

# State of care for EU mobile workers' rights in the Dutch meat sector in times of, and beyond, COVID-19

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## Abstract

**Purpose** – With a focus on the position of EU mobile workers in the Dutch meat industry, this article discusses the multi-level State efforts to enhance protection of workers who experienced limited protection of existing State and private enforcement institutions. The COVID-19 pandemic, with virus outbreaks at Dutch meat plants, fuelled public and political will to structurally improve these workers' precarious work and living conditions. Yet, the process of policy change is slow. The authors show it is the gradual transformation in the institutional environment that the State needs to counter to become more protective for EU mobile workers.

**Design/methodology/approach** – Using the gradual institutional change approach and the concept of State ignorance, the authors examine State responses drawing on interviews with expert stakeholders in the public and private domain, public administration records and newspaper articles.

**Findings** – Through knowledge creation, boosted social dialogue mechanisms, enhanced enforcement capacity and new housing legislation, the Dutch State focuses on countering gradual institutional change through which existing institutions lost their effectiveness as protectors of EU mobile workers. The organization of work is, nevertheless, not (yet) fundamentally addressed with tighter public legislation.

**Originality/value** – The findings contribute to a more nuanced understanding of the role of the State as multifaceted actor in institutional change processes towards increased protection for EU mobile workers.

**Keywords** COVID-19, EU mobile Workers, Institutional change, State policy, Dutch industrial relations

**Paper type** Research paper

## Introduction

The COVID-19 pandemic not only caused spikes in COVID-19 infections among migrant workers worldwide, it plainly brought to light the substandard living and work circumstances that many of these workers face. The situation in Dutch meat plants was even labelled in a UK newspaper as gruelling, slavery-like practices (Young, 2020). As the pandemic laid bare the pre-existing precarity of this particular group of migrant workers in the Netherlands, such as their employer-dependency, the poor enforcement of their working conditions, and the limited



social embeddedness in the regions where they work (Berntsen and Skowronek, 2021), hopes were that the pandemic would catalyse fundamental changes in the way this type of work is organized. When the COVID-pandemic hit Europe, an important element of the “emergency” government policies adopted across the EU was to guarantee the supply of “essential” migrant workers in the face of lock-down restrictions and border closures (Mantu, 2022). This highlighted Europe’s reliance on migrant workers for the continued functioning of basic services, such as social care and food supply (Anderson *et al.*, 2021), despite increasing popularity of anti-immigration positions. While migrants were among the groups most exposed to risks during the pandemic, because of their “essential” work positions, legislative and policy attention to protect their health, including access to care, their labour and social rights was modest, beyond emergency measures (Szelewa and Polakowski, 2022).

Importantly, the COVID-19 pandemic reaffirmed the centrality of the State to govern and secure availability of migrant labour, even after years of deregularization and privatization trends in various policy domains. Indeed, the core advice from the Migrant Workers Protection Taskforce (from here on: Taskforce), instated by the Dutch national government in response to COVID-19 outbreaks amidst EU mobile workers [1], was precisely that State authorities should take on a greater role in protecting their rights and well-being (Taskforce, 2020). While the Dutch national government, by the end of 2020, committed itself to implement the 50 recommendations made by the Taskforce, municipalities early 2022 criticized the tardiness at the national level in implementing said advice (Endedijk and Middel, 2022).

How to understand the different ways the Dutch State at different governance levels acts to improve protection of this workforce? We consider the State as multi-level actor and thus not as a homogeneous, unitary entity (Martínez Lucio and MacKenzie, 2017). We argue that the State’s ability to regulate and protect EU mobile workers depends on pre-existing institutions and industrial relations, including policies and regulations in different domains and governance levels. Also, we put forward that State’ responses should be understood in light of the incremental, yet transformative, institutional change that has taken place of the years, with the steady expansion of market relations in the area of work and the resulted changed power balance from labour towards capital (Streeck and Thelen, 2005; de Beer and Keune, 2018). As a result, enforcement institutions, designed to monitor compliance and enforce worker protection schemes are rendered ineffective especially when it concerns workers in lower-waged jobs employed via cross-border recruitment in the EU (Arnholtz and Lillie, 2020; Cremers, 2020). This leaves EU workers in low-waged jobs employed under conditions that are poorly regulated and monitored by the State and private institutions competent to do so. While the precarious position of EU mobile workers in the Netherlands was not unknown to the Dutch State pre-COVID, minimal State efforts to improve their position on the Dutch labour market were made. The COVID-19 pandemic, however, urged the Dutch State to act more comprehensively towards these workers, yet the policy process is slow and foremost concerned with a minimal roll-back of the increasingly deregulated institutional system from the years (decades) before COVID-19, which is less grand and transformative than some actors may have hoped.

