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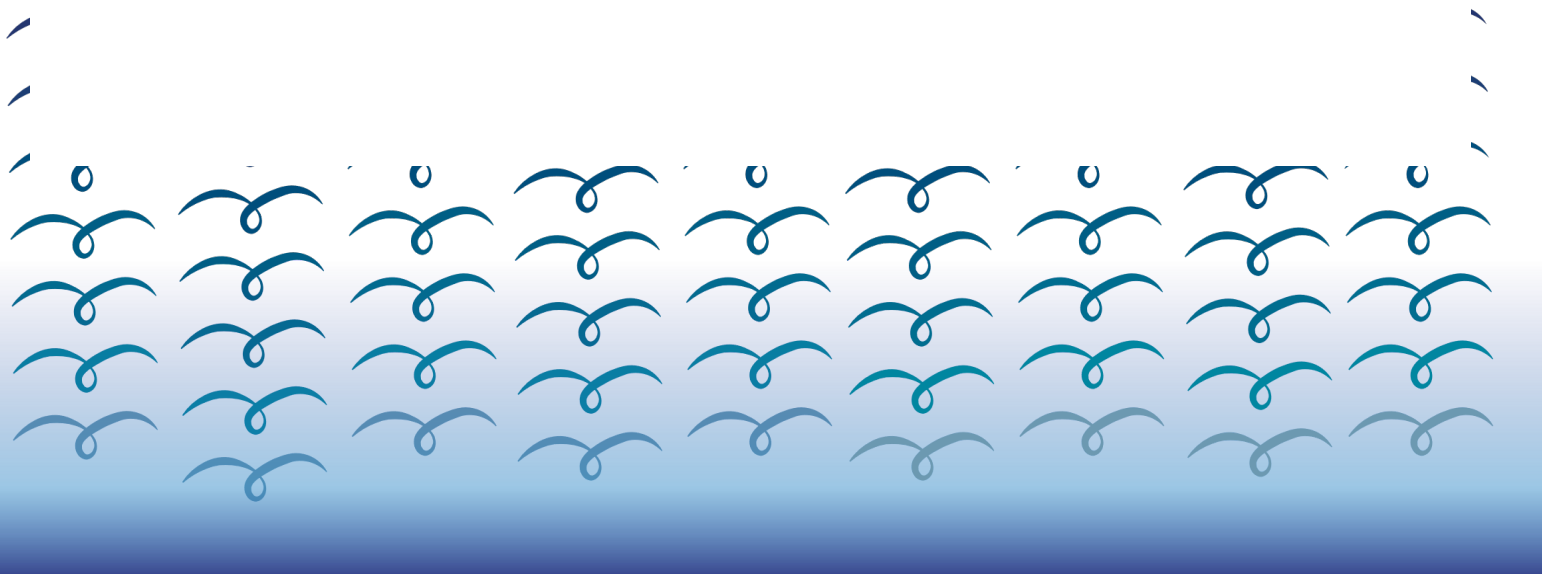
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Advancing Alternative Migration Governance



How (seasonal) agricultural demands for labour are met by immigrant workers in the Netherlands and Germany (Deliverable 3.4)

Jeroen Doomernik, Wendelien Barkema and Vincenzo Gomes

December 2020



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Abstract

This work package surveyed the working conditions of migrant workers in agriculture in The Netherlands and Germany. By and large, these turn out to be EU citizens who stand a considerable risk of being exploited by their employers as well as by recruiters. Typical for the Dutch case is the role of temp agencies in recruitment as well as they act as the de jure employers whereas actual employment lies with third parties. Exploitation is of their work (long hours and/or underpayment) and of their housing (poor conditions, overcrowding, and relatively high rents). Enforcement of labour law is insufficient in both countries. Covid-19 acerbated these conditions in cases where housing facilities are overcrowded, and employment sites are indoors. These critical observations are accompanied by examples of working and housing conditions that are decent and can be exemplary of proper conduct on the part of recruiters and employers. The paper concludes that the right of free movement for all EU citizens is meaningful when accompanied by better safeguards for equal treatment between them.

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1 Country report Netherlands and Germany

1.1 Introduction

In its 2020 Pact on Migration and Asylum the European Commission among other instruments proposes to regain more control over irregular migration by creating more legal pathways into the Union. In as far as this would facilitate labour migration benefits are to be expected for countries of origin and destination as well as the migrants themselves. However, as reminded us by Anna Schmidt of the EU's DG DEVCO in a webinar broadcasted on 24 November 2020¹ sponsored by the Horizon2020 sponsored TRAFIG project: it is not within the realm of the EU to shape pathways for legal labour migration. Labour migration remains the competence and prerogative of its member states. The question thus is not so much why the Commission wants legal pathways to be offered but rather whether and why member states do or do not.

Germany and the Netherlands are both highly developed (conservative) welfare states (Esping-Anderson 1990) with strictly regulated labour markets. This includes nationally valid minimum wage levels (in The Netherlands since 1968 and in Germany since 2015). Upholding of labour standards is being enforced, albeit more so in Germany than on the Dutch labour market (Aanjaagteam 2020). Access to welfare in principle is universal to all permanent residents. This almost by definition makes national policy makers cautious about permanent immigration, especially of people who might end up needing welfare state support. Yet, their approach towards labour migration shows some remarkable dissimilarities, notably when it comes to the satisfaction of demands for menial labour. In the German case, this includes options for third country nationals to temporarily (maybe also permanently) immigrate on a substantial scale. This might go into the direction of offering legal pathways as mentioned above. Dutch policies are far removed and allow 3rd country labour migration only in very exceptional cases and settlement of non-highly skilled migrants is generally seen as undesirable. Instead, EU internal mobility, notably from Central and Eastern European (CEE) states is deemed sufficient to satisfy all such Dutch labour market needs. Visions for the longer term appear absent.

In this comparative report we do not develop the ambition to explain these differences. Rather we take stock of current policies and practices. We focus our attention on labour migration towards the

¹ https://www.youtube.com/watch?v=PPw_hzUGf8k&feature=emb_err_woyt

satisfaction of (temporary) needs for agricultural workers. This choice was made because these needs are present in most if not all EU member states and because it is generally known that the upholding of labour standards in temporary employment, and especially of non-nationals, by employers and intermediaries, frequently is a challenge. First and foremost, we think a critical assessment should reveal where governmental or EU interventions could be beneficial in view of enhancing protection of employment standards whilst satisfying present and future agricultural labour market needs.

Our inventory is based on secondary sources and interviews with stakeholders and other experts. Proper fieldwork was originally envisaged but was made impossible by the Covid-19 pandemic. Almost all interviews were conducted online.

2 The Netherlands

2.1 Introduction

As a result of post-World-War II immigration the Netherlands has become an ethnically highly diverse society. Immigration had broadly three origins: (post) colonial, labour and asylum. Indonesia was a Dutch colony until 1949 and Surinam a part of the Dutch Kingdom until 1975. Their independence caused many of its inhabitants to resettle in the Netherlands. On January 1st 2020 356 thousand residents were of Indonesian descent and the same number of Surinamese origin (defined as being born in that country of origin or having at least one parent for whom this was the case)². Still part of the Kingdom are the Dutch Antillean islands and Aruba. The number of people whose roots lie in these islands stood at 166 thousand. From the 1960s onward migrants arrived from Turkey and Morocco. Initially these came as “guest workers” to fulfil labour demand few Dutch workers were interested in and in industries that could not have survived without cheap and undemanding personnel. When the 1973-oil crises sparked a large recession, these industries indeed could no longer survive, at least not based in the Netherlands, which made many of these “guest workers” redundant. It may have been the believe among both these migrants and the Dutch government that their presence was temporary, the fact was that many of them stayed and brought over their relatives. In 1970 Moroccan and Turkish nationals accounted for 17 and 24 thousand inhabitants

² All figures from Statistics Netherlands (CBS) StatLine: <https://opendata.cbs.nl/#/CBS/nl/>

respectively (NIDI 2003: 149, table 18). Presently, the Netherlands is home to 409 thousand people of Moroccan, and 417 thousand of Turkish extraction. The resulting communities have been the subject of the Dutch government's integration policies as deficiencies have long been and still are in evidence in terms of educational attainments, labour market participation and earnings, and housing. The government additionally has pursued restrictive immigration policies towards labour migrants since 1973. From the early 2000's it also put in place measures that aim to reduce family based migration from less developed nations (including Morocco and Turkey) (Doomernik 2017).

From the mid-1980s refugee migration to the Netherlands gained considerably in importance, and notably the end of the Cold War caused considerable displacement within Europe. The Netherlands saw the arrival of asylum seekers from war-torn former Yugoslavia. Others came to find a safe place from Iran, Somalia, Eritrea, Afghanistan, Iraq and Syria. People from these countries of origin taken together number 330 thousand.

In 2013 the Dutch government introduced its Law on a Modern Migration Policy with the aim to simplify rules for regular (i.e. non-asylum based) admissions. Whereas earlier labour migration had been considered as something that was exceptionally allowed, it now had been made part and parcel of this Modern Policy. The aim was not to return to the low- and unskilled labour immigration from before 1973. Instead, the policy is geared towards highly skilled (college level) workers and entrepreneurs. Mid-skilled and lower skilled workers had meanwhile freely become available from the Central and Eastern European countries that had joined the European Union in 2004. Its citizens did not immediately have the freedom to work in the Netherlands (this had to wait until January 2007, and for Romanian and Bulgarian workers even seven years longer, i.e. until 2014). In this respect the Dutch government was more hesitant than those of Sweden, Ireland and the United Kingdom which had immediately opened up their labour markets for workers from these new Member States. As Kremer (2016) observes, the Netherlands was suffering from a "guest worker" trauma whereas at the same time the demand on the Dutch labour market was no longer for the type of workers who were recruited in the 1960s. And, indeed, expecting the same outcome – a part of the population that experiences difficulties integrating – would not have been merited (Doomernik 2015). In any event, presently the largest numbers of migrants in the Netherlands stem from Central and Eastern Europe. In 2020 close to 200 thousand Poles were registered as well as forty thousand Bulgarians and about the same number of Romanians (39.000). Next to those there are many more workers from these countries who do not register with a municipality because they do not experience the need to do so or because there is no obligation. The latter is the case when their stay does not exceed four months, which typically applies to many seasonal workers.

Meanwhile, labour immigration from third countries for other than 'knowledge workers' remains severely restricted. All such admissions are regulated by the *Wet Arbeid Vreemdelingen* (WAV) (Law on Aliens' Employment). The general rule is that an admission serves the needs of an employer (i.e. is demand driven). Nevertheless, a growing segment of the permits is supply driven while serving the Knowledge Migrant scheme which allows recently graduated persons to remain in the country for a year whilst looking for employment, including the option to start a company. This option is also available to someone who has graduated from a selected foreign university (e.g. one of the top 200 as published by the [Times Higher Education World University Rankings](#)).

Admissions from abroad must fill a vacancy which cannot otherwise be fulfilled from the labour force already present within the European Economic Area (EEA). Depending on the precise nature, employers may or may not be required to demonstrate they have undertaken recruitment efforts within the EEA. Normally the permit to work and reside is valid for an initial one year period. After five years, the migrant is completely free to remain and take on any job. Until then the permit limits them to a particular type of employment and employer.

