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REPORT
Neglected and Exploited: The Plight of EU Migrant Workers at the Hands of Dutch Temporary Work Agencies

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Date: June 28, 2021

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EXECUTIVE SUMMARY

EU migrant workers face several obstacles when working in the Netherlands, the most prominent being the zero-hour contracts containing a temporary employment clause.[1] These contracts function on a 'no work, no income' basis. Combined with a lack of knowledge about their social rights, migrant workers are in danger of being exploited. Further problems migrant workers encounter are the merger of housing and labour contracts, poor working conditions, poor access to information and legal help, problems with the Burgerservicenummer (the mandatory registry, and social security number) and the limited mechanisms and its effectiveness of the Dutch Labour Inspectorate.

The International Labour Organisation's (ILO) Private Employment Agencies Convention of 1997 (C181) provides an extensive legal framework for regulating the practices of TWAs.[2] The Netherlands is party to the Convention, and thus obliged to comply with the statutory obligations contained therein. Pursuant to the Conference Committee on Application of Conventions and Recommendations' direct requests and observations, this report selects some of the Convention's provisions for further scrutiny – i.e., those provisions with which the Netherlands' compliance is concerning. The focus lies with the accreditation of TWAs; issues of equal treatment and the charging of fees and costs to migrant workers. This report contends that domestic legislation and collective agreements are not reflective of the international legal framework's statutory requirements. Of particular concern is the delegation of accreditation to private entities; the unequal dismissal regimes applicable to migrant workers and regular workers; and the charging of fees and costs to migrant workers.[3]

Accordingly, the recommendations contained herein largely echo some of the advice expressed by the Roemer Commission report and the advice by the Dutch Sociaal-Economische Raad (SER).[4] Whilst measures must be taken to ensure better compliance with C181, the report is

[1] Art. 7:691(2) Burgerlijk Wetboek van 1 Januarie 1992 (amended 2020) ('DCC').
[2] Convention (No.181) Concerning Private Employment Agencies (adopted 19 June 1997, entered into force 10 May 2000) 2115 UNTS 249 art 1(b) ('C181').
[3] C181 arts 5(1); 7; 11; 10; 12; 14.
[4] Aanjaagteam Bescherming Arbeidsmigranten, 'Geen tweederangsburgers: Aanbevelingen om misstanden bij arbeidsmigranten in Nederland tegen te gaan' (2020) ('Roemer Commission Report'); 'Sociaal -Economische Beleid 2021 – 2025: 'Zekerheid voor Mensen, Een Wendbare Economie en Herstel van de Samenleving' (Ontwerpadveis 21/08, June 2021) ('SER Advice').

cognisant of the Dutch government's current budgetary restrictions. Hence, the forthcoming recommendations – particularly those addressing the accreditation system – set out a long-term plan for achieving compliance.

At the European level, Directive 2008/104 sets the minimum standards which all member states must provide to ensure a fair labour market. Directive 2008/104 establishes a balanced approach which guarantees the respect for the migrants' labour rights and the flexibility of the market.[5] The Netherlands has implemented the majority of its obligations under Directive 2008/104. However, some inconsistencies with regards to Articles 5 and 6 are present.[6] Article 5 mandates equal treatment relating to wages. Under the Directive, social partners are allowed to derogate from this principle if 'an appropriate level' of protection is provided.[7] Currently, Dutch legislation allows for social partners to derogate from the principle of equal treatment relating to pay with no guarantee of 'an appropriate level' of protection.[8] This leaves extensive room for appreciation for the social partners. Moreover, Article 6 requires the hiring company to inform migrant workers about any vacant posts in their undertaking, giving them the opportunity to find permanent employment akin to regular workers. At present, Dutch legislation explicitly excludes temporary work agencies from this obligation; hindering the possibility of migrant workers acquiring stable, permanent employment.[9]

The EU social security coordination rules have been passed to facilitate the adequate functioning of social security systems of the member states, in cases of cross-border provision of work and services.[10] This determines which social security system EU migrant workers are subject to once they utilize their free movement rights. This report focuses on sickness benefits, unemployment benefits, insurance, and aggregation of periods.

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[5] Directive 2008/104 of the European Parliament and of the Council of 19 November 2008 on temporary agency work [2008] OJ L 325 ('Dir 2008/104').
[6] Dire 2008/104 arts 5; 6.
[7] Dir 2008/104 art 5(3)
[8] Art. 8(4) Wet Allocatie Arbeidskrachten Door Intermediairs van 14 Mei 1998 ('WAADI').
[9] Art. 7:657(2) DCC.
[10] See Council regulation (EC) 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [2004] OJ L 166/1 ('Reg 883/2004'); Council regulation (EC) 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) 883/2004 on the coordination of social security systems [2009] OJ L 284 ('Reg 987/2009).

The Social Security Coordination Regulations have been correctly implemented regarding unemployment benefits, and the Dutch legal framework is compliant with the Regulations on this subject.[11] However, there are issues regarding the aggregation of unemployment benefits because migrant workers fail to register their Dutch addresses, and due to TWAs not organizing unemployment insurance properly. Secondly, Dutch legislation for 'phase A employment contracts' is not in compliance with the social security coordination schemes on sickness benefits, seeing the lack of offering those benefits. Thirdly, the Dutch system for the coordination of social security of unemployment benefits, sickness benefits and proper administration is non-compliant with the Regulations since migrant workers face unnecessary obstacles in organizing proper administration. Fourth, migrant workers do not have equal access to social security as Dutch nationals. Therefore, the principle of non-discrimination; the principle on aggregation; and the principle that social benefits should be exportable to other member states are not properly guaranteed in the Netherlands at the moment.[12]

[11] Ibid.
[12] Reg 883/2004 arts 4; 6; 7.