To comprehend the impact of State’s responses, we argue that the efforts need to be understood within the gradually transformed institutional setting in the Netherlands, which functioning on the ground over the past decades, especially for EU mobile workers, has weakened and changed. We show this by using the typology of gradual institutional change by Streeck and Thelen (2005), and the concept of State ignorance by Boswell and Badenhop (2021). This is not to convey an idea of State passivity, or normalize and naturalize labour deregulation and poor enforcement of labour standards, but a concept to comprehend the State actions and non-actions. We show that the State efforts to strengthen knowledge formation, social dialogue mechanisms, enforcement and regulation, are attempts towards constraining market relations through reinforced, new and changed institutional obligations in an institutional environment that has not been protective for these groups of workers for years.

The article is based on shared knowledge of the topic acquired over the past twenty years in academia, legal practice, trade union research, as well as desk-research and 60 interviews with expert stakeholders, such as local, regional and national bureaucrats, employer-representatives, trade union officials, NGO-workers, conducted in the period October 2020–June 2022 and part of a government-funded research project on the impact of COVID-19 measures on essential migrant workers in the Netherlands [2]. The exemplary cases of (local) State practices discussed in this article are informed by our interview and desk research. We zoom in on State responses in the Dutch meat sector, as outbreaks were most prominently reported in this industry, also in other countries (Middleton *et al.*, 2020), and here demands for State action were voiced most notably.

This article is structured as follows. First, we present the literature on institutional change, State ignorance and migrant worker protection and proceed with an overview of flexible work in the Dutch meat industry and the gaps in worker protection laid bare by the pandemic. Then we critically discuss the various State responses to protect EU mobile workers through knowledge creation, social dialogue mechanisms, enforcement and regulation efforts. In the final section, we present a discussion, theorizing our findings and conclude.

### **Institutional change, state ignorance and migrant worker protection**

In general, the COVID-19 pandemic was perceived in the public and political domain as a potential window of opportunity for policy change (Kingdon, 1995) and seen as a chance to produce new evidence, learn, raise awareness and even advance policy change regarding the position of migrant workers (Mica *et al.*, 2021). Policy change refers to shifts in existing structures, or new and innovative policies (Bennett and Howlett, 1992). Especially in migration policy, a historical tendency has been discerned for policy shifts to be driven by shock events (Castles, 2000). Despite such opportunistic framing, crises do not always lead to significant redefinition of policies (Mouthaan, 2021). In fact, Kingdon (1995) argues that policy change occurs only when problems, policies and politics align. Organizational scholarship observes the often cautious approach taken by bureaucrats building on past experience, leading to redeployment or adaptation of existing practices and policies instead of reconfiguration and change (Weick, 1995; Mouthaan, 2021). Streeck and Thelen (2005) point out that institutional change – meaning changes in laws and regulations as well as in organizations that shape such institutions – is more often of a gradual nature than characterized by large shifts induced by exogenous shocks. An important element of incremental endogenous institutional change is driven by the strategic action of institutional actors on gaps between rules and their implementation or “enactment” (Streeck and Thelen, 2005, p. 13). Indeed, Streeck and Thelen (2005) characterize different forms of gradual, yet transformative, institutional change: *displacement* as the slowly rising salience of subordinate relative to dominant institutions; *layering* when new elements are attached to existing institutions that gradually change their status and structure; *drift* as the neglect of institutional maintenance in spite of changing external circumstances resulting in changed enactment of institutions on the ground; *conversion* as the reinterpretation of old institutions to new purposes or the attachment of new purposes to old structures; and finally, *exhaustion* as the gradual breakdown of institutions over time.

Regarding the (pre-COVID-19) position of EU mobile workers, scholarship points towards the profound difficulties for States and enforcement authorities to control wages and work conditions among this workforce (Arnholtz and Lillie, 2020). The cross-border recruitment and (sub)contracting practices, facilitated by the EU freedoms of movement, put pressure on nationally bounded industrial relations systems that are not equipped to control the variety and flexibility in cross-border employment standards. Research relates this to changes in institutional enactment (circumvention and re-interpretation of employment standards) rather than formal rule changes (Jaehrling and Mehaut, 2013; Wagner, 2015). Coupled with the weakened powers of national enforcement actors, due to

declining trade union strength and decreasing labour inspectorate's resources, this leads to institutional drift and conversion, meaning incremental changes where formal rules stay the same, but everyday practices for certain segments of the labour market change (Streeck and Thelen, 2005; Arnholtz and Lillie, 2020). The COVID-19-pandemic laid bare the presence of workers whose protection is hardly cared for by encompassing labour market institutions, which is especially problematic during a health crisis, not only for the workers involved but broader, because of spill-over risks concerning public health.

