and legal texts, and 28 follow-up qualitative interviews with relevant stakeholders (e.g. policy-makers, experts and members of trade unions and organisations supporting migrant workers) at the national and European levels.

# GERMANY

## 1. INTRODUCTION

Germany is one of the world's top agri-food exporting nations, ranking third after the United States and the Netherlands. Its domestic production and trade system is strongly influenced by a relatively small number of powerful retail companies. Foreign workforces have been a feature of German agriculture for more than 200 years, particularly for seasonal harvesting work. Even during periods of high overall unemployment and despite state incentives for job-seekers, agricultural workers in agriculture has never been an attractive option for Germans, as very few are willing to do the demanding physical work for relatively low wages.<sup>6</sup> Since the 1980s, the meat industry has similarly become more dependent on foreign labour. Despite the introduction of a minimum wage in 2015, the sector continues to be characterised by a secondary labour market prone to undeclared work, precarious employment and various forms of exploitation.

## 2. FACTORS DRIVING SUB-STANDARD AND EXPLOITATIVE PRACTICES IN THE AGRI-FOOD SYSTEM

In 2016, more than 940,000 people worked for a total of 275,392 agricultural enterprises in Germany. More than half the workers were family members, the majority of whom worked part-time and another 204,600 were permanent employees. The seasonal workforce totalled 286,300. The majority of the workers in all the subgroups were male (64%). However, among the seasonal workers the ratio was much more balanced: 55% male and 45% female (Table 2).<sup>7</sup>

Regarding non-seasonal positions, the shares of foreigners (EU and non-EU nationals) were 24.2% in agriculture and related economic activities, 17.3% in forestry and logging, 33.0% in meat production and 20.6% in landscape and garden service activities.<sup>8</sup> At the same time, foreigners were significantly over-represented among those working through temporary agencies and employee leasing in the corresponding occupational sectors.<sup>9</sup>

## 2.1 Trends and patterns in agri-food migrant labour

As most seasonal work remains unrecorded in labour market statistics, there is a clear lack of relevant data on seasonal workers.<sup>10</sup> In the past 20 years, the annual total number of seasonal workers has ranged around 300,000, with a recent downward trend. Between 1991 and the early 2000s, Polish seasonal workers constituted the vast majority of foreign

seasonal workers in Germany. However, from 2006 their share rapidly decreased to about 60% in 2010 while the share of workers from Romania increased from about 8% in 2004 to nearly 35% in 2010 (Table 1),<sup>11</sup> when the two countries supplied nearly 95% of the total workforce. The other 5% came from other South-East European countries such as Bulgaria, Croatia, Hungary and Slovakia.

**TABLE 1**

Shares of total seasonal worker permits issued by country of origin, 2004-2011 (percentages)

	2004	2005	2006	2007	2008	2009	2010	2011
<b>Poland</b>	85.9%	84.7%	77.9%	76.4%	68.1%	63.6%	60.3%	-
<b>Romania</b>	8.2%	10.0%	16.9%	19.0%	26.8%	31.7%	34.7%	93.5%
<b>Other</b>	5.9%	5.3%	5.2%	4.6%	5.1%	4.7%	5.0%	5.6%

Source: calculations based on Federal Ministry of the Interior.<sup>12</sup>

**TABLE 2**

Gender distribution among the seasonal workforce in German agriculture (absolute numbers and percentage shares)

	2010		2013		2016	
<b>Male</b>	180,900	54.7%	166,400	52.9%	156,900	54.8%
<b>Female</b>	149,600	45.3%	147,900	47.1%	129,400	45.2%
<b>Total</b>	330,500	100.0%	314,300	100.0%	286,300	100.0%

Source: calculations based on Federal Statistical Office.<sup>13</sup>



## BOX 1: AVOIDING SOCIAL SECURITY CONTRIBUTIONS IN TIMES OF GROWING WAGE COSTS. HOW EMPLOYERS CAN CUT PAYROLL EXPENSES

According to the German Social Code, marginal employment (i.e. less than 70 days or 3 months in a calendar year) can be exempt from mandatory social security contributions. Employment of seasonal migrant workers almost entirely relies on this “70-day regulation.”<sup>14</sup> However, the job must not be occupational in the sense that it constitutes the core of the working person’s income. Otherwise, contributions to the social insurance system of the worker’s country of origin become mandatory.<sup>15</sup> Experts assume that a significant number of cases would actually have to be subject to contributions.<sup>16</sup> While the exemption from obligatory contributions appears to be a win-win for farmers and workers, the risk is on the employer, as contributions can be claimed retroactively for the previous 4 years.<sup>17</sup> Furthermore, when employees overstay the registered 70 work days, they miss out on their potential right to a pension in Germany, as contributions due to the pension fund are not paid.

As for the German meat industry, posted contract work has become the standard operating procedure for recruiting manual labour in the past 15 years.<sup>18</sup> Following scandals and a public debate over wage dumping and sub-standard labour conditions, the competent trade union for the food-producing sectors (*Gewerkschaft Nahrung-Genuss-Gaststätten*, NGG) succeeded in negotiating a sector-specific collective bargaining agreement, which established generally applicable wages, also binding subcontracting firms outside of Germany.<sup>19</sup> In 2015, some contracted jobs in the meat industry were transformed into regular employment. The total number of employees in meat processing increased until June 2018. The largest nationality groups among the 51,400 foreign workers in 2018 were Romanians (22,400) and Poles (8,500).<sup>20</sup> The 2017 Act to Safeguard Labour Rights in the Meat Industry introduced a general liability for contractors to pay social security contributions and explicitly prohibited charging workers for the necessary tools and safety gear.<sup>21</sup> However, subcontracting remains a standard way of employing much of the labour in meat production, with thousands of workers and facing a high turnover.<sup>22</sup>

Studies assume that agriculture is among the top sectors in which extreme forms of labour exploitation occur in Germany.<sup>23</sup> While in very few incidents exploitation in this sector involves slavery-like relationships or trafficking, there are a number of completed or ongoing trials involving systematic forms of labour exploitation.<sup>24</sup> In more than simply isolated cases, the employer withholds migrant workers’ passports.<sup>25</sup> In some cases, harvest workers are employed on the basis of oral agreements. Those who sign a written contract at the beginning of the engagement often do not understand the content properly as it is in German, and neither do they always receive a copy.<sup>26</sup>

In particular, as is also highlighted in the case studies on the Netherlands and Sweden, if recruitment agencies are involved (with some of them charging excessive fees), the risks seem to be bigger as workers are bound to package deals and a single employer, which creates a situation of dependency. Frequently, timesheets are filled out by the employer or a foreperson but never shown to the workers, who consequently receive payment based on a reduced hour count.<sup>27</sup>

Employers tend to deduct the maximum amount possible for sometimes sub-standard facilities or low-quality food that even constitute health risks. Many outsource food and lodging to a service provider (which may be a local partner or a family member) as this makes it possible to charge higher prices to the workers.<sup>28</sup> Employers also charge for protective clothing and the use of machinery or essential tools.<sup>29</sup> Moreover, workers are fined for missing work or for allegedly damaging machinery.<sup>30</sup>

As in Southern European countries, conditions in the fields are often dire due to extreme weather, in addition to the arduous bending or kneeling. While some workers have adequate living standards, others still have to live in containers or makeshift housing, some of them in deplorable conditions. These sub-standard living conditions for seasonal agricultural workers can be considered a structural feature in Germany, as they are all around Europe.<sup>31</sup>

## 2.2 Value chain dynamics

The German food retail market is characterised by strong competition and oligopolistic tendencies. Discount and supermarket chains have obtained unprecedented market power. Currently, four retailers (EDEKA, REWE, Aldi and the Schwarz group) make up more than 85% of the food retail market.<sup>32</sup> Price wars and discount battles between competitors result in relatively low price levels for meat, dairy products, vegetables and fruit compared to the rest of the EU.<sup>33</sup> Retailers are often organised in cross-border operating alliances (international buying groups, IBGs) that bundle procurement and so are able to drive down prices by up to 10%.<sup>34</sup>

As a result, domestic producers have limited leeway to increase prices on wholesale markets.<sup>35</sup> The introduction of the minimum wage in 2015 has further affected the profit margin for agri-food producers. The case of the German asparagus economy (see Box 2) is emblematic in this regard. In the meat industry, the minimum wage has reduced the profit margin for producers, as the price level for meat has remained stable.<sup>36</sup>

### BOX 2: FOREIGN WORKERS AS AN INDISPENSABLE PILLAR OF THE GERMAN ASPARAGUS ECONOMY

Asparagus is by far the most labour-intensive culture in Germany. In 2018, a total of 23,400 hectares were farmed with asparagus, resulting in a harvest of 133,000 tonnes.<sup>37</sup> For the past 25 years, seasonal workers from Central and Eastern European countries have been an indispensable workforce, particularly for cultures in Brandenburg, where the crop size increased exponentially – “thanks to the Poles.”<sup>38</sup> Following the introduction of a minimum wage in 2015, farmers have to pay 7.40 euros (Western Germany) and 7.20 (Eastern Germany) an hour, while before they typically paid between 4 and 5 euros an hour. Considering that about half the costs of production are labour costs,<sup>39</sup> and that there is hardly any margin for higher prices, some farmers over-produced and started to shut down parts of their businesses. At the same time, it has become more difficult to hire workers and the industry has lobbied strongly for government measures which would allow them to recruit from third countries.<sup>40</sup>

Moreover, challenges result from the massive cost differentials between EU member states, particularly neighbouring ones, as is illustrated by an example brought up by a blueberry cultivator in Brandenburg. While he has to pay the German minimum wage of roughly 9 euros to his employees, the minimum wage

on Polish blueberry fields 50 kilometres to the East is less than a third.<sup>41</sup> This seems to be in line with some reflections provided in a study on Italy which highlight that employers in that country complain about lower wages in Spain.<sup>42</sup>

### BOX 3: POLICY INITIATIVES FOR FAIR PRODUCTION AND LIABILITY ACROSS THE SUPPLY CHAIN

Since December 2019, the Federal Minister of Labour and Social Affairs and the Federal Minister for Economic Cooperation and Development have advocated supply chain legislation which would put German companies producing abroad under an obligation to ensure good working conditions.<sup>43</sup> In January 2020, an initiative by the Ministry of Development, the German Development Agency (*Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH*, or GIZ) and seven major retailers was launched seeking to abolish child and forced labour while ensuring human rights and fair living wages. This includes full transparency throughout the supply chain.<sup>44</sup> Furthermore, the ministers stressed the importance of a binding law that provides for sanctions since voluntary actions by retailers will not achieve the ultimate goal of “100 percent fair” supermarkets.<sup>45</sup>

## 2.3 Recruitment practices

After the EU’s Eastern enlargement, the focus of recruitment shifted towards Romania and the role of agencies increased. Recruitment agencies sometimes charge between 200 and 300 euros for a successful referral and bind workers to a group for which they arrange transportation and lodging. Cases have been reported in which migrant workers have to continuously pay fees which are deducted from their remuneration. At times, workers refrain from organising and claiming their rights as they fear repercussions by recruitment agencies. There have been accounts of agencies banning whole families or even whole villages from new referrals for work.<sup>46</sup> In 2016, the Federal Criminal Police uncovered a highly professional organised criminal system of labour exploitation in which an agency recruited Ukrainian citizens with false promises and sent them via Poland to work in exploitative conditions in various German businesses, including agri-food firms, with forged Romanian passports. Some of the workers were

threatened, beaten, accommodated in deplorable conditions and forced to work, while wages were withheld or cut to a sub-standard minimum.<sup>47</sup> Due to the risks, the German Horticultural Association (*Zentralverband Gartenbau e. V.*, ZVG) advises its members not to work with agencies.<sup>48</sup>

Facing a scarcity of potential workers, employers with a sustainable strategy and a good network aim to recruit independently by offering work to labourers from previous years.<sup>49</sup>

It has been reported that job-seekers (including undocumented migrants and refugees registered in other EU countries engaging in so-called secondary movements) are sometimes present in rural areas and ask for work on farms. Only in isolated cases, e.g. in apple and cherry-picking, have these groups been reported working in German agriculture<sup>50</sup> and this type of irregular employment does not seem to be a conspicuous phenomenon.<sup>51</sup>

An increasing presence of Ukrainian and Albanian student interns has been noticed on German fields. These students receive a residence permit, do not have to be paid the minimum wage and are prone to wage dumping and other forms of exploitation.<sup>52</sup> As it is effectively impossible for the authorities to inspect the students' academic documents, unlawful employment is hard to prove.<sup>53</sup>

### **3. DEMAND MEETS SUPPLY: MATCHING EMPLOYMENT NEEDS AND MIGRANT LABOUR**

#### **3.1 The impacts of migration and asylum policies**

Most labour migration options in Germany, which are generally rolled out through ordinances rather than as wholesale legislation, concern low-skilled occupations and sometimes particular countries of origin. These legal pathways may be one of the reasons why undocumented labour migration has remained at a moderate level in Germany. Furthermore the Eastern enlargement of the EU in the 2000s guaranteed a pool of potential migrant workers due to huge wage differentials and the prospect of free mobility.

