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The regulation of employment conditions of labour migrants in the temporary work agencies sector: The cases of the Netherlands and the UK

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BETWEEN THE REPRESENTATION
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The regulation of employment conditions of labour migrants in the temporary work agencies sector: The cases of the Netherlands and the UK

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1. Introduction

The 'freedom of movement for workers' and 'the freedom to establish and provide services' are two of the four principles of the European single market. The freedom of service provision is closely related to the free movement of workers, as it may involve workers who are formally employed in one country, but are outsourced to another country (posting of workers) (Pedersini & Pallini, 2010; Sociaal Economische Raad, 2014). In practice, therefore, both freedoms enable labour migration between European countries. In 2004 and 2007, a total of ten Central and Easter European (CEE) countries accessed the European Union (EU). These CEE countries had generally a lower wage standard than the existing member states. This caused concern among the existing member states, as they expected large numbers of labour migrants to enter their labour markets as a consequence. They were worried that this would disturb their labour markets, because labour migrants would be willing to work for lower wages and under worse conditions than natives, because low wages in the old member states are not low compared to the standard in the accessing countries (Jones, 2014; McDowell et al., 2008; Sporton, 2013). They expressed their concern that this would exert a downward pressure on wages and employment conditions and result in crowding out, especially at the lower end of the labour market (Krings, 2009; Lillie & Greer, 2007; Menz, 2010; Skupnik, 2014). The outcome of the debate that followed on the EU level was that existing member states were allowed a maximum of seven years to fully open their labour markets to workers from the accessing member states, in order to have time to adjust their labour markets and welfare system to the new situation[1].

For employers, labour migrants are a potential source of cheap, temporary and flexible labour (Engbersen et al., 2011; Hassel, Steen-Knudsen, & Wagner, 2015). In the Netherlands and the United Kingdom (UK), temporary agency work has become a common and broadly accepted way to accommodate labour market flexibility (Kalleberg, 2001; Kalleberg, Reynolds, & Marsden, 2003; Voss et al., 2013). Unsurprisingly, in these countries, the temporary work agencies (TWA) sector has absorbed a large proportion of the EU labour migrants after the accession of the new member states (Engbersen et al., 2011; Scott, 2007). The access to this new group of migrant workers offered business opportunities for the TWA sector (Jones, 2014; McDowell et al., 2008). Agencies started actively recruiting workers in accessing countries and "selling" these workers to employers in the old member states (Jones, 2014; McDowell et al., 2008; Sporton, 2013). Some of them opened new offices in the accessing countries in order to recruit workers locally and, thus, extended existing services to the accessing countries (Pool, 2011) or initiated transnational partnerships with local agencies (Faulconbridge, Hall, & Beaverstock, 2008; Jones, 2014; McDowell et al., 2008; Sporton, 2013). Moreover, temporary work agencies began to offer additional

[1] To the EU treaties of accession of 2003 and of 2005 a clause was added that existing member states of the EU had a maximum of seven years in total to fully open their labour markets to workers from the accessing member states.

services, such as the arrangement of housing, health insurances and administrative services in order to facilitate the migration process. Temporary work agencies have thus played a central role in the initial labour migration from the accession countries to the UK and the Netherlands. In both countries, it is the largest sector for the employment of labour migrants from the new CEE member states.

The fact that the employment conditions of labour migrants in the TWA sector have indeed been under pressure is illustrated by reports in the Netherlands and the UK that show that this group of workers is offered very little job security, has to accept extreme flexibility and is often not paid for overwork (Maroukis, 2015; McGauran et al., 2016). That the services of TWAs are not restricted to employment mediation, but include the provision of housing, health insurance and transport, increases the risk of becoming over-dependent on the agency and makes migrants vulnerable for maltreatment and abuse (Maroukis, 2015; McGauran et al., 2016). Their vulnerability is illustrated by 'administrative constructions' that were reported to have been designed to make it legally possible to pay workers extremely low wages by deducting the costs for housing, food and transport (Håkansson et al., 2009; Krings, 2009; Lillie & Greer, 2007). In both the UK and the Netherlands a rise of so called 'dishonest temporary employment agencies', that exploit their workers, was signaled (McGauran, de Haan, Scheele, & Winsemius, 2016).

Yet, wages and employment conditions do not necessarily deteriorate. Policies (legislation, regulations and collective agreements) adapted to the new situation can uphold employment conditions (Hassel et al., 2015), preventing labour migrants to become employees with less social rights and lower wages (Vosko, 2009). Such regulations can be adopted at both the national and sectoral level. Yet, countries and consequently sectors within countries vary in their response to the increased inter-European labour migration. In this study we compare the responses of the TWA sector in the Netherlands and the UK to understand similarities and differences in responses and to understand the universal struggles that remain regardless a difference in approach. We focus on the TWA sector, because of the central position of this sector for the employment of EU labour migrants and their role with respect to outsourcing to other sectors. For these reasons, the protection of employment conditions for labour migrants in the TWA sector is central to avoid deterioration of employment conditions. More specifically, we look into the question: *To what extent, by and for whom and with which rationales are policies formulated at a national and sectoral level to counteract potential negative consequences of increased inter-European labour migration and what are the remaining struggles?* This means that we focus on policy making actors and analyze their role, decisions and target groups on which they focus their policies.

2. Data and methodology

This study is part of a large Horizon 2020 project, the Representation of the Crisis and the Crisis of Representation (ReCriRe, see www.recrire.eu), covering 13 European countries, that was carried out in the years 2015-2018. The ReCriRe project included a broad range of case studies. The Dutch case study focused on labour market policy and solidarity in relation with labour migration.
We conducted two case studies: one in the Netherlands (case 1) and one in the UK (case 2). As a first step, document analysis was adopted analyzing policy documents that describe the regulation of working conditions of CEE labour migrants in the TWA sector and the (political) discussions leading up to these regulations. Next, central regulating and policy making actors in the TWA sector in both countries were determined at the national as well as the sectoral level. A round table discussion was organized in the Netherlands for which these actors were invited and which served as input for the topic list to be used by the semi-structured interviews in the next phase. Topics that were included were the role of the organization, what the arrival of labour migrants meant for the organization in particular and for the country/sector overall, the problems observed in the sector as a consequence of increased CEE labour migration, views on regulation of the working conditions of labour migrants and the TWA sector, lobbying and decision making about regulation and triggers for regulation.

In both countries, semi-structured interviews were held with trade unions, employers' associations, government bodies, TWAs and sectoral organizations. In addition, expert interviews were held with four scholars in the UK. Unfortunately, in the UK context the BEIS department refused to participate due to current political circumstances (Brexit). Information about the government's approach has been derived from interviews with third parties. In total, 14 interviews were held in the Netherlands and 8 in the UK. Appendix 1 gives an overview of all parties interviewed. The interviews lasted between 45 minutes and 100 minutes. All interviews were face-to-face and took place at the offices of the interviewees. Interviews were recorded and transcribed afterwards. A round of open coding was adopted to allow topics to emerge from the data.

Before turning to the case studies, we will first briefly discuss the EU level legislation concerning the free movement of workers, the freedom of service provision and the regulation of temporary agency work, as this forms the background against which national and sectoral level legislation and regulations are developed. Moreover, we will describe the research approach adopted.

3. EU level legislation

The EU regulation of the internal labour market also sets the stage for the regulation of the employment conditions of CEE labour migrants in the TWA sector in the member states. In this chapter we discuss the relevant EU regulation at the time of the research: the first half of 2017. In the context of the free movement for workers, directives were introduced at EU level to prevent wage competition between native and migrant workers to occur (Sociaal Economische Raad, 2014). The reason being that wage competition would be disruptive for the functioning of the national labour markets (Afonso, 2011; Kvist, 2004). It was decided that when EU citizens are employed by a company, the legislation and collective agreements of the country where they work apply (host country principle). This is different in the case of posted workers: the employment conditions of the country of origin apply when the duration of posting does not exceed 24 months (Cremers, 2010). However, when this country of origin principle is applied, it can lead to downward pressure on wages in the host country (Menz, 2010). Therefore, the Posting of Workers Directive (96/71/EC) stipulates that legislation regarding employment conditions and wages as well as certain parts of extended collective agreements of host countries should be applied to posted workers if these are more favourable for the worker (Cremers, 2010). In principle, this should prevent wage competition to occur between native and migrant workers (Sociaal Economische Raad, 2014).

Specifically for the TWA sector, the European Commission issued another directive in order to prevent wages and employment conditions to vary between agency workers and workers directly hired: the Temporary Agency Work Directive (2008/104/EC). This directive states that 'the basic employment conditions of temporary agency workers shall be equal (…) at least those that would apply if they had been recruited directly by that undertaking to occupy the same job.' (2008/104/EC art.5.1) The directive leaves room for individual member states to implement it in its own way (see country chapters for a description how the Netherlands and the UK have implemented it).

Even though the directives seem to ensure a level playing field, there are still financial benefits for using posted workers or temporary agency workers. For posted workers, this advantage is caused by the difference between the minimum package of employment conditions from the collective agreement that must be applied to posted workers compared to the full collective agreement for native workers. Furthermore, the possibility that the employee is covered by the social security system of the home country instead of the host country during the first two years of being posted can reduce the labour costs during these years (Sociaal Economische Raad, 2014). For this principle to apply, a so called A1 statement has to be shown. Even though this system was developed in order to make it easier for employees to work temporarily in another EU country without having to transfer all their

social security accounts, in practice the system has also been used in scheme constructions to keep social security payments low. For temporary agency workers, the difference between 'essential employment conditions' that should be applied to them equally as to other workers that are directly employed by the user company and the full package of employment conditions of those directly hired can be fairly big, providing an advantage in costs for employers and room for profit for temporary employment agencies (Strauss, 2014). Moreover, depending on the country and/or collective agreement, the principle of equal application of essential working conditions does not necessarily have to apply from the first day of work onwards.

4. Outline of the report

The report contains two case studies. We will start with a discussion of the case of the Netherlands, followed by the UK. For each case, we first look at the policies in place. In the second part, we look at how policies and target groups of policies are described in official documents. In the third part, we look at the considerations of actors involved in the design and implementation of the policies. We will end with a discussion comparing the two cases.

Case 1

The Netherlands

1. Context and historical background of the policies

This study focuses on the course taken by social actors and the government in the Netherlands towards the regulation of the TWA sector in order to uphold employment conditions after the arrival of labour migrants from the CEE countries that accessed the EU in 2004 and 2007. These labour migrants were not granted immediate free access to the Dutch labour market upon accession. Initially, the government in the Netherlands – backed up by the trade unions and employers' associations – suggested immediate full access to the labour market after accession of the new member states. However, this proposal was rejected by parliament in November 2003. The reasons for postponing direct access, according to documents of the Dutch House of Representatives, were: economic circumstances, the critical public debate regarding this topic, uncertainties with regard to the size of the labour migration to be expected and the position of neighbouring countries (Rutte, 2004). Workers from the CEE countries that accessed in 2004 were granted full access from 1 May 2007 onwards (Engbersen et al., 2011). Between 2004 and 2007, workers from the new member states needed a work permit (Rutte, 2004). The inflow of labour migrants from these countries turned out to be larger than expected (Sociaal Economische Raad, 2014). As a result, the government decided to use the full seven transition years when Bulgaria and Romania accessed the EU in 2007. Workers from these countries needed a permit to work in the Netherlands during this period (Asscher, 2013:1). Since 2014, they are granted full access. Regulation of EU migrant labour now takes place through regulating their employment conditions rather than restricting their access to the Dutch labour market. In the remainder of this chapter we focus on the regulation of the TWA sector, as a case study of a sector in which many EU labour migrants are employed.

1.1 Short description of the policy

CEE labour migrants in the TWA sector

In 2015, about 3 percent of the working population in the Netherlands was employed in the TWA sector (Vermeulen et al., 2016). This percentage fell during the crisis, but has since then recovered. (Vermeulen et al., 2016). Between 24 percent (CBS, 2014[2]) and 33 percent (Engbersen et al., 2011) of the labour migrants of the CEE countries work for or through a temporary employment agency. For Polish workers, this number is even higher with estimates around 60 percent (Engbersen et al., 2011). These migrant workers are mostly outsourced to the food (18.3%), metal (10.1%) sector, logistics (32.1%) and horticulture (19.1%) (van Baars, 2017).

[2] Based upon authors own analysis of CBS data over 2014; analysis strategy available upon request. Data available through Statistics Netherlands: www.cbs.nl

Type of actors involved in the regulation of employment conditions in the TWA sector

The Dutch system of industrial relations can be characterized as 'social partnership' (European Commission, 2008). Both unions and employers' associations have influential peak level organizations that are consulted by the government when formulating policies in the form of a tri-partite consultation (European Commission, 2008). The employers' association influencing the national decision making around the regulation of the TWA sector is VNO-NCW. The sectoral employers' associations (ABU and NBBU) are a member of this organization. The peak level bodies of CNV and FNV are the trade unions that negotiate at the national level. Unions and employers' associations thus interact frequently with each other and with the government in an institutionalized way at the national level.