It is also possible for entrepreneurs to operate in the Netherlands. In such a case a business plan has to be submitted for evaluation by the Netherlands Enterprise Agency (*Raad voor Ondernemend Nederland*) (RVO). The Immigration and Naturalization Services (IND), which administers the application, bases its decision on the RVO's verdict regarding the viability of the proposal and its added value for the Dutch economy. Similar rules apply for those who want to start up a new business. A permit allows the applicant to remain in the country for a year during which the business can be created and developed. It is mandatory to have a sponsor (facilitator) who is certified by the RVO.

In case 3rd country nationals are being seconded to provide services in the Netherlands by an employer based in another EU member state, this should be reported to the Employee Insurance Agency (UWV) of the Ministry for Labour and Social Affairs (SZW). There is anecdotal evidence of growing numbers of Ukrainian nationals who have a Polish work permit and hired by a Polish firm are in this manner working in the Netherlands.

If employment does not surpass three months no residence permit is required. However, also then the UWV will perform a labour market check. Might a national of one of EEA be hired, no work permit will be issued. For a period exceeding three months both a work and a residence permit are required, and the IND is the responsible agency. It checks with the UWV whether the conditions laid out by the WAV are met.

2.2 How was migrant agricultural work affected by the Covid-19 pandemic?

Like in most other developed economies, Covid-19 induced restrictions have had major consequences, and this is still the case. In as far as migrant workers are concerned, we partly rely on what the media report and this suggests labour migrants have been seriously affected in their health and safety. Reports about the working conditions in slaughterhouses, meatpacking and distribution centers showed cramped working conditions resulting in high infection rates. Housing conditions equally put workers at risk.

“They often live in houses that are of poor quality, with many in one room, poor food, little access to bathrooms, cannot maintain hygiene very well, are transported in mini-vans, crowded vans to work, have to start very early and relatively often they have to work over-hours. That is normal for certain type of seasonal work, strawberries, asparagus, mushrooms, which must be picked quickly.”

Helena Kosec (FairWork)

The daily *De Volkskrant* (Dirks 2020) reported how the local government of the city of Rotterdam (located close to the *Westland*, a region with a high concentration of greenhouses) assists Polish workers and their families who become homeless because of lacking income and abusively high rents. It is reported moreover that many migrants have never registered with the municipality. This is likely to complicate applying for unemployment benefits (to which one should add that these benefits might not suffice to pay the excessive rent for an informally occupied apartment). The informal nature of a rental agreement may be the reason why people are not recorded in the population register: the landlord might be found out. Figures from Statistics Netherlands show that out of nearly 179 thousand Polish workers less than half (77 thousand) are recorded in the municipal population register (out of twelve thousand Bulgarians eight thousand are registered, Romanians respectively 23 and eleven thousand, figures for 2017). Registering is mandatory for anyone remaining for four months or longer³.

The same *Volkskrant* report mentions working conditions in the greenhouses to be in violation of Covid-19 rules: maintaining a minimum distance of 1.5 meters between workers is largely being ignored.

The NGO FairWork (working on anti-trafficking) spoke of workers who lost all resources because they were unexpectedly terminated at their job. These people asked for help with very basic issues like

³ <https://opendata.cbs.nl/statline/#/CBS/en/dataset/84060ENG/table?ts=1574321992379>

where to get food and a roof over their heads. There is no reason to believe agricultural workers were particularly hit (the examples given were of hospitality and household related employment)

A representative of the largest Dutch trade union (FNV) mentions that those migrants who work the fields usually are housed by the farmer on or close by the farm and do not face the risk of those who have to be transported to work by car or minivan which renders maintaining proper distance problematic.

On the difference between being hired by a farmer or via a temp agency in terms of housing a representative of the Vereniging Huisvesters Arbeidsmigranten:

“Next to the year-round housing need for the industrial greenhouse employment (...) there much seasonally determined housing needs. Typical for this agricultural housing is its large-scale nature on the site of agricultural companies. In cases where the farmer directly hires the workers (...) who often have direct lines to a village in Poland or wherever, where already for generations people come back and forth to help harvesting. Where the farmer himself hires housing is often on the compound and in case agency hires, they are housed externally. Seasonal workers are often hired directly by the farmer, and this is only for a maximum of six months. But in the case of year-round production, one often sees that agencies are involved. And then one again gets the issues surrounding the housing of these labour migrants.”

Joep Thönissen (VHS)

In June 2020 reporter Phaedra Werkhoven for newspaper *De Stentor* paid a visit to a so called *Polenhotel* and spoke with a Polish worker:

*“If everything goes well next week she can go to Poland, with a minivan. For this she also needs to pay Corona-tax. It has become something like 20 euro more expensive, she tells, because they could take fewer passengers and had to clean more. ‘But that is totally not true, we are going stuffed together to Poland and have to pay extra to boot.’”*⁴⁴(Werkhoven 2020: n.p.)

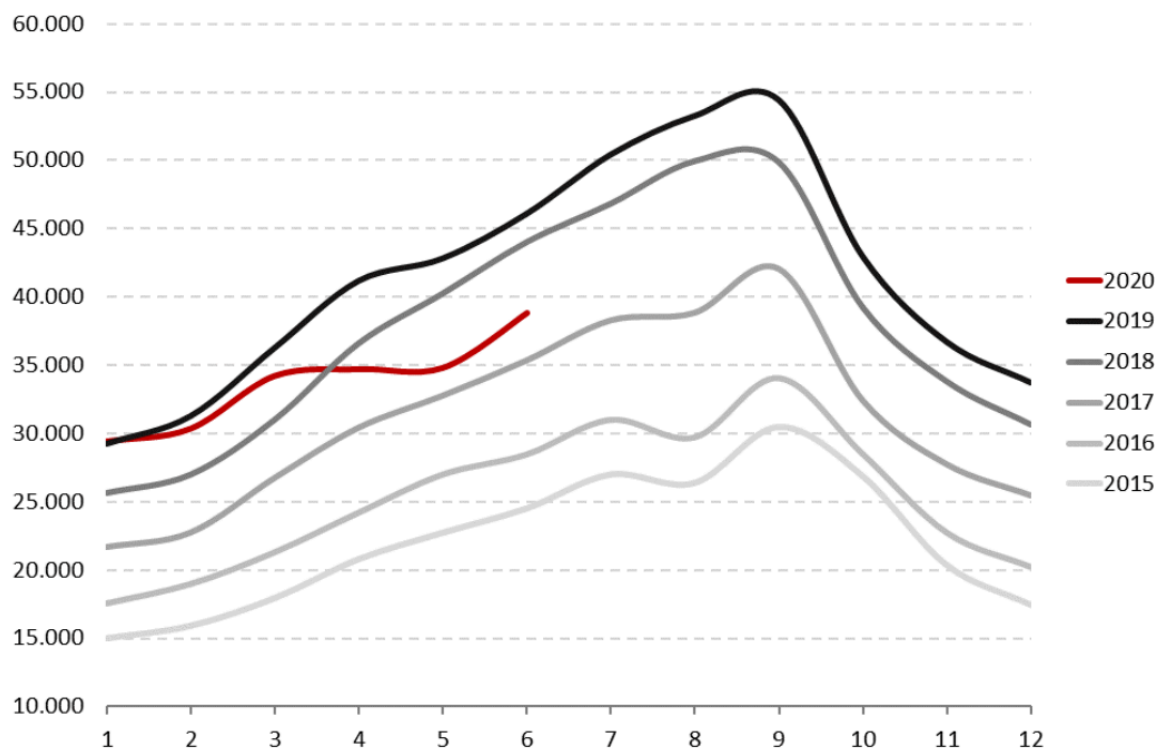
In terms of effects on (un)employment among labour migrants in the agricultural sector some data are available. This is a consequence of the creation of a so called *Aanjaagteam* (loosely translated as boost team) in May 2020 by the Dutch Cabinet. The Team was created in response to reports of such incidents as mentioned above and the government wanted an inventory of practices, experiences of labour migrants and advice for future policies. The Team itself subsequently ordered a report on the development within the agricultural sector. From this report we learn, among other things, how the employment through 2020 developed, compared to previous years. A large part of the employment

⁴⁴ All quotes are translated by the authors.

in this sector involves temp agencies. The Netherlands has 14 thousand of such agencies as the sector was deregulated some decades ago. Some are large and solid employers but there are also less serious and even criminal agencies (Aanjaagteam 2020). The latter tend to be small operations.

It is known how many people are employed through agencies. More correctly: it is known how many they employ because under Dutch law the agency is the employer, who subsequently dispatches its workers to the actual ‘employer’. This does mean there are no precise statistics detailing where a worker actually is doing their job. There are estimates and we do have figures on employees who are hired directly. So we do have statistics on how many people of which nationality are hired by the farmers themselves.

Figuur 8 Schatting van het aantal arbeidsmigranten als uitzendkracht in de land- en tuinbouw, per maand, per jaar, 2015-2020

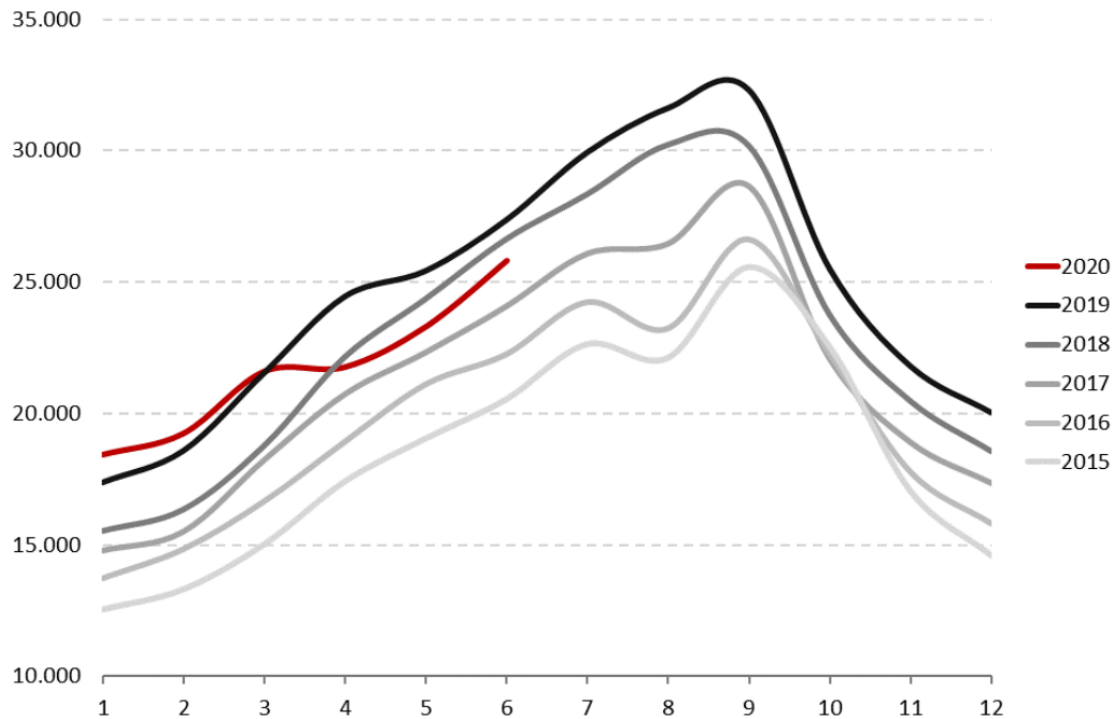


Bron: CBS Microdata, bewerking SEO Economisch Onderzoek

Graph 1 estimated labour migrants in agriculture hired via temp agencies

Source: Heyma et al. 2020

Figuur 6 Aantal arbeidsmigranten in directe dienst in de land- en tuinbouw, per maand, per jaar, 2015-2020



