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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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Over recent years, increasing attention has been paid at both the European and national levels to substandard work and the exploitation of migrant workers in agri-food production in Southern Europe. However, this situation is not limited to this area of the European Union. Several studies have reported that migrant workers experience substandard and even abusive working conditions in the Northern EU member states, especially in sectors such as agriculture and food production.

This policy brief, which condenses the findings of an exhaustive report commissioned by the Open Society European Policy Institute (OSEPI) and drafted by a team of researchers coordinated by the European University Institute (EUI), focuses on working conditions in agri-food production in Germany, the Netherlands and Sweden. In these three member states, which also host some of the retail giants that play key roles in value chain dynamics, recourse to migrant labour has become a structural element in the development of their agri-food industries.

As in the case of Southern Europe,¹ the demand for low-wage, flexible and exploitable labour in the agri-food sector – which has been mainly met by migrant workers – is driven and fostered by an interplay of factors. These factors include: EU and national policies on labour mobility, migration and asylum; value chain dynamics; labour market policies and dynamics; the Common Agricultural Policy (CAP) and national policies on agriculture and rural development; and policies addressing labour exploitation.

This policy brief provides recommendations for stakeholders at the European and national levels with a view to implementing coordinated initiatives aimed at strengthening and protecting workers' rights, while at the same time promoting a more sustainable agri-food system in a way which benefits producers, workers and consumers.

The research on which this brief and the accompanying report 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.

1 A. Corrado, F.S. Caruso, M. Lo Cascio, M. Nori, L. Palumbo and A. Triandafyllidou, 2018, *Is Italian Agriculture a "Pull Factor" for Irregular Migration – And, If So, Why?*, Open Society European Policy Institute

MIGRANT LABOUR AND EXPLOITATIVE WORKING CONDITIONS IN AGRI-FOOD PRODUCTION

As in the case of Southern EU member states, in Germany, the Netherlands and Sweden nationals are generally reluctant to take up employment in the agri-food sector, mostly due to the **poor labour conditions and hard work** characterising this sector. Indeed, in these countries, many migrant farmworkers work for long hours, in unsafe conditions and for low pay. Moreover, they often live in poor and degrading accommodation.

This foreign workforce is composed of both EU and non-EU migrant 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 in these countries of secondary movements of asylum seekers, refugees and undocumented migrants working in agri-food

production from other member states. 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 substandard 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 Poles and Romanians) form the bulk of the agricultural labour force, and accordingly they are the ones who experience the most abusive practices. As was also underlined in the case of Italy, this shows 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.

WHAT IS DRIVING SUB-STANDARD AND EXPLOITATIVE PRACTICES IN AGRIFOOD PRODUCTION?

Value Chain Dynamics

In line with the findings of the report on Southern Europe, this study highlights that one of the factors driving 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, the margin for farmers across Europe to increase prices on wholesale markets is limited. Yet, rather than looking for other strategies that allow them to keep being competitive or to develop alternative channels or shorter supply chains, most farmers tend to depress the cost of labour by lowering pay and eroding working conditions.

Competition over Labour Costs and Subcontracting Practices

A further highly problematic and related challenge is the result of competition over 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 these differences in labour costs to improve their competitiveness, driving down wages and employment protection**. This is especially true in labour-intensive sectors such as the agri-food industry.

Indeed, the three country studies show that in a context of flexibilisation and deregulation of the labour market there is **significant 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 twist the law and profit from loopholes

and ambiguities in relevant EU and national laws (e.g. creating companies or affiliates in member states where labour costs are low, or declaring less hours than those actually worked on payslips). Recourse to these practices, which rely on the exploitation of migrant workers in different forms and at different levels, causes unfair competition and social dumping dynamics within the European internal market and entails a serious risk of eroding workers' rights.

The Role of Recruitment and Employment Agencies

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 weak spots in the legal framework**. In this scenario, highly flexible labour market dynamics and practices – in particular, indirect employment via agencies – play a crucial role in providing workers with staggered economic and social entitlements. Furthermore, as the case of Thai workers in Sweden highlights, migration policies have also contributed to the fragmentation of national labour markets, fostering migrant worker precariousness.

As the case of the berry-picking industry in Northern Sweden reveals, indirect employment via 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 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.

Similar to migrant farm workers' dependency on intermediaries in Italy (where, however, illegal gangmasters – *caporali* – are more widespread), **workers' high degree of dependency 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. Moreover, as the German case shows, there are also forms of collective punishment which affect workers' family members when the latter are barred from taking up employment to sanction a specific worker.

As was the case in Southern Europe, regarding female workers, exploitation and the disciplining of workers by intermediaries seem to be worsened by prevailing gendered norms and power relations. For instance, as underlined in the case of the Netherlands, Polish female workers, in charge of family responsibilities, often have difficulties escaping their employers' demands. In fact, 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.

Agricultural and Rural Policies

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. However, little attention is still paid to labour conditions and workers' rights.

As was highlighted in the report on Southern Europe, this study has underlined **the controversial impact of the Common Agricultural Policy**, which has traditionally prioritised consolidating competitiveness in the agri-food sector at the EU and global levels, supporting a system which relies on the employment of a cheap and flexible labour force which includes significant numbers of migrants. For instance, in Germany and especially in the horticultural and meat industries, the CAP has contributed to production intensification and specialisation, horizontal and vertical supply chain integration, land concentration, market consolidation and internationalisation, with limited attention being paid to the consequences for farm workers.