In fact, the intricacies resulting from cross-border recruitment bring inclinations for States and public administrations "not (to be able or willing) to cope with complexity" (Scholten, 2020, p. 112). Boswell and Badenhoop (2021) refer to this as "State ignorance": an awareness on the part of public authorities that they lack knowledge to address social problems, which happens especially in "information-poor environments", where the opportunities to produce knowledge about problems are limited. There may be different reasons for ignorance. Ignorance may be related to the State's wishes to avoid drawing attention to issues they sense they cannot address effectively, to attempts to buffer the State from unfeasible public expectations or to obtain certain political or economic goals (McGoey, 2012; Boswell and Badenhoop, 2021). Alternatively, State ignorance can be a form of oversight, and the result of decisions not to produce knowledge on particular issues considered not to be a priority (Boswell and Badenhoop, 2021).

While State ignorance may seem exceptional, Best (2021, p. 5) in fact argues, that policy development and implementation involves ignorance as much as expertise. Ignorance is, in other words, endogenous within the policy process, and key to developing policy knowledge (Mallard and McGoey, 2018; Best, 2021). As ignorance scholarship shows, ignorance fosters tendencies, especially in the context of crises or unexpected events, to reproduce existing institutional conditions (McGoey, 2012; Mallard and McGoey, 2018). While the European refugee crisis of 2015–2016 put the fragilities in the common EU asylum policy on the political agenda, Mica *et al.* argue that "the ignorance of the important aspects of the refugee problem (human rights violations by some of the asylum policies, etc.) seem to reproduce, though in another form and with other issues at stake" (Mica *et al.*, 2021).

Boswell and Badenhoop distinguish three possible State responses when ignorance is exposed. The first is elucidation, the attempt to expose the problem by producing more knowledge, for instance by investing resources in commissioning studies or enhancing tools and monitoring practices. The second possible response is denial, a refusal to acknowledge a deficit in knowledge, either because relevant information is unreliable or unavailable, or because politicians deny the existence of a social problem that needs to be addressed. The third strategy is resignation: when State ignorance is recognized, yet stays unaddressed because of insurmountable obstacles to overcoming it (Boswell and Badenhoop, 2021). We add State actions to tackle previous State ignorance, with, in our case, attempts to counter the gradual institutional change that left, and if unaddressed leaves, protection gaps for EU mobile workers.

In the following sections, we analyse Dutch State responses towards EU mobile workers since the COVID-19 pandemic and moving forward. Responses vary from classic forms of elucidation, to attempts to counter processes of institutional drift and conversion with efforts to bring this workforce back under the scope of the institutional monitoring and enforcement system. Before moving towards the State responses, we discuss the flexible work relations in the Dutch meat sector and the gaps in worker protection that were laid bare by the COVID-19 pandemic.

### **Flexible work relations in the Dutch meat sector**

Many EU mobile workers are employed in the Netherlands on temporary agency contracts. Since the abolishment of the temporary agency permit system in 1998, there are no demands or checks to establish an agency firm, except for registration with the Chamber of Commerce. Furthermore, the possibilities for firms in the Netherlands to turbo-liquidate (dissolve the company without liquidation

proceedings when there are no assets at the time of dissolution) (Renssen, 2016) complicate enforcement, as agencies can liquidate one firm and establish a new one under a different name to escape State or sectoral enforcement (Taskforce, 2020, p. 22). The agency sector has further been critiqued for years for the maltreatment of EU mobile workers. Already in 2011, a parliamentary committee expressed concerns about migrant exploitation by temporary agency firms (Koopmans, 2011), and called for strengthening of enforcement. By now, agency work has become the standard way for companies to fill low- and unskilled jobs, even though the EU mobile workers fulfil a structural labour demand (Taskforce, 2020, pp. 20–21). The agency sector consists of and estimated 14,000 firms and the rights of agency workers built up according to a contractual phase system. Especially the first phase of agency employment entails high income insecurity, due to the lack of guaranteed hours of work and quick dismissal possibilities (Siegmann and Williams, 2020).