According to the Employment Ordinance, the precondition for the admission of seasonal workers from third countries is the existence of bilateral agreements between the German Federal Employment Agency and the labour administration of the third country in question. On provision of a work contract, a residence permit for up to six months can be issued. At the time of writing, no such agreements are in place. Following complaints of a lack of seasonal workers and intense lobbying

by agricultural associations,<sup>54</sup> in 2019-2020 negotiations have been underway with a number of third countries, in particular those whose citizens have visa-free access to the EU, including Ukraine, Georgia and some Balkan states.<sup>55</sup> However, trade unions have criticised the prospect of new bilateral agreements as the workforce from third countries is not only cheaper but also more prone to exploitation.<sup>56</sup>

In addition, agreements on temporary employment through service contracts (*Werkvertrag*) for persons without vocational training are currently in force with partner countries such as Bosnia-Herzegovina, North Macedonia, Serbia and Turkey. The agreements contain employment quotas and allow for a maximum stay of two years in certain occupations in the manufacturing of basic metals and construction.<sup>57</sup> However, the annual number of contracted workers is modest. In 2019, 1,749 people from Bosnia-Herzegovina, 3,288 from Serbia, 196 from North Macedonia and 1,653 from Turkey worked in Germany on service contracts.

In 2015, Germany introduced a pathway into employment for citizens from six Western Balkan states<sup>58</sup> to reroute irregular migration and unfounded asylum applications into a regular channel. Until the end of 2020, nationals from these countries can obtain residence permits for any type of work they wish to take up in Germany if they can present a valid job offer irrespective of their skill level. The Federal Employment Agency has to give approval after a labour market test (a priority check and an examination of working conditions under the contract). Although no reliable data exist, consultation services doing field visits have encountered only small groups of seasonal workers from Serbia and Montenegro.

## BOX 4: REFUGEES AS A PANACEA FOR LABOUR DEMAND IN RURAL AREAS?

Since November 2014, asylum seekers have been allowed to work in Germany after three months. A 2016 Integration Law introduced measures on labour market integration, access to language courses and a system of mandatory residence (in the federal states in which the asylum procedure is pending), including for beneficiaries of international protection when they are dependent on welfare services.<sup>59</sup> This measure countered the tendency of refugees to move to large cities and tried to respond to labour demand in rural areas. Within this framework, three regional chambers of agriculture participate in a federal programme which deploys Referral Officers (*Willkommenslotsen*) to provide tailored placement services. The Federal Association for Horticulture employs seven officers across the country for this purpose and they have already referred several hundreds of refugees.<sup>60</sup> In addition, there are a number of regional projects which are also co-funded by the European Agricultural Fund for Rural Development. It is worth noting that asylum seekers are rarely encountered in harvesting and meat processing<sup>61</sup> as they seem to prefer other sectors. The Ministry of Agriculture does not consider marginal employment such as harvesting an appropriate way to integrate refugees.<sup>62</sup> However, regular employment is often associated with bureaucratic hurdles,<sup>63</sup> including in agriculture.<sup>64</sup>

### 3.2 Policies against labour exploitation

Although labour violations in the agricultural sector are frequently mentioned in reports by the German Federal Criminal Police Office (*Bundeskriminalamt*), the number of cases in which charges are pressed or perpetrators are sentenced for labour exploitation is fairly small, suggesting that unreported incidents are widespread.<sup>65</sup>

The main enforcement authority is the Customs Unit for the Financial Control of Undeclared Employment (*Finanzkontrolle Schwarzarbeit, FKS*).<sup>66</sup> While the FKS should perform workplace inspections in all sectors of the economy, its focus is on those with a high propensity for irregularity, i.e. construction, restaurants and hotels. According to data from 2015 to 2018, the FKS inspects an average of 887 agri-food companies a year.

Labour safety authorities in the 16 federal states (*Laender*) are another official body tasked with identifying exploitation and situations of abuse or endangerment. They have to safeguard workplace security and public health in compliance with

the Labour Protection Act and the Workplace Ordinance.<sup>67</sup> This is a crucial task regarding the agricultural sector as it is the one with the highest rate of work-related accidents.<sup>68</sup>

With regard to transparency and fair-trade efforts in Germany, there are several organic and fair trade quality certificates (labels). However, the certifying organisations for organic produce in Germany do not cover labour conditions. More than ten years ago, an initiative supported by a trade union attempted to establish a label for German farmers who provide seasonal workers with fair conditions, but this was unsuccessful.<sup>69</sup>

### 3.3 The EU CAP and national agricultural and rural policies

In public debates in Germany – as in other member states (such as Italy and Spain) – there is considerable demand for agricultural sector reform at the national and European levels, including as regards the EU CAP. However, hardly any arguments relate directly to labour conditions and workers' rights.

The agricultural industry has become a business for holdings without a history of farming, and land prices have steadily increased (by 170% between 2005 and 2018). Small- and medium-sized farms are being replaced by large enterprises, with a negative impact on the number of available jobs.<sup>70</sup> This is counter to the federal government's policy goals for rural development (i.e. diversified ownership of land, priority for individual farmers in acquiring land and avoidance of dominant market positions).<sup>71</sup> It is also widely assumed that smaller agri-food businesses with diversified cultures in Germany are more likely to treat workers fairly, unlike in other member states such as Italy.<sup>72</sup>

While the EU as the regulator of fertilisers and crop-protection substances has only defined minimum standards in the use of these products, the federal government has chosen to implement stricter standards regarding the substances and quantities allowed.<sup>73</sup> Professional associations and producers have criticised this, referring to market disadvantages for German farmers. Any increased production costs may therefore be passed on to employees.

In December 2019, the federal government organised a summit with stakeholders to discuss the future of agriculture in Germany. Recommendations included: setting up a Commission on the Future of Agriculture; addressing the issue of price dumping for groceries (e.g. meat products) and the consequences for family farming; transposing the EU Directive on Unfair Trading Practices;<sup>74</sup> and working towards ratification of the Mercosur Agreement provided that all parties safeguard the binding rules with regard to labour, the environment and climate.<sup>75</sup>

The Federal Minister of Food and Agriculture calls on consumers to pay higher prices to ensure higher standards, but the consumer rights organisation Foodwatch takes the position that a new agricultural system will not be accomplished by "consumer bashing."<sup>76</sup> German consumers are generally not willing to pay higher prices to achieve better animal welfare and environmental and climate protection. This could be due to widespread scepticism over German agriculture's capacity to improve standards and to the limited number of suppliers.<sup>77</sup>

## 4. GOOD PRACTICES

Following a proposal by the German Trade Union Confederation (*Deutscher Gewerkschaftsbund*, DGB), in 2011 Germany established a system of counselling, support, mediation and awareness-raising services for migrants and the general public. At the federal level, the DGB has launched a counselling programme named "Fair Mobility" (*Faire Mobilität*) with nine local branches, which assists in the enforcement of fair wages and working conditions for migrant workers from Central and Eastern European countries. A specialised section for agriculture is being planned.<sup>78</sup>

At the federal level, the Office for the Equal Treatment of EU Workers is currently developing a "Project Case Book" primarily targeting mobile EU workers. Among other sectors, the guidebook will include seasonal work in agriculture and employment in the meat industry. It will provide workers with practical advice on possibilities to fight exploitation and access remedies for withheld payments.<sup>79</sup>

The Industrial Union for Building, Agriculture and Environment (*Industriegewerkschaft Bauern-Agrar-Umwelt*, IG BAU), the competent trade union in the agriculture sector, has developed a web application named "Agriworker."<sup>80</sup> This is a low-threshold approach providing seasonal migrant workers with up-to-date information on their rights and support services. In various languages, the project targets workers in Austria, Denmark, Germany and Poland. In January 2020, IG BAU introduced a tailored "package" membership model to serve the needs of seasonal workers in agriculture, including legal support for migrant workers.<sup>81</sup>

In addition, new inter-institutional cooperation practices between the FKS Unit of the Central Customs Authority, DGB and various authorities at the federal, state and municipal levels have been launched in order to achieve better mutual understanding of priorities and develop more structured cooperation to tackle labour exploitation.<sup>82</sup>

## 5. CONCLUSIONS AND RECOMMENDATIONS

The ever-growing power of large retailers and buying groups puts extreme price pressure on producers. On the other hand, in the absence of a sufficient domestic labour force, German employers (like employers in other member states, e.g. Italy, Spain and the Netherlands) have turned to an agricultural reserve army from low-wage countries in the EU. The rate of trade unionisation of these workers is low, meaning that working conditions tend to be opaque and kept out of the public eye. Migrant workers tend to have little knowledge of their rights and insufficient command over the German language to empower themselves.

At the structural level, the German federal government should strive to implement the 2019 EU Directive on unfair trading practices in a way that protects farmers from harmful price pressure exercised by retail chains, thereby contributing to improving labour conditions in agri-food production.

Increasing inspections and controls through law enforcement agencies and regulatory authorities has been identified as a major tool to prevent and tackle abusive practices in the agri-food production sector. In order to ensure efficient inspections, the staff of enforcement agencies has to be increased in size and they should be properly trained. The institutional and legal capacities of labour inspectorates at the federal level (Customs and Financial Control Authority) and

at the regional level (State Labour Safety Authorities) should be bolstered, including as regards providing assistance to workers to ensure respect for their rights.

In order to increase the trustworthiness of businesses and to make them more attractive to seasonal workers, agricultural umbrella associations should define their control mechanisms and set common standards, such as providing workers with contracts in their mother tongues, recording daily working hours in a transparent way, charging fair prices for food and lodging, and allowing unions unfettered access to their fields.

Organic and fair-trade labels regulated by the state would require a better and more strategic linkage between agricultural, labour and environmental policies. Private associations and professional organisations representing organic farmers should also consider including labour rights in their standards as environmentally conscious consumers might generally be more aware of labour rights.

Finally, through cooperation between employers' associations or regional labour market agencies and labour administrations in countries of origin, more transparent and standardised recruitment channels should be established. In order to increase seasonal workers' knowledge of their rights and duties under European and national law, publicly funded counselling services could develop curricula for pre-departure courses.