With regard to rural policies, as the studies on Germany and Sweden underscore, over recent years several projects have been implemented to facilitate and support the social and economic inclusion of migrants and refugees in rural areas and to address labour shortages and depopulation problems. These projects have also been supported by several EU funds, but their impact has so far been limited.

Policies Addressing Labour Exploitation

In recent years, in all three countries national policies have been implemented to address and remedy abusive employment and working conditions in sectors such as the agri-food industry. For instance, in 2011 in Sweden the Migration Agency introduced specific requirements for companies employing berry-pickers. In the Netherlands, the 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 significant exception of certified agencies.

However, in general, the **institutional capacity to guarantee fair labour standards appears so far to be weak**. For instance, in the Netherlands, only an estimated 3.5% of companies are currently being monitored annually by the Labour Inspectorate due to a decrease in funding and the resulting limited capacity.

In general, as the Swedish and Dutch cases clearly show, 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.

Concerning supply chains, there are intentions in all three countries to strengthen agricultural producers and suppliers against retailers by transposing the Directive on Unfair Trading Practices (2019/63) into national legislation.

ACTIONS TO STRENGTHEN AND PROTECT WORKERS' RIGHTS AND ENSURE FAIR VALUE CHAINS

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 of the existing legal procedures to claim their rights and because of the short periods they generally stay in the country. Lack of knowledge is also due to language obstacles.

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**. For instance, in Germany a comprehensive counselling and support network named Fair Mobility (*Faire Mobilität*), which involves trade unions and other civil society organisations, offers its sector-specific publicly funded services to migrant workers with the aims of raising awareness among them about their rights and assisting and empowering them. The IG BAU (*Industriegewerkschaft Bauen-Agrar-Umwelt*) trade union has developed a web application named Agriworker to provide seasonal migrant workers with up-to-date information on their rights and the available support services. In the Netherlands, FNV (*Federatie Nederlandse Vakbeweging*) trains workers as shop stewards in order to enable them to inform their colleagues about their rights and entitlements in their own languages. In Sweden, trade union visits to workplaces to monitor salaries and working conditions also represent a good practice. However, this only applies to companies where at least one worker is unionised or a collective agreement allows for it.

Consumer pressure, especially in Germany and the Netherlands, appears not to have pushed companies or governments to adopt initiatives to better protect labour rights (including through food labelling schemes). However, it is worth mentioning that in Sweden supermarkets and retailers (such as Coop, Axfood and Systembolaget) have joined **campaigns about labour rights in supply chains** for agri-food products imported from Italy (tomatoes and wine) and Morocco (citrus fruit). These campaigns involve human rights assessments of suppliers carried out directly by the big retailers. These practices and new codes of conduct could be broadened to include agri-food products made in Sweden.

RECOMMENDATIONS

Addressing substandard 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 together with consistency and complementarity between policies**. It is necessary to implement coordinated initiatives aimed at tackling 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 vulnerability.

Relevant EU instruments and policies include: the Single Permit Directive (2011/98/EU); the Seasonal Workers Directive (2014/36/EU); the Employer Sanctions Directive (2009/52/EC); the Directive amending the Posted Workers Directive (2018/957/EU); the Directive on Temporary Agency Work (2008/104/EC); the Directive on Transparent and Predictable Working Conditions (2019/1152/EU); the European Labour Authority (ELA); the Directive on Unfair Trading Practices (2019/633/EU); the Common Agricultural Policy (CAP); the Farm to Fork Strategy for sustainable food; and the Gender Equality Strategy (2020-2025). It is also worth mentioning that discussions are currently underway about an EU-wide minimum wage initiative.

KEY MESSAGES FOR POLICY MAKERS 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 Complaints 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 the 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 more effectively the CAP measures **enabling producers to strengthen their bargaining power and obtain fair prices for their products** (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 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** regardless of whether contractual arrangements effectively sanctioning the abuse have been drawn up or not.

KEY MESSAGES FOR POLICYMAKERS AND STAKEHOLDERS AT THE NATIONAL LEVEL

Germany

- **Increase labour inspections** to monitor compliance with the minimum wage and standard working conditions.
- Bolster 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), including as regards **providing assistance to workers to ensure respect for their rights**.
- Encourage agricultural business associations to **adopt monitoring mechanisms and set common decent work standards**.
- Foster **seasonal workers' knowledge of their rights and duties** by developing curricula for pre-departure courses through publicly funded counselling and support services, particularly with regard to new recruitment agreements with third countries which are currently being negotiated by Germany.

The Netherlands

- Bolster the implementation of labour rights guarantees through better **enforcement of labour inspection**, including an increase in the resources of the Labour Inspectorate.
- Adopt a **streamlined civil procedure to recover unpaid wages, overtime and holiday pay** and reintroduce a **recruitment agency licensing system**.

- Bolster fair price guarantees for producers, e.g. by **regulating 'living price' benchmarks and setting standards on living wages** for farmworkers.
- Strengthen migrant farmworkers' power through **innovative forms of awareness-raising, organising and forging alliances**.

Sweden

- **Increase the capacity to reach migrant workers** by providing information in relevant languages.
- **Strengthen the presence of trade unions and the Work Environment Authority** (*Arbetsmiljöverket*) on the ground, and provide more effective tools, including **more resources**, to the Work Environment Authority.
- Extend **provisions on corporate human rights due diligence implemented by retailers** (which currently apply to some goods produced in Southern Europe) to goods produced in Sweden.
- Introduce **stricter regulation and monitoring on recourse to recruitment agencies and staffing companies**.
- **Monitor migrant workers' living conditions** (accommodation, access to services and, more broadly, social inclusion).