There are two major employers' associations in the TWA sector, ABU and NBBU, and four trade unions, FNV, CNV, De Unie and LBV. The social dialogue between these social actors has resulted in two collective agreements that cover the sector, meaning that temporary agency workers in the Netherlands are covered by its own collective agreements rather than those of user companies (Håkansson et al., 2009). One of these collective agreements, signed by the ABU, is legally extended by the Minister of Social Affairs and Employment to all TWAs in the Netherlands (covering 90 percent of the agency workers), with the exception of agencies that are a member of the NBBU (mainly small and medium sized agencies).

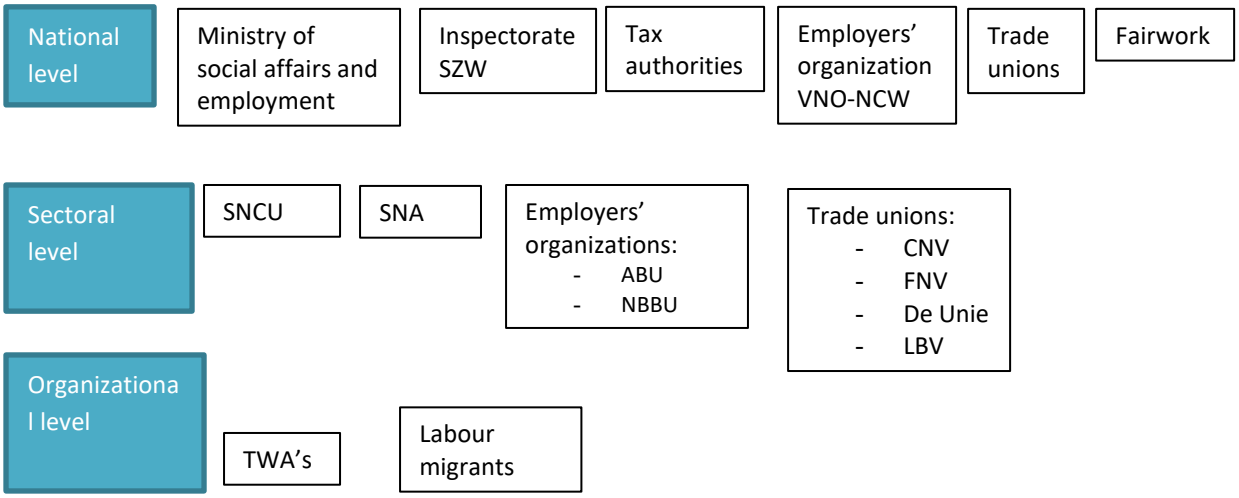
Besides these organizations that determine legislation and regulations, there are several inspection organizations active in the TWA sector. First, the national labour inspectorate which falls under the Ministry of Social Affairs and Employment (from now on referred to as 'Inspectorate SZW') are responsible for monitoring whether TWAs act in compliance with labour law. They work reactive - responding to reports of individuals and third parties of potential wrongs- as well as set up their own risk profiles and do inspections wherever they think it is needed (Inspectorate SZW, 2016). They prosecute violations of labour legislation under the heading of the body of public prosecutors. Of course, the tax office of the Netherlands is responsible for controlling whether TWAs paid their taxes. Second, Fairwork is a non-profit organization in the Netherlands that intends to prevent and target 'modern forms of slavery' in the Netherlands[3]. They have a signalling function and communicate, among many other things, suspicions of labour abuse in the TWA sector to the inspectorate SZW. They focus on the modern slavery part, but increasingly also focus on bad employment conditions that do not qualify as modern slavery but can still be seen as abusive (information from interview). Third, the social partners have set up their own control system for compliance with the collective agreements, with the Stichting Naleving Cao voor Uitzendkrachten (SNCU) [translation: Foundation for compliance with the collective

[3] See: http://www.fairwork.nu/wat_wij_doen/

agreement of temporary agency workers] at the heart of it. They are often referred to as the 'collective agreement police'. Fourth, at the sectoral level the Stichting Normering Arbeid (SNA) [translation: Foundation Norm setting Labour] is the holder of a private certification scheme[4] for TWAs. Organizations that hold this certificate are controlled twice a year whether they still comply with the norms set by the scheme.

Figure 1, gives a graphic overview of the actors involved in the regulation of employment conditions in the TWA sector in the Netherlands.

Figure 1: actors involved in the regulation of employment conditions in the TWA sector



Regulation of employment conditions in the TWA sector

In general, temporary agency work in the Netherlands is regulated by the 'Placement of Personnel by Intermediaries Act' (WAADI[5]). The introduction of this act in 1998 removed legal barriers for the sector and abolished the previously existing government's licensing system (McGauran et al., 2016). According to the WAADI, temporary agency workers are covered by the collective agreement of the sector. However, it is possible to deviate from this law by collective agreement, which has happened from the start by formulating collective agreements specific for the sector. In addition, the 'flexibility and security act'[6] came into effect in 1999 to regulate the sector more closely by bringing the temporary agency work relationship within general labour law (Voss et al., 2013). According to this law, temporary agency workers are entitled to a permanent contract after three years or after three consecutive temporary contracts (McGauran et al., 2016).

[4] There is also a private certification scheme for specifically for those TWAs that offer housing. SNF is the holder of this quality label. Because of the focus on housing rather than working conditions, they fall outside the scope of this study.
[5] Wet Allocatie Arbeidskrachten door Intermediairs.
[6] Wet Flexibiliteit en Zekerheid

The Temporary Agency Work Directive (2008/104/EC), which states that the basic employment and employment conditions of temporary agency workers shall be equal to what they would have been if they had been recruited directly by the user company, of the EU comes in the Netherlands in effect immediately after workers are hired. This is the case since the end of March 2015, when it was included in the collective agreements of the temporary employment agencies. Before this date, the principle of equal pay started to apply after 26 weeks of employment only[7].

In recent years, the Dutch government has introduced further legislation to regulate the employment conditions of workers in the TWA sector. Their introduction has especially been related to the employment of CEE labour migrants by the sector and tends to focus on regulating the behavior of TWAs and user companies, rather than individual worker rights. Central in the debate stood the reduction of 'dishonest TWAs'. A first introduction of new legislation was that since 2010 not only the TWA is responsible that the minimum wage plus holiday allowance are paid, but also the user company. Second, companies offering labour are obliged to register from 1 July 2012 onwards, which makes it easier to control them. Third, on the first of July 2015, a specific law to reduce dubious employment constructions came into force called the Artificial Constructions Law (Asscher, 2013: 1&2). The law is intended to banish constructions that are used to sidestep employment regulations and collective agreements. The law includes chain-responsibility for the payment of wages to which employees are entitled (so not only minimum wage)[8] meaning that companies are also accountable for the violation of regulations by subcontractors further down the 'chain', the requirement to hand out understandable pay-slips and the prohibition to cash payment of minimum wages instead of transferring the pay to a bank account of the employee. From 1 January 2017, deductions from the minimum wage are no longer allowed, with the exception of deductions for housing costs and social insurance contributions. Many of the recent adjustments of legislation and regulation by the government are a government response to the Social Agreement between the social partners of 2013 (SvdA, 2013)[9].

Not all regulation of the TWA sector is set at the national level. Also sectoral self-regulation plays an important role. As a first step to better self-regulation, the sector (employers' associations and trade unions together) introduced its own 'collective agreement police' in 2004: the SNCU. Its task is to oversee compliance with the two collective agreements in the sector. This has the double aim of creating a level playing field and fair rewarding of employees in the sector. The SNCU responds to complaints and reports of third parties by visiting the sites there have been complaints about. They start investigation when

[7] For the ABU collective agreement which is extended to the sector, the NBBU collective agreement included this principle earlier.

[8] Within another law (Invorderingswet, 1990), the principle of chain responsibility also for tax payments was already put down: the main contractor is responsible for the payment of employee's payroll taxes, national insurance premiums and employee insurance, if the subcontractors fail to pay them. This accounts for the whole chain of sub-contractors used.

[9] The scope of this research ends after the first half of 2017. After this date, however, other legal changes were introduced to regulate employment conditions. For example, the legal minimum wage legislation has been altered starting from 1 January 2018 onwards to include overtime hours and to include piece rates in the hourly wage system.

incompliance is reported. When incompliance is indeed determined, the temporary work agency is summoned to repair this, which is than checked by the SNCU. The SNCU works in close harmony with the inspectorate SZW and they share certain information. In addition to this monitoring task, they have an important information campaigning function: they play an important role in educating employers in the TWA sector about the rules and regulation with which they have to comply. They see this as an important task as the rules and regulations in the sector, resulting from government regulation and the collective agreement, are rather complex and incompliance of employers is therefore not always intentional. By information campaigning they try to reduce unintentional violation of the employment conditions of temporary agency workers.

In 2005, a private certification scheme for TWAs was added to the system. The set-up of this private certification scheme for the sector as whole was initiated by politics in close contact with the relevant parties in the sector. Before that, there were separate private certification schemes for certain parts of the sector. The parliament requested the government to form one scheme for the whole sector, as one believed a stronger self-regulation in addition to the national regulation of the sector (including legislation and compliance checks by the inspectorate SZW) was a better answer to 'dishonest TWAs' in the sector than re-introducing a license system. The SNA runs this private certification scheme, which is meant to set the standard. It is backed up by legislation protecting user companies from chain liability for taxes if the TWA they use is SNA certified. Twice a year checks[10] are performed to ensure compliance with the norms[11] set. Checks include whether wages meet the minimum wage as set by the law. From 1 July 2016 onwards, it also includes some clauses of the collective labour agreement of the TWA sector ABU, among which a procedure to apply sectoral wages to agency workers (Stichting Normering Arbeid, 2016).

Information campaigns among (potential) EU labour migrants about their employment rights in the Netherlands and about organizations where they can go if their rights are violated backs up the policies and regulations in the sector. The ideas behind these information campaigns are protection of the labour migrants against exploitation: by giving them information they can make better informed decisions, and making the systems of control more effective as these rely for an important part on reporting of labour migrants themselves. Parties that do information campaigning among (potential) labour migrants are the government, Fairwork, SNCU and trade unions.

There have been several commission to study the consequences of the increased inter-European labour migration since the accession of the new member states and the effectiveness of the self-regulation of the TWA sector. These projects have been important

[10] Paid for by the TWA sector itself.
[11] The norms that have been developed are called NEN 4400-1 (Dutch enterprises) and NEN 4400-2 (foreign enterprises acting on the Dutch labour market).

input for the regulations. Important was the project EU labour migration and the parliamentary commission LURA[12] which was installed by the House of Representatives of the Dutch parliament in 2011. The report concludes that many EU labour migrants in the Netherlands are exploited and underpaid. Specific attention was paid to the role of temporary employment agencies, as it was concluded that since 2007 between 5000 and 6000 illegal temporary employment agencies were established, violating employment rights and using legal constructions to side-step the law (Kamp, 2011). The recommendations of these commissions have been important in the political debate about the regulation of employment conditions of EU labour migrants in the TWA sector. Important is also the project 'AMU'[13] which targets dubious employment agencies and in which national level organizations work together with sectoral level organizations.

Table 1: Timeline of relevant policies in the Netherlands 1998 – mid-2017 (scope of the research)

July 1998	Introduction of the WAADI and the abolishment of the licensing system for TWAs
January 1999	Introduction of the Flexiblity and Security Act
February 2004	Founding of the SNCU by the social partners in the TWA sector
May 2004	Accession of 10 new countries to the EU, transition period for full access to the Dutch labour market for 8 of those countries: Slovenia, Hungary, Czech Republic, Estonia, Lithuania, Slovakia, Latvia and Poland. In the accession agreements of Cyprus and Malta with the EU it was decided that no transition period would be installed for citizens of these countries
June 2005	The parliament requests the government to support the setup of one integrated sectoral private certification scheme in the TWA sector which is now run by SNA
January 2007	Accession of Bulgaria and Romania to the EU, transition period established in the Netherlands for 7 years, permission needed during this period (not for services) (Kamp, 2011)
May 2007	Full access to the labour market for labour migrants from countries that accessed the EU in 2004
January 2010	Not only the temporary work agency is responsible that the minimum wage plus holiday allowance are paid, but also the user company
March 2011	The parliament starts the commission LURA

[12] Lessen Uit Recente Arbeidsmigratie (Koopmans, 2011)
[13] Aanpak Malafide Uitzendbureaus (Reduction of dishonest TWAs)

2011	Start of the project EU labour migration of the government
January 2012	Start project AMU by the government (Asscher, 2013)
July 2012	Obligation for TWAs to register
April 2013	Social agreement between the social partners
2013	Action plan to reduce dishonest TWAs
January 2014	Full access to workers from Bulgaria and Romania to the Dutch labour market
March 2015	Collective agreements valid that states that temporary agency workers should by paid equally to those hired directly by the user company
July 2015	Artificial Constructions Law valid
January 2017	Deductions from the minimum wage are no longer allowed, with the exception of deductions for housing costs and social insurance contributions

Actors on which the policies focus (beneficiaries)

Three types of legislation and regulation can be detected that aim to protect the employment conditions in the TWA sector in the context of the arrival of A8 and A2 labour migrants: those that target (dubious) TWAs, those that target practices of the user companies and those that target labour migrants.