The Netherlands is the largest meat exporter of the EU and exports 60 per cent of the yearly meat production volume (CBS, 2021). Around 12,000 people work in the Dutch meat industry, of which an estimated 7,500 are EU mobile workers. Yet, on the production floor, around 90 per cent of the workers are EU mobile workers, originating from Poland and Romania primarily. The majority of them work via specialised temporary agency firms, which predominantly supply workers to the meat industry. Their employment conditions therefore fall under the scope of the collective bargaining agreement (CBA) for the meat sector (and not the temporary agency CBA). The minimum wage for jobs in the meat sector that require limited expertise or skills is 10.94 euros an hour.

### **COVID-19 and the gaps in EU mobile worker protection in the Dutch meat sector**

The COVID-19 pandemic brought structural precarious work and living conditions of migrant workers to the public eye, across the world, including the Netherlands. Particularly in the meat industry, COVID-19 outbreaks among migrants were reported, including in Germany, Portugal, the UK, as well as the US and Canada (Middleton *et al.*, 2020). The Netherlands formed no exception, and the conditions of EU mobile workers received quite some media attention. COVID-19 outbreaks in the Netherlands were reported in May 2020, and coincided with the better-known outbreaks in Germany where residents of Gütersloh, North Rhine-Westphalia were returned to lockdown after COVID-19 outbreaks among meat factory workers. In the Netherlands, outbreaks among EU mobile workers paired with a lack of compliance with the government COVID-19 prevention measures, and limited accessibility of COVID-19 testing possibilities, forced meat companies to temporary shutdowns in May and June 2020 (VNOG, 2020).

Where State measures to contain COVID-19 transmission risks emphasise social distancing rules, minimal social contacts and various hygiene-related measures, the role of work in the COVID-19 transmission process has been a blind spot in governmental initiatives (Vogel, 2020). Indeed, social inequalities among workers and differences in the nature of work play an important role in the outbreaks among EU mobile meat workers. It is the organization of work and socio-economic factors that put these workers at higher risk of COVID-19 infection and create precarious employment situations (Weatherburn and Berntsen, 2021). First, information on health and safety measures related to COVID-19 has not (always) been communicated in languages workers speak or may not be communicated via channels that workers consult (Berntsen, 2022). Second, workers may feel unable to adhere to the COVID-19 related and general health and safety instructions because of employer-pressure: for instance, when workers refrain from calling in sick out of fear of dismissal, thus increasing the risk of COVID-19 transmission in the workplace. The majority of COVID-19-related notifications received by the Dutch Labour Inspectorate regarding EU mobile workers were indeed related to illness – i.e. of people continuing work, when ill themselves, or with housemates being ill (Inspectorate SZW, 2021b, p. 20). Another important factor is employer-dependency for accommodation and transport facilities: many EU mobile workers rely on employer-arranged housing, where they share



sanitary, kitchen facilities and sometimes bedrooms as well. During the pandemic, such housing circumstances entailed limited possibilities for distancing and minimisation of social contacts, especially with regular household composition changes. Additional complicating factors are that when workers on temporary contracts lose their jobs, many simultaneously lose their accommodation, and that the right to access health insurance is often tied to the employment.

The EU institutions' response to the protection of "essential" workers during the COVID-19 pandemic was entirely based on soft law measures and emphasized the existence of a detailed and complex legal framework that is designed to ensure protection and prevent abuse. Yet, the EU institutions' insistence on recommending that the Member States improve labour inspections as a solution to the many cases of EU mobile workers' poor work and living conditions does not solve the enforcement problems present in many States already before the pandemic (Arnholtz and Lillie, 2020).

### **Analysing state responses to improve protection and position of EU mobile workers**

Since the COVID-19 outbreaks, the Dutch State addressed the exposed ignorance and gaps in worker protection through various initiatives. This section is not meant as an exhaustive overview of all measures taken (see De Lange *et al.*, 2022), but to understand the impact on the ground of State efforts to reverse the gradual transformations of the functioning of the institutional system. We discuss the State's actions and their limitations in four domains: knowledge creation, social dialogue, enforcement and regulation.

#### *The knowledgeable state*

In May 2020 a government-initiated Taskforce was set up to investigate the working and living conditions of EU mobile workers related to housing, employment and recruitment. The Taskforce made 50 recommendations to reduce the (multiple) dependencies EU mobile workers face vis-à-vis their temporary agency employers [3]. Core recommendations include: the compulsory certification for agency firms, better registration of EU mobile workers, better information services for EU mobile workers, the decoupling of employment and housing contracts and the advice to work towards private bedrooms of at least 15 m<sup>2</sup> (Taskforce, 2020). However, while the recommendations were fully accepted by the end of 2020, the implementation was postponed till the formation of a new cabinet in 2022. In the meantime, a plethora of national, regional and local initiatives were taken to discuss and develop solutions to improve the position and protection of EU mobile workers.

