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# Labour Exploitation of Polish Migrant Workers in the Netherlands

**Fair Work and Equality Law Clinic**

*Executive Summary*

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## EXECUTIVE SUMMARY

### **Subject matter**

This report focuses on Polish migrant workers who are often subjected to exploitation while working for private temporary employment agencies in the Netherlands that are regulated by Dutch law.

### **Purpose of the report**

The first part of the report provides a description of Dutch regulations on temporary employment agencies and its compliance with the ILO Private Employment Agency Convention 1997 and European Union law - more notably, the Directive on Temporary Agency Work (2008/104/EC), the Revised Posted Workers Directive (2018/957/EU) amending the Posted Workers Directive (96/71/EC) and the Regulations on Social Security such as Regulation (EC) No 883/2004 and Implementing Regulation 987/2009. Analysing the above could indicate whether the Netherlands appropriately implements international and European provisions. The second part of the report focuses on issues associated with temporary employment agencies, namely zero-hour contracts; no return costs; account settlement and wage deductions; sickness benefit procedures UWV; and scope of labour inspection competence. These issues frequently impact the well-being of Polish migrant workers. Therefore, the report examines whether international and European Union law contains provisions that could potentially regulate and offer remedies for these issues. Finally, possible recommendations are provided to improve the lives of Polish migrant workers.

### **Methods of analysis**

The report uses a descriptive approach, especially in the first chapters where it elaborates on issues Polish migrant workers face while working in the Netherlands. The report continues to analyse Dutch law and relevant provisions of international law and European Union law that govern the operation of temporary employment agencies. After the objective evaluation, the paper analyses possible incompatibility with the ILO Private Employment Agency Convention 1997 and relevant European Union Directives. The paper continues with a discussion of a number of focus issues directly linked to temporary employment agencies and their legality. The paper takes a diagnostic approach where it looks at Dutch law more critically so as to find more connections between issues related to work agencies and law. Lastly, the paper provides the reader with possible recommendations as to tackle the problems elaborated upon in the report, thus providing a prescriptive analysis.

### **Results**

#### *General remarks:*

The report concludes that the Netherlands, on the one hand, complies with the temporary employment agencies Convention and Directive on Temporary Agency Work. On the other hand, there are several issues associated with the regulations provided by both international and EU law. For instance, the ILO-Convention does not explicitly call for a public licensing system. Therefore, the system of certification is mostly private which the government does not directly



control. Reports of malicious practices are thus still common within the private sector. This raises the issue of effectiveness of the Convention itself. Moreover, the Netherlands also complies with the EU directive, however, it is found to do the bare minimum, deviating from the Directive where possible, complicating rather than improving lives of the migrant workers.

*Focus Issues:*

- There are also no obligations to regulate the flexibility of zero-hour contracts. Some changes are possible through the collective labour agreement, however that would require the willingness of the parties to the collective agreement to apply to remedy some of the issues. A social agreement has been drafted by social partners stating the willingness to no longer use zero-hour contracts, and instead replace them with fixed hour contracts that can be filled flexibly.
- Neither in Dutch law nor in international and EU law can obligations be found to reimburse travel costs, especially costs covering travels back home. In other words, no obligations have been found calling for states to offer reimbursement so that migrant workers could safely return to their country of origin. This could cause homelessness and human rights violations. This particular issue is also closely linked with the employment contract being tied with housing.
- Moreover, direct obligations concerning the swift account settlement with migrant workers after contract termination are likewise not explicitly included in the relevant international and EU regulations. Thus, even if the waiting period for the accounts to be settled is very problematic for the migrant workers in the Netherlands, the Dutch legislation in this regard is compliant with both international law and EU Directives. The identified problem concerning the lack of a swift account settlement is of a practical and not legal character. The Dutch legislation regulating the problem of wage deductions is also compliant with both international and EU law. Provisions included in the ABU-CLA grant broad protection to migrant workers against questionable wage deductions. However, also here the identified problem is due to poor enforcement.
- Migrant workers experience difficulties due to the long duration of UWV sickness benefit procedures because the contracts of migrant Phase A workers are automatically terminated when the worker falls ill and the accommodation is terminated with the contract. Nevertheless, the rules are the same for Dutch workers and the equal treatment principles of EU and ILO law are not violated by Dutch implementing provisions of sickness and benefit procedures.
- The competences of the Dutch labour Inspectorate (Inspectorate SZW) are in compliance with Article 14(2) of ILO Convention 181 which states that the national Inspectorate has to oversee the Convention's provisions into national legislation. In spite of this, workers face difficulties in filing complaints about labour abuses due to the generalist structure of the Inspectorate which include monitoring labour standards as well as undocumented employment and labour fraud. Further difficulties arise because the investigative procedure of the inspectorate cannot be triggered by individual complaints made by workers.