Scale of intervention

The labour legislation affecting all companies within the TWA sector: they should all comply with the law. Part of the legislation focuses on the user companies. This legislation is focused on all companies that make use of temporary agency workers.

As the labour inspection of the ministry of social affairs and employment is the organization responsible for monitoring whether temporary work agencies comply to labour law, it covers the whole sector and the organizations that make use of temporary agency workers. However, in practice they can only proactively control a small part of it yearly as a consequence of their limited capacity. They choose where to control based on a risk-analysis and in response to complaints from third parties and employees. As the ABU collective agreement is legally extended to the sector, the reach of the SNCU is also the complete TWA sector: in theory they can control any temporary employment agency. They also work risk-based and control those organizations where they suspect to find incompliance. The SNA only covers the part of the TWA sector that is covered by its private certification scheme. They aim to inspect each of those organizations twice a year. About 90 percent of the

workers in the sector are employed by an agency covered by the private certification scheme (Sociaal Economische Raad, 2014).

It is difficult to say what the reach is of the information campaigns. In theory, they aim to reach all labour migrants, but it is difficult to know whether they are indeed reached. The SNCU stated in the interview however, that the nature of the questions they get from (potential) labour migrants shifted from simple questions in the early years to more complicated questions now. This seems to indicate that labour migrants are increasingly better informed.

Governance level

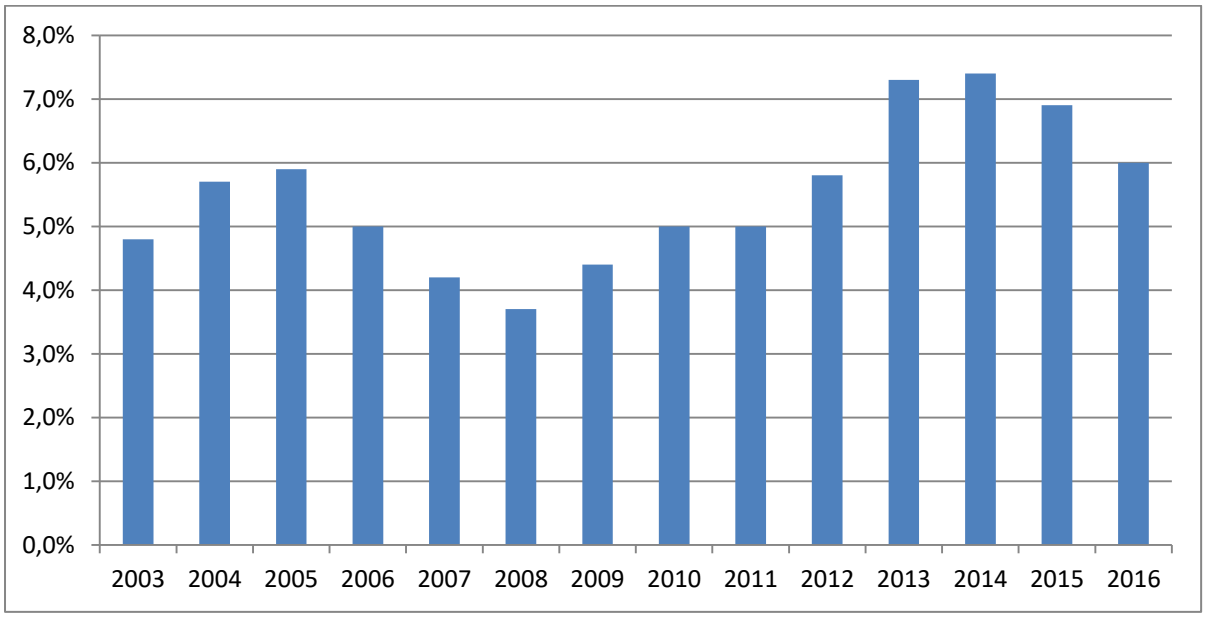
The sector is regulated by a combination of government level labour legislation, the inspectorate SZW, the tax office and self-regulation of the sector by means of a legally extended collective agreement with an inspection organization that controls compliance with this collective agreement and a private certification scheme. There are quite some interactions between these two levels, especially because the possibility for self-regulation rather than a government controlled license system is made dependent by the government on the success of the self-regulation. In addition, inspection organizations at the two levels tend to work together by exchanging information.

1.2 Description of the context

Labour market conditions in the Netherlands 2004-2016

Since the accession of the new EU member states, the Dutch labour market has –just as all countries- been affected by the economic crisis. This is reflected in the unemployment rate as shown in *figure 1.* The economic crisis hit the Netherlands in the second half of 2008, which caused the unemployment rate to increase in 2008. Since 2015 the unemployment rate is going down again, which can be interpreted as a sign of a recovering economy.

Figure 2: Unemployment rate 2003-2016

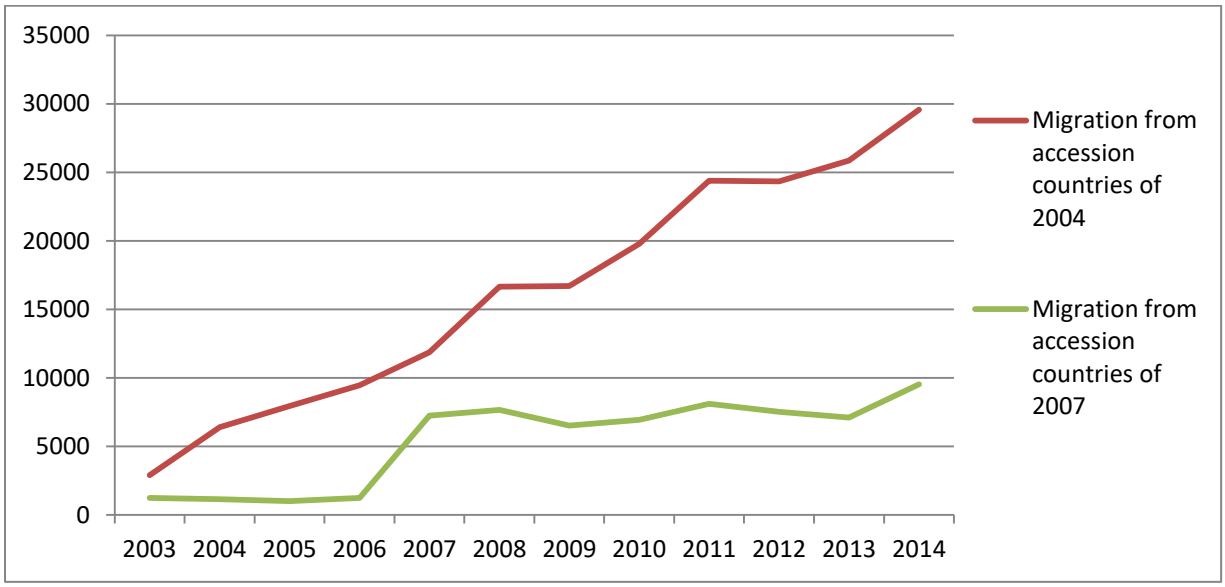


Source: Statline, 2017

CEE migration to the Netherlands

Figure 2 shows the migration from the accession states to the Netherlands in the period 2003 until 2014. The figure shows that already in the years prior to the expiration of the transition period (2007 for migrants from countries that accessed the EU in 2004 and 2014 for those that accessed in 2007), the migration started to increase. The overall picture is that the number of migrants from the counties that accessed in 2004 has been increasing up to a total of almost 30.000 that entered the Netherlands in 2014 (return migration has not been taken into account). The figure also shows that although it was expected that migration from the countries that accessed the EU in 2007 would spike in 2014 when the transition regime ended, this turned out not to be the case.

Figure 3: Labour migration from accessing countries to the Netherlands 2003-2014



Source: Statline, 2016

Attitudes towards immigrants

The attitude of Dutch citizens regarding immigrants has become considerably more critical in the past decade. However, the public debate on immigrants in the Netherlands has focused primarily on so-called allochthones, which include persons who were not born in the Netherlands as well as persons of whom at least one parent was not born in the Netherlands. In particular the first and second generation (and sometimes even the third generation) of so-called guest workers from Maroc and Turkey have attracted a lot of attention. The discussion about these groups is also strongly influenced by the fact that they are mainly Muslims, whose culture according to many people tends to conflict with 'Dutch' culture. This 'cultural clash' seems to be less of an issue with respect to the migrants from Eastern Europe, who are mainly Christian.

According to a survey conducted by the Netherlands Institute for Social Research (SCP) in 2014, more than one in three respondents thought that there are too many persons with another nationality in the Netherlands (table 2). About half thought that there many, but not too many foreigners. However, as it comes to the position of allochthones at work, about nine in ten respondents think that they should be treated equally as autochthones (natives) with respect to dismissal and promotion, and don't have any objection to have an allochthone as a colleague.

Table 2. Attitudes of Dutch population towards immigrants, 2014 (% of population aged 18 and over)

Opinion on number of persons in the Netherlands with other nationality	
too many	35.6
many, but not too many	51.3
not many	11.8
refusal	0.1
don't know	1.2
total	100.0
Who should be laid off in bad times?	
allochthone	4.5
autochthone	1.9
should not make a difference	93.2
don't know	0.4
total	100.0
Who should get a promotion?	
allochthone	1.3
autochthone	4.5
should not make a difference	93.8
don't know	0.4
total	100.0
Allochthones as colleagues	
no objection at all	89.7
acceptable, but less comfortable	8.2
resist	0.4
it depends	1.3
refusal	0.0
don't know	0.4
total	100.0

Weighted results
Source: SCP (CV 2014)

The respondents were also asked how they thought about various ethnic groups in the Netherlands. On a 'temperature' scale from 0 to 100 they had to indicate whether they had very positive feelings (100) or very negative feelings (0) regarding these groups. As shown in

Table 3, on average Moroccans scored by far the lowest, and Antilleans and Chinese the highest. Interestingly, Poles evoked just a little less positive feelings than autochthone Dutch. This seems to show that Dutch people do not value Poles very differently from Dutch compatriots.

Table 3. Average score on feelings regarding various ethnic groups, 2014 (0-100)

Moroccans	65.5
Turks	79.2
Poles	83.1
Autochthones	87.1
Surinamese	89.1
Chinese	92.9

Antilleans	93.7

Weighted results
Source: SCP (CV 2014)

Finally, Table 4 gives some results from the survey that was conducted among the Dutch population as part of WP3 of the ReCriRe project. Regarding the question whether immigrants are a source of cultural enrichment, the Dutch population is divided: a little over half of the population agrees with this view, while a little less than half reject it. Nevertheless, almost four of every five respondent would find nothing wrong with employment for a foreigner.

Table 4. Attitudes towards immigrants and foreigners, 2016 (%)

Immigrants are a source of cultural enrichment	
Strongly disagree	14.4
Somewhat disagree	32.5
Somewhat agree	43.1
Strongly agree	10.0
Total	100.0
I would find nothing wrong with employment for a foreigner	
Strongly disagree	7.8
Somewhat disagree	15.3
Somewhat agree	45.5
Strongly agree	31.4
Total	100.0

Source: ReCriRe survey Netherlands

The general picture that emerges from these surveys is that the Dutch population is rather critical regarding the number of foreigner and migrants and their contribution to Dutch society, but the large majority is nevertheless very tolerant towards foreigners at work and do not want to discriminate against foreigners. One particular group of Eastern European migrants, viz. Poles, do not evoke particular negative nor positive feelings from the Dutch population.

Political framework

Since the accession of the new countries to the EU, there have been four successive ministers occupying the Ministry of Social Affairs and Employment: Aart Jan de Geus (Christen Democratic Party, 2002-2007), Piet Hein Donner (Christen Democratic Party, 2007-2010), Henk Kamp (Conservative liberal party, 2010-2012) and Lodewijk Asscher (Labour party, 2012-2017[14]).

[14] The scope of the research ends mid-2017.

2. The official discourse: how are policies described?

2.1 Problem and problem-setting in official documents

Prior 2003, the Dutch government did not foresee problems with allowing full access to the labour market to citizens of the newly accessing countries. Employers had emphasized the importance of opening the labour market to fulfill open positions on the labour market that they expected to be difficult to get fulfilled (LURA, 2011; Rutte, 2004) and this view was broadly shared among government, employees, employers and the social economic council (Rutte, 2004). The government, met with little opposition, therefore announced not to impose any transition measures (LURA, 2011). This perspective changed in 2003, however. The government stated in a letter to the Dutch parliament that '*in the light of the changing economic circumstances, the societal debate about this topic and the changes in the opinions of the political parties, the position of neighboring countries, as well as the great uncertainty in the estimations of the numbers of labour migrants to be expected to come to the Netherlands, the government has decided to reconsider the previous decision*' (Rutte, 2004: p.2). Consequently, it was decided to introduce a transition period which in the end lasted three years for workers from the countries that accessed the EU in 2004.

After the decision was made to grant full access from 1 January 2007 onwards, the discussion shifted to policies and practices shaping the circumstances of work and living of CEE labour migrants in the Netherlands. Within this discussion, the protection of employment conditions of CEE labour migrants had a central place (LURA, 2011). The importance of protecting employment conditions was formulated as twofold. First, when they are not protected, there is a high risk of the exploitation of migrant workers and second, it means unfair competition for both employees and employers (Asscher,2013). For employees this unfair competition means a threat of being crowded out.