Bron: CBS Microdata, bewerking SEO Economisch Onderzoek

Graph 2 number of directly employed labour migrants in Dutch agriculture

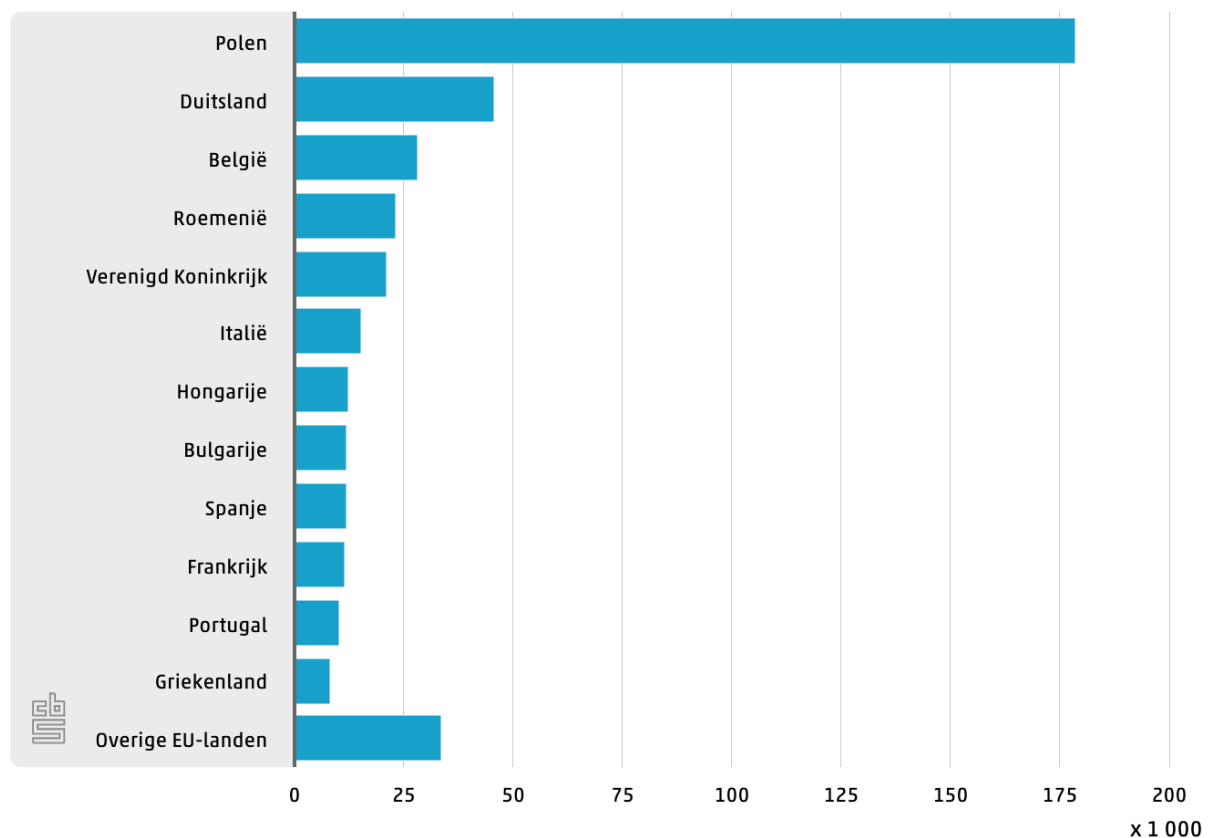
Source: Heyma et al. 2020

As graph 1 and 2 illustrate the number of hired workers dropped at the beginning of the Dutch Covid-19 induced lock-down but seemed on its way back up only two months later. Interestingly, employment of Dutch temp workers also dropped but much more dramatically and seemingly not bouncing back in May (see graph 4 in the statistical annex). This would seem to underline the reliance of Dutch agricultural on Central and Eastern European workers.

From the report from which these graphs were taken (Heyma et al. 2020) we furthermore learn the following effect of the pandemic for the employment rates of labour migrants directly employed in the agricultural sector. Based on data from Statistics Netherlands the authors observe a sharp drop in labour migrants who are directly employed by a business and which were subsequently replaced by Dutch workers. And as we already mentioned the drop is also in evidence among those who are employed by temp agencies but where there is no replacement by Dutch workers. These observations are limited to the period between the initial lockdown in March and June 1st. When asked about the consequences of the pandemic for workers in the agricultural sector our respondents observe that the supply of labour was not in any serious way affected and business was

neither. Because the observed period was also characterized by the closing of restaurants and other catering companies which presumably made the demand for agricultural products drop, domestically as well as elsewhere in Europe which made exports decrease substantially (Siegmann and Quaedvlieg 2020:12) this may help explain why the agricultural sector did not experience labour shortages.

Once employment needs picked up, enforcement of hygiene standards and distancing requirements appear not have been first on all governmental minds: “While some municipalities fined employers for violations of Covid-19 prevention measures, in Westland, a global hub of greenhouse horticulture, the municipality announced that, in order to guarantee food security, controlling the transportation conditions for workers offered by employment agencies was not a priority.” (Siegmann and Quaedvlieg 2020: 13).



Graph 3 European workers in The Netherlands (CBS 2019)

The ABU, the Dutch Federation of Private Employment Agencies (*Algemene Bond Uitzendondernemingen*), the main representative of Dutch temp agencies, identifies housing in

relation to the pandemic as a major challenge. Many of its member's workers are housed in holiday parks (i.e. cottages) and people are expected to keep their distance.

2.3 Recruitment and Working conditions

Unlike elsewhere in Europe (notably Germany) Covid-19 travel restrictions hardly impacted seasonal work in the Netherlands. As was explained to us by representatives of The Netherlands Agricultural and Horticultural Association (LTO Nederland) this may have been an effect of earlier closure of the Italian labour market for Central European workers who then made their way to the Netherlands. And in any event, travel restrictions once imposed lasted only days and LTO Nederland was able to issue its members with instructions and documents with which their workers could pass borders.

On why labour migration plays such a prominent role in the greenhouse and agriculture as representative of the organization of greenhouse growers:

“First of all, insufficient domestic availability of people who could do the work. Hiring people on a permanent basis carries very large financial risks, i.e. transition compensation [transitievergoeding = mandatory compensation paid to tide over an employee after job termination] or sick leave. Most importantly, the sector works with nature and nature cannot be regulated. Yes, partly in a greenhouse with warmth and temperature of course, but one always must deal with peaks. For a peak you simply need additional people. That peak of people cannot be found in the Netherlands and we cannot offer permanent positions to people who only work during the peak. Thus followed the development of making use of people who come from abroad to the Netherlands.” (...) The sector needs people who are motivated to work. These people who come to the Netherlands simply want to work a lot, working hard and earning money to invest in the development of their country of origin.”

Peter Loeff (Glastuinbouw Nederland)

It is interesting to note that work in the Dutch green houses in the 1980s and 1990s often was done by irregular migrants. With the inclusion of Central European countries in 2004 many of these became regular (cf. Siegmann and Williams 2020).

Their recruitment either is by “traditional” connections between certain locations in Poland, Bulgaria and Romania and Dutch farmers. This then mainly serves harvesting crops from the fields – typically seasonal work. Or recruitment is through intermediaries (i.e. temp agencies).

“Polish migrants are most often recruited through employment agencies in Poland that are local offices of Dutch companies or Polish agencies collaborating with Dutch agencies. The steep rise in the numbers of one-person agencies in Poland suggests that CEE countries are being used as

conduits for employment contracts offering employers opportunities to circumvent collective bargaining agreements (CBAs), thus lowering wages and social security costs.” (Siegmann and Williams 2020: 18)

It is estimated that 275 thousand workers are employed via temp agencies and another 49 thousand directly by growers/farmers (Siegmann and Williams 2020).

“At its [seasonal] peak our sector employees 125 thousand people. (...). 72 percent is not included in the payroll, they are flexibly employed and of those 80 percent, 72 thousand are international workers. Among those about 38 thousand work all year round.” “We are interested to find out more about the flex workers. Where are they and in which positions? What does it mean to be working all year round as a flex worker? Does one work for a single employer or for several? What are their motives, while we hear they do not desire a permanent contract.

Peter Loef (Glastuinbouw Nederland)

The Aanjaagteam (2020) stresses that temp agencies can be very decent and service oriented employers. It recalls one example of an agency that guarantees migrant workers a fixed income during their initial stay. Why this is a considerable benefit becomes clear once we learn that normal practice is that workers are hired on a so-called “zero-hour contract”. This means they are entirely reliant on the demand for their labour. Obviously, this means that in case of any disruption in a business operation the worker immediately loses their income. We already noted this happened as a result of the Covid-19 pandemic.

Dutch labour law stipulates that a temporary worker should at some point become a permanently hired employee. As the *Aanjaagteam* notes:

“The initial idea of temp work, in which temp agencies fulfil an allocation function on the labour market and help businesses to cover for “peak and sick”, has in the course of time changed into temp work as the standard model for low- and unskilled work. In practice there are few labour migrants who have work contract with the company for which they really work – for an undetermined period and with fixed working hours – even though they often do structural work” (p. 20-21).

Once temp workers have been employed for a certain amount of time their position should become more secure and rights are accrued. In order to avoid this from happening, the worker is re-hired through another agency which legally brings them back to square one.

