Report
Migrant Workers in the Frontline
Expert Meeting
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# Report Expert Meeting

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Introduction

Prof. dr. Tesseltje de Lange, who is the project leader of the research project Migrant Workers in the Frontline, together with Dr. Pascal Beckers, started this expert meeting. It was organized by the project's core-team to facilitate a cross-border exchange of relevant knowledge. More than 35 people from the public and private sector from Germany and The Netherlands attended this online meeting.

De Lange pointed out the relevance of cross-border cooperation, especially during the pandemic: although borders were closed, business and work did not stop at the border. Even when the borders are open, the law, policies and enforcement stop at the border. The focus of the meeting was thus on the COVID-19 measures taken in industries working across the border or in the border region. With that in mind, she gave a special welcome to the German guests from the ministries of North Rhine-Westphalia.

Aanjaagteam Arbeidsmigranten | Booster Team Labour Migrants

The first presentation was given by Jaap Uijlenbroek who works as special advisor for the Dutch Ministry of the Interior and Kingdom Relations. He was also a member of the “Booster Team Labour Migrants” that issued two advisory reports to the Dutch Government on the working and housing conditions of labour migrants during COVID-19 in The Netherlands in June and October 2020.

Uijlenbroek pointed out that the first report was aimed at change in the short run regarding the current COVID-19 emergency situation. At the core of the second report, however, is the call for a structural re-formulation of norms and standards of how to deal with migrant workers in a proper way – especially regarding their vulnerable position in society.

This second set of recommendations is based on five core values. First, all workers should be treated equally and regarded as fully participating in our society. Second, the law needs to be changed where necessary. It is important, third, to take out the loopholes of the system that now enable parties to take advantage of migrant workers and fourth to stimulate the independence of migrant workers, especially from their employers. Finally, there is a need for improving the registrations of migrant workers to have better insight of the issues at hand. Uijlenbroek then moved on to summarize the main recommendations of the Booster Team.

Regulation of temporary work agencies (TWAs): Up until the 90s, TWAs were required to have a licence, but nowadays a voluntary certification system is in place. The Booster Team did not want to return to a licence-system due to the difficulty of enforcement. They recommended making the voluntary system a ‘closer’ system by using the partially private system that is already in place and applying a substantial fee if a TWA is not certified.

Registration: The Booster Team considers proper registration of labour migrants an important step towards change. Municipalities for instance need ‘these numbers’ to ensure an adequate amount of housing and General Practitioners in their area. Now, registration in The Netherlands consists of two complementary systems: the RNI when people stay 0-4 months and the BRP (basic registry of persons) when migrant workers stay longer.

Housing: There is a lack of housing in The Netherlands in general due to the dense population of this country. Municipalities thus experience problems in making space available for proper housing for migrant workers. The Booster Team identified several instruments that are already in the ‘toolbox’ of
government authorities – but there is a need of instructing civil servants how to use these tools. Moreover, stricter norms and enforcement regarding proper housing are needed.

**Health care:** At the moment, losing access to health care poses a serious threat for migrant workers since it is very often connected to their work obligations. This means that it is possible for migrant workers to lose both work and health insurance at once. The Booster Team suggests a prolonged entitlement to health insurance for 30 days after loss of jobs.

**Institutional action:** In The Netherlands, due to the many different actors, institutional action is only based on ad hoc cooperation at the moment. The Booster Team calls for a central information point to ensure a structural cooperation between all involved parties. The central information point will also offer additional support through phone. Moreover, the Booster Team demands that employers will have to report on their efforts in such a serious manner as they are already doing regarding for instance the climate.

**Enforcement:** The Booster Team identifies a better cooperation between various actors in general, including cross-border cooperation, next to a structurally arranged data exchange as major pillars for improvement of enforcement. However, privacy rules make it difficult to have an effective exchange scheme, even between different inspections and municipalities within The Netherlands.

**Arbeitsschutzkontrollgesetz | NRW Legislative Proposal**

The following presentation was provided by Talar Valentina Acemyan and Thomas Kipper, policy advisors for the Ministry of Labour, Health and Social Affairs of the State of North Rhine-Westphalia (MAGS) at the Department of Occupational Safety.

First, the major objectives of the *Arbeitsschutzkontrollgesetz* were elaborated upon: strengthening occupational safety is key priority, as well as contributing to improvements in working conditions in the meat industry. In particular, the law includes changes and new regulations in the existing laws/ordinance *Arbeitsschutzgesetz*, *Arbeitsstättenverordnung* and *GSA Fleisch*. Implementation of the new law was therefore far from easy.