> *'The wages in the accession states lies still well below that of the Netherlands. Labour migrants often accept lower salaries then what they are entitled to. This results in unfair competition for employers. In addition, it means unfair competition on the labour market: if labour migrants are under paid and cheaper than job seekers in the Netherlands, it contributes to the side-passing of this group of unemployed people.'* (Kamp, 2011: 8)

Within this debate, dishonest TWAs were seen as A) an important threat to equal employment conditions, B) a cause of pressure of crowding out and C) an abuse of labour migrants. The presence of dishonest TWAs are seen as a rather imminent problem, because of the big role of the TWA sector in the employment of labour migrants.

One of the central problematic practices in the TWA sector mentioned in official documents are reductions of costs leading to payments under the minimum wage level. The reductions of housing costs and the fines deducted from the wages make it very hard for the inspectorate SZW to control whether the minimum wage is paid (Kamp, 2011). Another central problem mentioned in the official documents is the difficulty to get to the dishonest TWAs because they make use of all types of legal constructions that make this hard (Kamp, 2011). This was mentioned in 2011 as a problem of a specific part of the TWA sector: that of the dishonest TWAs. However in 2012/2013, it was mentioned as an issue in larger parts of the sector because complicated administrative constructions in various degrees of legality were used to side step legislation and the collective agreement (Asscher, 2013). The government sees this as a problem because labour migrants should get what they are entitled to and because it leads to unfair competition based upon employment conditions.

Another problem voiced in the official documents of the government is the ignorance of labour migrants of their employment rights in the Netherlands, which is seen as contributing to their vulnerability for being exploited.

> '*labour migrants are vulnerable for phenomena such as exploitation, unfair competition and overcapacity. In some cases, labour migrants accept a lower salary, making them attractive for employers. Often this involves dishonest TWAs. It is important to act against this: labour migrants need to be protected against exploitation.'* (Kamp, 2011: 2)

As a connected problem, the government mentions in their official reporting that even if labour migrants do recognize that they are being exploited, the barrier they need to overcome to report it is high. They are afraid of repercussion by their employer and of being fired. Also, some labour migrants have low general trust in governments and trade unions (Kamp, 2011).

In 2013, the potential problem of the crowding out of workers at the lower end of the labour market became more central in the government communication. This was related to the issue of unemployment that was still high after the recession of 2008.

> *'we need to avoid that there is crowding out going on at the lower end of the labour market, especially at this moment (red. in this time of high unemployment), as a consequence of large groups of EU labour migrants entering the labour market to do unqualified jobs. Crowding out is a real possibility when there is unfair competition because of the use of inappropriate administrative constructions.'* (Asscher, 2013: 1)

2.2 Tools and actions in official documents

For the problem described in official documents that EU labour migrants are often ill informed about their employment rights (Kamp, 2011), the government emphasizes that 'information campaigning is essential. Migrants that know what to expect have a better

chance of a successful stay in the Netherlands' (Kamp, 2011: 5). More concrete, they have set up information campaigns in the Netherlands as well as in the sending countries in the languages of the labour migrants themselves and in close collaboration with the local authorities of these countries and the embassies. These campaigns took place via folders as well as on the internet (Kamp, 2011). Where the information campaigning in the early years had the aim of the reduction of the vulnerability of the labour migrants, in the 2013 communication is becomes clear that another aim has been added: the reduction of job competition and possible crowding out going on.

> *'With the project to increase the compliance with employment conditions by companies and by informing citizens in EU countries already before coming to the Netherlands about the possibilities and risks (such as deception by dishonest TWAs) on the Dutch labour market, the crowding out of native employees can be avoided. This all of course within the boundaries of the EU right of free movement of labour and the principle of non-discrimination.'* (Asscher, 2013: 1+2)

To be able to reduce exploitation and abusive situations, the government points out that information from labour migrants themselves is essential. In order to make reporting as easy as possible for labour migrants, the government ensures that this can be done anonymously and in their own language at inspectorate SZW. Also, the government tries to become less dependent on the sole reports of labour migrants by improving the information exchange between inspectorate SZW and other actors involved.

To target the problem of violation of employment rights, fines and repercussion possibilities have been increased in order to make these practices less attractive (Kamp, 2011). Within the TWA sector, the government chose the approach of stimulating self-regulation of the sector rather than the reintroduction of a licensing system to reduce dishonest practices:

> *'[…] a good collaboration between the government and the honest part of the labour market can lead to the best results. A licensing system of the government, like the one that was in place until 1998, appeared not to be capable of the eradication of dishonest TWAs.*' (Kamp, 2011: 11)

The government has kept a close eye on the effectiveness of self-regulation. Moreover, they legally backed up some of the agreement made between the different actors in the sector. For example, they agreed upon the exemption of chain responsibility for taxes for those organizations that hired workers through a SNA certificated agency. Moreover, in order to be able to have an overview of the sector for the national level inspectorate SZW as well as for the sectoral inspection organization SNCU, TWAs were required to register.

To decrease the problem of TWAs deducing large sums of money for housing, insurance and other services from the wages of labour migrants, the government decided to forbid decreasing money from the minimum wage, with exceptions being made under strict conditions for housing and health care insurance.

In order to have a better policy to target the dishonest TWAs, collaborations with other countries have been established. Moreover, the government has started a lobby at EU level to make the negative effects of EU free movement for workers and services discussable, and more in particular the situations of labour exploitation and crowding out as consequences of the competition based on employment conditions (Asscher, 2013). They lobbied for a rephrasing of the posting of workers directive:

> *'Priority at the moment is to target competition of employment conditions. [..] In the context of the EU we do this by evaluating the posting of workers directive. For posted workers, the principle of equal pay for equal work in the same place should be more apparent.'* (Asscher, 2014B: 5)

The introduction of the WAS, was the government's response to the Social Agreement of 2013 between the social partners. The law intents to prohibit some administrative constructions that are unwanted but at the moment legal and increase the possibilities of the inspectorate SZW (Asscher, 2014A). Also, more inspectors were temporarily added to the inspectorate SZW to form a special intervention team to reduce dishonest TWAs (Asscher, 2015).[15]

2.3 Description of the target population in official documents: goals, explanations, motivations and attended results

With regard to the problem defined as ill-informed CEE labour migrants and the information campaigning developed to alter this, the government distinguishes between those CEE labour migrants that are still in their country of origin and are thinking about coming to the Netherlands plus those CEE labour migrants that are only in the Netherlands for a short term, and those that intend to stay longer. The information relevant for a move and a short stay are available in the languages of the sending countries whereas information relevant for those staying longer is only available in Dutch and English:

> *'From people that want to stay in the Netherlands for a longer period, the government expects them to learn Dutch'* (Kamp, 2011: 5).

Another important target group for policies are the dishonest TWAs. They are defined as:

> '*Dishonest TWAs are characterized by intentional and systematic violations of laws and regulations, among which employment- and fiscal laws and regulations. The aim of these dishonest TWAs is profit.'* (Asscher, 2014A: 1)

[15] The scope of reporting policies ends mid-2017.

2.4 monitoring activities and evaluation in official documents

In 2011, the government stated that the government would keep a close look on the developments in the TWA sector and would take additional or other actions when deemed necessary.

The project AMU had an official evaluation moment to evaluate whether the licensing system needed to be introduced or whether the improvements of the self-regulation system of the sector were effective enough (Asscher, 2014A). The conclusion of the government while evaluating the AMU project in 2014 was that the private certification scheme of the SNA was not sufficiently effective. Ground for this conclusion was that the inspectorate SZW still ran into a lot of dishonest practices in the TWA sector both among certified and uncertified agencies (Asscher, 2014A). Based upon this evaluation measures were taken to improve it, among which the inclusion of elements of the collective agreement in order to increase the standard set by the private certification scheme and improvement of the inspections. The effectiveness of these improvement measures were again evaluated in 2015. The conclusion was that the improvement package has been implemented to satisfaction but to see the effects a longer period of evaluation is needed.

Also, in order to have better knowledge about the problems with labour migrants in the Netherlands, the House of Representatives requested a study: the commission LURA. This commission issues a report in 2011 (Lura, 2011).

3. Planning, implementation and evaluation of the policies: the views of stakeholders

In this chapter we will discuss the views of stake holders. We will start by describing the methodological approach (§3.1), after which we will describe the problems in the TWA sector with regard to employment conditions as observed by the inspection organizations active in the sector, the government, trade unions and employers (organizations). This description intends to give an overview of the problems that are targeted by the regulation of the sector (§3.2). Next we will discuss the views and approaches of the government (§3.3), employers' associations (§3.4) and trade unions (§3.5), as the actors deciding about the national and sectoral policies and practices developed to regulate or protect the employment conditions of labour migrants in the TWA sector.

3.1 Problems observed by actors

The problems detected by the actors involved in the TWA sector revolve around the CEE labour migrants themselves, dishonest TWAs, the user companies, the image of the sector, EU regulation, the effectiveness of inspection organization and the general attitude in the sector. Of course, all are related.

Around the group of CEE labour migrants, all actors observe that it is a group that is set back in terms of information about their labour rights, already just because they work in a country that is not their own and where they often do not speak the language. This makes them an easy victim for dishonest TWAs. Fairwork mentions that having this information is also important for labour migrants to be able to self-identify that they are being exploited. It is also mentioned by the actors involved in the TWA sector that not every situation that would qualify as exploitation in the Dutch context would also be perceived as such by the labour migrants themselves: what they earn is still more than they would earn in their own country.

> *'If we look at the complaints we get through our hotline, and these are the people that know how to find us, it turns out that they often have no clue what their rights are, how collective agreements work and which employers should follow the collective agreement. This is generally speaking, because we often deal with the low educated labour migrant: the capsicum harvester and the asparagus plug, there is a problem there.'* (SNCU)

Also the fact that CEE labour migrants are often housed by the TWA is seen as a problem by both trade unions and employers' associations: it makes labour migrants extra vulnerable for exploitation and abusive situations and puts them in a position that makes it hard to do something about it, because if they complain they lose their job as well as their housing. Both employers' associations –ABU and NBBU- questioned during the interviews whether TWAs should be providing housing to labour migrants. They recognize the vulnerability of the situation and question whether housing should be part of the business model of TWAs:

> *'The question is whether an employer should be housing labour migrants. Should they not stick to what they know? Just provide labour to user companies, place temporary workers in companies, this is what you are good at. Housing should be taken care of by other parties'* (SNCU)

The employers' associations conclude that they prefer a situation in which housing is taken care of by TWAs just in the first period of employment, just because it makes it easier for labour migrants to come to the Netherlands to work when they know they have a place to stay. However, they would like a third party to take over the housing responsibility after this first period to avoid that it becomes the business model of TWAs and a potential ground for exploitation.

'*If you ask us what it should look like in the future, where do the labour migrants of the future live? We say, not with TWAs, preferably. We see it as an emergency solution which has become institutionalized in some parts of the market. But I feel that we have to get rid of it at some point as TWA sector*' (employers' association 1)

However, they also mention that they at the moment see no solution because of the housing shortage in the Netherlands in general and therefore also for labour migrants. It is also the question to what extend this point of view of the employers' associations reflect that of their members, as housing has become a source of earnings for TWAs regardless whether the sector organizations see it as their core business or not. The trade unions have a preference for a prohibition of the housing of labour migrants by employers at any time, because of the vulnerability of the situation.

The SNCU distinguishes four groups of TWAs in the sector: 1) dishonest TWAs that willingly use illegal constructions, 2) TWAs that accidently do things wrong, 3) borderline TWAs that try to do things that are just legal, 4) TWAs that are honest. Dishonest TWAs use many different practices to earn as much as possible using labour migrants. The actors interviewed mentioned having run into practices of too high amounts of money being deducted from the wages, fines for things as having a messy room or leaving the heating on: deductions that are illegal but happen nevertheless, not paying holiday allowance, large sums of money being deducted from their wages for housing, and health care insurance and work to home commuting (see McGauran et al., 2016 for an overview of wrongs found in the TWA sector in the Netherlands). The control organizations in the sector (SNCU and the inspectorate SZW) mention that although the sector has become more professional, the dishonesty in the sector is not gone but has changed in character: it has become smarter and more complex. They are also using administrative constructions that make it hard to take them off the market for the inspectorate SZW. They develop for example administrative constructions using companies in foreign countries. Legally they could be pursued even if they operate from another country, but it is much harder. Another construction is the use of Ltd's that are going bankrupt as soon as they find out that they are in the eye of the inspectorate SZW when at the same time a new Ltd is being set up. All personnel is then transferred to the new Ltd which makes it harder to pursue them. Also, the dishonest practices have shifted to other sectors or types of employment (e.g. secondment or contracting). However, the illegal or abusive practices by TWAs are not always on a large scale. It can also be many small things together, '*but many small things together can result in a business model. This is what we want to avoid*' (employers' association 2).