During the pandemic, the Dutch State further responded through a classic elucidation strategy: issuing various studies on the position of EU mobile workers in the Netherlands. For example, the Labour Inspectorate published an overview report in early 2021 (Inspectorate SZW, 2021b); the Ministry of Justice and Safety published in July 2021 the first of what will be a yearly overview of the "State of Migration" (Ministry of Justice and Safety, 2021); the special department tasked with "migrant worker" protection within the Ministry of Social Affairs published an overview of the progress of implementation of the Taskforce's recommendations in December 2021 (Ministry of Social Affairs and Employment, 2021); and a commissioned study appeared in February 2022 on good employment for short-staying EU mobile workers (Heyma *et al.*, 2022). All these studies point towards the structural precarious position of, a share of, the EU mobile workers in the Netherlands; yet, at the same time, stress the continuous difficulties to provide an overview of the legal and factual situation of all EU mobile workers.

This knowledge gap is related to the (non)registration of EU mobile workers. EU mobile workers, who come to work in the Netherlands for less than four months, can obtain an obligatory fiscal number by registering as non-residents, with an address in their home

country. After four months, they should register as residents of the municipality where they are staying, yet, this is often not done. The resulting lack of accurate information on how many EU mobile workers actually reside in the Netherlands and at which addresses, complicates State monitoring efforts, most prominently in times of a health pandemic. For example, once vaccines were available, regional health services had difficulties locating EU mobile workers to offer them vaccination.

Already before the pandemic, some Dutch municipalities lobbied for legislative changes to oblige EU mobile workers to register as residents in a municipality from “day 1” of their stay. In response to the pandemic, these lobbying efforts with the Ministry of Internal Affairs were renewed. The Ministry proposed instead to register mobile workers’ contact details and temporary addresses in the Netherlands in the non-resident’s registry. One reason not to oblige EU mobile workers to register as residents from day 1, is that such an obligation may be incompatible with EU law. Thus, – again – an independent study on this issue was commissioned (Parliamentary Papers II, 2020/21, 35,648, nr. 16).

Other municipalities devised ways to register EU mobile workers as residents with the help of agency firms or housing providers. For example, one municipality regularly visits housing sites for EU mobile workers, outside office hours, to register new arrivals as residents. During registration at the location, a video is shown with information about their rights. Agency firms and other housing providers that apply for an operating permit for a housing facility are required to cooperate. In addition, the municipality tries to make arrangements with large employers to share EU mobile workers’ address changes directly with the municipality. To be able to share this information, employers need EU mobile workers’ authorization. These municipal on-site registrations commenced in 2019, and proved helpful during the pandemic as it allowed for easier monitoring of compliance with COVID-19 rules on the housing sites. The sharing of personal data between employers and municipalities is possibly pushing the limits of yet other laws according to the municipality, but that has not prevented the municipal efforts to protect EU mobile workers better.

Finally, there are also municipalities that prefer not to register EU mobile workers as residents, because of the administrative burden involved with the registration and deregistration of people who leave already within six months. Moreover, registering EU mobile workers as residents may bring other obligations, such as enforcement actions, for instance, when people live in buildings not zoned for residential use, or in case of overcrowding. These municipalities thus prefer to stay ignorant, to avoid taking responsibility.

While the State thus wants to get EU mobile workers in sight, in practice, getting registration systems in order, brings along its own challenges. While the Netherlands has a strong tradition of knowledge building, with independent advisory bodies, its registration systems are less developed than in other countries and allows municipalities to push for, or escape responsibilities (cf. Belgium where different registries for non-Belgian workers exist, [Weatherburn and Berntsen, 2021](#)).

#### *The State and social dialogue: the Dutch polder*

The Dutch industrial relations model is known as the *Polder* model, with social dialogue mechanisms and peak-level consultation as strong and defining features. Though still in place, the system has been under pressure in the last decades ([de Beer and Keune, 2018](#)). The pandemic brought a renewed boost to social dialogue in both formal and informal settings, with regular peak-level consultation and negotiations between government and social partners on the development and implementation of COVID-19-related measures and support packages ([Graaf, 2021](#)). Time will tell, whether this intensified social dialogue will continue to exist beyond the COVID-19 pandemic.

