Towards Shared Interests between Migrant and Local Workers

Recommendations for Policymakers and Practitioners

Competition and Labour Standards

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With the support of the Europe for Citizens programme of the European Union

multicultural center prague

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DIPARTIMENTO DI FILOSOFIA, SOCIOLOGIA, PEDAGOGIA E PSICOLOGIA APPLICATA

ESCODE
Estudios y Cooperación para el Desarrollo

This publication was prepared within the framework of the project 'Towards shared interests between migrant and local workers' supported by the Europe for Citizens programme of the European Union.

The views expressed in this publication are those of the respective authors and do not reflect the views of the European Commission.

The series was edited by Olena Fedyuk.

About the Project

Central and Southern European countries have faced growing labour migration from both EU and non-EU countries. Mostly welcomed by employers and some politicians, it has remained controversial for parts of the general public due to perceptions of competition in the labour market and local reactions in places with a concentration of migrant workers. This project responds to these conflicting economic, political, and social interests by engaging a discussion with the local European publics.

While most of the debates on migrant integration have traditionally centred on cultural adaptation and social inclusion, this project targets their economic and legal situation in particular. In the context of flexibilisation and precarisation of employment, migrant workers have begun to share manifold aspects of their situation with the host country's domestic labour force. Yet, solidarity between migrant and domestic workers is constrained by negative stereotypes and a lack of common platforms in which to share experiences. This project suggests that such a platform can be created by taking a labour rights perspective.

As part of the project, partners from 5 countries (Czech Republic, Poland, Bulgaria, Italy and Spain) conducted interviews with migrant and local workers, labour rights experts, and other local asking about (1) precarisation and social citizenship, (2) competition and labour standards, and (3) solidarity in fragmented workplaces.

Summary

This brief deals with the issue of competition between different categories of workers and the connected risk of worsening labour standards in a workplace. We discuss these issues based on five case studies in a variety of occupational sectors in five EU countries: all-inclusive hotels in Bulgaria, multinational supermarket chains in the Czech Republic, temporary workers in Poland, the commercial cleaning industry in Italy, and domestic and care work in Spain. All the cases have a high presence of migrant workers. Inside the sectors, migrant workers are employed in the worst occupations in terms of wages, precariousness, and work and health conditions. They share this position in the lower levels of the labour market with other categories of workers, such as students (Czech Republic), poor indigenous women (Bulgaria, Italy, and Spain), and workers from rural and poor regions (Bulgaria). However, rarely is there direct competition and an explicit process of substitution between native and migrant workers (with the exception of the Bulgarian case study).

In the majority of cases taken into consideration, migrant workers satisfy a relatively new labour demand in the services sector (with the exception of Poland) characterised by unfavourable working conditions, low labour standards, and precariousness, such as commercial cleaning services, domestic work, logistical services, shop assistants in organised large-scale distribution, and operators in all-inclusive hotels. While the majority of native workers have the social and economic resources to look for better working conditions in their own countries or in other countries, migrant workers are recruited explicitly to do these jobs (Bulgaria and Poland) or are forced by migration policies and economic needs to accept these jobs (Czech Republic, Italy, and Spain). Thus, the analysis of migration policies and recruitment agencies plays a crucial role in the process of weakening labour standards. Moreover, we argue that to defend and improve labour standards, it is necessary to develop policies aimed at harmonising labour standards across sectors and countries following the principles of the European Pillar of Social Rights. As a result of the research conducted in the field of competition among workers and labour standards, this brief focuses specifically

on three issues: proliferation of labour outsourcing, multiplication of different labour regulations, and intersections between precarious and/or flexible employment and migratory regimes. In the following sections, we will analyse each issue separately; nevertheless, it must be kept in mind that they are often interconnected and influence each other.

Main issues

1. Proliferation of Labour Outsourcing

In the countries considered, there is a proliferation of labour outsourcing in its varieties of modalities — fixed- term contracts, temporary work agencies, and subcontracting. This is one of the mechanisms responsible for labour standards lowering and increasing competition among workers. However, in EU legislation, there is scarce attention paid to limit this phenomenon.

According to the dual labour market theory[1], migrant workers, together with other disadvantaged categories of workers, concentrate in the secondary labour market, where often they are employed by subcontractors. Indeed, the case studies analysed show that outsourcing chains follows ethnic lines: In the Czech Republic full--time supermarket workers are usually Czech citizens, while temporary workers are foreign citizens (Ukrainians); in Poland, temporary workers recruited through temporary work agencies are mainly migrant people (Ukrainians), while workers directly employed by firms are Poles; in all-inclusive Bulgarian hotels, low-skilled workers are mainly seasonal migrant workers (Ukrainians), while high-skilled workers are Bulgarian citizens; and in Italy, the commercial cleaning sector underwent a process of externalization that started in the Eighties and now employs a high percentage of migrant women (from different countries).