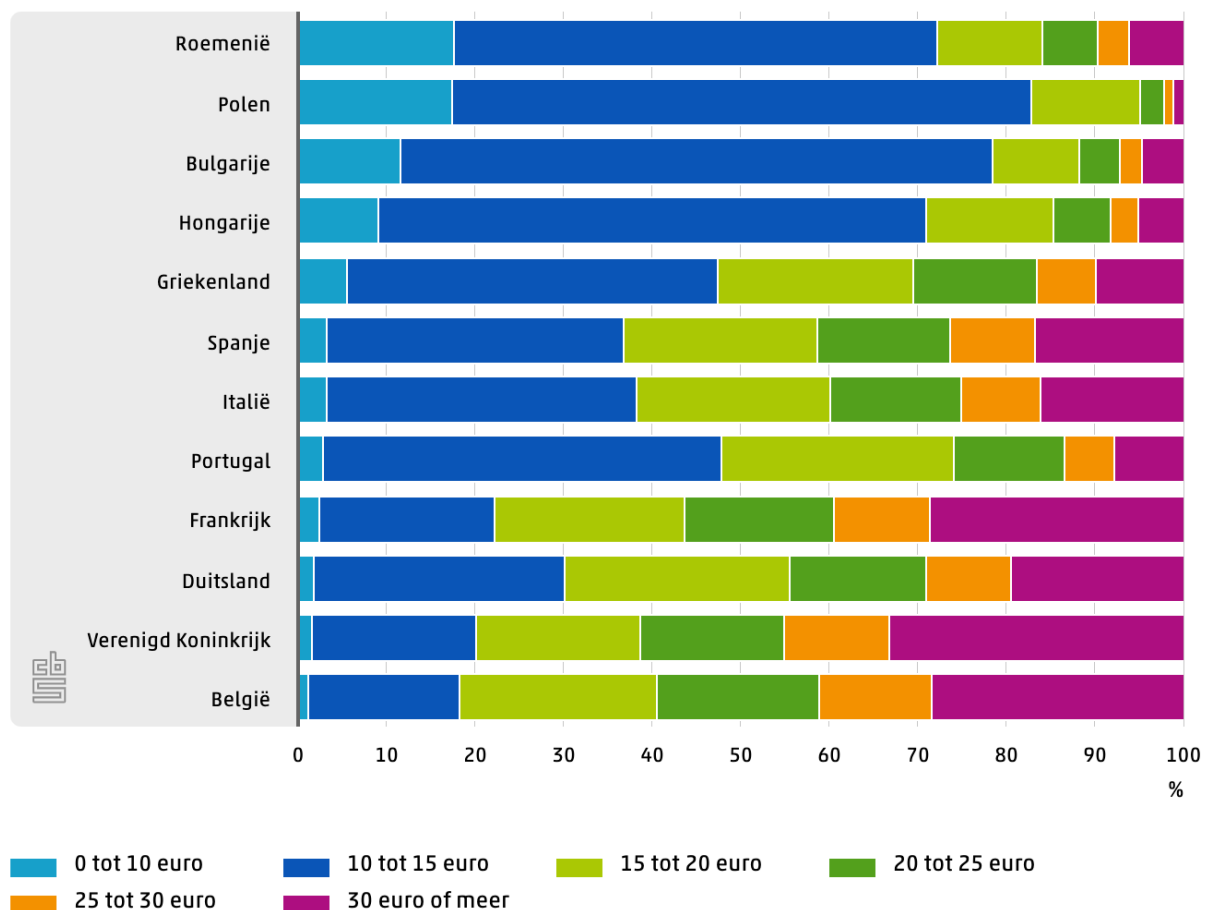
Many of the international workers do not accept a permanent contract. This is something we want to bring into the open while we often are criticized like: well, you do not hire people in permanent positions.”

Peter Loef (Glastuinbouw Nederland)

They remain in phase A, which is the term used for a contract in which one has no income when sick or in the absence of work. “As a consequence of their uncertainty labour migrants feel the pressure to keep working when they actually are sick. Moreover, they do not trust to complain about living or working conditions for fear (...) of immediately losing their job and with it their accommodation and health insurance.”(Aanjaagteam 2020: 21)

“Speaking about irregular practices in the greenhouse and agricultural sector: “Those who earn their money on the back of international employees. This is disrespectful towards the employee first, and disrespectful towards the sector because you are dishonest in your competition. Where others invest and incur costs, which they do not view as expenses but as investments, this gets negated and tarnished by them.”

Peter Loef (Glastuinbouw Nederland)



Graph 5 Income of European workers in The Netherlands (CBS 2019)

The *Aanjaagteam's* report has few details on agricultural employment in particular. This is different in a study with the telling title: *Are Agri-Food Workers Only Exploited in Southern Europe? Case Studies on Migrant Labour in Germany, the Netherlands, and Sweden* (for the Dutch case Siegmann and Williams 2020). Its findings concur with those which the *Aanjaagteam* found for temporary workers in sectors such as logistics and distribution, food processing and construction also applies in agriculture. The important caveat here is that they explicitly were on the look-out for exploitative practices whereas the *Aanjaagteam* is aware of the fact that not all employers aim to abuse their temporary workers.

The *Aanjaagteam* also notes that the odds of getting checked by the labour inspectorate (*Inspectie SZW*) are (too) small. The team has calculated that one percent of the agencies are inspected. It observes that in Germany, where employment through temp agencies is much less frequent than in the Netherlands this is five percent. If a Dutch temp agency is caught for a violation of labour law or is about to, it is easy for the proprietor to close it down and instantly open up a new business. The market is minimally regulated.

"(...) there are many parties in the sector who use temp agencies simply to make a lot of money quickly on the backs of vulnerable people, who stem from other countries (...) and who let the company evaporate (ploff) as it is called, and subsequently start afresh. This way the inspectorate has no chance to intervene. (...) What we propose as Aanjaagteam is mandatory certification and so without this certification placement services are not permitted."

(members of the *Aanjaagteam*)

Siegmann and Williams recount one case, however, in which the inspectorate was very effective:

"In February 2019, a large-scale case of illegal practices was punished with a fine of 134,000 euros, 240 hours of community service and two years' suspended imprisonment. A labour intermediary invented an operation that involved selling strawberries, raspberries, asparagus and mushrooms before harvests to a foreign legal entity owned by the intermediary, while in fact no transfer of ownership took place. The crop was then harvested by migrant workers from Poland employed by the foreign company. This mechanism enabled income tax and social security contribution evasion and allowed the products to be sold at a lower price to Dutch retailers. Both the intermediary and about twenty large growers involved earned millions of euros in untaxed profits.¹³⁶ The ISZW sees such fraudulent practices as one of the main causes of unfair competitive pressure on other growers, which has resulted in mass bankruptcy." (Siegmann and Williams 2020: 19)

2.4 Housing conditions

Our interviewees and the *Aanjaagteam* convey a unanimous picture of the problematic housing situation in which the majority of migrant seasonal workers in the Netherlands find themselves. The principle may be solid, the practice is less so.

In case the worker is employed via a temp agency this normally means the agency arranges the housing. By law, they have to offer housing but the employee is free to find their own accommodation. Dutch law permits a maximum of 25 percent of the official minimal wage to be withheld in order to cover for the housing costs. The Dutch minimum wage lies around ten euro per hour, slightly dependent on the amount of weekly working hours. Actual wages tend not to deviate much from this minimum (see graph 4 for an illustration). If the employer arranges a health care coverage, these costs can also to be deducted. Basic health coverage in the Netherlands costs about one hundred euro per month. When asked, the largest Dutch trade union (FNV) utters reservations about these package deals for the principle ought to be that a worker has the autonomy to spend his wages freely.

The *Aanjaagteam* finds that there definitely are employers (be they temp agencies or farmers) who offer such package deals (which may also include transportation between accommodation and workplace) in a reliable and decent manner but also observes:

“(...) there are also employers who look for the margins. These use the regulations partly as a source of revenue. They, for instance, save on housing by limiting maintenance or placing more people in a house than would be advisable, but do deduct the full 25 percent of the wages for housing. Other employers put labour migrants in (for the company cheaper) housing far from the workplace, transport them to and from work and deduct serious transport costs from the wages, without offering opportunities for housing closer by, and fail to compensate for the long travelling time. (...) These are examples of practices for which enforcement and supervision are unequipped to intervene but are nevertheless undesirable.” (Aanjaagteam 2020: 14)

As housing and insurance are tied up to the employment, losing one’s job can easily mean instant homelessness and problematic access to healthcare. “As a consequence, migrant workers are vulnerable and do not trust to stand up for themselves and do not dare to report abuses.” (Aanjaagteam 2020: 15). The report further notes how the position of labour migrants is different from that of a Dutch employee. Regulations are geared towards independently acting citizens who know their way on the Dutch labour market and in society at large and who are able claim their rights by going to court or get assistance from their trade union if employers treat them unfairly

(Ibid.). This fear of reporting abuse for fear of losing one's job is also observed by the anti-trafficking NGO FairWork with whom we spoke for this project. These are general observations, however, that may not necessarily be a major issue in agriculture.

Not only do migrant agricultural workers face the risk of paying more than the real costs of their housing, which is illegal, the quality oftentimes is problematic. As our respondent from the largest Dutch trade union noted: "de facto it comes down to the fact that people pay for a matras, not a living space but a space to sleep." Or as the *Aanjaagteam* notices for a neighbourhood in The Hague (Laakkwartier) which is degenerating while unscrupulous landlords increasingly house labour migrants in cramped and poor conditions: "Apartments are being rented out to 8 or 10 persons who rent a matras for 100 euro a week." (Aanjaagteam 2020: 16)

Worse, there are also employers who purposefully exploit the vulnerable position of their workers. To quote the *Aanjaagteam* once more:

"Situations of sub-standard housing and which are used to launder money. In which labour migrants are fined for failing to clear up the dishes or dirty clothes. In which labour migrants, without knowing this, are underpaid for the overtime they are forced to make, do not receive their holiday pay or have to make a high number of hours in a short timespan while the payment is spread-out over 26 weeks so that unemployment benefits can be applied for.⁵ And situations in which labour migrants are intimidated by their daily supervisor so they do not dare to complain about their accommodation for fear of losing their job. In some situations, one might even speak of human trafficking, when the labour migrant is exploited by the employer or temp agency." (Aanjaagteam 2020: 14)

"It is skewed that certain sectors work almost exclusively with labour migrants and that large parts of the Netherlands, municipalities which prefer not to have those people living within their municipality. (...) One sees this also in the Westland [region with a high density of greenhouses close to The Hague]. The Westland has an enormous number of greenhouses in which labour migrants work, and they do not want them all housed in their municipality, what of course is also understandable. At the same time, The Hague experiences considerable inconvenience because these people live a squalid housing (...). There is very little direction on this issue, there is little collaboration."

Anonymous members of the *Aanjaagteam*

⁵ Presumably this allows the continuation of the housing exploitation paid for out of public resources.

As several informants pointed out, municipalities appear not very keen to facilitate group accommodations, for instance while fearing public order issues. For those migrant workers who are employed by temp agencies housing is often found in holiday parks, outside of the public eye. As a respondent for the *Vereniging Huisvesters Arbeidsmigranten* (VHA) (Association of Labour Migrants Housing Providers) points out it is largely the poor quality or unsuitability of housing in which migrants end up that creates the nuisance other people experience.

