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Published in:
European Journal of Industrial Relations

DOI:
10.1177/09596801211052532

Article

European Journal of Industrial Relations

European Journal of
Industrial Relations
2022, Vol. 28(2) 175–191

DOI: 10.1177/09596801211052532
journals.sagepub.com/home/ejd
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Combatting exploitation of migrant temporary agency workers through sectoral self-regulation in the UK and the Netherlands

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Abstract

The recent growth of precarious work has sparked a vivid debate on whether this tendency can be reversed by the social partners through sectoral self-regulation. In this sectoral case study of the temporary work agencies sector in the United Kingdom and the Netherlands, the views, approaches, power and interaction between trade unions and employers' organizations are studied in the context of increasing labour migration in the decade following European Union enlargement. The results show that the employers' organizations have been leading actors in self-regulation, seeking collaboration with trade unions in the Netherlands. In both countries, trade unions have taken an inclusive approach but had little power to affect the deterioration of employment conditions. It has proven difficult to the social partners to reverse the process of increasing precarious work and exploitation. Strict regulatory frameworks imposed by the government are needed to turn a vicious circle into a virtuous one.

Keywords

European Union labour migration, exploitation, temporary work agencies sector, self-regulation, social partners

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Introduction

The flexibilization of labour markets has been linked to a growth of precarious work in modern capitalist societies. An increasing proportion of the workforce enjoys little job security and is poorly paid (e.g. Lohmann, 2009). This growth of precarious work has sparked a vivid debate on whether a further dualization of the labour market is inevitable, with a distinct group of well-paid insiders enjoying a high level of social protection versus a large group of precarious outsiders, or whether this process can still be reversed (Doellgast et al., 2018; Howell, 2021; Meardi, 2018). Against the backdrop of this debate, the role of social partners, as either contributors or opposers to the processes of dualization or liberalization has been discussed in the academic literature. Up to date, the focus has mainly been on trade unions. On the one hand, is argued that they are fierce opposers of flexibilization in general, attempting to slow down or reversing processes of flexibilization and increasing precarity. On the other hand, it is argued that they have enhanced these processes, by focussing on the interests of their members, which are often 'insiders' on the labour market (Lillie, 2012; Rueda, 2006). This literature argues that only when trade unions also represent the interests of the outsiders, they will be able to slow down or reverse these processes. Doellgast and colleagues (2018) phrase this as the possibility to create a 'virtuous circle' instead of a vicious one.

The role of employers has not received much attention in this literature, yet. Their role is mostly discussed in terms of their power to 'exploit exit options' (high versus low), relying on the observation that employers and their organizations celebrate flexibilization at the national, sectoral and organizational level (Greer and Doellgast, 2017; Kinderman, 2016). Different employers, however, might have opposing interests. Limiting the growth of precarious work and protecting employment conditions might be in the interest of some employers as it creates a level playing field (Afonso, 2011). If these interests prevail among a substantial proportion of the employers in a sector, it might lead to self-regulation in order to protect employment conditions. We argue that both trade unions and employers have the potential to turn a vicious circle into a virtuous one, especially when they find each other and are willing to cooperate. The central question of this article is whether the two parties are able to find each other in sectors where a growth in precarious work is already taking place.

An important driving force behind precarization and dualization of the labour market is the substantial inflow of labour migrants to Western Europe, triggered by large wage differences and active recruitment, after the enlargement of the European Union (EU) in 2004 and 2007 (McDowell et al., 2008). The growth of labour migration increased the risk of exploitation, downward pressure on employment conditions and substitution of incumbent workers, leading to a new group of precarious workers on Western European labour markets. Various reports showed that labour migrants often have little to no job security, are forced to accept extreme degrees of flexibility and receive no payment for overwork or travel time during working hours (Maroukis, 2015; McGauran et al., 2016). After a transition period of maximum 7 years, the old member states were required to open the borders to labour migrants and had to rely on labour market regulation rather than migration policies to prevent potentially detrimental effects of labour migration on their

labour markets. Available avenues for regulation of the labour market include not only legislation and formal regulation at the national level, but also self-regulation at the sectoral level by employer associations and trade unions.

The temporary agency work (TAW) sector has played an important role in the accommodation of EU labour migration and therefore provides an interesting case. It is an important source of employment for labour migrants, especially in those countries where TAW was already commonly used by employers to achieve flexibility in their organization of labour, such as the United Kingdom (UK) and the Netherlands (Voss et al., 2013). It is estimated that 26% of Central and Eastern European (CEE) labour migrants work through temporary work agencies in the Netherlands (Strockmeijer et al., 2017), reaching up to 60% for Polish labour migrants (Engbersen et al., 2011). In the UK, the estimates vary between 40 and 50% of all CEE labour migrants being employed through temporary work agencies (Green et al., 2013), resulting in a share of 19% of all agencies workers being of CEE origin (Judge and Tomlinson, 2016).

The years following EU enlargement showed the TAW sector to be especially vulnerable to the exploitation of CEE labour migrants and the evasion of labour standards, including instances of mala fide temporary work agencies using complicated administrative setups in order to pay labour migrants extremely low wages (Håkansson et al., 2009; Krings, 2009; Lillie and Greer, 2007; McGauran et al., 2016). Temporary work agencies often not only provide employment, but also housing, health insurance and transportation to and from work. Such practices increase labour migrants' dependency on the temporary work agency, which makes it less likely they will object to malpractices and thereby increases the risks of underpayment and exploitation (Maroukis, 2015; McGauran et al., 2016). We address the question which roles the social partners have taken up in this sector to potentially halt this vicious circle by means of sectoral self-regulation.