1 Reich M., Gordon D. M., Edwards R. C. (1973), 'Dual Labour Markets: A Theory of Labour Market Segmentation', American Economic Review, 63(2), pp. 359–365.

In all considered sectors, competition among different categories of workers may arise since migrants can be held responsible for the bad working conditions and low wages.

At the EU level, the only directive aimed at regulating one of the outsourcing forms is Directive 2008/104/EC on temporary agency work. It follows one of the Lisbon Strategy priorities on growth and employment, seeking to promote flex-security, and to reduce labour market segmentation. The Directive affirms the principal of equal treatment (Article 5) between temporary agency workers and workers directly employed by the user firm in respect to a limited number of working and employment conditions[2]. Moreover, the Directive provides that 'temporary workers shall be informed of any vacant posts in the user undertaking to give them the same opportunity as other workers to find a permanent employment' (Article 6.1) and that 'temporary agency workers shall be given access to amenities or collective facilities in the user undertaking, in particular any canteen, child-care facilities and transport services' (Article 6.4).

According to our case studies, even these very basic equal treatment rules are not respected by employers. In Polish food production plants, we found that agency workers are not allowed to use the fitness club nor attend team building activities. While in Czechia, supermarket temporary workers doing the same kind of tasks as core employees earn a lower wage.

2 Countouris N., Horton R. (2009), 'The Temporary Agency Work Directive: Another Broken Promise?', Industrial Law Journal, 38(3), pp. 329–338.

2. Multiplication of Different Labour Regulations

A further reason for low labour standards involves legislation that frames an entire sector as special, as is the case in the domestic sector (Spanish case study) and the road transport sector (Polish case study). In both cases, we see that both national and EU regulations allow the different treatment of workers employed in these sectors, making legal conditions that in other sectors are forbidden.

Let us take the emblematic example of domestic work in Spain. Before 2011, domestic and care work was framed as a special sector whose workers did not enjoy the same rights and benefits as workers affiliated with the general regime. In 2011, two legislative measures (the Royal Decree 1620/2011 on working conditions and Law 27/2011 on social protection) represented an attempt by the state to legislate this sector inline with the legislation of other economic sectors. In this sense, some conditions of work have been equated to other sectors, such as those relating to rest/break hours or compulsory affiliation for all kinds of workers, and some specificities of the sector have been improved, like the 'times of presence'[3] or social security contributions according to pre-established steps. Other issues are still pending, such as the possibility of dismissal without justification or the lack of unemployment benefits, although a commitment has been made by the government to address them through a committee of experts.

Directive 2003/88/EC of 4 November 2003 concerning certain aspects of working time organisation, gives Member States the possibility to derogate family workers, among other categories, from regulations on daily rest, breaks, weekly rest periods, maximum weekly working time, length of night work etc. (Articles 3 to 6, 8 and 16). Such derogation is established on the basis of the specific characteristics of the activity concerned since the Directive claims that the duration of working time is not measured and/or predetermined, nor can it be determined by the workers themselves.

3 In the domestic service, 'times of presence' means the time in which the domestic worker remains at the disposal of the employer without performing any effective work, unless it is needed.

In this case, 'family workers' are compared to 'managing executives or other persons with autonomous decision-taking powers' and 'workers officiating at religious ceremonies in churches and religious communities', thus giving the same status, negotiation power, and control of the labour process to workers that are not at the same level. The inclusion of family workers in a worker category that can be excluded from the regulations of the Directive 2003/88/EC frames domestic and care work as an exception that undermines labour standards and increases the distance with other sectors.

3. Intersections Between Precarious and/or Flexible Employment and Migratory Regimes

The outsourcing of work and the multiplication of different labour regulations engender a variety of flexible jobs that are performed by workers who are precarious from different points of view. Precariousness, indeed, is a subjective condition produced not only by employment circumstances, but also by other dimensions in people's lives, such as legal migration status, housing, welfare entitlements, and personal relationships[4]. According to our case studies, migration status is strongly associated to non-standard employment, engendering a multiplier effect on workers' precariousness[5] . This tie is due to the migration policies of EU Member States that aim to hinder long-term immigration, to endorse migrant employment, and to promote short-term labour immigration. The result is that migrant workers are pushed, through different mechanisms, to accept casual jobs [6].

4 Arnold D, Bongiovi J. R. (2013), 'Precarious, Informalizing, and Flexible Work Transforming Concepts and Understandings', American Behavioral Scientist, 57(3), pp. 289–308

5 Lewis H., Dwyer P., Hodkinson S., Waite L. (2015), 'Hyperprecarious lives. Migrants, work and forced labour in the Global North', Progress in Human Geograph, 39(5), pp. 580–600

6 Fedyuk O., Stewart P. (2018), Inclusion and Exclusion in Europe. Migration, Work and Employment Perspectives, ECPR Press, Colchester.

Therefore, migration policies are machinery producing a perfect workforce supply for flexible jobs. In this sense, they are responsible for creating conditions for social dumping. The functioning of this system is particularly clear in the Bulgarian, Czech, and Polish case studies.