In the Netherlands, in contrast to other EU Member States, the enforcement of CBAs is the responsibility of the signatory parties and not Dutch State institutions. Dutch trade unions, however, only have access to workplaces when granted permission by site management and

cannot force companies to open their books to monitor compliance with CBAs (only the State's Labour Inspectorate has this authority). While the opportunities to recover information from employers via the Labour Inspectorate have expanded after the 2013 Social Pact, it remains a time-consuming process. Since 2014 social partners can initiate investigations by the Labour Inspectorate that are related to collectively agreed pay and working conditions (art. 10 of the Act on Generally Binding Agreements and art. 8 of the Act on Temporary Agency Work). Trade unions can use the information obtained by the Inspectorate to start negotiations with involved employer(s) or contractors on compensation, or provide input to conventional redress, legal action or judicial claims (Cremers, 2020). The low degree of unionization of EU mobile workers gives trade unions limited information on actual working conditions, complicating monitoring of CBA compliance. To monitor working conditions in the sector, trade unions therefore resort to pro-active out-reach to EU mobile workers outside the workplace (not only in meat, also in other sectors with high presence of EU mobile workers, see Berntsen and Lillie, 2016).

In fact, consultations on granting trade unions access to the workplace in the meat industry between the meat employers' representatives and trade unions are ongoing since the COVID-19 pandemic. The employers are not open to allow trade unions access unless they are legally obliged to do so by the Dutch State (Boonstra, 2022). According to the ILO Digest of Decisions of 2006, trade unions should be allowed access to the workplace, regardless of trade union membership, to allow communication about potential benefits of membership and representation [4]. The Labour Foundation, an important advisory to the Dutch government on socio-economic policies, advised in 1997 already, to grant trade union access to the workplace (Labour Foundation, 1997). That such an obligation has not been enacted into law, is an illustration of institutional drift. However, the initiated negotiations on trade union access can be understood as an effort to counter institutional conversion and reinforce workplace democracy mechanisms.

With the conclusion of a new CBA for temporary agency work by the end of 2021, some recommendations of the Taskforce were implemented. The CBA includes a provision for a guaranteed two-month statutory minimum wage income when an agency worker arrives for the first time in the Netherlands. Where the previous agreement stipulated that workers should be given a "reasonable term" to vacate an employer-arranged accommodation after contract termination, the new agreement specifies this transitional period as four weeks. Furthermore, it stipulates that temporary work agencies need to consider workers' personal circumstances with the collection of rent, especially when a worker is unable to pay the rent for reasons beyond personal control or illness. The agency workers in the meat sector, fall under the scope of the CBA for the meat sector, where the former provisions are also included since March 2022, except for the provision that calls for consideration of personal circumstances when a worker is unable to pay the rent.

As recommended by the Taskforce, the State and social partners work towards the development of a new public-private certification scheme for temporary agency firms. The existing private certification (SNA) is also a public-private cooperation with the Labour Inspectorate and Tax Authorities as participants on the State side. However, trade unions stopped supporting this certification after concerns about the values it upheld. If the new public-private certification will be any better is to be seen; it is foreseen that a law installing such a scheme will go into public consultation in the summer of 2022. The fact that the State, again, opts for private certification instead of a public law permit, is testimony of the continued State's reluctance to re-regulate the sector.

These State efforts focus on countering drift and conversion by strengthening social dialogue mechanisms via more regular peak-level consultations, and by making recommendations to be included in CBAs. Yet, we also notice the State's reluctance to change existing social dialogue mechanism through legal provisions on workplace democracy and the refusal to tighten control of the temporary agency sector through public law regulation. Yet, laying down specific conditions to protect EU mobile workers in CBAs is an important instrument to quickly improve



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working conditions that are directly negotiated and agreed upon with employers' representatives. The downside of CBA regulations is that these only apply to workers that fall under the scope of said CBA, and that compliance needs to be monitored by private enforcement actors, with their discussed limited reach among EU mobile workers.

### *The State of enforcement*

The enforcement capacity of the Dutch Labour Inspectorate has been under pressure: based on risk assessments, it is able to inspect 1 per cent, and in 2023, 2 per cent of the temporary agency sector (Taskforce, 2020, p. 22). Chances that malpractices are caught by Labour Inspectorate's compliance efforts are thus low. The Netherlands Court of Audit in 2021 even reported that the Labour Inspectorate's approach to labour exploitation was ineffective, despite enhanced inspection staff and resources (Algemene Rekenkamer, 2021).