The fact that dishonest TWAs can exist because there is a demand for them is mentioned by many actors. User companies want the cheapest options possible and they profit directly from the underpayment of workers. This is an issue mainly in those sectors where the margins are small. Employers in these sectors are under pressure, the profit margins are so small that every saving they can make on wages counts. This problem has been amplified by

the economic crisis, which has made being profitable as an organization something that is not self-evident. It is labour migrants in the TWA sector that are mainly affected, because it is them that are mostly employed in these sectors where the margins are small and where the official wages are already on or just above the statutory minimum wage level.

> *'It starts with the user companies, as long as they are willing to work with dishonest TWAs, they will be there. This is why chain liability is so important. Already its existence can have a preventing effect.'* (SNCU)

> *'The user companies are a real issue. They ask for cheap. This can be a real problem. It pushes the margins to such an extent that it is impossible to offer temporary workers for the money they are willing to pay in a legal way. This is how honest TWAs miss out on assignments.'* (employers' association 2)

The sector at large is affected by the very existence of dishonest TWAs because it results in a bad reputation. This is perceived as damaging by the employers in the sector. Moreover, dishonest practices put pressure on employment conditions. In some sectors it is hard to compete as an honest TWA because the pressure on price is so high because of the competition of dishonest TWAs. It is all about the price: if you are cheaper than your competitor you get the job. This makes that TWAs have to look for ways to organize things as cheaply as possible.

Around legislation, the actors seem to agree that with regard to the free movement of labour the present legislation seems sufficient. Some aspects however need to be altered to remove some unwanted elements and to make it easier to for inspection organizations to assess. Issues the inspectorate SZW mention are that the legal minimum wage only applies to the standard weekly employment hours as laid down in the collective agreement. Everything that is worked on top of these hours is not regulated. This results in situation in which these hours are unpaid. Another issue they mention evolves around piecework, at the moment there is not a guarantee that workers are paid the statutory minimum wage. These are issues that are being solved at the time the interviews took place (early 2017) by altering the legislation. Also the topic of introducing an hourly minimum wage has been put on the agenda because this would make wages easier to assess for inspection organizations. Actors observe more legislative issues around the free service provision and the posting of workers. They state that these issues could best be solved at a European level. However, the different actors have different opinions about what the issues are that need to be solved. Some mention that the abuse of A1 statements should be solved, whereas others mention that there is not really a big problem in this area. This is also the case for the posting of workers directive, which some argue should be altered whereas others think it is fine.

The actors also mention that it is hard to solve all the bad practices in the sector. Even when there are more rules and regulation, incidents keep happening. They however mention that the dishonest part might be outside the observation window of inspection organizations: they are no members of employers' associations, they are uncertified, they are maybe not

even registered as a TWA. Apart from this general problem, they also mention that there are still issues with the inspection system in the Netherlands. This is mainly stated by the employers' associations and the trade unions that both hold the government responsible for the inspection of the organizations that fall outside the observation window. The employers' associations state that the government should have stronger enforcement and blame the current lack of enforcement they perceive on the shortage of labour inspectors combined with the complexity of the statutory employment conditions. The latter is also mentioned by the inspectorate SZW itself. They also mention that the system of information exchange could be better organized in order to make it more likely that violators are caught, especially because it is more about de persons behind the dishonest TWAs. In this context, they do mention that this is already improving: inspection organizations look more and more to the persons behind the dishonest TWAs.

In addition to the above issues, some trade unions mention the current entrepreneurial spirit in the TWA sector and sectors making use of these temporary agency workers as problematic. According to them, employers/TWAs look for possibilities, often also within the law, to do things cheaper, as there is a strong focus on money. Employers follow each other in these practices. One trade union expressed: *'A1 payments, 5 or 6 years ago there were only a few using this construction whereas nowadays it is widespread. Also because legal advisors advertise with explaining these possibilities to organizations'* (FNV). In the context of the economic crisis, the access to the large pool of inter-European labour migrants have increased the possibilities for employers to do things as cheaply as possible.

3.2 The planning phase: opinions and views of national policy makers

Expectations based on the literature

The position of the national government with respect to CEE labour migrants will first of all be determined by the position of the political party or parties that form the government (coalition). Ideally, the position of the governing party or parties would reflect the opinion of the majority of the population, especially because they generally received the majority of the votes. Of course, there are many reasons why the views of these parties may not coincide with the majority view of the population (for instance, voters may deem other issues more important than the position with respect to immigrants). Nevertheless, in general one would expect that *the government will reflect in its policy making to the views of the population about (the consequences of) CEE labour migration*.

Views on the regulation of employment conditions and approach taken

With regard to policy making at the national level, the policy makers of the ministry of social affairs and employment see a change of policy approach over the successive years since the accession of the new member states to the EU. They link the changes to the different ministers that have occupied the post and their opinions and political orientation. They state that under minister Donner (2007-2010) CEE labour migration was not perceived as a policy issue. When minister Kamp (2010-2012) was in charge, citizens and different parties in society had put forward problems around CEE labour migration. He therefore took a more active take on the matter and laid down the vision that CEE labour migrants were welcome as long as they are gainfully employed and were expected to leave when this was no longer the case. Minster Asscher (2012-2017) put the focus on the avoidance of the crowding out of workers and the decrease of fraud. This was a response to the concerns expressed in society about potential crowding out practices happening. The policy approach has been one of the combined protection of labour migrants against exploitation and the prevention of downward pressure on employment conditions through illegal or legal but unwanted administrative constructions. The final legislative addition has been the WAS, that ensures among other things chain liability for wages and the restriction of the possibility to deduce costs from the minimum wage by TWAs. The first step into the direction made was the social agreement between trade unions and employers' associations in 2013 which were thereafter taken further by the minister to be translated into legislation.

Besides legislative approaches, the ministry of social affairs and employment took up on informing (potential) CEE labour migrants about employment in the Netherlands and informing employers about the rules and regulations around employing labour migrants. Informing CEE labour migrants has been taken up since the end of the transition period in 2007, but since 2013 it has been intensified by direct deals with Poland, Romania and Bulgaria to spread the information in these countries. This has been the outcome of the project 'EU labour migration'. Moreover, Fairwork is supported by the government to inform and directly support labour migrants in abusive situations. Over the years, not only the intensity and approach of the information campaigning had changed, but also its goal:

> *'We do not know how effective the information campaigning is. The goals are therefore rather prevention and that if something is wrong they can easily find out where to go. But I do not have the illusion that they will suddenly actively claim their rights. In the beginning the idea was that if we tell people that they run the risk of being exploited here, they will not come. But as soon as people found out what we meant by exploitation in the Netherlands they realized it was a completely different perspective on the matter than that of their own. So it was not effective. Our perspective thereafter changed to informing people about where they can go if they are being exploited.'* (SZW)

To inform the employers about the rules and regulations, the inspectorate SZW has a tool on their website. They regard this important to rule out the accidental wrongs. They work with different target groups of employers based upon their intentions (employers that 'do not know', 'do not want' or 'cannot') and adjust their approach accordingly: for some information campaigning is relevant for other groups active inspection by the inspectorate SZW is the approach.

The government also has a preference on how the TWA sector should be regulated: by government licensing or through self-regulations. Since the abolishment of the licensing system, there has always been the discussion of whether it should be reintroduced in the TWA sector. But the general preference of this moment is to stick to self-regulation through the SNA and together with the employers' associations and the trade unions to keep on employment on improving this system.

One can conclude that the government has in its policy approach taken into account the concerns of the population about potential crowding out.

3.3 The planning phase: Opinions and views of employers' associations

Expectations based on the literature

With the accession of the new EU countries in 2004 and 2007, employers gained a reservoir of workers willing to work for lower wages and worse employment conditions than the incumbent workers. This advantage for business leads employers' associations in Europe to be in favour of the free movement of labour (Afonso, 2011; Donnelly, 2015). More diverse is their position as to what extent employment conditions should be regulated. In some countries, employers' associations have lobbied together with the trade unions for regulation to uphold employment conditions of EU labour migrants while in other countries they prefer little regulation (Afonso, 2011; Pedersini & Pallini, 2010). According to Afonso (2011), the position of employers' associations is the outcome of the internal balancing of conflicting interests of member firms and interactions with trade unions and the state.

In the literature, employers' associations are often depicted as the organization representing *the* interests of 'business'. Hence, they are expected to advocate minimal regulation regarding the employment of CEE labour migrants as a way to bring down wages (Krings, 2009). Nevertheless, employers can have conflicting interests in this area, resulting in some employers advocating regulation while others preferring little regulation. For some companies it enhances the access to cheap and flexible labour, while for others companies that use less or no labour migrants it means additional competition from those organizations that do use them and can as a result lower their prices. This is mainly the case for SME's. This group of employers might be more in favour of regulation, as it levels the

playing field for employers and helps them secure their market position (Afonso, 2011). When this group is better represented among the members of the employers' associations, the employers' association is more likely to be in favour of regulation. In addition to this argument, Lillie and Greer (2007) find that, in contrast to many large employers who are internationally orientated, employers' associations tend to be more nationally focused. This leads them to seek a compromise between fair competition and the advantages of access to cheap labour. A stance in favour of regulation might be re-enforced by strong unions (Afonso, 2011; Lillie & Greer, 2008) or fear of state intervention (Afonso, 2011). Thus, in an industrial relations system that is characterized by frequent consultation and consensus seeking with the unions and with the government, as in the Netherlands, employers' associations are more likely to be in favour of some kind of regulation to uphold labour standards. Therefore, it is expected that *employers' associations are in general in favour of little regulation of the working conditions of EU labour migrants, but that in the Netherlands employers' associations are willing to accept some regulation.*

Views on the regulation of employment conditions and approach taken

National level employers' association

The national level employers' association VNO-NCW states that they have always been in favor of the free movement for workers within the EU. The arguments they find most important are the export orientation of the Netherlands, for which open borders are helpful and the option to have a larger pool of employees especially for those vacancies that are hard to fill. In this context, they found the transition regimes that have been used in the Netherlands not necessary. They feel these have been installed because of the societal unrest about the future perspective of many labour migrants potentially arriving.

For the employers, the reinforcement of equal employment conditions is an important issue that they fully support. That is mainly the case for the smaller companies because they will lose business to companies from other countries that can do things cheaper of employment conditions are not regulated and a level playing field created. In this context they see the legal extension of the collective agreement also as something valuable: it contributes to a level playing field and increases the predictability of the total wage sum for employers. They also express that they regard the inspectorate SZW as very important in this context: they need to ensure that employment conditions are indeed equal. Moreover, as dishonest TWAs disrupt the market, they see the inspectorate SZW as very important as they have the task of erasing them from the market. In their point of view these dishonest TWAs are criminals and not employers and therefore the responsibility of the government to eradicate.

Overall, the national employers' association is in favor of self-regulation of the TWA sector rather than the reintroduction of the licensing system. When it was recently a point of

discussion with the minster of social affairs and employment Asscher, they pressed for improving the SNA certificate rather than a licensing system, a lobby that was successful.

Even though the national employers' association is in favour of regulating employment conditions and of creating a level playing field, this should happen to a minimum extent: it should not increases the administrative pressure on employers. In this context they regard the WAS as something that goes too far.

Sector level employers' associations

The employers' associations in the TWA sector express that just after the accession of the CEE member states, they also had to find out what it would mean for the sector. They say it took a while for them to realize that the agencies mediating labour migrants where actually operating in the same domain and could therefore regarded to be part of the TWA sector. At the moment that the TWAs that were operating in the recruitment of migrant labour formed their own organization (VIA) and tried to from their own collective agreement they decided that they wanted to prevent this and get them within the existing ABU collective agreement in order to ensure a level playing field for all TWAs. From this moment onwards their focus has been on creating a level playing field and targeting abusive situations. For this very reason of wanting a level playing field, employers' associations are in favour of regulating the sector. According to their views it should be about having the best people possible in every position, not because they are cheaper. They feel that the resulting pressure on employment conditions would be bad for the sector in the long run. For this reason, and because they wanted to improve the image of the sector and retain self-regulation, they came up with a certifying system which has now turned into the SNA.

> *'Certification has been an important step. Also politics expected a lot from it. It was a way to regulate the sector and it also shows that we as sector organizations have a vision: we want our members to do it correctly. The other side of the story is the pressure from politics and trade unions, that you respond to these types of pressure'* (employers' association 2)

They also actively promote it among their members, even though it means additional administrative tasks:

> *'The main goal of the certification is that you want to be able to show as an honest TWA that you are liable, I had to sell this to my members: I said you have to differentiate yourself, because I do not know who the dishonest agencies are.'* (employers' association 2)

> '*Regulation is important because we earn our money with flexible labour. I think that ever company that has a certain product at the heart of their business wants that product to have a good reputation'*. (TWA 1).

Employers' associations actively combat the dishonest TWAs because they disturb the market and result in a bad image of the sector. Apart from dishonest practices they fully support the business model of employment with labour migrants. In line, they started to actively inform their members about the possibilities and started commissions to discuss specific issues relevant for those TWAs working with migrant labour. They acknowledge the price pressure in the market and state that every TWA therefore needs to be very sharp on what is legally and fiscally possible:

> *'We take a double approach by both educating the members in what is possible but also in showing them what good employer practices are'.* (employers' association 2)

The preference of the employers' associations is strongly for self-regulation over government licensing. They want to 'keep matters in their own hands'.