Support of both employers and trade unions for self-regulation of the TAW sector is far from self-evident: the very existence of the sector relies on increasing flexibility in the labour market and regulation is often seen by employers as hampering flexibility. Moreover, temporary agency workers and migrant workers are rarely trade union members, and improving their working conditions is therefore not likely to be a core priority of trade unions but rather the elimination of TAW altogether. The TAW sector therefore constitutes an interesting case to study the approach of social partners towards the protection of working conditions.

We focus on the preferences and abilities to self-regulate the TAW sector in the decade after the enlargement of the EU when pressure on working conditions was most acute. We compare two countries that are similar regarding the central role the TAW sector has since long played in accommodating labour market flexibility and where the sector is well established: the UK and the Netherlands. In both countries, similar problems arose in the sector after the enlargement of the EU. The two countries differ with regard to their system of labour relations, which allows studying, in very different contextual settings, the considerations and responses of social partners to labour migration and to observe whether they have attempted to turn around the vicious circle into a virtuous one.

Regulation of the TAW sector

To explain the role of unions with respect to the 'precarization' of work, Doellgast et al. (2018) discuss three theoretical approaches: (1) the comparative political economy approach, (2) the critical sociology approach and (3) the comparative employment relations approach. In line with these three different approaches, we briefly discuss the role of national systems of labour relations, the preferences and aims of unions and employers and the interaction between various actors at the national, industry and company level, respectively. In contrast to Doellgast et al. (2018), whose focus is the role of trade unions, we pay equal attention to the role of employers and employer associations.

Systems of labour relations

For most of the post-World War II-period a clear dividing line regarding economic governance, the regulation of the labour market and the inclusiveness of welfare institutions ran between the so-called coordinated market economies and the liberal market economies (Hall and Soskice, 2001). For a long time, these systems of economic and social ordering were assumed to be relatively stable over time. The more recent scholarly literature, however, highlights the changes that have taken place in the past decades (e.g. Baccaro and Howell, 2017; Streeck, 2009). Baccaro and Howell (2017) observe a common evolution in a more 'liberal' direction. Nevertheless, systemic differences between countries remain. The UK is generally considered the prime example in Europe of a liberal market economy, whereas the Netherlands is a typical coordinated market economy. The systems of industrial relations are also radically different in the two countries. The UK system has been qualified as 'liberal pluralism' (Visser et al., 2009) or 'fully decentralized' (Garnero, 2020), in which the government interferes with labour relations as little as possible and collective bargaining only takes place at the company level – if at all. Business and government share the notion that the labour market ought to be subject to as little regulation as possible to facilitate maximum flexibility (Scott, 2007). Involvement of the social partners in policy making at the national level is rare and is limited to ad-hoc consultation, whereas the social dialogue between unions and employers occurs primarily at the workplace level (Lillie and Greer, 2007; Voss et al., 2013). There is little social dialogue at the sectoral level and few sectoral collective agreements exist.

Dutch labour relations, on the other hand, are characterized by a corporatist system of 'social partnership' (Visser et al., 2009) in which collective bargaining is 'organized decentralized and coordinated' (Garnero, 2020), meaning that the sector (industry) level is the predominant bargaining level but bargaining is centrally coordinated. In this system, the labour market is regulated in close cooperation with the social partners, that is, trade unions and employer associations, or by the social partners themselves. This includes tripartite consultation and cooperation with the government at peak-level. Nearly 80% of Dutch employees are covered by a collective agreement, of whom the large majority (c.90%) is covered by extended or non-extended sectoral collective agreements (De Beer and Keune, 2017). In short, social partners have a lot more say at the national and at the sectoral levels than they do in the UK. In both countries, trade unions and employers'

organizations do not necessarily agree upon what kind of regulation they prefer nor always have the strength to realize their wishes. Where they align, the chances for the fulfilment of their preferences are higher (Doellgast et al., 2018).

Trade union's preferences and abilities to self-regulate the TAW sector

One key issue in the industrial relations literature is to understand how trade unions have responded to precarious work (Gumbrell-McCormick, 2011; Pulignano et al., 2016). Two central strategies have been pointed out (Mendonca, 2020). In the first, trade unions focus on protecting the interests of their members and by doing so contribute to the dualization of the labour market (e.g. Hassel, 2014). The second strategy centres around the protection of working conditions of precarious workers, thereby trying to realize better working conditions for all (Doellgast et al., 2018). This dual-approach can be extended to how trade unions approach intra-EU labour migration. Trade unions can opt for protection of the position of their members, which are often not the labour migrants. However, besides strengthening the position of labour migrants, the regulation of labour migrants' terms of employment may also be an effective way to prevent the worsening of terms of employment and substitution of incumbent workers (Donnelly, 2015; Krings, 2009; Lillie and Greer, 2007; Marino et al., 2015).