Then, the essential contents of the law were described; the prohibition of service contracts, (*Werkverträge*), and temporary work (*Arbeitnehmerüberlassung [Leiharbeit]*) in the meat industry (and in the meat industry only!). Starting from January 2021 (applicable to *Werkverträge*) and April 2021 (applicable to *Arbeitnehmerüberlassung*), the law applies to the areas of slaughtering, cutting and processing of meat. An exception to these prohibitions is the butcher's trade sector; only if a company employs more than 49 people - the threshold value - this law is enforced. It was also mentioned that there were major discussions about this threshold value; the sales staff and trainees as specialist salespeople in the food trade (specialization) are not taken into account.

In order to handle order peaks, there will be an opening clause for temporary workers in meat processing initially until April 2024. The opening clause does **not** apply to the areas of slaughter and cutting. It will apply to meat processing companies that are bound by **collective agreements**, if a corresponding collective agreement allows this.

People engaging in temporary work need to be treated equally to permanent staff in terms of both working conditions and salary. Another regulation on the topic of working hours concerns an
electronic system to ensure transparency and efficiency in the entire work process – also as a tool to combat forgery.

A minimum inspection rate of 5% of the total number of companies was introduced in the Arbeitsschutzgesetz. Also, if accommodation is provided by the employer or a third party, by order of the employer, the accommodations of employees in all industries (not only meat) need to be documented by the employer at all times. This is not only so that someone can be held accountable, it is also done to establish a legal basis for inspections by the occupational health and safety administration. The employer has to keep the documentation available at the place of work of the respective employee at all times.

In order to strengthen this legal basis for labour migrants, there is an urgent need for cooperation between the safety authorities on both sides of the Dutch/North Rhine-Westphalian border. Creating a list of contact persons from specific ministries and enforcement authorities is key in this process, as well as conducting joint inspections on both sides of the border. Finally, it was stated that legal requirements for cross-border data exchange needs improvement, as life does not stop at the border.

### Wohnraumstärkungsgesetz | NRW Legislative Proposal

Next, the floor was given to Deborah Hilbrands to present the Wohnraumstärkungsgesetz (Housing Strengthening Act). Hilbrands is working as a legal official for the Department of Housing Supervision, Law of Tenancy, Housing Allowance and General Right of Residence at the Ministry for Regional Identity, Communities and Local Government, Building and Gender Equality of the Land of North Rhine-Westphalia (MHKBG).

First, Hilbrands elaborated on the current status quo in terms of migrant workers' living conditions. Numerous employees work in various industries, above all in the meat industry, logistics and agriculture. They are recruited as migrant workers and, at the same time, given accommodation. In summary, accommodation is often in precarious living conditions at excessive rents. Municipalities frequently only learn about current immigration developments and overcrowding of individual properties with a time lag.

Hilbrands then presented the current legal situation and practice. According to current building regulations, buildings can be checked to see whether the properties are suitable for people to live there permanently, hence the distinction between housing (permanent) and accommodation (temporary; Unterkünfte in German). Accommodations are not classified as suitable to live in for a longer period of time. However, there are still no binding specifications for equipment and specific conditions of the accommodation/housing in the current Wohnungsaufsichtsgesetz (Housing Supervision Act).

The Unterkunftserlass (Accommodation decree) from August 2020 defines standards for the uniform treatment of rooms and buildings that are operated and used as accommodation for employees in accordance with building law and housing regulations. At the same time, it takes aim at aspects of infection control. The responsibility for implementation lies with the building supervisory authorities. The housing supervisory authorities are currently only active in relation to residential buildings.

The draft bill of the Wohnraumstärkungsgesetz (Housing Strengthening Act), introduced in December
2020, will now raise these issues to a legal level. Relevant in this respect is § 7 WohnStG-E as well as the transfer of standards that already apply to accommodation in occupational health and safety law, the guideline “Technical rules for workplaces - accommodation” (“ASR A4.4“ for short).

Last but not least, Hilbrands elaborated on the new commitments for the operators of the accommodation. There will be an obligation to notify accommodations, which not only covers new accommodation but also existing ones. The obligation to notify is flanked by the obligation to submit an operating concept and the requirement, that a contact person who can be reached at all times for the respective accommodation must be named to the municipality.

Reflection

The core-team invited Prof. dr. Femke Laagland (Radboud University) who is an expert on European labour law, to reflect on the Dutch and German input.