On the relationship between temp agencies and the creation of new housing: *“(...) bonafide and malicious practices regarding the housing of labour migrants are strongly interwoven. Specifically, the malicious branch, and this can pertain to a single home occupied by ten people, or an obsolete hotel in which people are accommodated without good quality criteria. In such cases we have malicious practices and these to a large extent determine the perception and thus the support for new housing and as a result we have entered a vicious circle. Let me say, housing for labour migrants was until three years ago really a tabu subject in many municipalities. This really results from these bad practices.”*

Joep Thönissen (Vereniging Huisvesters Arbeidsmigranten)

In any event, affordable housing is very scarce in most if not all municipalities, resulting in long waiting lists for public housing. Nationally there is a shortage of 322 thousand houses/apartments (Ibid.: 35). The [Kenniscentrum Arbeidsmigranten](#) (knowledge center labour migrants) estimates the needed number of beds for labour migrants to be 150 thousand. The number of labour migrants has grown over the past years which drives up the need for proper housing. Purposely build accommodations for so called short-stay (less than one year) do already exist and more are being developed. These are popularly referred to as Polish Hotels (*Polenhotels*). To lift the quality of housing for labour migrants a pact was concluded between a range of stakeholders, among which the Ministry of the Interior, the Association of Dutch Municipalities, employers' organizations and trade unions which sets norms for adequate housing conditions. Those norms are guarded by the *Stichting Normering Flexwonen* (SNF) (Foundation Standardization Flexliving). The VHA represents a number of commercial parties who are committed to the SNF norms.

The VHA observes that seasonal workers often are hired directly by a grower/farmer and are also housed by him. This is done for a relatively short period and employees tend not to be picky. Those who stay longer are often found to work in the green houses (where work is less tied to the seasons) and are more often employed by temp agencies. Their housing needs are different and abuses more frequent. According to the *Collectieve Arbeidsovereenkomst* (CAO) (Collective Employment Agreement, which lies down employment conditions for an entire sector) the agencies are responsible for the housing of their migrant workers but are not bound to the SNF norms. The VHA

observes that an important reason for sub-standard housing lies in the relationship between the de facto and the legal employer (a temp agency). The de facto employer might fall for the temptation to simply expect their workers to be on time and not feel any responsibilities aside from what happens on the work floor. Nevertheless, VHA members manage to build adequate housing and repurpose commercial and office buildings into “Polenhotels”. This also happens on locations close to industries and in apartments for four persons, each with their own bedroom.

The ABU also identifies housing as their main challenge. It has become the weakest link. In its view further growth in facilitated labour migration depends on the availability of more accommodation. As long as adequate housing is still scarce holiday parks are a frequently used solution. Holiday parks are, for obvious reasons, usually found in remote locations: making (extensive) travel to and from work necessary. Standards for holiday cottages are presently such that owners of these parks, or of individual cottages on them, are not always able or willing to keep them up to standard in which case renting them to house labour migrants makes economic sense. Also here abuses are reported, notably regarding excessive rents. It is up to municipalities to set conditions for renting out properties, e.g. whether permanent use of holiday cottages is permitted or how many people are allowed to live there, and to inspect whether these rules are being abided by. Municipalities moreover can decide whether a farmer/grower can house workers on their property or not.

2.5 Concluding remarks and recommendations

Among those who are familiar with current labour practices and who take seriously the needs of labour migrants, society at large and those employers who seek the best for their workers, there is little doubt that the core of the present problems lies with the virtually unrestrained intermediary sector, i.e. unregulated temp agencies. The regulations and quality-seals in place are self-imposed such as by the ABU regarding the employment and the VHA regarding housing quality but are not binding to those who seek to stay outside of them, i.e. for every agency on the market. Additional problems arise out the nature of the agency – actual employer relationships. It allows the employer to turn a blind eye to the housing needs and transportation costs of their workers. As long as these arrive on time and do what is needed, an employer’s needs are satisfied. For this reason, the *Aanjaagteam* proposes an overhaul of the market for temp agencies, by introducing a licensing system and stricter regulations. These should bind temp agencies to rules that ensure the labour rights of their employees are protected. Under such a regime, those agencies who fail to comply would not be licensed.

We cannot but concur with an observation made by one of our respondents (the representative for the employers organization VNO/NCW): immigrant labour is not necessarily cheaper than domestic workers when all standards are abided by and no short cuts in terms of housing, working conditions and such are made. The advantage of temporary labour is flexibility and ought not to be about lower costs or otherwise making profits out of the fact that workers are coming from abroad.

In the longer run, it is to be expected that mechanization will gradually displace agricultural workers, in the greenhouses as well as on the fields. We were told already today robots can do almost everything workers are now hired for. In short, seasonal and other agricultural work is likely to lose its relevance in the medium or longer run. As a report by the Dutch bank ABN-AMRO suggest, Covid-19 has the potential to fundamentally change the scene in horticulture by making further investment in robots a relevant solution (ABN-AMRO 2020). Or as explained to us by Peter Loef of *Glastuinbouw Nederland*, the association of Dutch greenhouse farmers, skilled IT workers as yet are not sufficiently orientated towards work in the agri-business.

Tabel 1 Totaal aantal werknemers per jaar in directe dienst in land- en tuinbouw naar herkomst, 2006-2019

	Nederlanders	Arbeidsmigranten	Totaal	Aandeel arbeidsmigranten
2006	171.642	27.092	198.734	13,6%
2007	158.075	34.175	192.250	17,8%
2008	148.032	39.066	187.098	20,9%
2009	139.270	40.321	179.591	22,5%
2010	137.399	42.610	180.009	23,7%
2011	131.486	47.744	179.230	26,6%
2012	125.220	45.868	171.088	26,8%
2013	125.679	46.718	172.397	27,1%
2014	122.423	46.962	169.385	27,7%
2015	119.471	46.515	165.986	28,0%
2016	119.450	49.692	169.142	29,4%
2017	117.545	53.006	170.551	31,1%
2018	116.804	55.524	172.328	32,2%
2019	115.759	58.231	173.990	33,5%
<i>Januari 2019</i>	<i>75.125</i>	<i>17.383</i>	<i>92.508</i>	<i>18,8%</i>
<i>April 2019</i>	<i>79.335</i>	<i>24.454</i>	<i>103.789</i>	<i>23,6%</i>
<i>Juli 2019</i>	<i>90.029</i>	<i>29.932</i>	<i>119.961</i>	<i>25,0%</i>
<i>Oktober 2019</i>	<i>79.814</i>	<i>25.515</i>	<i>105.329</i>	<i>24,2%</i>

Bron: CBS Microdata, bewerking SEO Economisch Onderzoek

Graph 6. Total number of workers in direct employment in agriculture according to origin (source Heyma et al. 2020)

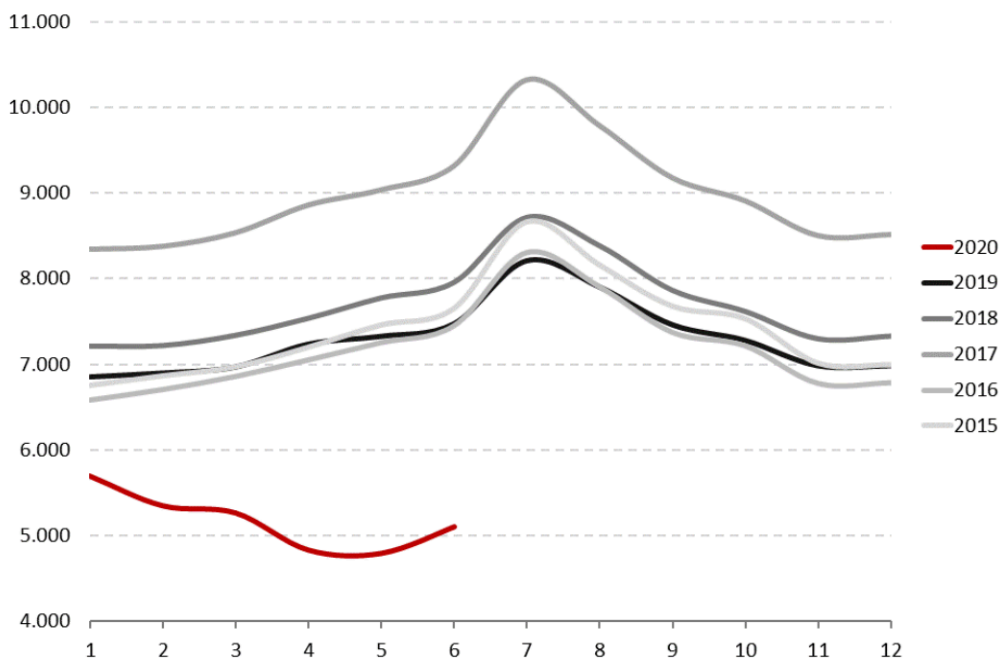
Tabel 2 Geschatte aantal uitzendkrachten in land- en tuinbouw naar herkomst, 2006-2019

	Nederlanders	Arbeidsmigranten	Totaal	Aandeel arbeidsmigranten
2006	22.273	22.927	45.200	50,7%
2007	24.608	37.174	61.782	60,2%
2008	17.254	48.574	65.828	73,8%
2009	13.976	43.022	56.998	75,5%
2010	13.175	46.519	59.694	77,9%
2011	16.654	50.733	67.387	75,3%
2012	13.353	47.867	61.220	78,2%
2013	13.532	47.764	61.296	77,9%
2014	15.160	50.040	65.199	76,7%
2015	11.204	55.536	66.740	83,2%
2016	10.735	63.516	74.252	85,5%
2017	13.160	77.854	91.014	85,5%
2018	11.172	91.669	102.841	89,1%
2019	10.558	98.114	108.672	90,3%
<i>Januari 2019</i>	<i>6.852</i>	<i>29.289</i>	<i>36.141</i>	<i>81,0%</i>
<i>April 2019</i>	<i>7.236</i>	<i>41.203</i>	<i>48.439</i>	<i>85,1%</i>
<i>Juli 2019</i>	<i>8.211</i>	<i>50.433</i>	<i>58.644</i>	<i>86,0%</i>
<i>Oktober 2019</i>	<i>7.280</i>	<i>42.991</i>	<i>50.270</i>	<i>85,5%</i>

Bron: CBS Microdata, bewerking SEO Economisch Onderzoek

Graph 7. Estimated number of temp workers in agriculture according to origin (source Heyma at al. 2020)

Figuur 9 Schatting van het aantal niet-arbeidsmigranten als uitzendkracht in de land- en tuinbouw, per maand, per jaar, 2015-2020