# THE NETHERLANDS

## 1. INTRODUCTION

The high productivity of Dutch agriculture goes hand in hand with high risks for migrant farmworkers. The Dutch Labour Inspectorate (*Inspectie Sociale Zaken en Werkgelegenheid*, ISZW) considers agriculture in the world's second largest agricultural exporter one of the top risk sectors for unfair work. In Dutch agriculture, "a flexible contract with a low wage and little certainty is the rule rather than the exception and employment agencies, contracting and payrolling are also widely used" as a result of efforts by growers "to keep prices low by reducing labour costs with all kinds of mechanisms to below the legally required minimum or collective wage."<sup>83</sup> Consequently, many migrant farmworkers in this rich country experience working poverty. Migrant workers from Central and Eastern Europe (CEE)<sup>84</sup> form the bulk of the agricultural labour force. About a fifth of them work at or below the minimum wage, earning an average of ten euros an hour, half the wage of other European workers employed in the Netherlands.<sup>85</sup>

## 2. FACTORS DRIVING SUB-STANDARD AND EXPLOITATIVE PRACTICES IN THE AGRI-FOOD SYSTEM

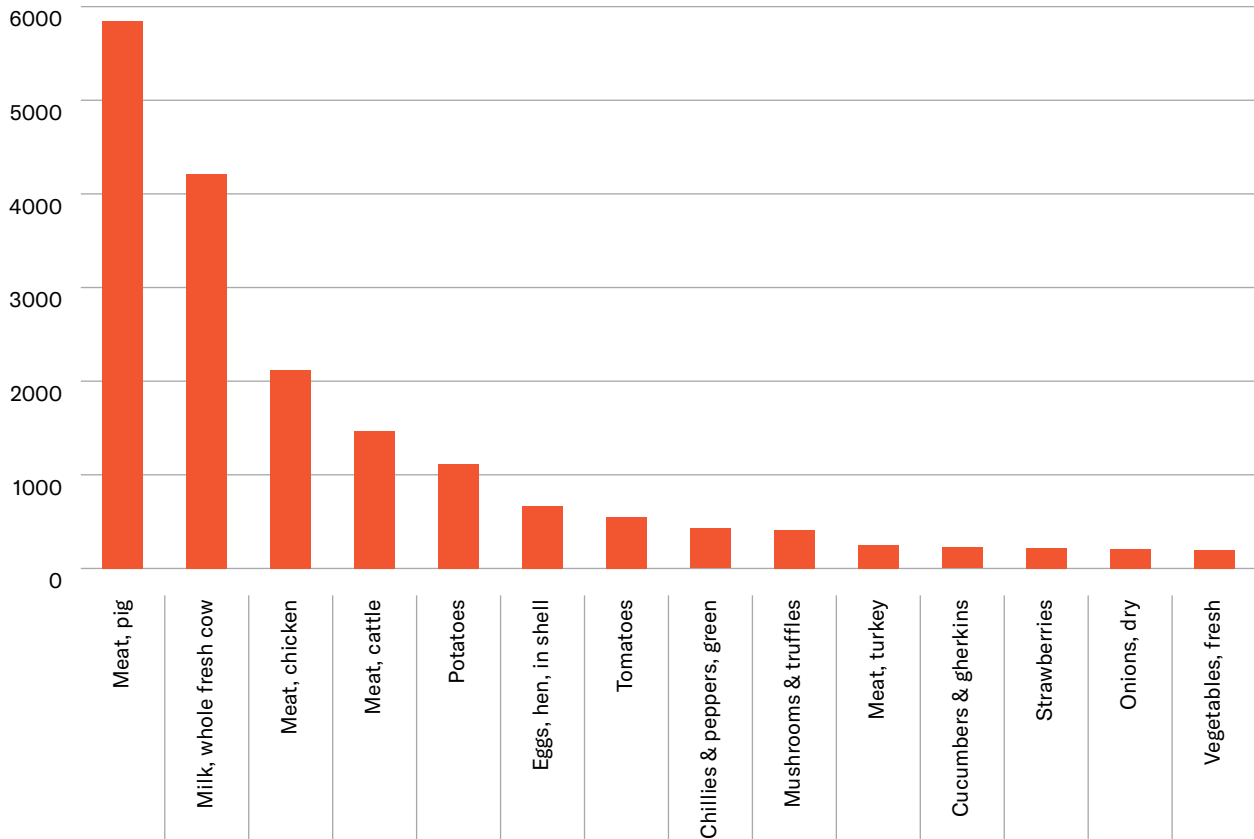
### 2.1 Trends and patterns in agri-food migrant labour

With a 7% share of Gross Domestic Product (GDP), agriculture has remained a significant sector in the Netherlands. Dairy and meat production have dominant roles in agricultural output (Figure 1). Horticultural production of flowers and vegetables is crucial for price-competitive exports and is characterised by a high labour intensity, with the workforce largely composed of migrant workers. For this reason, this section of the report focuses especially on employment in horticultural production, but recognises the incidence of similar unfair labour practices in other sectors, such as the meat industry.<sup>86</sup>



**FIGURE 1**

Gross production value by main agricultural product, 2016 (million euros)



Source: FAOSTAT.<sup>87</sup>

Migrant labour has long been a structural component of the Dutch agricultural industry, with CEE migrants becoming the predominant migrant labour force after the EU expansions in 2004 and 2007.<sup>88</sup> Recruitment agencies and agriculture are identified as the top employers of CEE migrants<sup>89</sup> with estimates of about 275,000 and 49,000 jobs respectively. According to official statistics, Polish

farmworkers form a third of the agricultural labour force.<sup>90</sup> Recently, the migrant agricultural labour supply has shifted further East,<sup>91</sup> i.e. Romania and Bulgaria, probably as a result of difficult work and low wages.<sup>92</sup> Male migrant workers represent a slight majority in agriculture, with the share of female farmworkers ranging from 36% (Polish nationals) to 20% (Romanian migrants).

**TABLE 3**

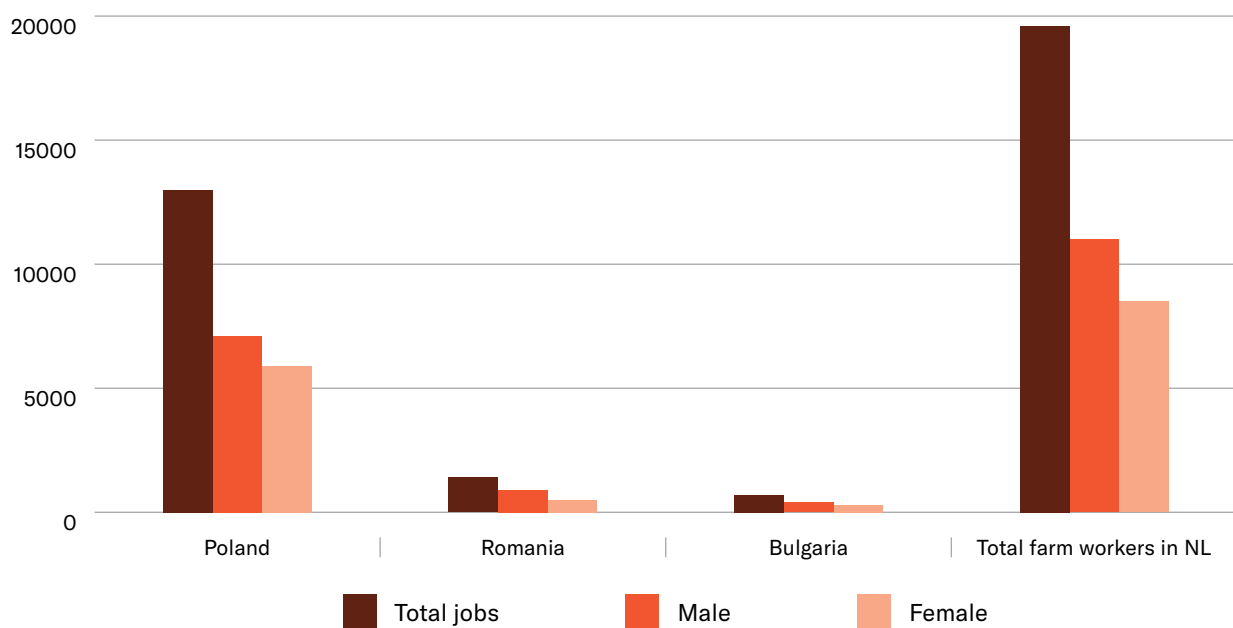
Migrant employment in agriculture by main countries of origin, 2017 (thousands)

	POLAND	ROMANIA	BULGARIA	TOTAL FARM WORKERS IN NL
<b>Total Jobs</b>	<b>13.0</b>	<b>1.4</b>	<b>0.7</b>	<b>19.6</b>
% Registered	32.3%	21.4%	28.6%	41.3%
<b>Male</b>	<b>7.1</b>	<b>0.9</b>	<b>0.4</b>	<b>11.0</b>
% Registered	29.6%	22.2%	25.0%	39.1%
<b>Female</b>	<b>5.9</b>	<b>0.5</b>	<b>0.3</b>	<b>8.5</b>
% Registered	35.6%	20.0%	33.3%	44.7%

Source: CBS.<sup>93</sup>

**FIGURE 2**

Migrant employment in agriculture by main countries of origin, 2017



Holding EU citizenship rights does not prevent a high degree of precariousness among CEE migrant workers. Precarious work is characterised by a range of labour-related insecurities,<sup>94</sup> including employment and income insecurity due to zero-hour employment contracts with recruitment agencies.<sup>95</sup> The physically demanding work comes with health hazards (e.g. exposure to chemicals in greenhouses) or work insecurity, while workers are threatened with dismissal when they request sick leave.<sup>96</sup> With possibilities for training being rare, skill reproduction insecurity is high too. Last but not least – as is also highlighted in a study on Italy (especially with regard to Romanian workers) – low trade union membership among migrant workers in agriculture<sup>97</sup> and some growers' efforts to prevent unionisation<sup>98</sup> result in CEE migrant workers lacking a collective voice in the labour market and therefore representational security.

Most of the complaints about severe violations of labour rights that FairWork – an organisation fighting labour exploitation in the Netherlands – receives from the agricultural sector do not involve labour exploitation and human trafficking as defined in the relevant national, EU (e.g. Employer Sanctions Directive 2009/52/EC<sup>99</sup>) or international frameworks (e.g. the 2000 UN Protocol to the UN Convention on Transnational Organized Crime<sup>100</sup>). Rather, these complaints stem from EU migrants being employed through recruitment agencies. This can be described as a sort of “regulated precariousness” deriving from an “agency contract that puts people in a highly dependent position and which people are often unaware of at the time they come to the Netherlands, and that gives them virtually no rights.”<sup>101</sup>

## **BOX 5: THE IMPACT OF TECHNOLOGICAL INNOVATION ON LABOUR CONDITIONS**

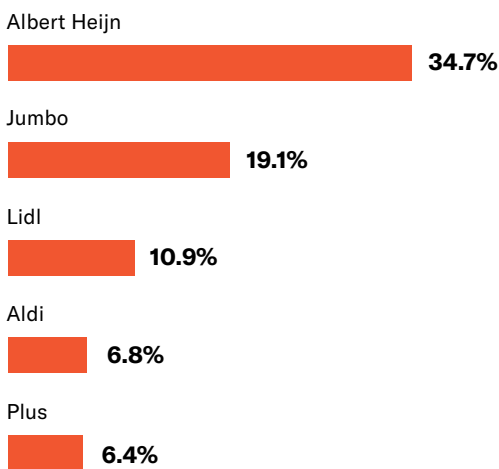
Being among the forerunners in the field of innovation in agricultural technologies, the Netherlands has been referred to as the Silicon Valley of agriculture.<sup>102</sup> The impact of such innovation has been ambiguous.<sup>103</sup> For instance, a shift in strawberry cultivation from open fields to greenhouses enables all-year production, potentially providing workers with more stable incomes and a reduction in the time spent working outdoors in difficult weather conditions. However, the downside of these improvements may be fewer overtime payments and harsher conditions in terms of heat and humidity in the greenhouse. In addition, technological upgrading of the agricultural production process is more likely to lead to more precarious conditions in terms of high labour intensity and income insecurity.<sup>104</sup>

## 2.2 Value chain dynamics

In the hourglass-shaped agri-food chain in the Netherlands, a highly concentrated group of retailers wields significant power over both a large number of farmers and millions of consumers.<sup>105</sup> The five largest supermarkets in the Netherlands – Albert Heijn, Jumbo, Lidl, Aldi, Plus – hold a combined market share of 78% (Figure 3).