Because the employers' associations wanted to actively recruit those agencies employing labour migrants, they decided to include a specific paragraph in the collective agreement for foreign labour. The issues included in this paragraph were decided upon after active consultation of the target group of TWAs.

To further increase the level playing field not only within the own sector, but also between temporary workers and those hired directly, they recently introduced the principle of equal pay from day one in the collective agreement that is legally extended to the whole sector:

> *'Equal pay from day 1 in the collective agreement, this was decided because we want our service to be about flexibility and not about price (wages) or employment conditions'* (employers' association 2).

Although the employers' associations in the sector have noticed the sentiments in society against labour migrants, they decided to try to convince people otherwise by telling how much labour migrants are needed for the segments in the labour market that are short in supply of labour.

Even though the employers' associations in the Netherlands express that they are in favor of regulation of the TWA sector in order to create a level playing field and to get rid of dishonest TWAs, they reflect the typical employers' perspective of deregulation in a sense that they state that the regulation needs to happen in a way that put as little pressure on employers as possible.

The employers' associations in the sector express that their biggest concerns of creating a level playing field and targeting dishonest TWAs lies in effectiveness of inspection organizations. According to them, inspections should be increased and more effective in order to create a healthy sector.

In this context, the sectoral employers' associations have lobbied for keeping the possibility of deduction of costs from the statutory minimum wage in the WAS. They however found

the trade unions opposed them, which led to the outcome that deductions are now limited, however still possible. Their argument was that by keeping it possible under the requirement that everything should be put on the salary slip would make things controllable. For a similar reason they lobby for the introduction of an hourly minimum wage.

Overall, employers' associations in the Netherlands are in favour of regulating and protecting the employment conditions of labour migrants in order to create a level playing field for employers: they want to remove the wage element and other employment conditions from the competition between employers. This means that indeed, employers' associations in the Netherlands are in favour of some regulation and have their own rationale why this is good for employers. Regulation should however put as little a burden on employers as possible.

3.4 The planning phase: Opinions and views of trade unions

Expectations based on the literature

Traditionally, trade unions in Western Europe have not been in favour of the inflow of labour migrants, because they feared for displacement of incumbent workers and a downward pressure on wages and employment conditions (Krings, 2009). Nevertheless, with the accession of the new member states to the EU, trade unions in the old member states did not oppose the opening of their labour markets for labour migrants. Instead, they advocated better employment conditions for migrant workers (Lillie & Greer, 2007). According to the literature, the reasons given by the trade unions are that inferior conditions for migrant workers are 'morally not right' and 'undermine employment conditions of all workers' (Krings, 2009). Unions differ, however, in the extent to which they focus on the preservation or improvement of employment conditions for labour migrants.

To explain the extent to which trade unions actively advocate the interests of labour migrants, Penninx and Roosblad (2000) have developed a theoretical framework. This framework has recently been revised in the light of current migration and labour market developments, including the accession of new member states to the EU (Marino et al., 2015). The framework describes the position of trade unions in terms of external and internal factors (Marino, 2012). The scope of their action regarding the free movement of labour is described in terms of dilemmas. The way that unions respond to these dilemmas is shaped by the context (Marino, 2012). In particular, four factors are important: 1) the power of trade unions in the particular industrial relations system, 2) the state of the economy and the labour market (labour shortage or unemployment), 3) social trends (public discourse, legislation, and other social actors), and 4) immigrants' characteristics and public perceptions of these characteristics (Penninx & Roosblad, 2000). Recently they have added a fifth factor: 5) internal trade union dynamics (Marino et al., 2015).

The first explanatory factor points to the fact that the industrial relations system does not only affect the extent to which a trade union can influence policies, but also affect their opinion. There may be a negative relationship between the institutional embeddedness of trade unions (industrial relations system) and their advocacy of employment rights for labour migrants: in those countries and periods where and when unions are most institutionally embedded, they tend to focus less on migrant workers' issues and vice versa (Marino, 2012). This is explained by the fact that fully institutionally embedded unions do not need the support of migrants and are able to protect the interests of the incumbent workers (or at least think so) without organizing migrant workers. In the Netherlands, where the unions have been strongly institutionally embedded for a long time, *we expect them to have a less inclusive view regarding labour migrants and to have exerted little effort to actively include them in their organization.*

The second contextual factor is the state of the economy and the labour market. According to Marino et al. (2015), the more favourable the labour market conditions are (low unemployment, large number of vacancies), the less labour migrants will be considered a threat to the employment conditions or labour market opportunities of the incumbent population, and the more positive unions will be regarding labour migration. Since the labour market situation deteriorated considerably after the Credit Crunch of 2008 and the ensuing recession, it can be expected that *trade unions had a more positive attitude regarding the rights of EU labour migrants before the recession years (until 2008) and after the recession years (since 2014) than during the years of the recession (2009-2013)*.

As suggested by contextual factor 3, the public debate about immigration and migrants may also affect the position of the trade unions. Since unions (pretend to) represent a large part of the population, the predominant views and debates on migration will influence the views expressed by trade unions. The fourth factor sharpens this argument further by implying that immigrants' characteristics or, perhaps more importantly, public perceptions of these characteristics may determine whether migrants are perceived to contribute to the economy and the support of the welfare state or to be a potential burden for the economy and the welfare state. Trade unions can therefore be expected to base their position vis-à-vis labour migration partly on *public perceptions regarding the contribution of EU labour migrants to the economy and their use of social provisions.*

Finally, internal trade union dynamics may affect the position unions take in the debate on migration. Marino et al. (2015) point in particular to the role of internal communication and decision-making processes. If unions have strong bottom-up processes they will more readily adapt the views of their rank-and-file, while top-down organized unions will be more strongly influenced by the views of representatives of employers' associations and the government with whom they consult. Although Marino et al. (2015) claim that bottom-up communication will facilitate the inclusion of (the interests of) migrant workers, this would

more likely depend on the dominant views of union members compared to the views of the representatives of the employers and the government. In the Netherlands, unions are organized top-down rather than bottom-up. We therefore expect *their views to resemble more strongly the views of employers' representatives and the government than the views of their members.*

Views on the regulation of employment conditions and the approach taken

The trade unions in the Netherlands, without exception, including those active in the TWA sector, state that they are in favour of inter-European labour migration. They nevertheless observe two issues on which they want to act: competition between incumbent workers and labour migrants for the same jobs and bad employment conditions for labour migrants. According to them, the best solution for both issues is ensuring equal treatment for all workers. First, this approach would lead to better (= equal) employment conditions for labour migrants. Second, it avoids competition based upon employment conditions and therefore reduces the competition between native workers and labour migrants, or at least it makes it a fair competition by removing financial incentives for employers to hire labour migrants. In addition, this approach also limits overall downward pressure on employment conditions, which might result if employers can hire labour migrants under worse conditions, which would put pressure on other groups of workers to also accept worse conditions in order to keep their jobs. According to the representatives of one of the large trade unions, this latter issue is overall actually a bigger problem than direct job competition (although the specific problems vary largely between sectors).

Although demanding equal employment conditions is the main focus of trade unions to reduce competition between incumbent workers and labour migrants, reducing the number of labour migrants is also considered a means to this end. For example, the reduction of labour migration might be a welcome effect of the improvement of employment conditions in the countries of origin, as it reduces the incentive (push factor) for workers in these countries to migrate to Western Europe. Creation of a level playing field for all workers by ensuring equal employment conditions may also contribute to reducing labour migration, since it makes hiring labour migrants more costly for employers. However, according to the trade unions this is only a side effect rather than the main goal.

Once labour migrants have entered the Netherlands, the trade unions regard them as fellow workers. This means that they also try to recruit them as members of their organizations, although they admit that this is really hard for labour migrants and for workers in the TWA sector, let alone for labour migrants in the TWA sector. This is explained by the temporary character of the work and the everyday threat of being fired that workers feel. The unions also observe that this group of workers often has a vulnerable position on the labour market. They consider it the responsibility of the trade union to offer help to those that are not treated well by their employers.

The trade unions note that in the transition period from 2004 until 2007, labour migration was not yet an issue that caused much debate within their organizations. The focus lay mainly on the inclusion of arriving labour migrants as members of their organization. In these early years, when the new member states had only recently accessed the EU, some of the trade unions at the national also promoted the development of trade unions in the accessing countries. In their view, this would help to improve the employment conditions in the accessing countries and would therefore weaken the incentives for workers to migrate, thus limiting the number of labour migrants and the potential for job competition.

For those labour migrants already employment in the Netherlands, trade unions developed services specifically for this group. Examples are helpdesks with Polish speaking staff (the largest group of labour migrants in the Netherlands) and practical support, such as finding a new employing temporary work agency when labour migrants are fired by another one because of complaining about their employment conditions.

Trade unions also lobbied at the national level for equal employment conditions. As a result, the nationwide social agreement concluded by the social partners and the government in 2013, led to the WAS legislation. They also lobbied for the disentangling of housing and employment relations by arguing that the deduction of housing costs from the earnings of a labour migrant should no longer be possible.

> '*It has to be disentangled, when you lose your job you need to have a renting agreement with the social housing office, not with your former boss. So you can at least stay in your own apartment. TWAs can in that case just be the mediator without being the agency that provides the housing*' (trade union 1).

Trade unions also lobbied for a level playing field and equal employment conditions at the sector level. This led, for example, to the inclusion in the collective agreement of the TWA sector of the clause that agency workers have to be paid the prevailing wages of the user company from day one. Moreover, they lobbied, successfully, for adding elements of the collective agreements to the SNA certifying system. Nowadays, elements of the collective agreement are included in the certificate.

Future approach suggested

The trade union representatives state that the problems resulting from the posting of workers should be tackled at the European level. Therefore, they also lobby at this level together with trade unions from other countries.

For the problems they observe regarding enforcement, the trade unions suggest to upscale the inspectorate SZW at the national level. They see most benefit in improving the existing situation of self-control in the TWA sector rather than re-introducing a licensing system, because '*the whole sector suffers from TWAs breaking the rules*' (trade union 3) and

therefore both trade unions and employers' associations have an interest in a well-functioning system of self-control.

Justification of their views: the explanatory factors

With reference to the five factors that affect the position of trade unions regarding migrants, this section attempts to explain the position that the unions have taken with respect to the employment conditions of labour migrants in the TWA sector.

In general, all trade unions stress that they support the view that labour migrants should be seen as colleagues and not as competitors. Therefore, they also attempt to include labour migrants as members. At the same time, they acknowledge that their lobby for equal employment conditions may not always be in the best interest of labour migrants, since it may be more difficult for them to be hired when the equal pay for equal work principle applies. A trade union official expressed this ambivalence regarding the plea for equal employment conditions:

> *'Our most important motive is against displacement. But it is rather complex. Because if you have a level playing field, there is little attraction in hiring labour migrants for employers except for vacancies that are hard to fill'* (trade union 2).

Therefore, the trade unions acknowledge that the creation of a level playing field regarding employment conditions might be more in the interest of native workers than in the interest of the labour migrants. This may be related to the fact that the Dutch unions are strongly embedded in the Dutch industrial relations system, irrespective of the low union density rate (currently, only 16 per cent of employees is member of a union). Therefore, Dutch unions have not a strong incentive to recruit more members among migrant workers and do not tend to give equal priority to the interests of (potential) migrant members as to the interests of their current, largely native-born members.

According to the trade unions, their general opinion regarding EU labour migrants has not changed during the recession years. Nevertheless, they acknowledge that the simultaneous occurrence of the crisis and the inflow of labour migrants has affected the line of reasoning within their organizations. They refer to this combination as something that '*forced us to think about the changes going on in the world of work*' (trade union 1) and as a development that has made it increasingly difficult for them to realize improvements in employment conditions:

> '*I think that the development of employment conditions has come to a standstill in the Netherlands over the last couple of years. That is also related to the economic crisis, not only labour migrants. It is hard to say what causes it. The crisis has not helped…'* (trade union 1).

Although the public debate in the Netherlands has been increasingly critical about migration, including CEE labour migration, and voices have been raised to stop it, the trade unions tend to take a different point of view. According to them the solution is not to close the borders or to reduce the possibilities for labour migration, but rather to create a real level playing field for all employees. The public debate, and the Brexit and the election of president Trump, which they see as the result of this debate, only strengthened their sense of urgency:

> *'It needs to happen now. No unfair competition, no modern slavery. That has been our focus already for a long period. But now we have arrived at this point in time where we say it needs to happen and it needs to happen now. Look at what is happening, the Brexit, the Euroscepticism, we feel the urgency'* (trade union 1).

This shows that the position of the trade unions is affected by the public debate about migration, but is not simply a reflection of that debate. To the contrary, the unions have explicitly chosen to take a stand against the anti-migration voices in the public debate.

The trade unions officials also acknowledge that their views are not necessarily a reflection of the views of their members. Above all, they state that the views of their members are very diverse as they reflect the opinions that can be found in society. Nevertheless, they recognize that in particular sectors, the views of their members can be more coherent and more opposed to the view that is expressed by the trade union. This is mainly the case in those sectors where a lot of labour migrants work:

> '*For a certain group of people it has been like suddenly the Poles arrived and they have a big impact. They replace you because they work cheaper, longer hours and in the weekends. That change is hard. It is the same with the economic crisis and the robotizing of work*' (trade union 1).

