

Guest Editorial

The aim of this special issue is to present an interdisciplinary overview of migrant workers vulnerabilities. The contributions all deal with the vulnerabilities of EU and third-country national (TCN) migrant workers with legal residence in a receiving state within the EU. Four of the seven articles that make up this special issue were presented as working papers at the UACES annual conference in Cork in 2014, for the panel on 'Vulnerabilities of Regular Labour Migration in the EU'.

Since newly arrived migrant workers are foreign to the laws of the state in which they work, they may easily be cheated out of their rights. This is especially true for migrant workers in low-wage employment. The migrant workers examined in this special issue have in common their '3-D jobs' in branches of industry such as hospitality, agriculture, construction and road haulage, but they differ with respect to their legal status. Together, the articles deal with seasonal workers, temporary agency workers, self-employed workers, posted workers and students/trainees with a part-time job. The specific legal status of the migrants often determines the framework within which these migrant workers have rights: EU nationals using their free movement rights to move for employment within the EU can base their claims on a different set of norms from that of migrants from outside the EU. Although the bedrock principle of international conventions is equality of treatment in wages and benefits for employed migrants regardless of legal status, substantive EU Migration Law and the Posting of Workers Directive (PWD) tell a slightly different story.

Two articles have an explicit focus on 'merchants of labour', such as temporary employment agencies and other intermediaries who facilitate the movement of workers across the EU. Both contributions are based on empirical studies adding to our knowledge of the dependent position of EU migrant and posted workers, their lack of agency as well as the difficulties they face in claiming their rights.

Chris Forde, Robert MacKenzie, Zyama Ciupijus and Gabriella Alberti from the Centre for Employment Relations Innovation and Change, University of Leeds, UK, discuss connections between temporary employment agencies and migration. They consider evidence drawn from four projects with a range of methodologies, including a survey, in-depth interviews with migrant workers and

agencies, case studies and ethnographic research. Together, the evidence presented in this contribution casts new light on the complex and changing relationship between temporary employment agencies on the one hand and migrant workers and employers on the other. The findings highlight how important temporary employment agencies are for migrant workers in finding work as well as in creating multiple dependencies, contributing to increased vulnerability of the workers involved: for instance, occupational downgrading is commonplace for migrants. The authors point out that there are some examples, albeit rare, of so-called social enterprise agencies trying to overcome this. They also outline innovative strategies used by temporary agencies and employers involving migrant workers and how these strategies limit access to temporary work for new migrant workers as well as limit access to more stable forms of employment in general.

Lisa Berntsen from Intervict, Tilburg University, the Netherlands, deals with migrant labour recruited by temp agencies and by subcontractors who make use of their right to provide cross-border services within the EU (regulated by the PWD). Empirical findings based on interviews with almost fifty Polish workers in the Dutch construction industry and meat processing sector constitute the centre-piece of her contribution. In the Netherlands, foreign construction workers are mostly posted workers and thus regulated under the EU framework of free movement of services, whereas most foreign meat processing workers are hired by Netherlands-based temp agencies and thus covered by the framework of free movement of workers, meaning that they have differential access to rights in the Netherlands. Interestingly, *Berntsen* shows that in reality, it is difficult to differentiate between the exact contractual arrangements under which these workers are employed, as the Polish interviewees were in most cases unaware what type of employment contract they were working on. Both groups of workers face similar socio-economic vulnerabilities and insecurities.

Two other contributions in this special issue zoom in on the position of bogus self-employed migrants. Both articles, though based on very different research designs, confirm that tackling this grey area between employees and 'genuine' self-employed continues to be an ongoing challenge.

Christer Thörnqvist from the School of Business, University of Skövde, Sweden, examines how bogus self-employed workers are received in five EU welfare and industrial relations systems and discusses possible solutions at national and/or EU level. The author starts by considering various definitions of self-employment, concluding that the falsely self-employed are in a kind of 'legal limbo' and that EU Member States have adopted different strategies to define what bogus self-employment is. Regarding the level of precariousness of those in bogus self-employment, the article draws on empirical findings from a

wide-ranging study on precarious work, including an extensive literature review, interviews, a questionnaire survey, case studies and national reports. In all the countries surveyed, bogus self-employment was perceived to be one of the most problematic forms of precarious work. In addition to a supposed growth in false self-employment, the outcomes of this study reveal a relationship of highly unequal power, where the offer of work depends on a relationship with a single 'buyer', that is, only one company or public sector authority. In his discussion of solutions, the author submits that the EU has over the years given clear recommendations on how to deal with bogus self-employment in national contexts. He highlights some interesting initiatives to address the problem at national level and cautiously concludes that it has been easier for stronger welfare regimes to handle bogus self-employment.