### FIGURE 3

Main supermarket market shares, 2018 (%)



Source: Distrifood.<sup>106</sup>

As in Germany, the power of supermarkets is compounded by the role of international buying groups (IBGs) which “coordinate procurement across borders to obtain the lowest possible prices for well-known brands and/or basic private label groceries.”<sup>107</sup> Several retailers participate in one or more of these IBGs. Aldi and Lidl are notable exceptions. They can be considered IBGs in their own right as to a large extent they centralise their procurement internationally.<sup>108</sup>

Dutch retailer participation in IBGs exacerbates the financial power they wield with regard to negotiating lower prices with food producers/distributors as they can resort to competitive tenders not just domestically but internationally. This enables them to unilaterally impose practices that “grossly deviate from good commercial conduct, good faith and fair dealing,”<sup>109</sup> such as retroactive delisting of suppliers unless they offer price discounts. While pushing for economies of scale in agriculture, IBGs can escape taxation through cross-border schemes.<sup>110</sup> As is also stressed in the case studies on Germany and Sweden as well as those on Southern European countries,<sup>111</sup> the downward price pressure means that growers employ all available methods to survive, including a dependence on low wages and insecure contracts for migrant workers.<sup>112</sup> These detrimental effects of retail concentration on workers seem to be permitted under current competition law “[a]s long as consumers benefit from the lower resulting prices.”<sup>113</sup>

Until recently, the Dutch (and EU) agricultural supply chain was governed by the Principles of Good Practice set forth in the Supply Chain Initiative (SCI),<sup>114</sup> which, however, has no enforcement powers and espouses voluntary training and dispute resolution through internal processes.<sup>115</sup> Importantly, the Dutch government has recently proposed a national regulation to transpose the EU Directive on unfair trading practices.<sup>116</sup>

Dutch suppliers, IBGs and industry groups reject assertions that they engage in unfair trading practices.<sup>117</sup> In contrast, the Dutch Arable Farmers Union (*Nederlandse Akkerbouw Vakbond*, NAV) has highlighted “that about three-quarters of the affiliated farmers had experienced unfair commercial practices.”<sup>118</sup>

Civil society organisations such as Oxfam Novib and SOMO suggest that existing legislation is insufficient to protect national, EU and extra-EU suppliers<sup>119</sup> and are also concerned about the ability of the inspection mechanism to track and efficiently respond to complaints.<sup>120</sup>

## 2.3 Recruitment practices

As in Germany and Sweden, indirect recruitment enables growers of horticultural products to pass on downward price pressures to a flexibly employed and poorly paid migrant workforce. This includes posted workers and hiring through agencies which act as subcontractors to growers.

According to the 1999 Flexibility and Security Act, a worker's contract with an employment agency is a regular contract with the exception of the first 26 weeks. Employers are allowed to deviate from the legal rules through a collective bargaining agreement (CBA). The two CBAs that govern such agency contracts distinguish different phases: during the first phase, the contract may be terminated at any time and workers are only paid for hours worked, while workers in the second phase must be offered a permanent contract and receive payment even if there is no work for them.<sup>121</sup> Agriculture tops the list of sectors with flexible employment relations in the Netherlands.<sup>122</sup> In 2017-2018, a total of 184,000 migrants were made available to the Dutch labour market through the two main employment agencies' associations. 72.8% of the workers were Polish and 46% worked in the food industry, greenhouses or farming.<sup>123</sup>

The phasing of labour rights is problematic as employment agencies avoid workers progressing beyond first-phase contracts.<sup>124</sup> This is beneficial for both the agencies, which receive higher recruitment fees based on repeated contracts, and for growers, who save money on wages and fringe benefits. For workers, in contrast, continued employment with a first-phase contract implies a constant risk of dismissal and high income insecurity. The fact that EU citizenship entitles dismissed CEE farmworkers to modest unemployment benefits<sup>125</sup> appears to be factored into growers' and agencies' business models,<sup>126</sup> with the cost offloaded from businesses to taxpayers, while in the media unemployed CEE migrants are widely framed as Dutch welfare state scroungers.<sup>127</sup>

Workers' multiple dependencies on agencies further weaken their bargaining power. CEE migrants'

employment, housing, transportation and medical insurance contracts are often interlinked and mediated through the employment agency.<sup>128</sup> There are two common ways in which this connection is turned into a profitable business model. First, housing expenses are often inflated and when they are deducted from workers' earnings they reduce the agency's labour costs. In addition, as in Germany, fines imposed on migrant workers for spurious reasons (e.g. using the wrong detergent in a washing machine) represent another common mechanism for reducing wages.<sup>129</sup>

Prevailing gender norms aggravate this situation for female workers. For instance, Polish women have difficulty refusing their employers' demands. They often move to the Netherlands to send earnings to their family in their country of origin. However, for those with children in the Netherlands, when their child is sick, they do not dare to take leave for fear of dismissal.<sup>130</sup> As a result, workers are hesitant to report labour rights violations "as the chances of being dismissed for a critical attitude are high."<sup>131</sup> This form of disciplining workers is especially effective because workers risk not only losing their jobs but also their accommodation in the event of conflict.

Many indirect contractual relations stretch the boundaries of legality, e.g. in the form of bogus schemes in which the worker's actual situation differs from that presented.<sup>132</sup> Polish migrants are most often recruited through employment agencies in Poland that are local offices of Dutch companies or Polish agencies collaborating with Dutch agencies.<sup>133</sup> The steep rise in the numbers of one-person agencies in Poland suggests that CEE countries are being used as conduits for employment contracts offering employers opportunities to circumvent collective bargaining agreements (CBAs), thus lowering wages and social security costs.<sup>134</sup>

Illegal recruitment from abroad involves a wide range of practices that violate regulations on immigration and labour standards. Among these, underpayment of migrant workers through both poverty wages and wage theft is the most significant and growing illegal practice identified by the Dutch Labour Inspectorate.<sup>135</sup>

## BOX 6: ACHIEVING COMPETITIVE ADVANTAGE AT THE EXPENSE OF MIGRANT WORKERS

In February 2019, a large-scale case of illegal practices was punished with a fine of 134,000 euros, 240 hours of community service and two years' suspended imprisonment. A labour intermediary invented an operation that involved selling strawberries, raspberries, asparagus and mushrooms before harvests to a foreign legal entity owned by the intermediary, while in fact no transfer of ownership took place. The crop was then harvested by migrant workers from Poland employed by the foreign company. This mechanism enabled income tax and social security contribution evasion and allowed the products to be sold at a lower price to Dutch retailers. Both the intermediary and about twenty large growers involved earned millions of euros in untaxed profits.<sup>136</sup> The ISZW sees such fraudulent practices as one of the main causes of unfair competitive pressure on other growers, which has resulted in mass bankruptcy.<sup>137</sup>

### 3. DEMAND MEETS SUPPLY: MATCHING EMPLOYMENT NEEDS AND MIGRANT LABOUR

#### 3.1 The impacts of migration and asylum policies

While undocumented migrants represented an important pillar in the Netherlands' greenhouse economy during the 1980s and 1990s,<sup>138</sup> since the turn of the millennium regular CEE migrants have taken over their role.<sup>139</sup> Only a small number of the workers supported by FairWork are undocumented migrants.<sup>140</sup> A 1998 Linkage Act excluded undocumented migrants from welfare state entitlements and connected immigration and social policy-related databases. Due to this connection, undocumented workers try to remain below the radar even in cases of severe labour rights violations.<sup>141</sup> Since that period, restrictive border policies have been complemented with internal migration control and expulsion policies to reduce the number of migrants already in the country.<sup>142</sup>

There remains a "single permit" combining a work visa and residence permit for seasonal agricultural work (up to 24 weeks) for which an employer or candidate can apply.<sup>143</sup> However, administrative hurdles and associated costs combined with the

continued availability of CEE labour currently make this process a less attractive option for growers.

As for asylum seekers' access to employment, they have no right to work during the 6-month decision period after an asylum claim. Assuming the decision period is extended, the applicants may then undertake an internship. They may also search for a job, but their employer will have to apply for a work permit for them and their earnings will be capped.<sup>144</sup> These restrictions probably explain the lack of evidence of asylum seekers being employed in Dutch agriculture and other sectors.

#### 3.2 Policies against labour exploitation

EU enlargement has been accompanied by measures that facilitate an erosion of labour rights guarantees. Legislation such as the Posted Workers Directive,<sup>145</sup> the Services Directive<sup>146</sup> and the Social Security Regulation<sup>147</sup> "allow for the posting of employees who were hired in one member state to work in another member state with the social protection and wages of the sending country, unless specifically regulated by the destination country."<sup>148</sup>

Even if national labour rights guarantees are not undermined by such mechanisms, the flexibilisation of the Dutch labour market increases the risk of

labour exploitation. The multiplicity of legally sanctioned working relationships, the emphasis on fostering entrepreneurship and the possibility of turbo-liquidation<sup>149</sup> create opportunities for fleeting entrepreneurship and the low chance of being apprehended creates the space for unfair contractual relations to flourish.<sup>150</sup>

Currently, only an estimated 3,5% of companies are being monitored annually by the Labour Inspectorate due to a decrease in funding and the resulting limited capacity.<sup>151</sup> In 2018, the Inspectorate aimed to monitor merely 1% of all companies where unfair labour practices are a potential risk.<sup>152</sup> All of this can have severe consequences for workers. A union representative offered the example of a group of seasonal Polish workers who reported burns suffered while handling chemical substances during their work to the ISZW. The Inspectorate finally reacted after three months, but the affected workers had already returned to Poland.<sup>153</sup>

While inspectors themselves insist that no advance notice is provided to employers,<sup>154</sup> representatives from *Federatie Nederlandse Vakbeweging* - FNV, the largest Dutch trade union, have shared examples of growers being alerted beforehand and therefore preparing for inspections, with workers being briefed. Private conversations with workers are essential<sup>155</sup> but do not seem to take place regularly, especially due to widespread language barriers.<sup>156</sup> These barriers also mean migrant workers are often unaware of grievance procedures to claim their rights. If they are aware of the procedures they often refrain from using them because they are cumbersome and costly.<sup>157</sup>

A system of public licensing of recruitment agencies was abolished in 1998 and replaced in 2004 with industry self-regulation through certification.<sup>158</sup> However, the shares of labour rights violations do not differ significantly between registered and non-registered agencies.<sup>159</sup> The industry's self-governance therefore seems ineffective.<sup>160</sup>

The Dutch government has taken steps to curtail abuses in subcontracting, including a 2010 law that enables employees to recover wages from their indirect employer in the event that the agency does not pay, with the key exception of certified agencies. The implicit assumption is that certified agencies do not exploit their workers, although this is not always the case, as shown above.<sup>161</sup> Subcontractors can also avoid liability by further subcontracting recruitment to a non-certified (sometimes foreign) subsidiary.<sup>162</sup>

In this situation, Dutch civil society appear not to be vocal about unfair labour practices in agriculture. The rights of farmworkers in the Netherlands are generally not taken up by a labour movement that has not yet effectively reached migrant workers or by environmental groups pushing for alternative food systems.

### 3.3 The EU CAP and national agricultural and rural policies

EU CAP direct support payments to producers in the Netherlands have concentrated on dairy and beef production and have enabled farmers to invest in labour-saving technologies.<sup>163</sup> Horticulture, in contrast, has hardly been touched by the CAP.<sup>164</sup> As a result, the sector has remained the most labour-intensive part of Dutch agriculture.