### Recommendations

Possible solutions are mentioned in the report to try and overcome the focus issues elaborated upon in the second part of the paper.

- **Zero-hour contracts:**

- Phase A could be effectively shortened through the collective agreement. Therefore, rather than allowing 78 weeks the collective agreement could indicate 26 weeks instead, adding a higher level of protection for migrant workers. Furthermore, the same agreement could also come with an obligation, calling employers to respect a guarantee of a two-month minimum wage, regardless of the number of hours worked.
- A social agreement has been reached by social partners. This agreement proposes legal change regarding zero-hour contracts. The agreement advises the government to no longer allow the use of zero-hour contracts and instead proposes fixed hour contracts that may be filled in flexibly. In connection to the previous recommendation, it also proposes to shorten the period of a phase A contract where the agency clause is permitted, to 12 months.

- **Travel costs:**

- Campaigns should be deployed by the Polish government so that future migrant workers are better informed of possible unpleasant situations associated with employment agencies. Moreover, these campaigns could provide help in case of emergency. Several non-governmental organisations offering help could also be listed.

- **Account settlement and wage deductions:**

- The general recommendation would be to reintroduce the compulsory system of state licensing to eliminate the malicious temporary employment agencies.
- Regarding the problem of account settlement, the ABU-CLA could be revised in order to replace the rule of next pay term with a rule mandating an immediate account settlement.
- Furthermore, template letters requesting the payment of due benefits together with instructions as to how they should be filled in could be published on the website of the Polish embassy.
- Finally, the Polish embassy, in cooperation with some of the Dutch NGOs, could offer online workshops or short video clips aimed at improving the knowledge of Polish migrant workers regarding the basic principles of Dutch labour law.

- **Sickness benefit procedures UWV:**

- Disconnect the employment agreement from housing to prevent homelessness in case of dismissal and during UWV procedures
- Enable better registration by allocating the responsibility for proper registration to the agencies. Ensure that municipalities properly register migrant workers and include actual address of residence
- Deem invoking the agency clause in case of sickness contrary to art. 7:670 (1) DCC, to ensure sick pay facilitated by agencies instead of leaving migrant workers dependent on UWV benefits.



- **Scope of Labour inspection competences:**

- To encourage workers to approach the Inspectorate with complaints, a relationship of trust needs to be established. One way to establish this is by increasing the active information flow from the Inspectorate SZW to Polish migrant workers, for instance by free seminars on the ambitions and competences of the SZW.
- Another solution to the issue of distrust between the workers and the Inspectorate SZW is the separation of competences of the Inspectorate SZW. This will entail a departure from the generalist model of the Inspectorate and should be given effect to by distributing illegal work and fraud competences solely to law enforcement and the immigration authorities.
- A higher number of inspectors need to be hired in order to make labour abuses more visible and combat them more effectively.

**Reintroduction of public licensing system:**

- Private SNA-certification should be abolished as it has not proven to be effective. In spite of the alleged administrative burdens that a system of public licensing of private employment agencies imposes on the government, it needs to be reinstated in order to reduce the high number of agencies and to prevent malicious agencies from entering the labour market.