Annette Thörnquist, affiliated researcher at the Research Institute for Migration, Ethnicity and Society at Linköping University, Sweden, discusses false self-employment and other arrangements in the grey area of the Swedish labour market and the related problems for workers, industrial relations and regular labour standards. She presents three Swedish case studies in the construction, road haulage and cleaning industries. In the context of enlargement of the EU, these sectors have developed into highly competitive and flexible labour markets, resulting in intense downward pressure on labour standards. Her findings reveal how the law actually stimulates the use of self-employed migrant workers and exacerbates their vulnerability. Self-employment is not the only factor giving rise to vulnerability: especially in the cleaning sector, gender and ethnicity contribute to a weak labour market position and unclear forms of employment and precarious working conditions play their part. In the construction sector, recruitment agencies contribute to the vulnerability of the nominally self-employed labour migrants from new EU Member States. From the description of the road haulage case we learn how deregulation and EU cabotage traffic contribute to the problem of false self-employment. The article casts light on the growing grey area between employment and self-employment and discusses how short-term arguments for economic growth through low-wage competition have resulted in ambiguous employment relationships becoming widespread, not just among migrant workers.

The remaining two contributions look specifically at the vulnerability of TCNs legally residing and working in EU Member States. They share a predominantly legal perspective, in contrast to the other articles in this special issue.

In her article, *Conny Rijken* from Intervict, Tilburg University, the Netherlands, discusses the potential of the 2014 EU Seasonal Workers Directive (SWD) to prevent and combat exploitative practices. To this end, first an

in-depth conceptual analysis is made of the term 'exploitation' and different legal approaches to combat exploitation are distinguished. From this perspective, potential pros and cons of the SWD are discussed. The SWD seeks to harmonize rules for admission and treatment of seasonal workers, especially in the agricultural and tourist sector. As the author emphasizes, one of the aims of the Directive is to prevent exploitation of this vulnerable group of migrant workers. In her assessment, the author is positive about the integration of multiple legal approaches within the SWD. She highlights specific provisions which may help reduce the vulnerability of the workers involved, such as the possibility to change employer within the timeframe of the permit, to avoid multiple dependency. However, this positive assessment is mitigated in light of the fact that these beneficial clauses are only of an optional character, meaning that Member States do not have a strict obligation to enhance the protection of TCN seasonal workers.

Tesseltje de Lange, affiliated to the Department of Labour Law and Social Policy at Tilburg University and to the Department of Administrative Law at the University of Amsterdam, scrutinizes another Directive for TCNs, namely Directive 2004/114 on the position of the often overlooked group of TCN students and trainees. Although residing in EU Member States for the purpose of study or vocational training, these individuals also have the right to be employed or self-employed outside their study time. According to the Directive, Member States must allow TCN students to work up to ten hours a week, whereas trainees do not enjoy such a right. If TCN students work more hours than a Member State allows, they run the risk that national authorities will deprive them of their status as students and regard them as illegally employed migrant workers instead. Illustrated by Dutch examples, the article aims to explore the legal consequences of such reclassification. Based on a thorough examination of the EU legal framework applicable to illegally staying TCNs, it is argued that TCN students may end up worse off than 'genuine' irregular migrant workers, who are to a certain extent protected by EU law, for example, in claims for outstanding remuneration.

While examining empirical national case studies and legal initiatives within the EU, the contributions advance insights into the vulnerabilities of migrant workers in low-wage jobs all over the world. The articles enhance our insights into the causes of migrant vulnerabilities, illustrate how migration categorizations may blur in practice, and reveal how employers and intermediaries create new exploitative arrangements again and again, strategically using legal loopholes. Individually and collectively, the contributions provide much food for thought on possible scenarios to reduce vulnerabilities of specific groups of migrant workers. Some end on a positive note, others are more pessimistic, pointing to a

crucial ingredient that is often missing: the political will to genuinely and unambiguously tackle vulnerabilities of migrant workers.

Mijke Houwerzijl and Tesseltje de Lange

Editor's Note:

As an addendum to the above, this issue closes with a study by Adalberto Perulli, Professor of Labour Law at the Ca' Foscari University, Venice, Italy, on Sustainability, Social Rights, and International Trade: The Transatlantic Trade and Investment Partnership (TTIP).