Her reflection on the relation between the European and national legal context led Laagland to the question if the recommendation of the Booster Team also applies to TWAs abroad, for instance in Poland. Laagland was also curious if the prohibition of contracting in German law that applies to the meat sector is also applicable in a cross-border situation. Does this, she asked the German team, for instance also apply to a Polish undertaking that posts its workers in Germany, but who actually are working in The Netherlands? The questions pertain to the laws of the European internal market, more specifically the right to free movement of services.

Note added from the research team: This argument was also brought before the German Courts in a challenge of the new laws, the outcome of which is not yet known, see also “Das Verbot der Arbeitnehmerüberlassung in der Fleischwirtschaft“.

Follow-up comments from Talar Valentina Acemyan and Thomas Kipper (MAGS): The prohibition of contracting does only apply to employees working in meat factories on German territory. Thus, workers from a Polish undertaking accommodated in Germany, but working in The Netherlands are excluded from the new regulation.

Uijlenbroek explained that there are administrative requirements for TWAs that cannot always be met, which are, according to the Booster Team, still in accordance with EU law. Uijlenbroek termed it a “loophole in the system”, preventing a shift to foreign agencies. The applicable rules can be somewhat fuzzy in practice.

Note added from the research team: What type of administrative requirements a member state may impose on intra-EU service providers has been outlined in numerous decisions of the EU Court of Justice, see e.g. CJEU 11 September 2014, Case C-91/13 Essent vs. Minister of Social Affairs and Employment (NL) in which the court reiterated its earlier case-law paras. 44 & 45 and what obligations can be imposed on service providers in para. 57-58 in respect of making available of workers.
Closing

The take-away message for De Lange of this very fruitful expert meeting was that the border is very present – even between different government bodies of the same country. Communication needs to go in many directions. In fact, an interesting comment of researcher Anita Böcker entailed thinking about the fact that at this moment, the (new) privacy law may not necessarily be safe, but perhaps costs lives.

Questions

1. **Frank Thon (DGB):** In Germany, local authorities do not know where the migrant workers are living. However, the address of a migrant worker is mentioned on her/his payroll. Why then do the local authorities do not know it?
   **Jaap Uijlenbroek (Booster Team):** The information on the pay slip is not accessible to the relevant government bodies. The tax agency receives this information, but it is not relevant to them as long as the employer pays the taxes. There is no data exchange between government bodies.

2. **Prof. dr. Ingrid Jungwirth (Hochschule Rhein-Waal):** What does the exchange of data between The Netherlands and Germany entail?
   **Thomas Kipper (MAGS):** From the German side, for now, they are not allowed to share data with Dutch colleagues. It is currently being checked under which conditions a data exchange may be possible. With respect to occupational health and safety, the exchange of data between the inspectorates enables improved regulatory supervision. For example, the Dutch SZW might encounter a German/North Rhine-Westphalian company working in The Netherlands violating occupational Labour Protection Acts. With this information passed on to the German inspectorate inspections at the company's office can be performed quickly in order to increase the pressure on the company.

3. **Jan Cremers (European Labour Authority):** The problem is that competence ends at the border – who is in charge as soon as there is this trans-national dimension? COVID-19 makes this also more clear and topical. It is good for us to know how this competence is spread in Germany over several organisations and institutions.
   **Scott Schwickert (MHKBG):** During the government consultations between North Rhine-Westphalia and the Netherlands in November 2020, the aim of improving cross-border cooperation in the context of the problems discussed was highlighted, this in relation to joint inspections and data exchange. Since then, regular exchanges have taken place between the ministries concerned on both sides of the border in order to link the respective competent authorities and to explore a way to be able to legally organise the necessary data exchange.
   **Talar Valentina Acemyan and Thomas Kipper (MAGS):** Members of the MINSZW, MHKBG and the MAGS are currently compiling a list of contact persons within the relevant authorities.
4. Jan Cremers (European Labour Authority): The question of who is responsible also arises at the workplace since there are several parties: the intermediate (Vermittler) and the employer. They have responsibility of clear instruction of safety and health that is at stake and security measures they can take – but how to measure this at the workplace?

Talar Valentina Acemyan and Thomas Kipper (MAGS): The Arbeitsschutzgesetz requires the implementation of a risk assessment in the workplace. Dangers are also taken into account that arise from cooperation between different employers and how these are prevented. If employees from several employers work in one workplace, the employers are obliged to work together in the implementation of the safety and health protection regulations. Insofar as this is necessary for the safety and health protection of employees at work, depending on the type of activities, employers must inform each other and their employees in particular about the risks to the safety and health of employees etc.