Bron: CBS Microdata, bewerking SEO Economisch Onderzoek

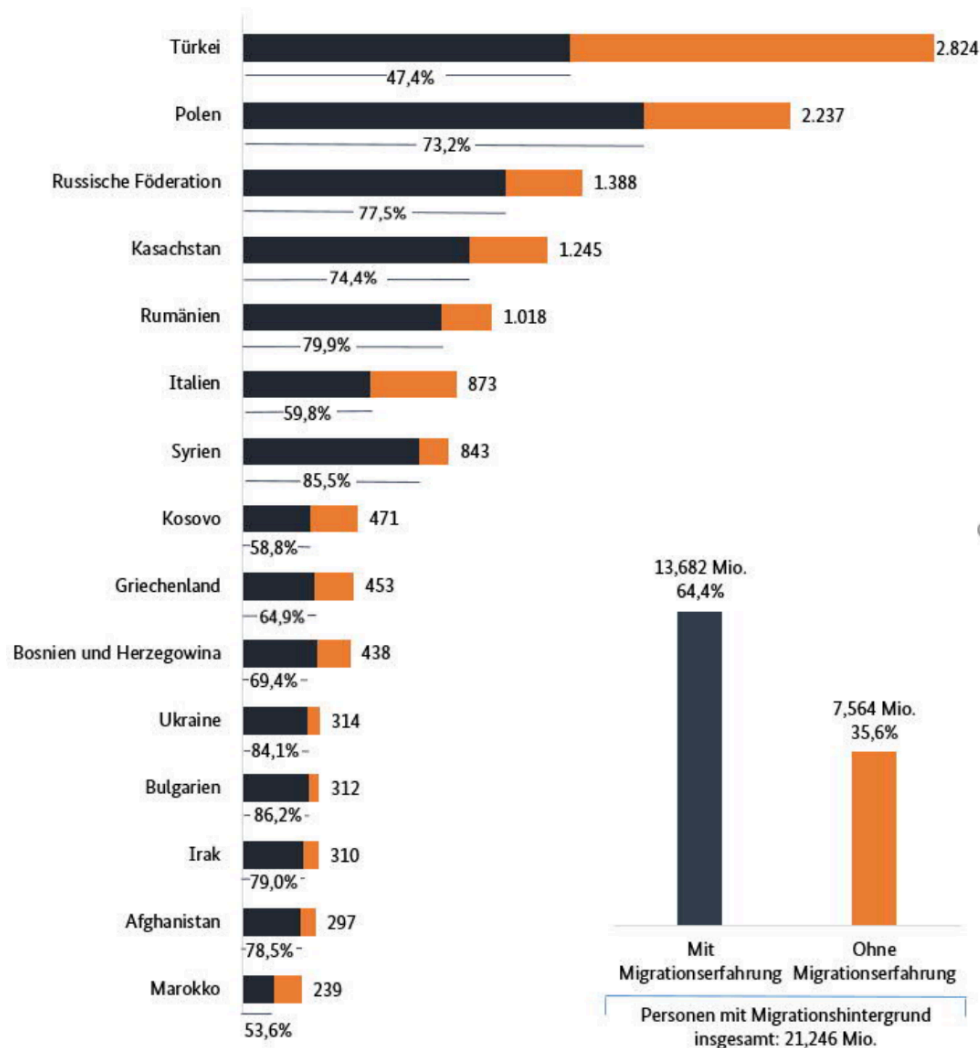
3 Germany

3.1 Introduction

In spite of the fact that Germany already for a very long time in demographic and relative terms has an immigrant population similar in size as in most other highly industrialized nations, its post-war governments have for a long time expressed the official vision that Germany is not a country of immigration. Its conception of nationhood, which until 2000 strictly adhered to the *ius sanguinis* rule (i.e. parenthood as key marker) had as its effects that millions of migrants who had been displaced from parts of the German empire by Soviet occupation and many more who arrived from the Soviet Union/Russia claiming German descent from the 1980s onward were never framed as being immigrants. At the same time millions of migrants who came as guest workers in the 1960s and 1970s and their descendants (i.e. people born and raised in Germany) persistently were spoken about as people who at some point in time were to go “home”. However, from January 2000 children born in Germany are German, also in case their parents are not, but must opt when they turn 18 for either the nationality of their parents or the German one (Worbs, Schulz, Blicke 2012). Presently, population statistics reflect this. Whereas earlier these statistics enumerated “nationality” as the prime marker this presently is “people of migrant background”. In 2020 this pertains to 26% of the German population. In recent years most immigrants come from Poland, Bulgaria and Romania.

Graph 1 still reflects the impact of the large-scale “guest worker” migration of the 1960s and 1970s as well as the migration of ethnic Germans shortly before and after the end of the Cold War. But this is also reflected in how the children of Turkish migrants have become an important part of those who have a migrant background: the orange colored segment of the top bar. The high number of people with Polish roots most certainly for a large part are arrivals of the past two decades but also includes earlier arrivals, e.g. of Poles of German descent who could travel already before 1989. Among Romanians too ethnic Germans (approximately 40 percent) make up an important share (cf. Bundeszentrale für politische Bildung 2019: table).

Abbildung 7-4: Personen mit Migrationshintergrund nach Geburtsland¹ und Migrationserfahrung im Jahr 2019, in Tausend



1) Dargestellt ist das eigene Geburtsland oder bei Geburt in Deutschland das Geburtsland der Eltern.

Quelle: Statistisches Bundesamt, Mikrozensus

Graph 3.1: Persons with migration background according to country of birth and migration experience (source: BAMF 2019: 201)

Tabelle 7-1: Bevölkerung Deutschlands nach Migrationshintergrund (im weiteren Sinne) im Jahr 2019, in Tausend

	2019
Bevölkerung in Privathaushalten insgesamt	81.848
Personen ohne Migrationshintergrund	60.603
Personen mit Migrationshintergrund im weiteren Sinn	21.246
Personen mit eigener Migrationserfahrung	13.682
Ausländische Staatsangehörige	8.556
Deutsche	5.125
Personen ohne eigene Migrationserfahrung	7.564
Ausländische Staatsangehörige	1.564
Deutsche	6.000

Quelle: Statistisches Bundesamt, Mikrozensus

Graph 3.2: persons with migration background in its narrow and wider meaning (source: BAMF 2019: 196)

From graph 2 it becomes clear that the majority of migrants (migration background in the narrow sense) still is a foreign national (8.556.000 out of 13.682.000 foreign born persons). This clearly is no longer the case in the following generation (migration background in the wider sense). 1.564.000 hold the nationality inherited from one or both parents whereas 6 million are German nationals.

In recent years Germany has also opened up its economy to migrants from all over the world (see e.g. the government's website *Make it in Germany*) provided these bring needed formally recognized skills. The origin of this approach lies in the Red/Green government (1998-2005) and more precisely the call of then-Chancellor Schröder for the introduction of a German Green Card system with which to attract highly skilled foreign workers for the IT-sector. In the same year the *Unabhängige Kommission Zuwanderung* (better known as the Süßmuth Commission after its chair Prof. Rita Süßmuth) was asked to propose a modernization of Germany's immigration policies, which until then had been informed by the notion that Germany is not a country of immigration. Labour immigration policies therefore always had the goal to limit settlement of foreign workers. In subsequent years, in sharp contrast the goal became to facilitate settlement and integration. In March 2020 the *Fachkräftezuwanderungsgesetz* (Law on the recruitment of skilled workers) came into force which does away with almost all restrictions for any third country national with professional skills, vocational or college training who seeks, and subsequently finds, a German job.

The German Statistical Office could note in its national economic review for 2018 that the German economy greatly benefits from immigration, notably from Central European EU member states, as well as from 3rd country nationals arriving as refugees (Statistisch Bundesamt 2019: 33).

Next to this openness for skilled foreigners there is the possibility for asylum seekers to take up employment (after the first three months of their procedure). Exempted from this option are asylum seekers stemming from safe countries of origin (presently: all West Balkan states as well as Ghana and Senegal). Should subsequently their application be rejected but their return cannot be effectuated, they can be issued with a tolerated status (*Duldung*). Such a status does not hold any rights but does protect against deportation as well as detention for illegal residence (which is criminalized under German law). Normally this status is to be renewed every six months but it may also be issued for shorter periods. This is done at the discretion of the *Ausländerbehörde* (a local office akin to the aliens' police or immigration office) (Eule 2018). When they are in possession of ID-papers or can demonstrate that they have none because of reasons beyond their control tolerated persons can seek/accept employment or enter into vocational training (which often includes on the job training). Again: people stemming from safe countries of origin cannot. These may, however, enjoy education.

By the end of 2019 202.387 aliens benefitted from a toleration. Of those approximately twenty percent were employed. If the tolerated person fulfils further conditions signifying integration into German society, through further training or already possesses desirable skills, regularization is possible. During the first half of 2020, 739 aliens (including spouses and children) received a residence permit on these grounds (Deutscher Bundestag 2020: 27). Migrants can furthermore receive a permit because it has been established their return remains impossible to effectuate. This has happened to 54.420 persons (Op cit: 22).

There is a final category of migrants who make the step from irregular to regular residence: *Härtefälle* (hardship cases). Based on federal law, each State (Bundesland) has the option to install a so-called Hardship Committee, consisting of representatives of the churches, welfare organizations and other civic institutions. They are completely independent and can ask the *Ausländerbehörde* to issue a residence status to foreigners who's expulsion would create considerable individual hardship. These migrants subsequently have labour market access.

All of the above has no specific bearing on the section of the labour market we focus on in our project: agriculture and especially seasonal work, even though in the Spring and Summer of 2020

attempts were noted to mobilize asylum seekers in order to replace the seasonal workers that normally arrive from Poland (30%) and Romania (65%) (Der Spiegel 2020)⁶ The *Verband Süddeutscher Spargel- und Erdbeeranbauer (VSSE)* (Association of Asparagus and Strawberry Farmers) estimates 80% of its seasonal workers to hail from Romania and 10% from Poland, whilst the remaining are Hungarian, Slovenian, Croatian and Bulgarian nationals, who by the way might well be living in neighbouring non-EU countries. More precise data, e.g. numbers of seasonal workers, are not available (Lechner 2020: 15). Many of those who normally arrive every year were hindered by travel restrictions imposed at the onset of the Covid-19 pandemic.

A survey this summer among asparagus and berry farmers showed that replacing experienced seasonal workers with domestically available workers such as unemployed people, asylum seekers, students and others was only a partial success. It turned out to be very difficult to keep workers in the fields who were new to this type of heavy labour. Fifty-nine percent of unexperienced workers left the job early. In seventy percent of those cases this was because of physical difficulties.⁷ The speaker of the VSSE, which organized the survey, remarked that asylum seekers did not differ from Germans in this respect. The experience is that only people who have serious financial needs are willing to do this type of work. In other words, substituting workers who could not travel to Germany because of Covid-19 restrictions proved to be problematic.

3.2 Statistics on tolerated foreigners and their labour market access

Data from Deutscher Bundestag (2020) on migrants who ought not to be in Germany but are regularized or on the way to a possible regularization through being employed:

Härtefälle: Personen mit Aufenthaltserlaubnis nach § 23a AufenthG: 8.751. These are aliens who ought to have left but have been granted a residence permit because of personal circumstances.

Aufhältige Geduldete zum Stichtag (tolerated aliens, on date) 31.12.2019: 202.387

Aufhältige Personen mit Duldung (toleration) zum Stichtag 31.12.2019 mit erlaubter Beschäftigung (allowed to be employed in a particular job) 30.443

Aufhältige Personen mit Duldung zum Stichtag 31.12.2019 mit zustimmungsfreier Beschäftigung (allowed to take on any job) 5.248

⁶ <https://www.spiegel.de/wirtschaft/service/saisonarbeiter-in-deutschland-wer-die-spargel-und-erdbeerernte-rettet-a-b557bb06-a520-44d2-a8cf-9627a0a47733>

⁷ https://download.vsse.de/Presse/PM_Umfrageergebnisse_SAK_2020_Netzwerk_final.pdf

Aufhältige Personen mit Duldung zum Stichtag 31.12.2019 mit nicht erlaubter Beschäftigung

(employed without prior permission) 3.538

3.3 Seasonal workers and recruitment

In Germany's agricultural sector seasonal workers are typical those who come annually and have a family to go back home to. Typically these people are peasants from remote rural areas in Central Europe who supplement their usual sources of income. Employers have economic interests to limit the contracts to a maximum of three months.⁸ In that case they are exempt from paying premiums for collective insurances and pension contributions. This saves 20% compared to prolonged employment for both employer and employee. Another condition is that the employees are not unemployed at home but must be "houseman or housewife".