In response to COVID-19 outbreaks in the Dutch meat sector, the Labour Inspectorate intensified workplace inspections in the summer of 2020. Among the 60 meat companies inspected, 65 transgressions were found, mainly related to failure to adjust the workplace risk assessment and evaluation policy document; lack of sufficient prevention measures; insufficient information and supervision on (proper) use of personal protection equipment (Inspectorate SZW, 2021a). The Inspectorate also pointed towards the difficulty to check fair working conditions of EU mobile workers, as labour inspectors were unable to speak with workers without a "chaperone" from the employers' side present. The Inspectorate reports on one case where its inspector could speak directly with the workers, and learned that people did not receive their wages when they quarantined because of a COVID-19 outbreak. The agency firm contested this but did not submit proof of continuation of payment during the quarantine period (Inspectorate SZW, 2021a, p. 32). This illustrates the limited ability of the Labour Inspectorate to inspect the actual working conditions of EU mobile workers, even if inspection resources increase. Filing formal complaints regarding working conditions with the Inspectorate is a (too) big step for many EU mobile workers. This is an example of drift, where existing institutions and complaints mechanisms do not function in practice for particular segments of the labour market.

The Dutch Labour Inspectorate can take compliance measures when workplace transmission risks are present, and the Inspectorate's authority and capacity to enforce government COVID-19-related prevention measures, such as safe distancing, was extended with the emergency decree that came into force in December 2020 [5]. While under normal circumstances, the Inspectorate needs formal complaints of workers to process issues concerning fair working conditions (such as payments or working times), such statements were not necessary when it came to the enforcement of COVID-19-related measures to prevent workplace transmission risks. Here, the Inspectorate's observations sufficed. When employers fail to protect workers from exposure to workplace risks, the Labour Inspectorate could issue a warning, a demand or a fine. Issuing fines is rare, except for severe cases. A situation where an employer forces sick employees to come to work could be qualified as severe (Inspectorate SZW, 2021a, p. 39). The Labour Inspectorate noted that EU mobile workers (mostly employed by temporary agency firms) were not paid when meat factories closed because of a COVID-outbreak, whereas directly employed workers were (Inspectorate SZW, 2021a). Although they took note of this, the Inspectorate apparently chose not to use their authority to enforce the Act on minimum wages to collect such payments on behalf of the EU workers. Thus, the Inspectorate did not use the option to waive the formal complaints requirement to increase enforcement effectiveness towards EU mobile workers.

On another level, in spring 2022, the Dutch Labour Inspectorate engaged in the enforcement of living conditions of EU mobile workers housed in the German border region by Dutch temporary agencies. The initiative came from German local and regional authorities enforcing a new North Rhine-Westphalia law on decent housing for migrant workers

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(*Wohnraumstärkungsgesetz*). While the German authorities concentrated on the housing conditions, the Dutch Inspectorate investigated the payment of statutory minimum wages and possibly illicit deductions for the deplorable housing. The case was well covered in the media, with the temporary agency's practices named and shamed.

The State's strengthening of its enforcement capacity by raising funding of the Inspectorate, stops short of changing inspection practices to protect EU mobile workers that remain out of their reach. If the State would increase fines in case of transgressions, to have a more extensive impact on employer behaviour or explore alternative ways to gather statements or evidence among workers that are very reluctant to come forward with claims, the State could potentially address the institutional conversion and drift that has taken place on the ground for EU mobile workers. Yet the Inspectorate does not seem to have the capacity or take the initiative. In May 2022, its Inspector-General, instead, urged to rethink the longer-term value of (segments) of the Dutch labour market, and, potentially, the need to stop production processes that heavily rely on foreign labour ([Dutch Labour Inspectorate, 2022](#)).

### *The regulating state*

Two and a half years after the COVID-19 pandemic started, a first legislative proposal on good landlordship ("*goed verhuurderschap*" Parliamentary Papers 36,130) has been tabled. The bill defines good landlordship, sets up accessible, free of charge complaint-hotlines on bad landlords and offers municipalities new tools to improve housing conditions. Through a public law permit system for landlords offering (temporary) housing to migrant workers, the municipality can in case of non-compliance with municipal rules take control over such a facility, and issue incremental and punitive fines, including the right to name and shame non-compliant landlords. This proposed bill would realize a core recommendation of the Taskforce on the decoupling of labour and rental contracts: the bill states that a good landlord needs to offer an independent rental contract, irrespective of who the landlord is.

Acting ahead of this regulatory framework, some municipalities have turned to "regulating" the living conditions of EU mobile workers themselves. For example, in 2021, a small town in the southern part of the Netherlands incorporated a new requirement in its local housing policy. Employers who apply for an operating license for a campus for EU mobile workers need to indicate how they will give effect to the concept of decent employment (e.g. by providing training opportunities, offering direct employment contracts after a period of time) and report annually on their compliance. Albeit a non-binding instrument, it is an interesting local approach to nudge employers to provide decent work and living conditions for EU mobile workers. The national bill on good landlordship backs such local initiatives with stronger enforcement competences.