Trade unions are not always able, however, to establish self-regulation of terms of employment with the employer associations. Their position is not very strong in either the UK or the Netherlands, with union density at 23.3 and 16.8% for the year 2017, respectively (OECD, 2021). Based on their membership rates, neither in the UK nor in the Netherlands are trade unions expected to have the ability to compel employers to cooperate. In the Netherlands, however, trade unions also participate in tripartite consultation at the national level, which strengthens their ability to influence labour market regulation. This does not mean, however, that trade unions in the UK have no means of making themselves heard: this can also be achieved through the organization of labour migrants themselves. When they are less integrated in national institutions, organization on the shop floor can be a valuable asset to unions (Marino, 2012).

Employer associations, labour migration and self-regulation

Employers and employer associations often do not agree with trade unions regarding flexibilization, regulation of employment conditions and labour migration. They are generally in favour of flexibilization, deregulation of employment conditions and intra-EU labour migration as labour migrants represent a potential source of cheap, temporary and flexible labour (Engbersen et al., 2011; Hassel et al., 2015; Krings, 2009). Depending on the institutional context, they have more or less succeeded in realizing their preferences. This description of the position of employers might, however, not be universally true. In some countries, trade unions and employer associations agree on the desirability of jointly regulating sectors with a large share of labour migrants and/or lobbying with the government for regulation, while in other countries employer associations take the position 'the less regulation, the better' (Afonso, 2011; Pedersini and Pallini, 2010).

In the literature, this difference in attitude is explained by the way that employer associations weigh the interests of various members or sub-groups of members, in combination with their relationship to trade unions and the government (Afonso, 2011; Lillie and Greer, 2007). Whereas labour migration means greater access to cheap and flexible labour for some employers, for others who do not employ labour migrants it may mean increased price competition which exerts downward pressure on their prices or their revenue. As a result, some members of employer associations are in favour of regulation of the terms of employment in order to create a level playing field, whereas others are against regulation (Afonso, 2011). The position ultimately taken by an employer association then depends on the composition of its member base.

Furthermore, Lillie and Greer (2007) show that employer associations, contrary to many individual employers, are more nationally oriented as a consequence of their interactions with government and trade unions. Strong unions can then more easily persuade employer associations to support regulation of terms of employment for labour migrants (Afonso, 2011; Lillie and Greer, 2007). Support for sectoral self-regulation may also stem from the wish to preclude the government from intervening (Afonso, 2011). The ultimate position of employer associations, therefore, is expected to depend on internal dynamics, the government's stance towards labour market regulation and the position of trade unions.

Research design

This research is based on two case studies in the TAW sector: one in the UK and one in the Netherlands (see also: (Been and de Beer, 2018)). The research focuses on the decade after the EU was enlarged in 2004 and 2007. In this period, the massive intra-EU labour migration that followed the enlargement was most disruptive for working conditions in the receiving countries and regulation has been most likely to have been put in place (if at all). The research design contains several steps. First, government documents pertaining to the regulation of the TAW sector were analysed in-depth for both countries to get insight in the government stand on regulating the TAW sector. This provided the context for the views of social partners on self-regulation of the sector. We obtained all relevant documents since the year 2002, to also capture the period leading up to the enlargement of the EU in 2004 and 2007 and the decade thereafter. As a second step, semi-structured interviews were held in both countries between November 2016 and February 2017 with representatives of the social partners in the sector, in order to get a better understanding of their diagnosis, preferences and motives (the primary interviews). Where relevant, additional semi-structured interviews were held with representatives of organizations in the sector which were set up to facilitate self-regulation, such as sectoral inspectorates and hallmarks. In the Netherlands, seven interviews took place and in the UK four, reflecting the higher density of sectoral self-regulation in the Netherlands involving a larger number of organizations. Finally, 10 additional informative interviews were held with experts to obtain deeper insight in the specifics of the regulatory systems in place in both countries (the secondary interviews). Some interviews were held with up to four persons from one

organization simultaneously which is counted as one interview (see Table 1 for an overview of all interviews).

All interviews were held by one of the authors, in either Dutch or English. The topics discussed included: (1) the role of the organization in the regulation of the TWA sector, (2) the impact of the inflow of CEE labour migrants on the organization, the sector and working conditions, (3) perceived problems following from CEE labour migration, (4) the person's/organization's point of view regarding the regulation of labour migrants' terms of employment in the sector, (5) lobbying activities, negotiations and resulting policies and (6) motives for formulating/pressuring for a particular policy/approach. The interviews lasted between 45 and 60 min each and were conducted in person at the interviewees' offices. The interviews were recorded with the consent of all interviewees and thereafter transcribed ad verbatim, to be coded and analysed using MaxQDA. We started with a coding list, including the view on labour migration, view on self-regulation, actions taken and (perceived) power to realize preferences. All interviews were coded using this list but simultaneously applying open coding to allow topics to emerge from the data. After coding two interviews, the coding was double checked within the team, thoroughly discussed and altered where necessary before moving on to coding the other interviews. Next, we entered a phase of axial coding, revisiting the raw data to ensure that codes reflected the data properly and making connections by setting up hierarchies resulting in a comparative overview describing the views, preferences, approaches and (perceived)

Table 1. overview of the semi-structured interviews.