The restrictive permanent immigration policies of EU countries are offset in some Eastern European Member States by the adoption of programmes for the recruitment of seasonal/temporary migrant workers to relieve dire shortages in the local labour force. This phenomenon is particularly pronounced in Bulgaria and in Poland, but it takes place also in Czech Republic. In these countries, temporary migrant workers are imported by temporary work agencies that are often also the employers of migrant workers. These workers, by definition, are flexible and precarious workers given that their short-term work permit allows them to access only some kinds of jobs. Moreover, in Bulgaria the specific seasonal migrant workers regulation ties their working visa strongly to the employer (they cannot change employers in the first 90 days), making it impossible to switch jobs. This system produces an ideal labour force —cheap, provisional, and disciplined — to employers who demand workers that will accept low wages and long working days.

In 2014, the European Parliament and the European Council approved Directive 2014/36/EU on the conditions to entry and stay of third country nationals for the purpose of employment as seasonal workers. This Directive was strongly criticised for different reasons including: (1) that it pays little attention to the precarious employment position of seasonal workers, (2) that it excludes seasonal workers coming for less than three months, and (3) that the rights guaranteed to seasonal workers are less than those guaranteed to high skilled migrant workers regulated by the Blue Card Directive[7].

7 Zoeteweij-Turhan M. H. (2017), 'The Seasonal Workers Directive: ...but some are more equal han others', European Labour Law Journal, 8(1), pp. 28–44.

Despite the numerous limits, the Directive provides some rules that can be helpful to improve the labour standards of seasonal workers. Article 20, on accommodation, states that seasonal workers should benefit from accommodation that ensures adequate standards of living and that the rent must not to be excessive compared to their remuneration. Article 23 states the right to equal treatment concerning employment conditions, the right to strike, back payments, social security, access to goods and services, job counselling offered by employment offices, education and vocational training, recognition of diplomas, and tax benefits. However, quite problematic is the possibility for Member States to restrict equal treatment in the field of family and unemployment benefits, education and vocational training, and tax benefits. Finally, Article 25 ensures workers the activation of mechanisms through which they can lodge complaints against their employers.

Recommendations

1. Proliferation of labour outsourcing

EU and state level:

· Legislate to limit the modalities of outsourcing labour and limit subcontractors within employment chains with the goal of favouring direct employment relations and open-ended contracts.

· Promote social dialogue between employers and workers' organizations to diminish the negative consequences for employees.

· Improve liability regulations (both soft low and hard low) in subcontracting chains.

State level

· Making operative the equal rights principles of Directive 2008/104/EC on temporary agency work and enlarging them.

State and local level

· Trade Unions and NGOs should promote unionizations of workers employed in the secondary labour market in order to reduce competition among workers.

· Given the general prejudice towards migrant workers as disposable labour, passive victims, and/or active threats, trade unions and NGOs should acknowledge and support their agency and organizational power to combat the division among workers that weaken thepossibility of building a common struggle on labour rights.

2. Multiplication of different labour regulations

EU Level

· Revise Directive 2003/88/EC of 4 November 2003 concerning certain aspects of the organisation of working time, excluding the possibility for Member States to derogate family workers from the regulations on daily rest, breaks, weekly rest periods, maximum weekly working time, and length of night work.

· Promote a European regulation on domestic and care work to include them in the protection of labour laws based in the European Parliament resolution of 28 April 2016 on women domestic workers and carers in the EU.

· Include the road transport sector in the Directive on Posted workers 2018/957/EC.

State level

· Equate different labour regulations, independent of the sector, in orde to universalise workers' rights.

· Promote social dialogue taking into consideration not only official trade unions as legitimate subjects, but also other forms of organizations, such as collectives and NGOs.

State and local level

· Trade Unions and NGOs should organise in platforms to promote an equal legal framework of different industry/occupational sectors in order to diminish labour segregation and improve labour standards.

3. Intersections between precarious and/or flexible employment and migratory regimes

EU level

· Revise the regulations on migration, especially those on temporary/seasonal migrants (Directive 2014/36/EU) in order allow workers to change employer and to stay longer in the host country.

State level

· Given the proliferation of precarious and flexible contracts and in order to overcome the structural inequality of the worker-employer relationship, change immigration legislation, untying legal residence from employment status.

· Make operative Articles 20, 23, and 25 of the Directive 2014/36/EU on the conditions to entry and stay of third country nationals for the purpose of employment as seasonal workers.

State and local level

· Local administrations: strengthen support in fields of life other than work (such as social inclusion and housing policies) to diminish the consequences of working precariousness.

· Trade Unions and NGOs: organise workshops on labour rights and regulations with native and migrant workers to promote awareness and the diminish perception of competition.

With the support of the Europe for Citizens programme of the European Union

This electronic publication is available at https://migrationonline.cz/shared. You may find further information on the MKC website at www.mkc.cz

Prague, November 2018

Graphic Designer: Krystyna Macková

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