Simon Schumacher (VVSE)

In contrast to the Netherlands recruitment and employment of Central and Eastern European workers through officially registered temp agencies is considerably less significant. On 30 June 2019 a total of 895.176 temp workers were employed on the German labour market (Agentur für Arbeit 2020). Of those 57 percent were foreign nationals. Looking at the sector agriculture, forestry, husbandry and horticulture we see comparatively even much smaller numbers: 5.107 of which 2.033 foreign workers (Ibid.). These figures do fluctuate with the seasons but do not suggest significant hiring of foreign workers: for 2019 the highest number of employed people stood at 5.256 (July) and the lowest at 3,398 (December)⁹. Hence, we could be tempted to conclude temp agencies do hardly or not at all play a role in agricultural seasonal work. However, this depends on one's understanding of the nature of such agencies. Furthermore, workers who are employed for less than 70 days (per annum) do not pay towards unemployment insurance and pension funds. The statistics cited are only enumerating workers who *are* insured. We do know the approximate overall number of seasonal

⁸ In 2020 extended to 115 days/5 months to address shortages caused by Covid-19 travel restrictions..

⁹ Bundesagentur für Arbeit "Leiharbeitnehmer und Verleihbetriebe" 1st half year 2019, item/sheet 1.7.1

https://statistik.arbeitsagentur.de/SiteGlobals/Forms/Suche/Einzelheftsuche_Formular.html;jsessionid=1C3702AD571D94D5B5AFF215BBEEF647?nn=1244296&topic_f=beschaeftigung-anue-anue

workers to be 286.300¹⁰ (2016) (Schneider and Götte 2020: 4). Fifty-five percent of those are male and 45% female workers (Op cit.). Of those working in agriculture (*Landwirtschaft*) next to these seasonal migrants, the work is being done by 449 thousand family members and 205 thousand permanently employed foreign workers (Heuser and Hammer 2020).

It is normal practice for employers to directly employ their seasonal workers and to maintain a long term relationship with them individually and their networks. However, there are also intermediaries who take on a role otherwise a temp agency might perform for those who are not already known to an employer nor part of such network.

As Schneider and Götte write:

“After the EU’s Eastern enlargement, the focus of recruitment shifted towards Romania and the role of agencies increased. Recruitment agencies sometimes charge between 200 and 300 euros for a successful referral and bind workers to a group for which they arrange transportation and lodging. Cases have been reported in which migrant workers have to continuously pay fees which are deducted from their remuneration. At times, workers refrain from organizing and claiming their rights as they fear repercussions by recruitment agencies. There have been accounts of agencies banning whole families or even whole villages from new referrals for work.⁴⁶ In 2016, the Federal Criminal Police uncovered a highly professional organized criminal system of labour exploitation in which an agency recruited Ukrainian citizens with false promises and sent them via Poland to work in exploitative conditions in various German businesses, including agri-food firms, with forged Romanian passports. Some of the workers were threatened, beaten, accommodated in deplorable conditions and forced to work, while wages were withheld or cut to a sub-standard minimum. Due to the risks, the German Horticultural Association (Zentralverband Gartenbau e. V., ZVG) advises its members not to work with agencies” (Schneider and Götte 2020: 8).

Schneider and Götte furthermore noted the following:

“Asparagus is by far the most labour-intensive culture in Germany. In 2018, a total of 23,400 hectares were farmed with asparagus, resulting in a harvest of 133,000 tonnes (sic). For the past 25 years, seasonal workers from Central and Eastern European countries have been an indispensable workforce, particularly for cultures in Brandenburg, where the crop size increased exponentially – “thanks to the Poles.” Following the introduction of a minimum wage in 2015, farmers have to pay

¹⁰ The Federal Statistical Office compiles four year average numbers. Those for 2020 are not yet available.

7.40 euros (Western Germany) and 7.20 (Eastern Germany) an hour, while before they typically paid between 4 and 5 euros an hour. Considering that about half the costs of production are labour costs, and that there is hardly any margin for higher prices, some farmers over-produced and started to shut down parts of their businesses. At the same time, it has become more difficult to hire workers and the industry has lobbied strongly for government measures which would allow them to recruit from third countries.” (Schneider and Götte 2020: 7)

The desire to be able to hire from non-EU countries is also voiced by the speaker for the VVSE. He specifically identified the *Westbalkanregelung* (see below) as a suitable and as yet not fully functional tool for this.

Plans for bilateral agreements with West Balkan states as well as Georgia are also welcomed by the VVSE as it is expected that labour supply from EU member states gradually dries up. Already in the past decade it was in evidence how Polish workers, who traditionally were the seasonal workers on the German fields, made way for Bulgarians and Romanians. The resulting competition for those seasonal workers who are willing to come might improve hiring practice as Schneider and Götte were told by the Association of East German Asparagus and Berry Fruit Growers: “Facing a scarcity of potential workers, employers with a sustainable strategy and a good network aim to recruit independently by offering work to labourers from previous years.” (2020: 8).

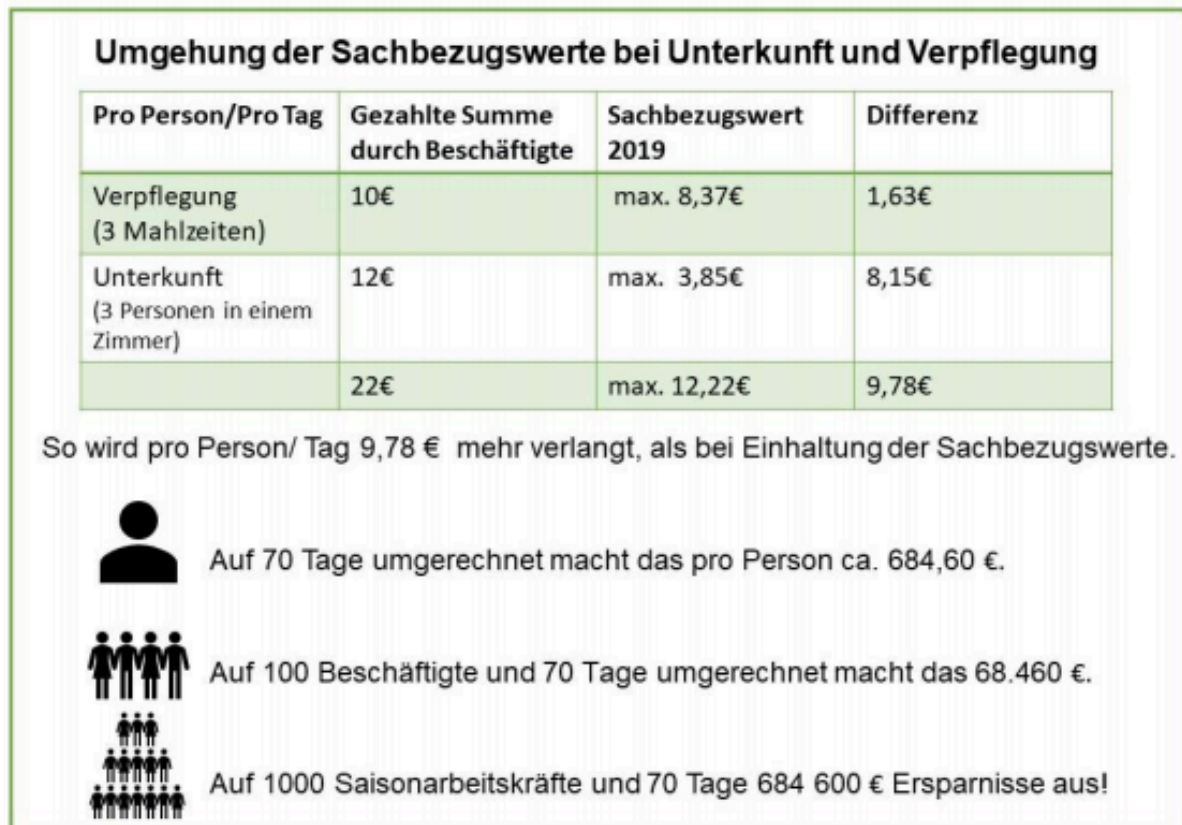
Interestingly Joep Thönissen of the Dutch Vereniging Huisvesters Arbeidsmigranten shared the following observation:

“The Poles have during the past ten to fifteen years in large numbers supplied Western Europe with labour migrants and specifically England and the Netherlands. Meanwhile a turning point becomes visible. As well as, let us say, the living standards in Poland have improved because of which they have less desire and need to come to the Netherlands. That aside. The hospitality in the Netherlands in general has meanwhile gotten a negative ring to it in Poland too. They do not feel welcome here. They feel exploited, in all kinds of ways and this has made Germany, despite their, let us say, culturally negative sentiments a more attractive employer than the Netherlands.”

3.4 Working conditions

The sources at our disposal tend to report bad practices rather than providing examples of good or excellent employment and housing conditions. We should suppose those to exist, not least if employers depend on the annual return of their seasonal workers and cannot rely on a fresh supply provided by temp agencies.

A report for 2019 by the Trade Union for Construction-Agriculture - Environment (*Bauen-Agra-Umwelt*) and PECO-Institut provides a very illuminating illustration of how employers save/earn from deducting unfair sums from the wages they pay their seasonal workers. The sums are relatively small but add up to considerable amounts (graph 3).



Graph 3.3: Circumventing actual costs of accommodation and Catering

Source: Industriegewerkschaft Bauen-Agrar-Umwelt/PECO Institut 2019:15).

Graph 3 illustrates a frequently reported phenomena. For three meals a day the workers are charged ten euro. The actual costs are not more 8,37. Workers are told their housing costs twelve euro while it actually costs no more than 3,85. In effect, each worker is charged almost ten (9,78) euro more for facilities they have no alternatives for.

More generally the Union reports instances of sub-standard employment conditions such as underpayment, overly long hours and poor housing for which abusive deductions from wages are made. Often workers are not fully informed about their wages and hours because of language problems, which also causes them to sign contracts they cannot read.

In the slaughterhouses and meat packing industry major scandals arose because of many CEE workers being infected with Covid-19 while at work. Contact restrictions and hygiene standards were

systematically disregarded (Schneider and Gotte 2020: 7). In June a further scandal arose over a plant of the Tönnies company in Gütersloh (North Rhine Westphalia) where a majority of its staff were found to be infected. The town it stands in came to a lock-down. The plant was largely staffed by Bulgarian and Romanian nationals. Tackling the issue was frustrated by the fact that often it was not known where these resided as they appeared to be unregistered.¹¹ It also transpired that these workers were employed via obscure sub-contracting schemes. Earlier such commotion had already spiked debates in parliament and on 20 May the government decided to ban such practices in the meat industry and to oblige employers to henceforth hire directly (Schneider and Götte 2020: 7).