The approach of the trade unions in these sectors is '*to lobby more strongly. Insofar we succeeded in getting enough support for an equal employment conditions approach rather than an approach for lobbying against migration*' (trade union 2) or '*to get a conversation with the members about things like labour migration, because the solutions we see is not in their first line of thought'* (trade union 2). This also means that the general strategy of the trade union is decided upon up at the top level. It is then pushed down the line to get comments from those lower in the organization, after which some alterations are made before the final decision is made. This indeed seems to indicate that the well embedded position of trade unions in the institutional system of the Netherlands implies that trade unions develop their position more or less independently from the opinions of their members.

We conclude that the position of the trade unions regarding labour migrants can only partly be explained by the factors that are stipulated in the theoretical framework of Penninx, Roosblad and Marino. The institutional embeddedness and the internal trade union

dynamics seem to play a role, but the impact of the crisis, the general debate on migration and the views of their members only had a very limited effect.

3.5 The implementation phase: national and sectoral approach

If we summarize, the planning phase has led to the introduction and future alteration of legislation at the national level combined with an approach of supporting the self-regulation of the sector. At the sectoral level, the sector is regulated through (al legally extended) collective agreements of which the compliance is controlled by a sectoral inspectorate organization (SNCU) and a private certification scheme (SNA). We will now describe the implementation of these elements.

National level policies and regulation

There is chain responsibility for employers with regard to taxes since 2007 and for wages since 2015 (part of the WAS). Both employers' associations and trade unions in the TWA sector are happy with these responsibilities because it reinforces a healthy chain and reduces pressure on wages from user companies. The employers' associations observe that is works fine for wages at the moment caused by the fact that employers were caught on mistakes and violations in the years after the introduction. This makes that employers nowadays pay more attention to whether companies they work with are reliable in paying their tax or only work with those TWAs that are SNA certified, because this gives them a legal dispensation. The employers' associations question nevertheless whether chain responsibility for wages works just as well. They emphasize that it should be reinforced effectively by having a real chance of being caught for the user company if the payment of wages by the TWA is incorrect. According to all actors, however, this chance is currently rather small.

> *'The problem with the user companies is also the chance that they get caught: we have regulated their responsibility for what is happening further down the chain, but if you have a very small chance of getting caught…'* (trade union 2)

Both the employers' associations and the trade unions are dissatisfied by how the possibility to deduce costs from the (minimum level) wages of temporary agency workers has turned out in the WAS. However, in line with their initial wishes, their complaints are opposites. In the discussions about the WAS, the first idea was to prohibit deductions below the minimum wage level completely. This was in line with the wishes of the trade unions. Employers' associations, however, wanted to keep this possibility open and lobbied for this possibility together with the requirement of putting all deductions on the pay slip: an option they saw as a better solution to the problem. They succeeded partially, as deduction from

the minimum wage are in the WAS partially allowed under strict conditions. Both the employers' associations and the trade unions feel this is not an ideal solution, employers' associations would like to have all freedom to deduct costs under the requirement of being fully transparent whereas trade unions would like there to be no possibility to deduce costs from wages.

> *'We are happy it is still possible, but I believe we did not move into the right direction. We believe it would be much better if everything would be visible in a very transparent way on the pay slip. Now this is only possible for part of the costs and the rest needs to be paid cash or whatever…. In this way we cannot see what is really happening and also not control it.'* (trade union 1)

Sectoral policies and regulation

All actors in the TWA sector are happy with the principle of self-regulation with the SNA certification at the heart of it. The trade unions have successfully lobbied for the inclusion of elements from the collective agreement in the certificate. They were successful because they found minister Asscher of the Ministry of social affairs and employment at their side stating that the certificate was not distinctive enough in its old form without the elements of the collective agreement. This led to the addition of several aspects of the collective agreement. Nevertheless, the trade unions decided early 2017 to leave the SNA because they were unhappy about the developments going on. Important elements of disagreement were about whether the certificate should be limited to TWAs only (trade unions preference) or extended to other forms of flexible labour such as pay roll and mediation of the self-employed (employers' preference). Moreover, the trade unions were disappointed in the effectiveness of the certificate because they focus on how things are regulated and set-up on paper (procedures) rather than actual practices going on and because they felt the system protected user companies too much as they were protected against their claims because they used certified agencies.

> *'They do not focus on the correct payment of wages, but rather on whether there are procedures that are likely to lead to the correct payment of wages'*. (trade union 2)

Employers' associations are on the other hand still happy about the SNA and feel it is effective in regulating the TWA sector.

> *'We feel the SNA is effective. Sometimes there are certified agencies that are caught by the labour inspection but if you look at it in more detail you see that these agencies are one time offenders whereas uncertified agencies are often structural offenders affecting a large group of agency workers. We therefore have the feeling that the certification system is effective.'* (employers' organization 2)

If we then turn to the ministry of social affairs and employment, they state that they like the principle of self-regulation in the sector and the principle of the certifying system of the SNA. They do however feel that it would be more effective if it would be stricter when

wrongs are detected: at the moment TWAs get much room and time for improvement before they are eliminated from the register. However, they see it as the responsibility of the sector and the SNA to further improve the certificate.

Information campaigning

FairWork is a central organization in actually informing labour migrants about their rights. The government closely works together with them. Fairwork actively seeks out labour migrants in the Netherlands to inform them. Most importantly, they use cultural mediators (employment on a voluntary basis) that themselves have a migrant background and who actively inform their community about labour rights and the risk of labour exploitation. They do so by going to places where a lot of EU labour migrants come together or online communities (Facebook, for a, chat). Whenever they run into violations of the collective agreement, they give this information to the SNCU. They also help individual labour migrants in abusive situations and help them to put down claims. Other ways through which they spread information is the Dutch embassy in Poland and social organizations in Poland. They try to evaluate how to best get the information to the different target groups: using which media.

> *'The medium used is very important. We continuously experiment what channels we can best use for different target groups. That really varies. The Chinese are focused on written information whereas the Polish need the information to be connected to something more personal: Lady Hanka or a radio interview. But it is trial and error and using different channels at the same time. And keep on doing that. Don't think we give them a leaflet and we are done. You have to show them that the system can be trusted. Having the information about your rights is just the first step. Claiming you rights is something different. For doing that you need the trust that your claim will be well received.'* (Fairwork)

The ministry of social affairs and employment mainly works through a leaflet and they actively work together with Fairwork to spread information. In the past, the government has also worked with attaches in the sending countries, which they saw as contributing a lot to having a good relationship with the authorities in the sending countries. They however stopped doing this in most countries, although the collaboration with the embassy in Warschau still continues.

3.6 The evaluation phase

The regulation of the TWA sector with regard to the regulation and protection of employment conditions of labour migrants is continuously evaluated. The possibility to reintroduce the official licensing system is the leverage used. The evaluation is put down in briefings of the ministry to the House of Representatives. The SNA certification system is central to the current system of self-regulation and therefore central to the discussion: its

effectiveness was discussed after the social partners put down in the social agreement of 2013 a plan to improve the sector. This was the clue for the ministry to call for the inclusion of elements of the collective agreement in the certificate in order to increase its distinctive power. Moreover, a recent study by Regioplan (Visee et al., 2015) again evaluates the effectiveness of the certificate by looking at whether certified TWAs violate the labour law less often that those that are uncertified. The outcomes of this study, that certified agencies are less often reprimanded by the national labour inspection, but that this is not as low as one would expect (Visee et al., 2015), are not yet followed up by policy alterations at the national or sectoral level. There is however a continuous dialogue to further develop the effectiveness of the certification scheme.

A recent important legal instrument to regulate the TWA sector is the WAS. This legislation is going to be evaluated in 2018. After this evaluation the plan is to keep up a yearly monitoring of the law.

Besides these official evaluations, there are some evaluations and suggestions that are shared among the different actors in the sector but are not the result of an official evaluation. A first example is that they all agree that an effective inspectorate at the national and sectoral level is essential in the TWA sector, but also conclude that lack of inspection is one of the biggest issues at the moment. A way mentioned to improve this would be to systematically upscale the inspectorate SZW. A second example is that they all agree that there has been a lot of criticism on the TWA sector for the wrongs detected with regard to the housing of labour migrants by TWAs and the vulnerable position it means for labour migrants to be housed by their employers. All actors in the sector recognize that there are problems and that the situation is indeed vulnerable. They also agree that housing should not be a business model for TWAs.

> *'If you ask us what it should look like in the future, we say that the labor migrants preferably are not housed by TWAs. We see it as a temporary solution that has become something institutionalized in some parts of the market. But we feel we have to get rid of it at some time'.* (trade union 2)

A third shared evaluation between the actors is, is that it is hard to remove the people behind the dishonest TWAs from the market. A shared frustration is, is that they know who they are but are hard to get rid of because of the complex administrative constructions they use.

One thing the unions and the employers' associations do not agree about, are the things that need to change at a European level. The trade unions pressure for changes in rules and legislation at a European level with regard to the possibilities to use A1 declarations and to a change of the posting of workers directive. The trade unions do see difficulties, however, to realize these wishes at a European level, with as the main obstacle the opposite positions on these matters of the trade unions in the Western European counties and those in the

countries that accessed the EU in 2004 and 2007. Where those in the Western European countries want rules and regulations to avoid competition within their countries on wages and employment conditions, those in the other countries see more benefit in keeping the possibilities for this kind of possibility open because it generates employment possibilities for labour migrants from their countries in the Western European countries.

4. Summary and conclusions

In line with the triparty system in the Netherlands, there are three main types of actors involved in the regulation of the TWA sector: the government, employers' associations and trade unions. They all agree that it is important to safeguard equal employment conditions for labour migrants and incumbent workers in the sector in order to ensure a level playing field and to prevent crowding out. They recognize that there are a range of opinions about this matter in society, with an increasingly louder voice for restricting migration, but they all agree doing so would be unwanted in the case of internal migration in the EU. They see the free movement of labour as a basic right and equal employment conditions as the pathway to the desired outcome. A view that is broadly shared by citizens in the Netherlands who tend to support that notion that once labour migrants are there, they should be treated equally to all other workers. Nevertheless the position of the employers' association is not completely in line with that of the government, which follows more the line of the trade unions, in a sense that employers' associations would like to attract more migrants to be able to have a large pool of employees to fill open positions on the labour market whereas the government and trade unions do not necessarily want to encourage labour migration. They neither encourage or discourage it and chose to focus on reducing labour exploitation instead.

There seems to be a consensus among the policy making actors that at the current moment a regulation of the sector at a lower institutional level is the preferred situation. In practice this means self-regulation of the sector backed up by legislation and private-public cooperation between SNA, SNCU, inspectorate SZW and the tax office. The baseline to which all TWAs should comply is set by labour legislation and the collective agreement legally extended to the sector. Compliance is reinforced by the inspectorate SZW (labour legislation), the tax office and the SNCU (collective agreement). In theory, labour legislation and the collective agreement together should uphold employment conditions and wages, especially because the collective agreement now ensures wages on the level of the user company from day one. However, exploitation of labour migrants and the violation of the principle of equal employment conditions are still observed. Underling problems mentioned by the policy making actors are lack of knowledge among labour migrants about their rights,

the very existence of dishonest TWAs, lack of knowledge about rules and regulations among TWAs, lack of capacity of inspectorate organizations, it being beneficial to cross the line between legal and illegal, TWAs that make use of legal constructions to avoid having to provide equal working conditions and a lack of knowledge among user companies about which TWAs are honest. In response to these problems, the policy making actors came up with statutory regulation cutting of some legal constructions used by TWAs and a private certification scheme so honest TWAs would be able to distinguish themselves, which also served for user companies as a possibility to ensure using honest TWAs. This private certification scheme was backed up by legislation by removing chain responsibility for those companies using TWAs covered by the private certification scheme. Moreover, various actors set-up information campaigning among labour migrants to enhance their knowledge about their rights. Biggest problem the policy making actors still observe in the sector in the lack of capacity within inspectorate organizations, making it too easy for TWAs to get away with unwanted practices and for dishonest TWAs to exist. Taken together, the overall policy approach means that the policy making actors distinguish three types of target groups in the sector when it comes to ensuring equal employment conditions: 1) TWAs, 2) user companies, 3) migrant workers. They have separate (implicit) notions about each group.