Due to the strong Dutch greenhouse vegetable sector's market orientation, the EU market support payments (Common Market Organisation, CMO) have contributed to increases in scale and to extensive supply-driven attention for quantity.<sup>165</sup> Indeed, financial support generally goes towards large-scale initiatives and investments in capital goods.<sup>166</sup>

EU market support payments have been negligible in recent years.<sup>167</sup> At national level, policies have aimed to promote sustainability and the quality of agricultural production.<sup>168</sup>

## 4. GOOD PRACTICES

Some of the interviewees have argued that resistance against exploitative practices in agriculture must be initiated by workers themselves.<sup>169</sup> First and foremost, this requires efforts to strengthen migrant workers' associational power, i.e. "the various forms of power that result from the formation of collective organisations of workers."<sup>170</sup>

In the context of Dutch trade unions' traditional focus on "tripartite bargaining in order to develop collective and social rights and institutional regulation,"<sup>171</sup> the emerging new forms of outreach to migrant workers through fellow CEE citizens are promising. Rather than organising outreach activities for migrant workers by sector, the trade union FNV has started organising regional events on issues such as occupational safety and health in the Southern provinces of North Brabant and Limburg where open field horticulture is concentrated. Interested workers are trained as shop stewards in order to enable them to inform their colleagues about their rights and entitlements in their own languages.<sup>172</sup> Such organising through cultural mediators has proven to be an effective way to take workers' social identities – beyond class – on board in union outreach.<sup>173</sup>

## 5. CONCLUSIONS AND RECOMMENDATIONS

The bulk of unfair practices that affect CEE migrant farmworkers in the Netherlands can be defined as "regulated precariousness" embedded in migrant workers' high degree of dependency on their employers and shaped by skewed power relations in the agri-food chain.

The strengthening of migrant farmworkers' associational power through new forms of awareness-raising and organising is a crucial stepping stone to counter unfair labour practices. Given the limited outreach to CEE migrant workers by Dutch trade unions, trusted migrant organisations have an important role to play. In addition, municipalities could provide information during migrant registration.

Awareness-raising and organising must be complemented through strengthening 'institutional power,' defined as workers' capacity "to influence the behaviour of an employer by invoking the formal or informal rules that structure their relationship and interactions."<sup>174</sup> The effective implementation of existing labour rights guarantees requires more rigorous enforcement by labour inspection,<sup>175</sup> including an increase in the resources of the Labour Inspectorate. Its approach requires reorientation towards workers as the ISZW's most important stakeholders. Institutional innovation in the form of a streamlined civil procedure to recover unpaid wages, overtime and holiday pay, and the reintroduction of recruitment agency licensing<sup>176</sup> would be further important steps towards fair labour conditions for migrant farmworkers.

While these proposed changes harbour a potential for short- and medium-term improvements, they do not yet challenge the neoliberal European market model with its focus on facilitating companies' profit-seeking and labour-cost reduction.<sup>177</sup> Institutional innovation to guarantee fair prices for producers, e.g. through the regulation of living price benchmarks and living wages for farmworkers would represent key building blocks for humanising the agri-food chain in the Netherlands.<sup>178</sup>



# SWEDEN

## 1. INTRODUCTION

Swedish industrial relations are characterised by a lack of a legislated minimum wage, implying that in the absence of a collective agreement in a specific workplace there is no threshold for how low wages can be. It is essentially left to trade unions to safeguard wage levels in Sweden.

The Swedish agri-food sector is divided into many branches and is regulated by several collective agreements negotiated by different social partners. Therefore, the agriculture sector (including forestry, gardening and animal care) and the food industry (including food manufacturing) in Sweden are subject to different dynamics. Against a national average of 89%,<sup>179</sup> only 54% of agricultural production is bound by collective agreement.<sup>180</sup> This makes the sector exposed to practices of undeclared, exploitative and sub-standard working conditions.

Sweden imports many agricultural products, in particular vegetables and fruit, which makes the agri-food sector comparatively smaller than in Southern European countries, which instead export these products.<sup>181</sup> The climate in the Northern part of Sweden (Norrbotten) makes a berry-picking industry possible, which has received attention in the

media and research due to the seasonal temporary labour migration involved in it. A continental type of agriculture takes place in the South, with extended fields of different crops (wheat, rape, sugar beet), dairy cows and a meat industry. While less in the spotlight, the agriculture industry in Southern Sweden is also affected by exploitative practices with sub-standard working conditions and the employment of labour migrants.

## 2. FACTORS DRIVING SUB-STANDARD AND EXPLOITATIVE PRACTICES IN THE AGRI-FOOD SYSTEM

### 2.1 Trends and patterns in agri-food migrant labour

A change in the labour migration regime introduced in Sweden in 2008 entailed a shift towards an entirely employer demand-driven system in which labour migrants apply for a job posted by a company in Sweden before requesting a work permit.<sup>182</sup> This system has been defined by the OECD as “the most open labour migration regime” among the OECD countries.<sup>183</sup>

The liberalisation of the labour migration regime modified the composition of the labour migrant workforce and affected the dynamics of the agriculture sector, which is characterised by low union density.<sup>184</sup> Before 2008 it was common for berry-picking to be done by migrants on tourist visas, who then remained in Sweden and worked for three months as undeclared workers. The right to public access, or the ‘right to roam’ (*Allemansrätt*), which includes free picking of natural products such as berries and mushrooms, favoured this.<sup>185</sup> Nowadays this possibility remains for EU citizens, who can enter the country for a period of up to three months, make use of *Allemansrätt*, work as ‘free pickers’ and sell the harvest to berry companies without being employed by them.<sup>186</sup>

Since 2010, labour migrants in the agriculture, gardening and forestry sectors have been the largest group of migrants applying for work permits.<sup>187</sup> In 2016 and 2017, a quarter of third country national labour migrants admitted to the Swedish labour market were seasonal workers in the berry-picking industry.<sup>188</sup> About 80% of the workforce employed in the agricultural sector is composed of migrant workers. In 2019, the number of labour migrants who received a work permit for berry-picking and agriculture was 6162 (the largest group) – 5935 from Thailand and 221 from Ukraine (Table 4).<sup>189</sup> Labour migrants from Thailand and Ukraine have progressively replaced those from Vietnam, China and other South Asian countries.<sup>190</sup> Ethnographic studies have shown a gender-mixed composition of the workforce among both non-EU migrant workers<sup>191</sup> and EU migrant workers, who often move and work in family-based groups.<sup>192</sup>

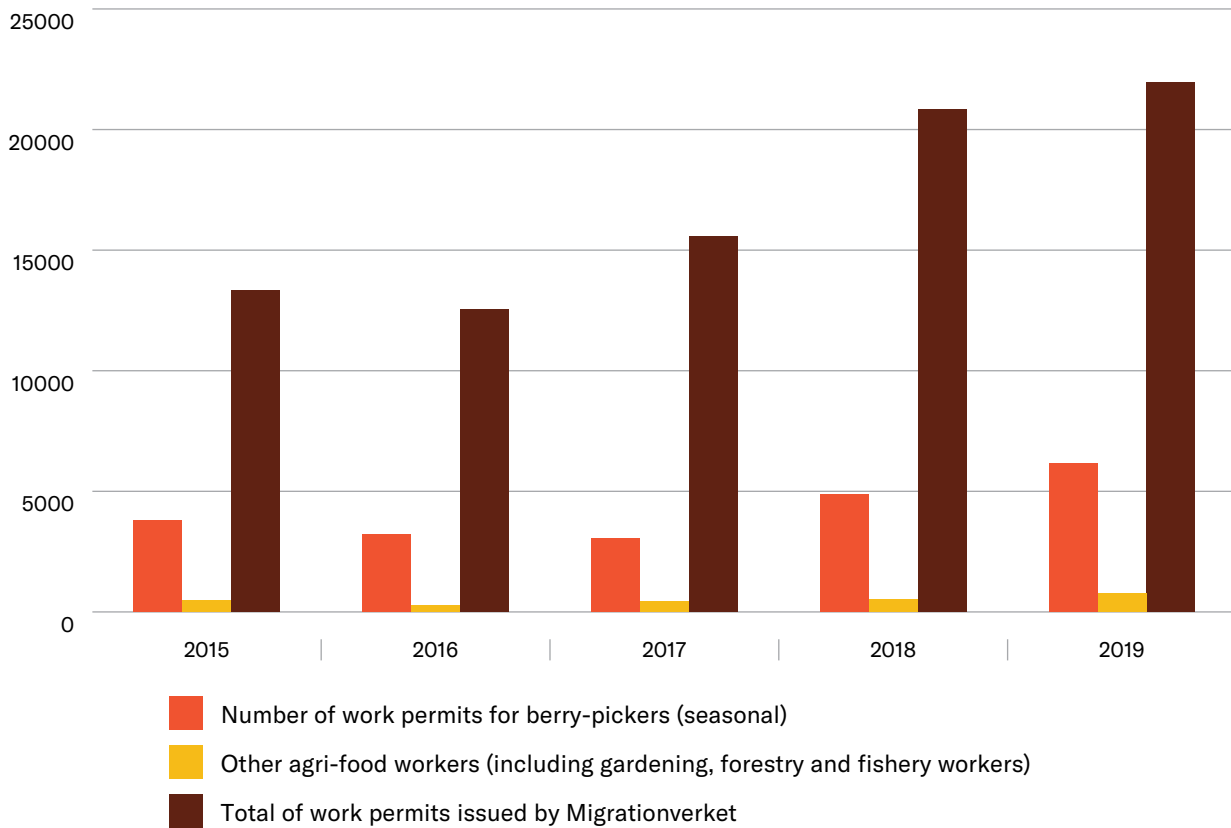
**TABLE 4**

Work permits for third-country nationals by year and occupation in the last five years

YEAR	NUMBER OF WORK PERMITS FOR BERRY-PICKERS (seasonal)	OTHER AGRI-FOOD WORKERS (including gardening, forestry and fishery workers)	TOTAL WORK PERMITS ISSUED BY THE MIGRATION AGENCY (Migrationverket)
2015	3,784	466	13,313
2016	3,199	268	12,526
2017	3,043	434	15,552
2018	4,882	528	20,841
2019	6,162	787	21,950

Source: Migrationverket.

**FIGURE 4**  
Work permits for migrant workers 2015-2019



Due to conflicts in Northern Africa and the Middle East, many asylum seekers have arrived in Sweden in recent years, especially in 2015 (around 160,000 in 2015 and 22,000 in 2019). A rejection rate of about 40% of asylum applications may produce a significant undocumented population in Sweden if rejected applicants stay and work irregularly. Asylum policy is therefore linked to labour market composition, including in agri-food production. The threat of deportation that these workers experience makes them exposed to exploitation.

No data are available regarding EU citizens, because the three-month period in which an EU citizen can freely reside in Sweden makes registration superfluous. In addition, EU citizens' work in the Northern berry fields tends to be informal. The EU citizens that pick berries are mostly Roma from Bulgaria, whose presence in Sweden has been driven

by the worsening of economic conditions in Bulgaria due to the 2008-09 economic crisis.