Category	Country	Organization	Type of organization
Primary interviews	NL	*Nederlandse Bond van Bemiddelings- en Uitzendondernemingen* (NBBU)	Employers' organization
	NL	*Algemene Bond Uitzendondernemingen* (ABU)	Employers' organization
	NL	*Federatie Nederlandse vakvereniging* (FNV)	Trade union
	NL	*Christelijk Nationaal Vakverbond* (CNV)	Trade union
	NL	*Landelijke Belangen Vereniging* (LBV)	Trade union
	NL	*Stichting Naleving CAO voor Uitzendkrachten* (SNCU)	Sectoral inspectorate
	NL	*Stichting Normering Arbeid* (SNA)	Hallmark foundation
	UK	*Recruitment and Employment Confederation* (REC)	Employers' organization
	UK	*Trades Union Congress* (TUC)	Trade union
	UK	GMB	Trade union
	UK	*The national Gangmasters and Labour Abuse Authority* (GLAA)	Inspectorate/ licencing authority
Secondary interviews	UK	*4 expert interviews with scholars*	N.A.
	NL	*6 expert interviews with scholars, national inspectorate and employers' organization (VNO-NCW)*	N.A.

power of the social partners in the TAW sectors linked to the actual level of self-organization of the sector in both the UK and the Netherlands. We will now turn to discussing these results. We will first provide an overview of the government regulation of the TAW sector in both countries, after which we will discuss what the self-regulation looks like. Next, we will turn to discussing the views and influence of, first, trade unions and, second, employers' organizations.

Government regulation of the TAW sector in the Netherlands and the UK

The two options that are available for sectoral regulation of the TAW sector are, first, a national government licencing system, and, second, self-regulation by sectoral social partners. In the Netherlands, a national licencing system for temporary work agencies existed until 1998, when it was replaced by a system of self-regulation with the introduction of the Allocation of Workers and Intermediaries Act (*Wet Allocatie Arbeidskrachten en Intermediairs*, or WAADI). In the UK, a licencing system still exists, but only for particular segments of the TAW sector, viz. agriculture and shellfish gathering. Its inception was to an important extent a response to the Morecambe Bay accident, a serious accident involving Chinese migrant shellfish gatherers in 2004 (Scott, 2007). The national Gangmasters and Labour Abuse Authority (GLAA, formerly GLA) issues licences and is responsible for enforcement. Although it is a government body, it focuses on the TAW sector specifically. Several attempts have been made to expand this system of licences to other parts of the TAW sector, but thus far no political majority supported expansion. However, the GLAA's responsibilities have been expanded with the acceptance of the Immigration Act 2016 including a monitoring function to investigate criminal activities in the TAW sector. Criminal activities are defined as modern slavery in conjunction with payment below minimum wages. This illustrates that in the UK, exploitation of labour migrants and the existence of mala fide agencies is combatted in the domain of criminal law rather than labour market regulation. This is in line with the government's philosophy of 'cutting red tape' which implies that there should be as little top-down labour market regulation as possible.

In contrast, in the Netherlands, the government has introduced further regulation of the TAW sector in response to incidents of exploitation. This legislation tends to focus on regulating the behaviour of agencies and hiring companies, rather than individual worker rights. Examples are the introduction of a joint responsibility of the hiring company and the temporary work agency for payment of the minimum wage and holiday allowance (2010), the obligation for temporary work agencies to register (2012), the Sham Constructions Law (Wet Aanpak Schijnconstructies, 2015) and the prohibition of deductions from the minimum wage, with the exception of costs for housing and social insurance (2017). These examples show that in addition to relying on sectoral self-regulation, the Netherlands government has – in contrast to the UK – opted for further labour market regulation in the TAW sector to combat exploitation in the years following EU enlargement.

Self-regulation of the TAW sector in the Netherlands and the UK

Both in the Netherlands and in the UK some sort of sectoral self-regulation of the TAW sector exists. In line with our theoretical expectations, in the UK, this is organized solely by the employer association of temporary work agencies, the Recruitment and Employment Confederation (REC). The REC has formulated a code of conduct to which all members must adhere, though it is not specifically aimed at the employment of labour migrants. For compliance, the REC relies on complaints about REC members' behaviour, which may be filed by anyone. Members' knowledge about the guidelines is kept up to date by means of a mandatory test to be taken every 2 years. This test was introduced after it was found that the main reason for non-compliance was the lack of accurate knowledge among members. The REC furthermore runs a campaign aimed at hiring organizations to encourage the use of bona fide agencies. The trade unions play no role in the self-regulation of the sector. They do, however, attempt to organize temporary agency workers and support members who wish to take their grievances to court. There is no sectoral collective labour agreement (CLA) in the TAW sector, and hence there is no sectoral enforcement body of the social partners. Workers' grievances therefore only pertain to their legal rights. Enforcement of legal rights is the responsibility of the national labour inspectorate. In the interviews, respondents stated that the labour inspectorate tends to act primarily in a reactive manner, responding to complaints, rather than proactively conducting inspections.

The system of self-regulation in the Netherlands is much more elaborate. Both the trade unions and the two employer associations, the General Union of Temporary Work Agencies (*Algemene Bond Uitzendondernemingen* (ABU)) and the Dutch Union of Intermediary and Temporary Work Agencies (*Nederlandse Bond van Bemiddelings-en Uitzendondernemingen* (NBBU)), are actively involved. Two CLAs exist in this sector, each one concluded by and named after one of the employer associations.[1] The ABU collective agreement has been extended by ministerial decree, which means that also temporary work agencies that are not a member of an employer association have to comply with it. As stated in the theoretical framework, this may enhance the effectiveness of sectoral self-regulation substantially. For compliance and enforcement, the social partners have instituted a sectoral enforcement body: the Enforcement Foundation of the CLA for Temporary Agency Workers (*Stichting Naleving CAO voor Uitzendkrachten* (SNCU)). The SNCU acts both reactively, in response to complaints, and proactively to address violations of the CLAs, thus constituting a form of self-regulation. It furthermore passes cases on to the national labour inspectorate (*Inspectie SZW*) when violations of the law are found. In the Netherlands, workers' grievances therefore include legal violations, violations of the CLA, or both, thus encompassing a wider scope than in the UK.