### **Discussion and conclusion**

This article discusses how the Dutch State, during and in the aftermath of the COVID-19 pandemic, enhances the protection of EU mobile workers in the Netherlands through knowledge creation, boosting social dialogue mechanisms, strengthening enforcement and new legislation. We argue that the State efforts centre on countering gradual institutional change by bringing EU mobile workers back under the scope of existing labour market enforcement institutions that have not been protective for these workers for years. In other words, the workers are taken back into State care, at least to some extent. Where the State clearly acknowledges its limited ability to control and shut down abusive employers, with a call from the Inspector-General to reconsider the sustainability of Dutch labour market segments heavily relying on foreign labour ([Dutch Labour Inspectorate, 2022](#), p. 28), efforts to tighten State regulations or increase fines to reign in employers' opportunistic behaviour are nonetheless not (yet) pursued.

Neighbouring Germany has a federal government that, instead, took a firmer State enforcement and regulatory approach with a ban on subcontracting, posting and temporary

agency work in the meat industry. While an advocacy coalition of trade unions, churches and NGOs campaigned for years for re-regulation of the German meat industry, it was the broader public health threat to the wider local community that created the opportunity for system change in Germany (Ban *et al.*, 2022). The law (*Arbeitsschutzkontrollgesetz*) was implemented within a year after the first COVID-19 outbreaks and has been celebrated for the potential to re-organize the meat industry. Yet, its effectiveness depends on the law's implementation and enforcement and the extent to which collective bargaining in the industry can be re-established (Erol and Schulten, 2021). The absence of an industry-wide CBA in the German meat industry, left the German State also fewer options for social dialogue or (public/)private enforcement initiatives compared to the situation in the Dutch meat sector, where industry-wide collective coverage is still present.

Yet, the Dutch State response to enhance knowledge creation and sharing, and the State's negligence to adapt institutions that in practice no longer function in line with their intention, can be considered a form of regulatory neglect (De Lange, 2021). In fact, by not acting, the Dutch State opens itself up to litigation for negligence to act or enforce [6].

This article contributes to the literature on the role of the State as a multifaceted actor within the dynamic field of industrial relations. With the attempts to improve registration of EU mobile workers, the boosted social dialogue mechanisms, the enhanced enforcement capacity and new housing regulation, the Dutch State focuses on countering gradual institutional change through which existing institutions lost their effectiveness as protectors of EU mobile workers. Not only are efforts taken to re-establish the State as a knowledgeable authority on the position of EU mobile workers, after the painful COVID-19-outbreaks among these workers, the State takes its monitoring role, also beyond the pandemic, more serious with improved registration methods, annual reports on the "state of migration", cross-border enforcement and, albeit two and a half years after the pandemics start, long awaited legislative change.

Beyond the mapping and analysis of these efforts, we find that a more fundamental question needs to be raised: the question concerning the way work performed by EU mobile workers is organized, because it remains doubtful whether these State efforts are enough to turn the "vicious" cycle of institutional interaction into a virtuous one (Doellgast *et al.*, 2018). As decades of policy reports and academic research show, employer opportunistic behaviour cannot be curbed through goodwill alone, the institutional system needs to be reappropriated to the reality in the labour market, with sufficient attention to the labour and social rights and well-being of EU mobile workers. As the COVID pandemic has proven, the State can and should play a crucial role in not only governing but also in protecting mobile workers.

## Notes

1. In the following, we use the term EU mobile workers to refer to workers from Europe, in particular Polish and Romanian nationals, who work in the Netherlands performing low-waged, "essential" jobs using their EU freedom of movement rights. This purposefully does not align with the term used in the Dutch public debate, which is migrant workers ("*arbeidsmigranten*"). We prefer to stay close to their position as citizens of the EU, entitled to engage in employment on the EU common market under the Treaty of the Functioning of the EU and the EU Citizenship Directive 2004/38/EU.
2. Funded by ZonMW, project number 10430032010031, 2020-2022 "Migrant workers in the Frontline".
3. In the first Taskforce report (issued in June 2020) recommendations were made to reduce risks of COVID-19 infections among EU mobile workers.
4. Para 1,590, Digest 2006.
5. To this end, the Temporary Covid-19 Measures Act amends the Working Conditions Act to improve the protection of employees by the Labour Inspectorate.
6. The Dutch trade union is for instance preparing such a lawsuit regarding the State's non-enforcement of the DBA (*Deregulerend Beoordeling Arbeidsrelaties*) law: <https://www.fnv.nl/nieuwsbericht/algemeen-nieuws/2022/02/fnv-overweegt-gang-naar-rechter-om-handhaving-wet>

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