In the agricultural sector in Southern Sweden, there is a presence of mostly EU citizens coming from Poland, Hungary and Romania, in some cases after having worked in Southern European countries like Spain.<sup>193</sup> However, there has been a recent trend of non-EU Eastern Europeans such as Ukrainian workers arriving. Workers are employed in a situation of 'regulated precariousness' with zero-hour contracts (*behovsanställning*), according to which hours are determined on a yearly basis but distributed unevenly over the months depending on the season, leaving workers without a secure and stable salary. Due to recruitment practices and subcontracting, the workforce is fragmented and wages are often set differently on the basis of nationality. Recourse to employment agencies, as in

the case of the Netherlands, makes the determination of the applicable collective agreement difficult and affects union monitoring of its implementation.<sup>194</sup>

While it is common practice for the employer to bear workers' housing and transport costs, it has been reported that signing a collective agreement leads to the employer, who is also often the owner of the housing facilities, demanding rent from workers and a fee for the use of transport services, making working conditions worse.<sup>195</sup>

Overall, there is a perception that a factor driving the demand for sub-standard work in agriculture is an unholy alliance between employers, who want to lower costs, and migrant workers, who lack knowledge about their rights, find employment in Sweden remunerative at almost any cost and accept intensified workloads in prolonged shifts, especially in the berry-picking industry, where more hours of harvesting correspond to better pay.<sup>196</sup>

## 2.2 Value chain dynamics

Berries grow wild in the North of Sweden and are sold for high prices both to the domestic food processing sector and as raw material for the cosmetics industry in Asia.<sup>197</sup> The high market value of berries and the low costs of production (mainly labour) make them profitable. At the global level, large retailers put pressure on prices, which also has an impact on berry companies as pressure on production prices translates into low wages and often exploitative working conditions.<sup>198</sup> Prices oscillate depending on seasonal weather conditions, which exposes workers to the risk of not being able to harvest enough berries to receive decent pay and puts them in harsh competition with each other.<sup>199</sup>

The practice of distributors buying berries from 'free pickers' produces informality in work by circumventing labour law.<sup>200</sup> Big retailers have a key role in setting the prices of berries and other agricultural products.<sup>201</sup> Oxfam highlights the responsibility of big retailers' low pricing policies, which create the preconditions for higher demand for cheap labour and the ensuing recourse to exploitative employment practices.<sup>202</sup> However, retailers claim they have scarce access

to information about the actual working and employment conditions in the sector.<sup>203</sup>

## 2.3 Recruitment practices

There are no evident cases in the literature on organised crime and corruption in Sweden concerning the recruitment of migrant labour in agri-food production. Instead, exploitative practices such as long hours, low pay and poor accommodation in the agriculture and berry-picking industry are often lawful, despite being ethically questionable.<sup>204</sup> However, it has often been reported that migrant workers are recruited with false promises and deceit<sup>205</sup> by recruitment agencies in their countries of origin as regards pay, working conditions and accommodation/transportation costs.<sup>206</sup>

In the agricultural sector in Sweden, posting from third countries occurs, especially from Thailand.<sup>207</sup> The shift from a system based on free pickers to a regime grounded on work permits has formalised recruitment practices through employment agencies established in Thailand.<sup>208</sup> These employment agencies act as the employer and are party to a contract for the provision of manpower with Sweden-based berry companies.<sup>209</sup> The number of berry-pickers to be employed each season is set by the Swedish berry-picking companies and communicated to the employment agencies located in Thailand, which handle the paperwork for work permits, accommodation and transport.<sup>210</sup>

Reportedly, so-called madams (Thai women married to Swedish men) have acted as pioneers in recruiting Thai workers for the berry-picking industry using informal contacts. They handle translation, accommodation and food for the workers. Their role has been progressively taken over by men as the industry has increased in relevance and supply chain dynamics have become formalised.<sup>211</sup>

Informal and personal networks are still the norm among other national groups working as berry-pickers, as in the case of Bulgarian Roma. Minders or patrons in the form of informal labour recruiters are present in the fields where Bulgarian Roma pick berries and are tasked with arranging trips from

Bulgaria and supervising the harvesting and selling of berries. Others contract debt to be able to afford to travel to Sweden to work in the fields and arrange the trip through informal agencies in Bulgaria, and in many cases arrive with their families as free pickers, all of whom are then informally employed (i.e. working without a contract). Some of them have already worked in agriculture in other EU countries, e.g. Italy, Spain and Germany, before reaching Sweden.<sup>212</sup>

In the Southern Swedish agricultural industry, it is a common practice to recruit using official job advertisements as well as through informal channels based on a network of intermediaries, often from the same national group.<sup>213</sup> It is also common for migrant workers to be recruited through staffing companies or employment agencies. A recently established practice in the agricultural industry in the Southern area – like in Germany – consists in international rural work exchange programmes, through which young workers, mainly from Ukraine, are recruited as interns for apprenticeships in agriculture firms.<sup>214</sup> These programmes allow companies to lawfully recruit interns to pick fruit and vegetables in sub-standard conditions with a fixed compensation for the internship at around 40 SEK an hour (about 4 euros).<sup>215</sup>

### **3. DEMAND MEETS SUPPLY: MATCHING IRREGULAR EMPLOYMENT NEEDS AND MIGRANT LABOUR**

#### **3.1 The impact of migration and asylum policies**

With the 2008 reform of the labour migration regime, a job offer with the terms and conditions applicable in the sector implies a right to enter and stay in Sweden, enabling an employer to invite third country nationals into the country to work. The Migration Agency (*Migrationsverket*) monitors the compliance of job offers with the collective agreement on a case-by-case basis during the application phase for

the permit. Violations are remedied *a posteriori*.<sup>216</sup> Cases have been reported in which workers claim to not have been paid the salary stipulated in the job offer.<sup>217</sup> Practical obstacles, i.e. not knowing the legal venues and procedures or not speaking Swedish, make it harder for third-country nationals to claim their rights in court. In sum, the labour migration scheme can be construed as a factor driving (or at least enabling) demand for work with sub-standard working conditions in agriculture.

Moreover, the 2008 reform risks bonding the migrant worker to the employer. Work permits are temporary. They cannot be longer than 2 years and can be extended up to 4 years in total, but each extension needs to correspond to a new job offer from the employer. In the case of termination, there is a need to find a job within 3 months in order to not lose the permit. A permanent residence permit can be awarded if the migrant has been working for a total of 4 years in a 7-year period. This favours exploitative practices due to the vulnerable position of the migrant worker and the corresponding power of the employer.

Working conditions for migrant workers need to comply with the provisions of the relevant collective agreement in the sector. Since December 2017, a legislative change has meant that if these conditions are not met, migrants whose permits have expired will not be immediately deported. Instead, the employer can remedy the situation and provide the worker with the applicable conditions, for instance via compensation.<sup>218</sup>

The aim of the 2008 reform of the labour migration regime to introduce a single system for all labour migrants has been challenged by the implementation of the EU Seasonal Workers Directive.<sup>219</sup> This re-introduced a legal entry route for agricultural and forestry work in Sweden and fostered fragmentation of the labour market, including via the application of different collective agreements depending on the employer of the temporary migrant worker (a Swedish-based company, a foreign temporary work agency or a Swedish-based temporary work agency).<sup>220</sup> The seasonal nature of berry-picking

makes the process of applying for and receiving visas and work permits smoother and easier than in other sectors of the economy.<sup>221</sup> At the same time, however, it makes it almost impossible for migrant berry-pickers to seek permanent residence in Sweden.<sup>222</sup>

### 3.2 Policies against labour exploitation

In the agricultural sector, particularly the berry-picking industry, the increased presence of free pickers entering Sweden on tourist visas has led to increasing checks on work permits.<sup>223</sup> To remedy sham employment and abusive working conditions, the Migration Agency has implemented new policies. In 2011, after media inquiries into abusive working conditions, the Migration Agency introduced specific requirements for companies employing berry-pickers: a bank guarantee demonstrating in advance the ability to pay wages; proof that the company has paid the due wages and taxes; evidence that berry-pickers have been informed about the type of job they will perform and the working conditions; and an obligation for foreign temporary work agencies to have a representative and a registered office in Sweden. Furthermore, additional requirements were introduced in 2013 such as demonstrating an ability to organise transportation, accommodation, food and other practical matters.<sup>224</sup> This has led to a slight decrease in the number of work permits issued and to some rejections.<sup>225</sup>

Trade unions need to have at least one member among the employees so as to have access to workplace premises and to check the company's books.<sup>226</sup> Compliance with health and safety regulations and the application of working time provisions (when not regulated by a collective agreement) are tasks which fall on the Work Environment Authority (*Arbetsmiljöverket*). However, 60% of companies have not received a health and safety inspection in the last three years.

In their risk assessment following the EU Employer Sanctions Directive, the Swedish police do not mention agriculture as a sector in which “illegally staying third-country nationals” are present in high numbers, focusing instead predominantly

on the service sector.<sup>227</sup> However, around 60% of employers in the green sector assume that there is a high to medium risk of being caught should they pay sub-standard wages off the books or hire undocumented migrants.<sup>228</sup>

Since 2018, it has been a crime to take advantage of a person's subordinate position and use him or her for work under obviously unreasonable terms and conditions (Criminal Code Chapter 4, Section 1b).<sup>229</sup> Thus, exploitation in the labour market has become a matter for the police, prosecutors and criminal courts.

Nevertheless, the structural characteristics of the agri-food sector combined with key features of the Swedish model of labour market regulation make the monitoring and enforcement of labour rights difficult.<sup>230</sup> Due to the absence of a statutory minimum wage, the lack of a collective agreement enables wide discretion in setting salaries, and if sub-standard wages are systematically applied to the workforce, there are no grounds for describing the practices as discriminatory.<sup>231</sup>

### 3.3 The EU CAP and national agricultural and rural policies

Sweden has developed a strategy that seeks competitiveness in the agricultural and forestry sectors, improvement in the environmental quality of rural areas, a commitment to economic diversification in the countryside and stronger local governance involving civil society.<sup>232</sup> Competition over land use has also emerged, particularly associated with Sweden's forests.<sup>233</sup>

In 2017, the Swedish government adopted a national food strategy which aims to make the Swedish food supply chain resilient, competitive and attractive while achieving relevant national environmental objectives, increasing employment and contributing to sustainable development throughout the country.<sup>234</sup> Concerning environmental issues, Sweden established 16 environmental quality objectives to be reached by 2020. Changes in the CAP, including new attention to agri-forestry, were mentioned in the strategy.

As rural areas in Sweden suffer negative demographic trends, foreign immigration contributes to maintaining the demographic balance and supporting revitalisation, diversification and rural development.<sup>235</sup> Reception programmes for refugees and asylum seekers in rural areas have been promoted. As in Germany, Sweden has adopted employment policies to favour social inclusion and the employment of migrants and refugees in the green industries. Despite good intentions, there are problems of over-qualification that contribute to the phenomenon referred to as brain-waste<sup>236</sup> or skill destruction.<sup>237</sup> On the other hand, the level of technological development, automatisisation and specific skill needs in agriculture and forestry in Sweden might make a more permanent and better integration of migrants in rural areas difficult.<sup>238</sup>

## 4. GOOD PRACTICES

One good practice concerns the involvement of trade unions when the Migration Agency assesses applications for work permits.<sup>239</sup> Trade unions should verify whether the wages and working conditions in the job offer comply with the standards set in the collective agreement. However, trade union involvement is not compulsory and neither is the Migration Agency obliged to follow the advice of unions.

Trade union visits to workplaces to scrutinise salaries and working conditions represent a good practice, but this only applies to companies where at least one worker is unionised or where a collective agreement allows for it. This exposes the limits of the Swedish model of industrial relations in ensuring universal worker protection.<sup>240</sup>

In 2009, the Swedish Trade Union Confederation mandated the Swedish Municipal Workers' Union (*Svenska Kommunalarbetsförbundet*, or Kommunal) trade union to organise the berry-picking sector. Kommunal now negotiates collective agreements

with the Federation of Swedish Forest and Agriculture Employers. An agreement signed in 2014 set down rules about monitoring worksites. For the employers bound by this collective agreement, inspections of working time and occupational health and safety occur regardless of whether there are union members at the workplace. The agreement also stipulates minimum wages and that costs for work equipment must not be deducted from wages.<sup>241</sup>

Since 2016 Kommunal has applied a policy of lowering membership fees for temporary labour migrants to encourage membership.

The comparatively smaller trade union Central Organisation the Workers of Sweden SAC reports that the practice of threatening to inform the media, consumers and retailers about food companies that are responsible for wrongdoing and mistreatment of labour migrants is an effective way of stopping further violations because it addresses the commercial and economic interests of companies.<sup>242</sup> However, the practice often exposes labour migrants to retaliation by the employers.