5. Dr. Sandra Mantu (Radboud University, CMR, RUNOMI): On the opening clause of the Arbeitsschutzkontrollgesetz: How are the peaks defined in the law?

Talar Valentina Acemyan and Thomas Kipper (MAGS): In order to handle order peaks, there will be an opening clause for temporary workers in meat processing initially until April 2024. Temporary work will therefore be possible in the future, if a collective agreement stipulates that temporary workers may be employed to a certain extent in the meat-processing sector. Limits have been set for this. For example: A share of 8 percent of the annual working time volume of employees in this area must not be exceeded.

Follow-up question: What should happen by 2024 so that such an exception would no longer be necessary/applicable?

Answer: The entire (new) regulations for the meat industry will be evaluated in 2023.

6. Imke van Gardingen (FNV): Are there any plans for the (near) future to apply the Arbeitsschutzkontrollgesetz also other sectors than the meat industry? Do employers hire directly in all industries in Germany?

Talar Acemyan and Thomas Kipper (MAGS): The law contains regulations for the meat industry and regulations for occupational safety across all industries. The ban on temporary work and work contracts only applies to the meat industry. Temporary work and work contracts are important instruments of the division of labour. The ban was the last resort to end the organized irresponsibility in the meat industry.
7. Prof. dr. Tesseltje de Lange (Radboud University, CMR, RUNOMI): It seems that meat factories' lobby pushed the German government. Is that correct and what mechanisms are in place to curb this lobbying power?

Talar Acemyan (MAGS): There has been a lot of resistance from the meat industry, but the government has clearly positioned itself with this law. The identified grievances did not allow any other possibility. The federal government is confident that through this law and the direct employment of employees the approaches to prevention will also receive a higher priority in companies in the meat industry and that structures will be established in this area that implement them (for example via the formation of works councils).

8. Prof. dr. Femke Laagland (Radboud University): Was there a discussion in Germany of fearing that German companies perhaps could move to The Netherlands because there, the labour costs might be cheaper – is that a possible problem that is considered in Germany?

Talar Acemyan and Thomas Kipper (MAGS): Labour costs in Germany were low compared to other European countries. However, it cannot be estimated how the changes will affect the meat industries' production sites.

9. Prof. dr. Femke Laagland: Many (meat) factories have outsourced their entire production to subcontracts. This allows a factory to completely evade responsibilities. Could chain liability be a less restrictive measure to solve this problem?

Talar Acemyan (MAGS): This problem is solved with the new regulation. Beyond the meat industry the § 8 in the existing Arbeitsschutzgesetz includes a regulation of cooperation of several employers (for this also question 4).

10. Bob van Oerle (Nationaal Rapporteur): Which persons and sectors are vulnerable for human trafficking? Is there an increase in labour trafficking in Germany? (Compared to the Netherlands where it is said to be no actual increase).

Frank Thon (DGB): The number of homeless people is growing fast; not reported, because they are mostly not in the social system (e.g. from Bulgaria) – increase in homeless people during the pandemic, furthermore there is nothing specific to see in Germany from the numbers.

Martin Slaats (Booster Team): More problems are coming for people who already have problems; it is hard to return to not being homeless when being hit hard (for whatever reason during the pandemic).
Additional Information

1. [Wohnraumstärkungsgesetz](https://example.com) (German only)

2. Follow the development of Wohnraumstärkungsgesetz by clicking on ‘Beratungsvorgang’ [on this website](https://example.com) (German only)

3. [Arbeitsschutzkontrollgesetz](https://example.com) (German only)

4. [Reports of Inspectorate SZW](https://example.com) (Dutch only) on labour migrants (‘Rapport arbeidsmigranten’) and on working conditions during COVID-19 (‘Het werk in coronatijd - Waarnemingen en ervaringen van de Inspectie SZW tijdens de pandemie’)

5. [Report of Nationaal Rapporteur](https://example.com) (Dutch only) on labour exploitation in The Netherlands (‘Uitgelicht: arbeidsuitbuiting’)


7. [Policy brief by the International Institute of Social Studies](https://example.com) ‘From regulated precarity to decent work’

8. Interesting [studies of Palumbo and Corrado](https://example.com) (see specific chapters)

9. [Briefing: The European Labour Authority and Enhanced Enforcement](https://example.com)

10. Neighbourhood development in Kleve: a [research project by Hochschule Rhein-Waal](https://example.com) in collaboration with the city of Kleve. The pilot started in specific neighbourhood in Kleve where social issues have arisen due to the large number of people with a migrant background (with or without German citizenship) living with children as well. There is a need to improve the support structures for these people.