Additionally, the Netherlands knows a privately governed hallmark for temporary work agencies issued by the Foundation of Labour Standards (*Stichting Normering Arbeid* (SNA)). The main objective of this SNA hallmark is to help hiring organizations to choose a bona fide temporary work agency. The hallmark used to be supported by legislation which exempted hiring organizations of responsibility for abuses further on in

the employment chain as long as they make use of certified temporary work agencies. However, this is no longer the case. About 90% of temporary agency workers are employed through an SNA-certified temporary work agency (Sociaal Economische Raad, 2014).

Finally, trade unions and employer associations in the Netherlands have agreed in the CLA that temporary agency workers are entitled to the same pay as employees in the hiring organizations, as follows from European legislation (Temporary Agency Work Directive: 2008/104/EC), but already from the first day that they are hired. This means that from the start of their employment they are paid equally to directly employed employees engaged in similar activities in the hiring organization. In the UK, equal pay is not required until after 12 weeks of employment (Maroukis, 2015; Voss et al., 2013). We conclude that the extent and nature of self-regulation in the TAW sector, despite its flexible nature in both countries, are in accordance with the industrial relations system in place. In the Netherlands, self-regulation is a joint initiative of unions and employers, and it is much more extensive than in the UK, where it is a unilateral initiative of the employer association.

The views of trade unions and their influence

Both the Dutch and the British trade unions state that they are in favour of labour mobility in the EU. In line with the literature, however, the unions identify two important problems arising from intra-EU labour migration: (1) competition between labour migrants and incumbent workers for the same jobs, and (2) poor terms of employment for labour migrants. Unions claim that employers abuse CEE labour migrants' vulnerable labour market position to minimize labour costs. In their view, equal treatment of all workers offers the best solution, as it will result in better terms of employment for labour migrants and create a level playing field for all workers, so that labour migrants no longer pose a threat of unfair competition to other groups of workers. It also prevents downward pressure on the terms of employment of incumbent workers. Ultimately, trade unions argue for equal terms of employment across the EU in order to lessen competition on terms of employment thus taking an inclusive approach. At the same time, however, unions acknowledge that equal terms of employment are not always in the interest of CEE labour migrants. After all, lower pay and poorer terms of employment may increase their job opportunities.

> *[our] strongest motive is countering substitution. But there's more than one side to it. If the playing field is equal, of course it becomes less attractive to bring people over here from abroad, except for vacancies that are difficult to fill here.*
>
> (Trade union, the Netherlands)

Although unions in both the UK and the Netherlands are in favour of regulation of terms of employment, their role at the national and the sectoral level differs significantly, as we explained in the theoretical framework. The British unions state that they have no

influence on national regulation, especially 'when there is no Labour government in place' nor within the TAW sector itself. Their strategy is therefore to draw the government's attention to the issue of vulnerable workers – which includes CEE labour migrants – without expecting to be assigned a concrete role by the government. Unions' main strategy is to organize labour migrants themselves. One way in which British unions actively stimulate membership is by offering language courses, which provide labour migrants with immediate benefit from their membership. Also, unions inform labour migrants about their rights because a lack of knowledge leaves them more vulnerable to exploitation. Unions offer information on their website in several languages and furthermore point out the importance of union membership for successfully claiming rights. Nonetheless, unions underscore the difficulty of organizing labour migrants: due to their vulnerable position joining a union may even mean losing their job.

They lose their job when they go to a union, are afraid of being sent home.

(Trade union, UK)

Contrary to their British colleagues, the focus of Dutch trade unions to improve the situation of labour migrants is mainly at the national and sectoral levels. At the national level, they consistently lobby for equal terms of employment and, just as in the UK, draw the government' attention to the issue of vulnerable workers and specific circumstances that contribute to vulnerability, such as the provision of both employment and housing. The success of their lobby for a prohibition of deducting housing costs from wages, proofs the effectiveness of this strategy.

At the sectoral level, the trade unions are closely involved in the joint regulation of terms of employment with the employer associations. They find each other in the wish to regulate the sector, the reason for trade unions being fairly straightforward to increase the working conditions for all workers in the sector and to reduce downward pressure. In this context, unions have successfully negotiated for equal pay for temporary agency workers and regular employees from day one in the two sectoral TAW CLAs. They have also achieved the inclusion of certain sections of the CLA in the SNA hallmark, on top of legal criteria. However, even though originally the SNA hallmark was jointly governed by employers and trade unions, in 2017 the trade unions withdrew their support of SNA because they no longer considered it to be effective. According to them, it created a paper reality focussing on procedures rather than outcomes meaning that nothing improved for workers themselves. Withdrawing from the hallmark was an attempt to turn this around, but insofar has not resulted into changes, reflecting their lack of real power. Thanks to their greater influence at sectoral and national levels, trade unions in the Netherlands are less dependent on the organisation of labour migrants than their British colleagues. Nonetheless, they do attempt to organize labour migrants, but find it challenging. To attract them, the Dutch trade unions have set up campaigns to inform CEE labour migrants about their rights and the support the trade union could offer them. Moreover, to make it easier to report violations of employment conditions, unions have engaged Polish-speaking helpdesk workers.