As for monitoring activities, the inspections carried out by the Swedish Work Environment Authority in the agri-food sector represent another good practice, particularly as regards materials and approaches designed for migrant workers.<sup>243</sup> However, the scope of these inspections is limited to the work environment (i.e. not accommodation). Actions by the Tax Agency (*Skatteverket*), which has to receive information about the employment situation of migrant workers in order to issue social security numbers and other documents, are also potentially helpful in monitoring working and employment conditions.<sup>244</sup>

Certain municipalities in the North of Sweden have also implemented stricter monitoring of accommodation (under fire and safety standards) for labour migrants.<sup>245</sup>

In 2011, the NGO Swedwatch reported that almost all the big Swedish berry wholesalers had adopted codes of conduct to monitor the compliance of picking companies with labour standards. However, when they are not supported by full disclosure of information on companies adopting bad practices<sup>246</sup> and by a third-party audit system, the effectiveness of these initiatives raises scepticism.<sup>247</sup>

Oxfam Sweden reports that Swedish supermarkets and retailers (such as Coop, Axfood and Systembolaget) have joined initiatives monitoring labour rights in supply chains for agri-food products imported from Italy (tomatoes and wine) and Morocco (citruses). The initiatives are based on human rights assessments of suppliers carried out by the big retailers. When violations of labour and human rights are found, supermarkets are supposed to require suppliers to remedy so as to foster good practices along the supply chain. These practices and new codes of conduct could be broadened to include agri-food products made in Sweden, by leveraging Swedish consumers' awareness about ethical consumption.<sup>248</sup>

As for social inclusion in rural areas, a LEADER<sup>249</sup> transnational cooperation project entitled "Immigrant Integration in Rural Areas: Identification and Exchange of Good Practices" (IIRA) has been promoted by the national rural networks of Sweden, Finland, Austria and Germany involving 16 rural areas to stimulate the exchange of good practices related to migrant integration in rural areas.<sup>250</sup> In addition, a variety of projects for integration and labour inclusion have been supported by the European Agricultural Fund for Rural Development (EAFRD).<sup>251</sup>

## 5. CONCLUSIONS AND RECOMMENDATIONS

The extent to which exploitative labour conditions prevail in the agri-food sector in Sweden is not entirely clear. The lack of a legislated minimum wage and the limited number of collective agreements increase the exposure of labour migrants employed in this sector to sub-standard and exploitative working conditions. Along with wages, sub-standard working conditions primarily pertain to working hours (length of the working day), scheduling (time of day) and health and safety issues (fatigue, lack of protective gear, etc).

In general, it can be argued that the procedures for the regulation and monitoring of the labour market expose marginal sectors like agri-food to sub-standard and exploitative working conditions.<sup>252</sup> Seemingly, the programmatic passivity of the state in regulating the labour market translates into the risk of exploitation for vulnerable subjects, like labour migrants and seasonal workers, with the effect of creating secondary labour markets fragmented along national or ethnic lines with sub-standard working conditions.<sup>253</sup>

While policies addressing working conditions in the agri-food sector must take into consideration the role of trade unions, shortcomings derive from the difficulties Swedish trade unions face in reaching labour migrants – a task that can be improved by facilitating access to information in foreign languages. More resources for the Work Environment Authority to conduct controls in workplaces would contribute to filling monitoring gaps.

Finally, stricter regulation of the use of temporary work agencies and of recourse to labour intermediaries and employment agencies, especially when they are located abroad, would tackle one of the most common channels for abuses and violations of labour rights.



# CONCLUDING REMARKS

## WHAT IS DRIVING SUB-STANDARD AND EXPLOITATIVE PRACTICES IN THE AGRI-FOOD SYSTEM?

Similarly to what emerged in the case of Southern EU member states,<sup>254</sup> recourse to a migrant workforce is a structural component of agri-food production in Germany, the Netherlands and Sweden. Indeed, the nationals of these three countries are generally reluctant to work as farmworkers, mostly due to the hard work, low-paid and highly flexible labour conditions characterising the agri-food sector.

This foreign workforce is composed of both EU and non-EU nationals. While there is a presence of undocumented migrants, non-EU agricultural labourers seem mainly to be mobile seasonal workers, with a smaller presence of asylum seekers and beneficiaries of international protection. There is little evidence of secondary movements of asylum seekers, refugees and undocumented migrants from other member states working in agri-food production in these countries. With regard to EU migrant workers, as the case of Bulgarian Roma in Sweden highlights, they often move from one EU country to another to work in the agri-food system.

While in Sweden non-EU (mainly Thai) seasonal workers are particularly at risk of sub-standard and exploitative working conditions, in all three countries EU migrant workers are exposed to forms of exploitation or abuse. In particular, in Germany and the Netherlands, EU migrant workers (especially Romanians and Poles) are predominant in the agricultural labour force, and accordingly they are the ones who experience the most abusive practices.

This shows, as was also underlined in the case of Italy,<sup>255</sup> that EU citizenship does not prevent migrant workers from being in a condition of vulnerability and being involved in situations of exploitation, including in its most severe forms.

In line with the findings of the report on Southern Europe, this study has highlighted that one of the factors fostering recourse to a low-wage, flexible and exploitable migrant labour force in Northern European agri-food production is price pressure from industry, large retailers and international buying groups (IBGs). In particular, the latter use their oligopolistic market power to impose prices and conditions on farmers, producing an unfair distribution of risks, costs and profits along supply chains. Therefore, there is a limited margin for farmers across Europe to increase prices on wholesale markets. Yet, rather than looking for other strategies that allow them to keep being competitive or to develop alternative channels or shorter supply chains, most employers in the agricultural sector tend to squeeze the cost of labour by lowering pay and working conditions, thereby violating workers' rights.

At the same time, a further key and highly problematic challenge is the result of competition on labour costs both within the European internal market and on the global market. In particular, mainly due to differences in pay levels and employment protection, labour costs vary greatly between EU member states and businesses use this difference to improve their competitiveness, driving down wages and employment protection. This is especially true in labour-intensive sectors such as the agri-food industry.<sup>256</sup>

Indeed, the three country studies show that in a context of flexibilisation and deregulation of the labour market there is increasing recourse to posted work and subcontracting, often with the involvement of employment agencies, as a way to hire cheap labour circumventing relevant EU and national legislation. Furthermore, subcontracting chains make monitoring and enforcement more difficult. While there are situations involving unlawful practices, several cases concern practices that twist the law and profit from loopholes and ambiguities in the relevant EU and national law. For instance, as was highlighted in the Netherlands study with regard to the steep rise of one-person employment agencies in Poland, which are sometimes local branches of Dutch companies, a common technique is to create companies or affiliates in member states where labour costs are low. This provides employers with the opportunity to bypass relevant employment and social security legislation. The expansion of these practices, which rely on the exploitation (in different forms and at different levels) of migrant workers, causes unfair competition and social dumping dynamics within the European internal market, and entails a serious risk of eroding workers' rights.

In general, the three country studies show that most abusive and exploitative labour practices in agri-food production in these countries take place in a "grey zone" through gaps and shortcomings in the legal framework. In this scenario, highly flexible labour market dynamics and practices, in particular indirect employment through agencies, play a crucial role, providing workers with staggered economic and social entitlements. Furthermore, as the example of Thai workers in Sweden highlights, migration policies (including the implementation of the Seasonal Workers Directive) have also contributed to the fragmentation of the national labour market, fostering the precariousness of migrant workers.

As the case of the berry-picking industry in Northern Sweden reveals, indirect employment through employment agencies also occurs in the case of non-EU migrant workers. Most Thai workers are recruited by employment agencies located in Thailand and work in exploitative conditions. Recourse to these agencies, which often tread a fine

line between legal and illegal practices, makes the determination of the applicable collective agreement more difficult and hampers the role of unions in Sweden, where they are tasked with monitoring labour conditions in workplaces.

Similarly to the dependency of migrant farm workers on intermediaries in Italy (where, however, illegal gangmasters – *caporali* – are more widespread), the high degree of dependency of workers on recruitment agencies further undermines their bargaining power and leads them to fall victim to exploitative practices, as they are afraid of losing their jobs, their accommodation and any other services offered as part of the initial employment package. In line with the findings of the study on Southern Europe, situations of exploitation and disciplining of workers also seem to be exacerbated, in the case of female workers, by prevailing gendered norms and power relations. For instance, as underlined in the case of the Netherlands, Polish female workers, in charge of family and social reproduction responsibilities, often have difficulties escaping their employers' demands. Indeed, the fear of losing their jobs, and thus being unable to support their children financially, prevents these women from reporting labour rights violations and abuse.

As all the country studies reveal, victims of abusive and exploitative labour practices have limited access to remedies and justice. This is often because workers are not aware of the offence against them and/or of the existing legal procedures to claim their rights and because of the short periods they generally stay in the country for. Moreover, in these three countries, the institutional capacity to monitor and enforce fair labour standards appears to be weak. For example, in the Netherlands only a very small percentage of companies are being monitored annually by the Labour Inspectorate due to a decrease in funding.

In general, the structural characteristics of the agri-food sector combine with the key features of a highly flexible and deregulated labour market to make the monitoring and enforcement of labour rights difficult.

There are some good practices in the three countries, such as trade union actions aimed at strengthening migrant workers' knowledge of their rights and associational power. Consumer pressure, however, appears not to have pushed companies or governments to adopt initiatives on food labelling to protect labour rights.

In all three countries, governments are increasingly focused on how agriculture is linked to sustainability, environmental and climate protection, animal welfare, biodiversity and consumer health issues. Little attention is still paid to labour conditions and workers' rights.

## RELEVANT EU POLICIES

With regard to **legal migration channels**, the Seasonal Workers Directive has marked an advance in the rights of seasonal workers. However, this instrument is premised on an employer-driven system and provides member states with wide discretionary powers over the implementation of the provisions concerning the rights and protection of seasonal workers.

The Seasonal Workers Directive is the *de facto* main EU instrument regulating the legal migration of low-skilled third country nationals. Over recent years, EU policies on migration have focused on highly skilled workers and, as interviews with EU stakeholders have confirmed,<sup>257</sup> the priority now is to conclude an agreement on a revision of the Blue Card Directive.<sup>258</sup> However, the absence of legal migration channels for low- and medium-skilled third country national workers,<sup>259</sup> which would support their inclusion in the labour market in a long-term way, certainly constitutes one of the main gaps in current EU migration policies.

As for **intra-EU labour mobility and labour conditions**, in 2018 Directive 2018/957<sup>260</sup> amending the Posted Workers Directive was adopted to strengthen the rights of posted workers and to

ensure fair competitive conditions for companies, introducing important provisions on remuneration, temporary agency workers and long-term posting. The effectiveness of the Directive in ensuring equal pay and rights for posted workers and reducing abusive practices will largely depend on its implementation and enforcement at the national level.<sup>261</sup> However, it needs to be stressed that this Directive does not deal with key issues such as a stricter regulation of the use of subcontracting.<sup>262</sup>

Another relevant and recently adopted tool is Directive 2019/1152 on transparent and predictable working conditions in the EU.<sup>263</sup> The Directive, which is an initiative under the European Pillar of Social Rights (EPSR), introduces minimum rights and updates the rules on the information to be provided to workers – including those with atypical contracts – concerning their working conditions. This Directive constitutes a significant and progressive step in the protection of workers' rights, especially those in more precarious jobs, and is the first EU legal instrument to address the risks of variable work schedules and zero-hours work. However, it contains some weak points.<sup>264</sup> Above all, the Directive does not prohibit zero-hours contracts. Indeed, it looks for solutions to provide protection to workers but “without really acting on the issue of the variability of hours.”<sup>265</sup>

The European Labour Authority (ELA), which has recently been created and is also part of the rollout of the EPSR, might constitute an important instrument to effectively implement and protect labour rights, especially those of EU mobile citizens. While it is too early to draw any conclusions on this initiative, the ELA might significantly support member states and stakeholders in strengthening the enforcement and monitoring of EU rules concerning labour mobility and social security coordination. In this regard, it is worth mentioning that the European Trade Union Confederation (ETUC) and the European Federation of Building and Woodworkers have already reported nine cases of exploitation of posted workers (in the construction sector) to the ELA.