As a consequence of the Covid-19 crisis, many of the seasonal worker that would normally have arrived from Romania, Poland and elsewhere, could not reach Germany's farms. To remedy this, the governments allowed the employment, without any bureaucratic restraints, of asylum seekers, tolerated (*Geduldete*) aliens and third country nationals who would normally not be permitted to take on such a job. This included migrants who had become redundant in other sectors, such as hospitality (Lechner 2020:21-2). This additional immigrant labour supply, together with German students and others, did not come close to fulfilling the demand and so the government decided on special measures (travel by charter plane, quarantined groups) that would allow a number of traditional seasonal workers to travel. Numbers were capped (Lechner 2020: 22 for all details). Allowed was the arrival of 40 thousand workers in both May and June (Initiative Faire Landarbeit 2020). However, the quota was not exhausted because recruitment proved problematic (Schneider and Götte 2020: 7). The VSSE (2020) reported for May it lacked 28 percent of workers. The restrictions were lifted in June. Citing the VSE Schneider and Götte note that the additional costs incurred for the employers by the pandemic had been 880 euro per worker (airfares and higher lodging expenses).

In order to compensate for the smaller numbers of seasonal workers the government allowed to employ them longer under similar conditions. While normally 70 days is the limit for hiring workers who are exempt from paying employment related insurance premiums, this was stretched to 115 days. The government took this extraordinary measure because it declared seasonal work to be part of the national critical infrastructure. Furthermore, protection and hygienic measures to prevent infections appear to have been ignored and extreme long working days imposed (Initiative Faire Landarbeit 2020).

¹¹ <https://www.spiegel.de/international/business/corona-in-the-slaughterhouse-the-high-price-of-cheap-meat-a-ad16d0df-c1c8-4f82-93df-573fdc2c8bd6>

3.5 Westbalkanregelung and seasonal work

The main route into Germany for workers without formal skills (a minimum of two years of vocational training) is through the West Balkan Regulation. This WBR was created in 2015 and came into force 1 January 2016 allowing access to the German labour market for citizens of Albania, Bosnia-Herzegovina, North-Macedonia, Montenegro, Serbia and Kosovo. It was evaluated in 2020 by the Institute for Employment Research (IAB) (Brücker et al. 2020a,b). On the basis of this evaluation the government decided to prolong the WBR which was set to expire by the end of 2020.

The WBR's purpose was two-fold: to effectively curb asylum migration from the West Balkan region (by defining these countries as safe countries of origin) and to satisfy growing German labour market needs. Unlike existing labour immigration rules, no proof of formal qualifications is necessary. However, a visa is required. The issuing of the visa requires a pre-arranged employment contract and a labour market test by the Federal Employment Agency (*Bundesagentur für Arbeit*) in order to establish whether the vacancy might be filled by an EU-national or a refugee, who then would have priority.

The visa process does not run as smoothly as it ought to as a result of limited capacities at the German consulates/embassies in the origin countries. As a consequence, it regularly happens workers do not arrive in time for the job they are hired for. This would seem especially problematic in the case of seasonal workers. In some instances, consular staff are able/willing to cut a corner (e.g. by processing multiple applications in one go) in other cases back-logs can be substantial. One example would be the visa process for Serbian workers at the Belgrade embassy between 2017-2018 which was streamlined in consultation with the Federation of Asparagus and Strawberry Farmers and went down from seven months to four weeks. Presently, the government has decided to curb administrative capacities to process a maximum of 25.000 applications per annum. In 2019 granted over 62.000 applications passed the Federal Employment Agency's labour market test but only 27.259 visa were issued because of capacity issues at German foreign representations.

“Until the introduction of the Westbalkanregelung January 2016 Serbian workers were much liked. They had come as asylum seekers. Coinciding with the introduction of the WBR their country was declared safe any many departed/were deported.

Presently the WBR is a source of workers but the procedure takes much too long and the numbers are presently limited to 25.00 per annum to keep processing in line with the capacities at the German embassies. This in view of the VSSE is unacceptable. Demand should be leading, not administrative

capacities. These are furthermore limited by the fact that skilled migrants for whom there is a special immigration regime are prioritized.

The VSSE wishes the return to practices employed by the embassy in Belgrade whereby in 2017-2018 groups were processed instead of individual cases.”

Simon Schumacher (VVSE)

Main beneficiaries of the WBR's renewal (until 2023) are likely to be building companies who go through a booming period in spite of Covid-19 (Deutsche Handwerks Zeitung)¹².

Much of the immigration takes place within established (ethnic) networks (e.g. resulting from refugee movements during the 1990s Balkan Wars). As its outcome, employment tends to be stable and limited to a first/single employer and based on mutual trust. Because employer and employee know (of) each other the fit between skills and needs are good. The need for/use of unemployment benefits is low. This may also be related to the fact that the use of benefits can negatively impact residence rights (Brücker et al. 2020a).

Potential labour migrants cannot make use of the WBR in case they applied for asylum within the two preceding years (Ibid.).

Those migrants from the West Balkan who tended to apply for asylum are by and large not the same people who benefit from the WBR. The asylum applicants tended to be Roma and Sinti. These are now subjected to the fast track procedure for asylum applicants from safe countries of origin. The main reason why they do not benefit from the WBR is that they lack precisely those networks that make the WBR a success.

Immigration via the WBR serves circular (seasonal) demands as well as permanent needs (e.g. in construction which is the sector with the highest demand for migrant workers coming via the WBR). Whether this can lead to permanent residence is uncertain. Normally *Ausländerbehörden* (which have discretion in this respect) expect language skills as a marker for being well enough integrated to receive a so called *Niederlassungserlaubnis* (an establishment permit). Language training is not part of the obligations the WBR poses on employers. It does appear that the WBR is politically contested for fears for the sustainability of the welfare system because of increased claims for unemployment

¹² <https://www.deutsche-handwerks-zeitung.de/westbalkanregelung-wird-bis-2023-verlaengert/150/3094/406920>

ensurance (which the recent IAB evaluation would not give cause to) or possible abuse of the workers (of which also little evidence was found).

Even though workers are not required to bring proof of formal qualifications, more than half the WBR's beneficiaries end up being employed at the same wage level as those which apply for skilled German workers. In other words, employers in those instances do not need them as unskilled/cheap labour but hire them to meet structural needs.

About a quarter of a million workers have benefitted from the WBR during the five years of its application.

It is not known how far workers for the agricultural sector benefit from the WBR. It is known however that Bavarian asparagus farmers do hire via the WBR (cf. interview S. Schumacher/VSSSE). However, main sectors which are served by the BR clearly are construction and hospitality.

3.6 Other temporary migration schemes

In keeping with the EU seasonal workers guideline (2014/36/EU) and based on the expectation that the number of EU-citizens who are available for that type of work will gradually drop (already in 2018 a survey among the VSSE's members show a considerable deficit in workers and inabilities among farmers to complete the harvest)¹³, we were told the Federal Employment Agency is looking to establish bi-lateral agreements with a number of states. In 2020 the first was concluded: Georgia. Its practical application has, however, not come from the ground because of Covid-19. Still planned are agreements with Bosnia Herzegovina, North Macedonia, Moldova and Albania.

Two more schemes allow the temporary hiring of migrant labour. First of all, labour can be contracted via a Holiday Workers scheme for foreign students, administered by the Federal Employment Agency. It allows students to come and work during their semester breaks for a maximum of three months per annum. Judging by the text on the Agency's website typical jobs are hospitality, manufacturing, agricultural work and office cleaning. The VVSE members use this scheme to hire Russians, Ukrainians, Belarusians and others. The legal minimum wage needs not to be paid. As Schneider and Götte note: "An increasing presence of Ukrainian and Albanian student interns has

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https://www.vsse.de/fileadmin/media/Dokumente/Pressemitteilungen/Pressemitteilung_Auswertung_Umfrage_Saisonarbeitskraefte.pdf

been noticed on German fields. These students receive a residence permit, do not have to be paid the minimum wage and are prone to wage dumping and other forms of exploitation. As it is effectively impossible for the authorities to inspect the students' academic documents, unlawful employment is hard to prove." (Schneider and Götte 2020: 9).

Lastly, trainees/interns can come to Germany for a maximum of 12 months during the entire duration of the study programme (after the first two years have been concluded). Permission has to be granted by the Federal Employment Agency. Minimum wage applies and the employment must be educationally relevant. The Agency mentions on its website to support foreigners who consider remaining in Germany upon the completion of their education. Interestingly, it has been reported how farmers have Ukrainians (who do not need a visa for Germany) work for them who formally are interns but who de facto perform work similar to that of regular workers (Lechner 2020: 25).

3.7 In conclusion

All people interviewed underline the significance of networks and established relationships between employers and employees for circular migration to be successful. Those relationships are clearly in evidence in seasonal work, both within the WBR and outside of it. In as far as EU countries no longer yield sufficient supply of seasonal workers, employers tend to (want to) look at countries just outside of the Union for new sources. Both the spokesperson of the VSSE and a representative of the Federal Employment Agency are of the opinion that seasonal workers should be accustomed to strenuous manual labour and the type of work should be familiar. Cultural proximity is thus an advantage. The suggestion that people from Africa might also be suitable candidates, did not fall on fertile soil. These would seem to lack the established network as well as familiarity with German agricultural practices. Or to paraphrase the representative of the Federal Employment Agency: one cannot randomly replace one worker with another.

The agricultural employers appear to prefer a post-Covid-19 that looks like it was before. If migrant worker supply from Central and Eastern Europe dwindles, and they expect it will, they would prefer more and easier access to workers from the Balkans above anything else. Moreover, it is expected that mechanization and robotics increasingly will replace workers in the asparagus and strawberry business, the technology of which is being pioneered in The Netherlands. But for the moment workers are still cheaper than machines.

4. Comparative Dutch German conclusions

Initial suspicions about the employment and housing situation of seasonal and other agricultural workers in The Netherlands and Germany (and presumably in most other parts of Europe) were confirmed by our own enquiries. Employers who aim to bend the rules do so and lax enforcement of migrant worker rights does not stop them. However, we also found evidence suggestive of widespread trust between employers and employees who know each year what to expect from each other. Indeed, much seasonal work seems to rely on mutual trust. However, our study does not allow any quantitative enumeration.

This is also true for our assessment of the role of agents who connect employer and (seasonal) workers but it does seem clear that the involvement of middle-men gives substantial room for abusive practices. In the Dutch case, their involvement reduces the responsibility felt by the actual employers and creates opportunities for abuse by unscrupulous agents. The workers at times are unaware of their financial losses or feel unable to voice their concerns for risk of future work.

In view of the fact that presently almost all agricultural workers in the Netherlands and Germany are EU nationals who should enjoy not only the freedom to work everywhere within the Union but also enjoy equal labor standards and protection against abuse, our report would point towards the need for better enforcement. Such would probably raise wages, which in turn might spark demand for more cheap labour (e.g. from 3rd countries), lead to more mechanization, or to fairer prices for agricultural produce.

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