Regardless their efforts, in both countries trade unions state that violation of labour legislation and, closely related, the existence of mala fide temporary work agencies continue to exist. A major problem is, however, that even though there is awareness of these problems as new cases are continuously uncovered, no one has any idea of the actual size of the problem. The trade unions fear that only the tip of the iceberg is uncovered.

The views of employer associations and their influence

As a rule, employer associations support migration and the free movement of labour, as it is a tried and tested method of filling vacancies, especially in sectors where this is difficult and where employers rely on cheap labour. The Dutch and British employer associations were no exception when the EU was enlarged. The interviewees of the British employer associations indicate, however, that the Brexit has changed the situation in such a way that their appeals for the free movement of labour are no longer relevant. Despite the similarity in views on migration, employer associations in the two countries have very different preferences regarding the regulation of terms of employment for CEE labour migrants.

In the UK, the TAW employer association REC sees no reason why the terms of employment of labour migrants and incumbent workers should be equal. They do not consider a level playing field as a logical starting point for regulating the labour market, neither by employer associations nor by the state. Since a level playing field is not deemed necessary, no need is felt for a sectoral CLA nor for cooperation with the trade unions. Terms of employment are left to the market and to negotiations between individual employers and workers. The REC does wish to stimulate decent conduct by employers to protect the sector's reputation: hence the code of conduct for its own members. Also, non-compliance with labour legislation by temporary work agencies is considered problematic because it leads to unfair competition for agencies that do abide by the law. However, agencies that violate the law are seen by the employer associations and by the government as criminal organizations interfering with the market, rather than as part of the sector and are thus not the responsibility of REC to deal with. The employers hold the state responsible for combatting these forms of criminal activity and do not consider it to be a task of the sector itself. In their view, the responsibility of the sector is limited to reporting incidents of exploitation to the national labour inspectorate.

> *The worst practices, we would not even call recruitment agencies, we would call them gangmasters, […] a criminal gang. And migrant workers that come here, they fall into the wrong hands, and once they are in the wrong hands it is difficult to get out.*
>
> (Employer association, UK)

The employer association and the government agree on their stance towards mala fide temporary work agencies. The state, too, sees them as criminal elements and does not consider them to be part of the TAW sector. Combating them is therefore not a labour market issue, but a criminal issue. It is addressed by the state in the broader context of modern slavery, which places it outside the scope of labour regulation. The government thus exerts little pressure on temporary work agencies to regulate the sector further. In

short, the TAW employer association assigns itself a minor role with regard to self-regulation, limited to its own members only. Beyond that, it is the task of the government to address breaches of the law, as a form of criminal activity.

In the Netherlands, both the peak-level employer association VNO-NCW and the sectoral employer associations ABU and NBBU are in favour of regulating terms of employment to create a level playing field for entrepreneurs. The position of small and medium sized enterprises (SMEs) is particularly important in this regard: SMEs make little to no use of labour migrants, and it would be very difficult for them to compete with larger enterprises that do employ labour migrants if terms of employment would be left unregulated. According to the Dutch employer associations, a level playing field is therefore particularly important for SMEs. A legally extended sectoral collective agreement is considered the most useful and obvious instrument for achieving this. For this reason, when the new Member States joined the EU, the TAW employer associations aimed at ensuring that temporary work agencies engaged in the transnational market and operating from abroad had to comply with the sectoral CLAs, too. Cooperation with trade unions was and is crucial in this endeavour: CLAs are negotiated with the trade unions, and sectoral enforcement of the CLA is organized through the SNCU, in which the unions participate. It is therefore not the strength of trade unions forcing employer associations to negotiate a CLA, but the shared interest in creating a level playing field for both workers and temporary work agencies. Finally, the government is also expected to contribute to a level playing field by combatting mala fide temporary work agencies.

The objectives of the TAW employer associations extend beyond merely creating a level playing field by means of the sectoral CLA. With the SNA hallmark, they strive to create a bona fide TAW sector. According to the SNA website, the hallmark originated from the 'strong desire for self-regulation within the TAW sector'. This statement can also be explained by the wish to avert the re-introduction by the government of a central licencing system, which might occur if the sector fails to curtail malpractices through self-regulation. The employer associations are opposed to this and prefer to 'keep things in their own hands', and to regulate the entrance to the sector as social partners themselves.

> *In the beginning it [employing labour migrants through temporary work agencies, ed.] just happened, and at a certain point you start hearing about malpractices. Housing, wages, and so on. Naturally, for a branch association, it's important to respond. Certification is an important point in that. To deal with it properly. Politically, too, much was expected from it. Certifying the sector was also a way to show that you are aware of malpractices. That you have a vision as an organisation, that you want your members at least to do it properly. On the other side, you see that there is pressure from politics and the unions for things to change. That you respond to it together.*
>
> (Employer association, the Netherlands)