A proposal for an EU initiative ensuring adequate minimum wages for workers in the Union should shortly be presented by the European Commission.<sup>266</sup> While EU action on minimum wages “will not eliminate the difference in wages in Europe between member states, it could contribute to possibly levelling down the wage competition between member states,”<sup>267</sup> especially in sectors such as the agri-food industry, in which such competition is strongly felt. However, the ETUC argues that a fair statutory minimum wage cannot be below the benchmark of 60% of the national median wage, which is the at-risk-of-poverty threshold. Furthermore, it must be coupled with measures to promote collective bargaining, in particular at the sectoral level. Under these conditions, according to the ETUC, rises in statutory minimum wages would not have a negative impact on competitiveness and employment.<sup>268</sup> It needs to be underlined that following an outcry by Nordic member states (such as Sweden and Denmark) over a threat to their long-standing systems of collective bargaining, the EU clarified that it will not force these countries to introduce a statutory minimum wage.<sup>269</sup>

With regard to **supply chain dynamics**, the recently adopted Directive on Unfair Trading Practices sets out a minimum list of 16 prohibited unfair business-to-business trading practices in the agricultural and food supply chain and lays down minimum enforcement rules. The Directive constitutes an important instrument aimed at protecting farmers and weaker suppliers of agricultural and food products against stronger buyers.<sup>270</sup> However, it presents some critical aspects.<sup>271</sup> For instance, it applies to cases where the buyer is in a larger size category than the supplier, assuming that size is a proxy for market power. However, unfair trading practices are unfair irrespective of the sizes of the companies involved. Furthermore, in addition to not providing a comprehensive ban on unfair trading practices, the Directive identifies six practices that are banned unless they have been unambiguously agreed by the supplier and the buyer. This seems to overlook power relations and unfair trading practices arising from the supplier’s economic dependence on a buyer, even when a supply agreement has been drawn up with the apparent consent of both parties.

Concerning the **Common Agricultural Policy** (CAP), the policy has moved towards a stronger market orientation as well as environmental sustainability, with a controversial impact in terms of sectoral, territorial and socio-economic inequalities. In particular, as was highlighted in the study on Southern Europe, the CAP has fostered competitiveness in the agri-food sector at the global level. This process has, in turn, contributed to upholding a system that relies on the employment of a low-cost and flexible migrant labour force.

Current debate about CAP reform recognises the important role of migrant workers and refugees in counterbalancing negative demographic trends and addressing labour demand in rural areas. New CAP proposals do not include conditionalities on payments based on respect for labour rights, but do aim to bolster the implementation of social policies in the farming community and rural areas. In addition, the new CAP is expected to introduce indicators of vulnerable groups, to be defined by the member states, which could include migrants and refugees.<sup>272</sup> Employment opportunities in rural areas for regularly staying third country nationals as well as social and economic integration could be supported through the EU rural development policies (such as LEADER initiatives, interventions on basic services, cooperation and training actions). It is worth highlighting that the social inclusion of migrants and refugees in rural areas has also been, and will continue to be supported by several EU funds,<sup>273</sup> but their impact has so far been limited.

Linked directly to current discussions on the future CAP is the EU Farm to Fork Strategy for sustainable food.<sup>274</sup> This strategy, which is part of the European Green Deal,<sup>275</sup> aims to cover every step in the food supply chain from production to consumption and to feed into the EU circular economy objectives. It also aims at complementing and supporting incentives proposed for farmers under the 2021-2027 CAP to actively contribute to climate objectives, protecting the environment and biodiversity, and contains welcome references to workers and their rights.<sup>276</sup> However, as civil society organisations have highlighted, the European Green Deal does not contain concrete commitments to engender a

fundamental transition towards a fairer and more sustainable and integrated food system.<sup>277</sup> In order to achieve this transition, the Farm to Fork strategy should provide a coherent response in connection with existing policies (such as the CAP) addressing climate change, health and animal welfare together with social equity, the power imbalance in supply chain dynamics and labour conditions.

In this regard, it is also worth mentioning that there is increasing momentum for effective EU mandatory Human Rights and Environmental Due Diligence (mDD) legislation. This legislation, which would build on the UN Guiding Principles on Business and Human Rights and OECD Guidelines on Responsible Business Conduct and Guidance on Due Diligence, should introduce a corporate duty to respect human rights and the environment and require companies and financial institutions to identify, prevent and account for abuses in their domestic and global activities, products, services and supply chains within and outside the EU. The new EU framework would also apply to intra-EU supply chains. Civil society organisations are pressing the EU to ensure that the legislation holds businesses legally accountable and supports access to justice for victims.

## RECOMMENDATIONS

Addressing sub-standard and exploitative work in agriculture means handling diverse but related issues such as migration and labour policies, value chain dynamics, agricultural policies and rural development. In this light, what seems to be most needed is a coherent policy framework and consistency and complementarity between policies. It is necessary to implement coordinated initiatives aimed at tackling the structural factors in a socio-economic system in which value is unfairly distributed. Workers, especially migrant workers, are the weakest links in this system, which relies on their precariousness and condition of vulnerability.

## Recommendations at the EU level

### Legal Migration Channels for Third Country Nationals

1. Bolster the **effective implementation of the Single Permit Directive** (2011/98/EU), supporting, for instance, the implementation of equal treatment provisions covering all categories of third-country nationals, including low-skilled workers.
2. Develop and strengthen **legal and safe channels for low- and medium-skilled third-country workers**, promoting their long-term inclusion in the EU labour market, including through legal migration pilot projects coordinated by the European Commission.
3. Improve **the protection of seasonal workers**, by encouraging member states not to apply the restrictions to **equal treatment** in Article 23(2) of the Seasonal Workers Directive and, with respect to the change of employer, to **waive the labour market test obligation** (Art. 15(6) of the Seasonal Workers Directive) as well as by allowing seasonal workers **more than one change of employer**.
4. Encourage member states to provide seasonal workers with pathways to **long-term resident status after consecutive years of seasonal work**.
5. **Amend the Seasonal Workers Directive** so that it also applies to **undocumented migrants already in an EU member state**.
6. **Amend the Blue Card Directive** so that it also applies to third-country nationals who have been **admitted to the territory of a member state as seasonal workers**.

### **Prevention, Monitoring and Complaint Mechanisms**

1. Promote actions **to regulate, license and monitor recruitment agencies** (including those based in third countries), **for instance through the ELA.**
2. Roll out **training activities for labour inspectorates and other key stakeholders on the rights of undocumented workers** under relevant EU instruments such as the Employer Sanctions Directive.
3. **Encourage actions by the ELA and other stakeholders to provide information and services to workers and businesses about their rights and obligations** through, e.g. the dissemination of technological tools for training and information.
4. Bolster the implementation of **effective labour complaints mechanisms** for all workers, irrespective of their contractual and immigration status, by channelling relevant EU funds to facilitate trade union support and legal assistance for workers as well as cooperation with labour inspection, and that promote the implementation of **monitoring and reporting mechanisms**, such as worker-driven social responsibility ones.
5. **Address gender-based discrimination and abuse in the agri-food system** by supporting actions – for instance under the EU Gender Equality Strategy (2020-2025) – to encourage all actors in supply chains (from farmers to large retailers) to adopt **gender-sensitive policies in their business models.**

### **CAP, Value Chain and Food Safety Strategies**

1. Bolster the link between the CAP and EU social policies by making **CAP payments conditional on respect for labour, health and safety as well as environmental standards.**
2. Promote the inclusion of **social and labour standards** in EU food safety and quality strategies, such as **the Farm to Fork Strategy.**
3. Encourage member states, through awareness and training actions, to implement the CAP measures **enabling producers to strengthen their bargaining power and obtain fair prices for their products** more effectively (e.g. by supporting producers' organisations and cooperation).
4. Support the **inclusion of migrants and refugees in rural areas** through the CAP Rural Development Programmes with rights-based policies concerning services, housing, transport, health, infrastructure and economic diversification, all of which could spur rural development.
5. Promote corporate accountability by adopting an effective **EU mandatory Due Diligence (mDD) legislation for environmental and human rights standards in supply chains.**
6. Bolster actions to tackle unfair trading practices, for instance by expanding the scope of the Directive on unfair trading practices to **cover all suppliers regardless of relative sizes** and by banning unfair **trading practices relying on abuse of the supplier's economic dependence** on the buyer, regardless of whether contractual arrangements effectively sanctioning the abuse have been drawn up or not.

# ANNEX 1

## LIST OF INTERVIEWS IN GERMANY

NO.	NAME	ORGANISATION	ROLE	DATE	LOCATION
Interview DE 1	Michael Maschke	Federal Government Commissioner for Migration, Refugees and Integration, Office for the Equal Treatment of EU Workers	Head of Unit	18.11.2019	Berlin
Interview DE 2	Dominique John	German Trade Union Confederation (DGB), Federal Executive Board	Project manager "Fair Mobility"	03.12.2019	Berlin
Interview DE 3	Katharina Varelmann	Peco-Institut e.V.	Expert on Labour Migration in Agriculture	10.12.2019	Kassel (by telephone)
Interview DE 4	Harald Schaum	Industry Trade Union for Construction, Agriculture and Environment (IG BAU)	Deputy Federal Chairman	19.12.2019	Frankfurt/M.
Interview DE 5	Ivan Ivanov	European Migrant Workers Union	Counsellor, 'Fair Mobility' project	19.12.2019	Frankfurt/M.
Interview DE 6	Juergen Jakobs	Association of East German Asparagus and Berry Fruit Growers (VOSBA e.V.)	Chairman	20.12.2019	Beelitz
Interview DE 7	Romana Hoffmann	German Horticultural Association (Zentralverband Gartenbau e.V.)	Legal advisor and Deputy Secretary General	10.01.2020	Bonn
Interview DE 8	Ellen Sunder	Federal Ministry of Food and Agriculture	Head of Unit for Social Policy (Unit 724)	10.01.2020	Bonn
Interview DE 9	Anne Stratmann, Matthias Schulz	Department for Financial Control of Undeclared Employment (FKS) within the Central Customs Authority	Heads of Working Divisions within the Unit for Risk Assessment and Inspections	15.01.2020	Cologne
Interview DE 10	Szabolcs Sepsi	Counselling Service 'Fair Mobility' in Dortmund, Competence Centre on the Meat Production Industry	Team Leader	24.01.2020	Dortmund (by telephone)

# ANNEX 2

## LIST OF INTERVIEWS IN THE NETHERLANDS

NO.	NAME	ORGANISATION	ROLE	DATE	LOCATION
Interview NL 1	Monica Buiks-Bota	Federatie Nederlandse Vakbeweging (FNV)	Project Lead, International Enforcement Team	12.06.2018	The Hague (by telephone)
Interview NL 2	Helena Kosec	FairWork	Coordinator of Cultural Mediators Working with European Clients	12.11.2019	Amsterdam
Interview NL 3	Edwin van Berkum / Arjan Zebel	Inspectorate of Social Affairs and Employment - Inspectie Sociale Zaken en Werkgelegenheid (ISZW)	Project Manager Labour Exploitation / Inspector ISZW	20.11.2019	The Hague
Interview NL 4	Heady Soe-Agnie	Stichting Hulp en Opvang Prostitutie en Mensenhandel (SHOP)	Coordinator	20.11.2019	The Hague
Interview NL 5	Mariola Michno / two active union members	Federatie Nederlandse Vakbeweging (FNV)	Consultant Agriculture / Active Member	26.11.2019	Weert
Interview NL 6	Katrin McGauran / Imke van Gardingen	Federatie Nederlandse Vakbeweging (FNV)	Policy Advisor European Affairs / Policy Advisor Labour Migration	28.11.2019	Utrecht
Interview NL 7	Izabela Franssen	Polka - Centre for Polish Women in Segbroek	Volunteer	19.12.2019	The Hague
Interview NL 8	Rob Bleijerveld	Redactie Supermacht	Owner website Supermacht.nl	20.12.2019	The Hague
Interview NL 9	Ania Paszak	Integratie in Den Haag van Europese Migranten (IDHEM)	Coordinator	10.01.2020	The Hague



# ANNEX 3

## LIST OF INTERVIEWS IN SWEDEN

NO.	NAME	INSTITUTION	ROLE	DATE	LOCATION
Interview SE 1	Daria Bogdanska	Sveriges Arbetares Centralorganisation (SAC)	Trade union representative local level	21.11.2019	Malmö
Interview SE 2	Berit Slottegård	Svenska Kommunalarbetareförbundet (Kommunal)	Trade union representative local level	12.12.2019	Malmö (by telephone)
Interview SE 3	Tim Gore	Oxfam	Head of policy, Food Justice	22.01.2020	Stockholm (by telephone)

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