Concluding remarks

The aim of this article was to shed light on the role and views of both trade unions and employers' organizations in potentially reversing the downward spiral of decreasing

working conditions through sectoral self-regulation in a sectoral context where pressure on working conditions has been severe: the TAW sector in the UK and the Netherlands in the decade after the EU enlargement in 2004 and 2007. The TAW sector is an important source of employment for CEE labour migrants in both the Netherlands and the UK. Self-regulation of terms of employment in this sector is therefore potentially an effective avenue for combating exploitation of labour migrants and reducing downward pressure on working conditions. In line with the industrial relations systems, self-regulations are much more extensive in the Netherlands than in the UK. The major explaining factor here are the employers' views on sectoral self-regulation: in the Netherlands, a level playing field, cancelling out competition on working conditions, is seen as important by employers, whereas in the UK such competition is viewed as inherent to the market and even desirable as long as it takes place within legal boundaries. Moreover, in the Netherlands, the government threatens to reintroduce a government licencing scheme if self-regulation fails, which would not be welcomed by employers. Consequently, in the Netherlands, employers seek cooperation with the trade unions to self-regulate the sector, whereas in the UK they do not. This illustrates that employers' organizations are, more so than trade unions, the defining factor for self-regulation in the context of the TAW sector where unions lack organizing power (as in most sectors of the economy).

Even though they are not the leading actors, trade unions do play a role in the TAW sector in both countries, but more extensively in the Netherlands than in the UK. In both countries, trade unions have opted for an inclusive approach (in line with Doellgast et al., 2018). They focused on improving working conditions for member and non-members/labour migrants and incumbent workers alike, as they felt this would be the best strategy to prevent a deterioration of working conditions which would hurt incumbent workers. Nevertheless, in both countries, unions acknowledge that this has been insufficient to set in motion a virtuous circle: severe problems and violation of working conditions continue to exists, even in the Netherlands where employers' organizations and trade unions found each other in their wish for self-regulation.

The violation of labour legislation by temporary work agencies is also recognized by employers' organizations. Self-regulation by employers' organization REC in the UK focuses on prevention among their members. Regulation of non-members and targeting mala fide agencies are seen as a government responsibility. In the context of the Netherlands, where it is regarded a labour market regulatory issue, self-regulation focuses on the sector as a whole. This is supported by the legal extension of the collective agreement. Nevertheless, also in the context of the Netherlands, the trade unions regard it not sufficiently effective, especially since they disagree with employers' organizations about the desired level of regulation, as illustrated by them leaving the hallmark organization. Therefore, in both countries, trade unions have also addressed the government to regulate (problems in) the sector. In the years since the enlargement of the EU, in both countries the government has indeed acted in response to reports of malpractices. In the UK, the government addressed the problems in the TAW sector in relation to labour migrants in the modern slavery debate, and in the Netherlands, the government extended labour market legislation with a specific focus on artificial construction used in the TAW sector. It can thus be concluded that in sectors that experience a strong downward pressure

on working conditions and statutory minimum standards are often violated, the government is needed to bring this process to a halt, as social partners find it difficult to effectively self-regulate the sector, lack the financial means to do so and/or do not consider it to be their responsibility. Moreover, in the TAW sector, which only exists because of flexibilization, social partners disagree about the extent of regulation, even if they share a preference for self-regulation, as is the case in the Netherlands. We therefore conclude that without strict government intervention it is very difficult to turn a vicious circle into a virtuous one in the most vulnerable sectors of the economy.

Acknowledgements

This article is an adaptation of Been and de Beer, 2020

Funding

The author(s) disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: This article is based on case studies conducted for the research project Re.Cri.Re, financed by the European Commission's Horizon 2020 programme (reference number: 649436) and published in Been and de Beer, 2018

Note

1. In 2019, the two CLAs have been harmonized, which means that they stipulate exactly the same terms of employment, although they are formally still two separate CLAs.

References

Afonso A (2012). Employer strategies, cross-class coalitions and the free movement of labour in the enlarged European union. *Socio-Economic Review* 10: 705–730. doi:10.1093/ser/mws008

Baccaro L and Howell C. (2017). *Trajectories of Neoliberal Transformation: European Industrial Relations since the 1970s*. Cambridge University Press.

Been WM and de Beer P (2018) *The regulation of terms of employment of labour migrants in the temporary work agencies sector: The cases of the Netherlands and the UK*. Amsterdam: University of Amsterdam.

De Beer P and Keune M (2017). Dutch unions in a time of crisis. *Rough Waters European Trade Unions in a Time of Crises*, 221.

Doellgast V, Lillie N and Pulignano V (2018). From dualization to solidarity: halting the cycle of precarity. In Doellgast V., Lillie N. and Pulignano V. (Eds.), *Reconstructing Solidarity: Labour Unions, Precarious Work, and the Politics of Institutional Change in Europe* (pp. 1–41). Oxford University Press.

Donnelly MJ (2015). Competition and solidarity: union members and immigration in Europe. *West European Politics* 39(4): 688–709. doi: 10.1080/01402382.2015.1110941

Engbersen G, Ilies M, Leerkes A, et al. (2011). *Arbeidsmigratie in vieren: Bulgaren en Roemenen vergeleken met Polen*. Rotterdam: Erasmus Universiteit Rotterdam

Garnero A (2020). The impact of collective bargaining on employment and wage inequality: evidence from a new taxonomy of bargaining systems. *European Journal of Industrial Relations* 26: 1–18. doi: 10.1177/0959680120920771

Green A, Atfield G, Adam D, et al. (2013). Determinants of the composition of the workforce in low skilled sectors of the UK economy. *Lot 2: Qualitative Research – Final Report*. Warwick: Warwick Institute for Employment Research.

Greer I and Doellgast V (2017). Marketization, inequality, and institutional change: toward a new framework for comparative employment relations. *Journal of Industrial Relations* 59(2): 192–208.

Gumbrell-McCormick R (2011). European trade unions and 'atypical'workers. *Industrial Relations Journal* 42(3): 293–310.

Håkansson K, Isidorsson T, Pond R, et al. (2009). *Representation of Agency Workers: He Representation of Agency Workers in Europe at National and Local Level in France, Netherlands, Sweden, Poland and the UK*. Gothenburg: University of Gothenburg. http://hdl.handle.net/2077/44375

Hall PA and Soskice D (2001). *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*. Oxford: Oxford University Press.

Hassel A. (2014). *Trade Unions and the Future of Democratic Capitalism. The Politics of Advanced Capitalism*. Cambridge: Cambridge University Press.

Hassel A, Steen-Knudsen J and Wagner B (2015). Winning the battle or losing the war: the impact of European integration on labour market institutions in Germany and Denmark. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2698094

Howell C (2021). Rethinking the role of the state in employment relations for a neoliberal era. *ILR Review* 74(3): 739–772.

Judge L and Tomlinson D (2016) *Agency Workers in the New World of Work*. London: Resolution Foundation.

Kinderman D (2016). Time for a reality check: is business willing to support a smart mix of complementary regulation in private governance? *Policy and Society* 35(1): 29–42.

Krings T (2009). A race to the bottom? Trade unions, EU enlargement and the free movement of labour. *European Journal of Industrial Relations* 15(1): 49–69.

Lillie N (2012). Subcontracting, posted migrants and labour market segmentation in Finland. *British Journal of Industrial Relations* 50(1): 148–167.

Lillie N and Greer I (2007). Industrial relations, migration, and neoliberal politics: the case of the European construction sector. *Politics and Society* 35(4): 551–581. doi: 10.1177/0032329207308179

Lohmann H (2009). Welfare states, labour market institutions and the working poor: a comparative analysis of 20 European countries. *European Sociological Review* 25(4): 489–504.

Meardi G (2018). Economic integration and state responses: change in European industrial relations since Maastricht. *British Journal of Industrial Relations* 56(3): 631–655.

Marino S (2012). Trade union inclusion of migrant and ethnic minority workers: comparing Italy and the Netherlands. *European Journal of Industrial Relations* 18(1): 5–20. doi: 10.1177/0959680111429755

Marino S, Penninx R and Roosblad J (2015). Trade unions, immigration and immigrants in Europe revisited: unions' attitudes and actions under new conditions. *Comparative Migration Studies* 3(1): 1. doi: 10.1007/s40878-015-0003-x

Maroukis T (2015). *Migration and Temporary Agency Work in the EU Welfare, Tourist and Agricultural Sectors*. Bath: University of Bath.

McDowell L, Batnitzky A and Dyer S (2008). Internationalization and the spaces of temporary labour: the global assembly of a local workforce. *British Journal of Industrial Relations* 46(4): 750–770. doi: 10.1111/j.1467-8543.2008.00686.x

McGauran K, de Haan E, Scheele F, et al. (2016). *Profiting from Dependency: Working Conditions of Polish Migrant Workers in the Netherlands and the Role of Recruitment Agencies*. Amsterdam: Fairwork and Somo (joined publication).

Mendonça P (2020). Trade union responses to precarious employment: the role of power resources in defending precarious flight attendants at Ryanair. *Transfer: European Review of Labour and Research* 26(4): 431–445.

OECD. (2021), "Trade unions: Trade union density", OECD employment and labour market statistics (database). DOI: 10.1787/data-00371-en (accessed on 16 July 2021).

Pedersini R and Pallini M (2010). *Posted Workers in the European Union*. Dublin: Eurofound.

Pulignano V, Ortiz Gervasi L and De Franceschi F (2016). Union responses to precarious workers: Italy and Spain compared. *European Journal of Industrial Relations* 22(1): 39–55.

Rueda D (2006). Social democracy and active labour-market policies: insiders, outsiders and the politics of employment promotion. *British Journal of Political Science* 36(3): 385–406.

Scott S (2007). *Temporary Migrant Workers and the UK's Flexible Labour Market: Shifting Policy Narratives and Regulatory Rebalancing*. http://www.skape.ed.ac.uk/__data/assets/pdf_file/0018/9126/Scott.pdf

Sociaal Economische Raad (2014). *Arbeidsmigratie*. Den Haag: SER

Streeck W (2009) *Re-Forming Capitalism: Institutional Change in the German Political Economy.* Oxford: Oxford University Press.

Strockmeijer A, de Beer P and Dagevos J (2017). Mobiliteit binnen de perken: Zeer geringe positieverbetering van werknemers uit Oost-Europa bij langer werkverleden. *Tijdschrift Voor Arbeidsvraagstukken* 33(4): 384–400.

Visser J, Beentjes M, van Gerven M, et al. (2009) The quality of industrial relations and the Lisbon Strategy. In: *Industrial Relations in Europe 2008*. Brussels: European Commission, pp. 45–72.

Voss E, Farvaque N, Broughton A, et al. (2013). *The Role of Temporary Agency Work and Labour Market Transitions in Europe: Institutional Frameworks, Empirical Evidence, Good Practice and the Impact of Social Dialogue*. Hamburg: Joint Eurociett/UNI Europe project.

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