First, the notion that policy making actors use about TWAs is based on the idea that there are different types of employers (TWAs) active in the sector with different goals and underlying values. The variability they consider is the outcome in terms of behaviour of these different types of employers: 1) honest TWAs, 2) ignorant TWAs, violating employment conditions because they lack knowledge, 3) TWAs that operate borderline legal and sometimes cross the line, 4) dishonest TWAs. This distinction is used to design a different policy approach for each group. For each approach, its own desired outcome is set. First, the dishonest TWAs are targeted by the formulation of labour legislation that intends to make it harder to earn money through often used legal routes leading to exploitation. Moreover, dishonest TWAs can be sanctioned when caught by inspectorate organizations at the national and sectoral level. Upon evaluation of these policies, policy makers conclude that there are not enough inspectors to make it sufficiently effective. Second, for those TWAs that chose to operate on the fine line between legal and illegal, an active inspectorate organization is seen as a good way to avoid them crossing the line towards illegal. Third, for the TWAs that violate the law/collective agreement unintentionally, the SNCU and employers' associations adopted an approach of educating them by providing information. These organizations state that as an evaluation they look at the nature of the questions they get which indicate an increase in the knowledge level of TWAs over the years. Fourth, for honest TWAs a private certification scheme, backed up by legislation, was set up in order for them to be able to mark themselves as honest. The scheme provides information to user companies that the TWA is committed to comply with certain standards. Policy makers conclude that this scheme is only effective when TWAs that are covered by it really comply with the labour law and collective agreement. In an evaluation study this was put to the

test. The results of the evaluation study are indecisive which according to policy makers makes it hard to draw any conclusions. The question therefore remains among the policy makers and inspectorates how the different groups can be distinguished ex-ante: do, for example, the TWAs that are a member of an employers' association or hold a private certificate indeed not belong to the group of dishonest agencies?

Second, the notion policy makers have about user companies is that they assume that user companies are mostly honest employers that would avoid using dishonest TWAs when they are able to find out which agencies are dishonest. They acknowledge that in some sectors of the labour market, for example agriculture, the margins are very small and therefore there is a greater demand for cheap labour. This situation forms a risk for exploitation. Moreover, policy makers recognize that it can be hard for user companies to know whether they make use of honest TWAs. The diversity in user companies is addressed by formulating labour law that makes them responsible for what happens further down the chain. This pushes user companies that might initially less inclined to do so towards using honest TWAs. Moreover, the private certification scheme serves as a mean for user companies to be able to identify honest TWAs.

Third, policy makers take the diversity among labour migrants into account in terms of the languages they speak and hence in which they should be addressed. Moreover, they use the notion that labour migrants will relate the working conditions and the wages they receive in the Netherlands to what they would be able to get in their own country. Policy makers recognize that labour migrants will not always regard violations of the labour law in the Netherlands as exploitation. After all, it might be still better than in their own country. In the implementation phase, this conclusion is translated into the conclusion that a pro-active approach of inspectorate organizations (both national and sectoral) is needed because labour migrants cannot always be expected to file complaints (meaning that a complaint based system would not be effective enough). The actual active approaching of labour migrants is mostly done by social organizations, such as Fairwork rather than the policy making actors themselves (although they do spread their own leaflets). They, for example, recognize diversity among labour migrants in the way that information can best be communicated to different groups of migrants in order to be effective. Moreover, the variation in labour migrants was addressed in the implementation phase by providing information to them in their native languages.

The policy making actors have diverging views about how they feel the regulation of the sector works out in practice. They all observe problems with dishonest TWAs, but where employers' associations interpret those as individual incidents; trade unions interpret them as structural failures of the system. Basis for this different views are a fundamentally different ideas of what a decent labour market should look like: employers' associations view the very existence of temporary work as something good and valuable whereas trade

unions see it as something they would like to reduce as much as possible. This fundamental difference in opinion is the ground for quite some tension between actors in the sector. Moreover, the employers' associations and trade unions also have very different opinions about the effectiveness of the SNA private certification scheme. The trade unions recently left the SNA board because they felt it lacked effectivity whereas employers' associations still feel it is a good way to regulate the sector. Condition for the different viewpoint of the actors in the sector about how fundamental the problems in the sector are is also that nobody really knows the extensiveness of them and it proofed hard to make a good estimate.

Case 2

The United Kingdom

1. Context and historical background of the policies

This second case study focuses on the course taken by social actors – trade unions and employers' associations – and the government in the United Kingdom (from now on referred to as UK) regarding the regulation of the TWA sector in order to uphold employment conditions after the arrival of labour migrants from the countries that accessed the EU in 2004 and 2007. Approaching 2004, the common position of government, trade unions and employers' associations was to grant full access to labour migrants from these countries immediately (Wright, 2010). The overarching argument was the need for labour (Krings, 2009; Menz, 2010). The geographical component (the accessing countries are no neighbouring countries) and the predictions that only between 15,000 and 25,000 workers from these countries would enter the UK each year played a role too in the decision to immediately grant full access (Caviedes, 2014). However, when the accession date came close and it became clear that the UK was one of only three countries granting immediate access, the public opinion shifted somewhat towards opposing immediate full access (Wright, 2010). Nevertheless, the government decided to move forward, because it believed that the country would generally benefit from CEE labour migration (Wright, 2010). However, under pressure from the press and the conservative party access to welfare benefits was restricted and registration with the Worker Registration Scheme (WRS) was required during a transition period of seven years (Krings, 2009; Sporton, 2013). The inflow of migrants into the UK following the accession was larger than expected and resulted in a shifting public and business mood. This led the government to impose a transition period of seven years when Romania and Bulgaria accessed the EU (Caviedes, 2014; Wright, 2010). During this period, a permit was needed to work in the UK for Bulgarians and Romanians. The permit system was matched to the estimated amount of immigrants needed on the labour market. After this period, labour migrants from these countries got full access to the UK labour market.

In the remainder of this chapter we focus on the regulation of the Temporary Work Agencies (TWA) sector until mid-2017 to understand the choices made regarding the regulation of the labour market as a response to increased intra-European migration. We choose the TWA sector as a case study because it employs many CEE labour migrants.

1.1 Short description of the policy

CEE labour migrants in the TWA sector

Estimates of the share of CEE labour migrants that work for TWAs in the UK vary between 40 and 50 per cent (Green, Atfield, Adam, & Staniewicz, 2013). There is little information

available about the sectors to which temporary agency workers are outsourced: they are registered as working in the 'administration, business and management sector' in the data that are available from the Workers Registration Scheme, which is the main data source on CEE labour migration to the UK (Home Office, 2009; McCollum & Findlay, 2011; McCollum, 2012). Studies indicate that they are overrepresented in low-skilled jobs in both producer and consumer services (McDowell et al., 2008), and that they are predominantly recruited 'for jobs in food production, driving and logistics, engineering and light industrial manufacturing' (Jones, 2014). According to the Recruitment & Employment Confederation (REC), as expressed during the interview conducted for this report, labour migrants in the TWA sector are largely employed in hospitality, warehousing, the industrial sector and agriculture.

Type of actors involved in the regulation of employment conditions in the TWA sector

The industrial relations system in the UK can be characterized as a system of 'liberal pluralism' (European Commission, 2008). Business and government share the belief that the labour market should be regulated lightly in order to uphold maximum flexibility (Scott, 2007). At the national level, the social partners' involvement in policy making is characterized by ad hoc consultation. The government can formulate policies without significant societal input (European Commission, 2008). In the UK context, most social dialogue takes place at the company level (Voss et al., 2013), just as most union activity (Lillie & Greer, 2007). The social actors pursue primarily their own group interest in a liberal and voluntarist way and collective agreements cover only a minority of the employees (around 30%). Most collective agreements are workplace based. Nevertheless, both trade unions and employers' associations have peak level organizations. The overarching employers' association, of which sectoral employers' associations are a member, is the 'Confederation of British Industry's' (CBI). The 'Trade Union Congress' (TUC) fulfils this function for trade unions. It has 60 affiliates from across different sectors. To illustrate the lack of structural involvement of the social actors in policy making, one of the experts interviewed said: '*TUC or any other trade union, have no regular meetings with the government, even with Labour that would not be routine'*, although the trade unions add to this that there are regular meetings with secretaries of state and opposition MP's. Also the makeup of the ruling government does make a difference: for trade unions it is easier to request a meeting with the employment minister under Labour than under another government. Nevertheless, the involvement of the employers' associations is bigger than that of trade unions regardless of the government in office.

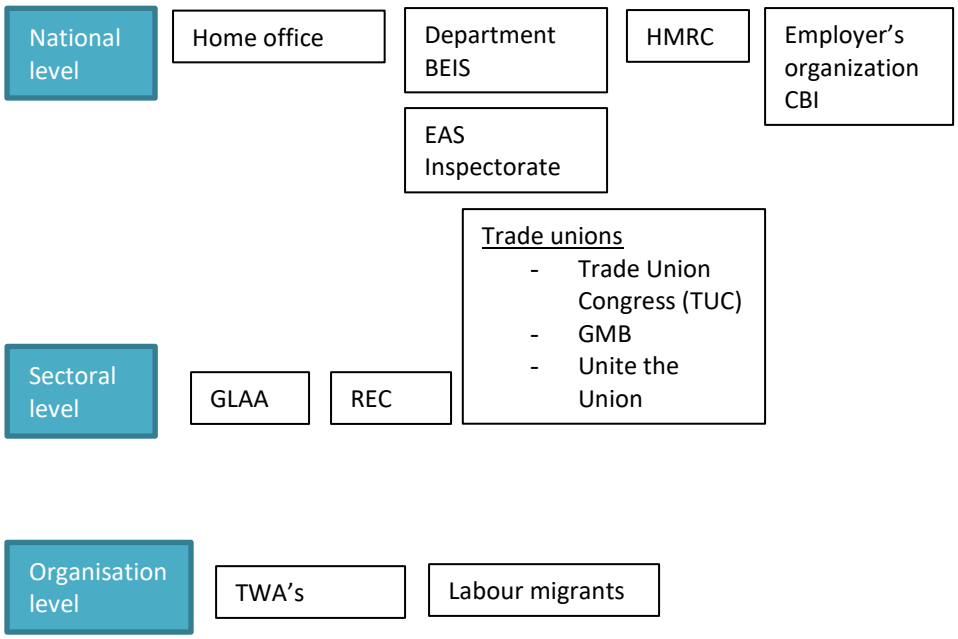
The department of the UK government that is involved in labour legislation is the 'Department for Business, Energy, and Industrial Strategy' (BEIS). The 'Home Office' of the British government is responsible for migration issues and was responsible for the registration of EU labour migrants during the transition period.

There are various inspectorate organizations, each responsible for a specific part of employment legislation. Three of these are most important for the context of TWAs. First, the 'Employment Agency Standards Inspectorate' (EAS) is part of the BEIS department and is responsible for ensuring that employment agencies comply with the Employment Agencies Act of 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations of 2003. Second, the 'HM Revenue and Customs' (HMRC) is responsible for reinforcing the minimum wage. Third, the 'Gangmasters and Labour Abuse Authority'[16] (GLAA) licenses specifically those agencies active in the agricultural and shellfish sectors. Its role was recently expanded along with a move to the Home Office department of the government: it now has authority to investigate criminal offences related to a combination of breach of the minimum wage[17], TWAs and a modern slavery offence in other sectors besides the agricultural sector. In the next section their role will be discussed more extensively.

The minor involvement of the social actors at the national level is reflected in the rudimentary social dialogue in the TWA sector (Voss et al., 2013). There are no collective agreements specific for the sector, which reflects the preference of the sector as well as of the government to minimize regulation in order to uphold maximum flexibility (Håkansson et al., 2009). Nevertheless, independently from each other, social partners try to regulate the TWA sector. The 'Recruitment and Employment Confederation' (REC) is the employers' associations for the TWA sector. They run a private certification scheme for the sector. The REC is a member of the CBI that does the largest share of the lobby work at a national level, although there is also direct lobbying from REC. Trade unions try to organize the temporary agency workers, mainly at a workplace level. There is no specialized trade union for the TWA sector itself. Unions try to organize agency workers along with other workers in their workplaces. A few large unions cover a wide range of sectors rather than being sector-specific, the most important are 'Unite the Union' and the 'General, Municipal, Boilermakers and Allied Trade Union' (GMB). *Figure 1,* gives a graphic overview of the actors involved in the regulation of employment conditions in the TWA sector in the UK.

[16] Used to be the Gangmaster Licensing Authority (GLA)
[17] The scope of this report end smid-2017.

Figure 4: actors involved in the regulation of employment conditions in the TWA sector



Regulation of employment conditions in the TWA sector

Agency workers are entitled to general employment rights that apply to workers[18] in the UK. In addition, the sector is regulated by some specific laws.

For a long time, the TWA sector was regulated by the Employment Agencies Act of 1973 and the Conduct of Employment Agencies and Businesses Regulations of 2003. Most importantly, these laws protect job-seekers and temporary agency workers in terms of rightful pay (paid holidays, at least the national minimum wage, no unlawful deductions from pay, no job seeking charges), working time and a requirement of written terms of employments. These laws are reinforced by inspectorate organization EAS. The European directive of Temporary Agency Work (2008/104/EC) made the introduction of additional legislation necessary, as it required domestic implementation by December 2011 at the latest. The UK had long opposed this bill in the European context (Keter, 2010). However, the draft proposal of the European directive of Temporary Agency Work at EU level combined with the introduction of Andrew Miller's Private Members Bill (Temporary and Agency Workers Bill, 2007/2008) at the national level, which states that agency workers should be entitled to the same basic employment and working conditions as a comparable direct worker, motivated a national agreement on temporary agency work between the TUC and the CBI in 2008 (BERR, 2008; Maroukis, 2015). The parties agreed that the principle of equal pay and equal treatment (compared to permanent workers in the same position) should come into effect after 12 weeks of continuous employment at the same company in the same – or a similar – position (Maroukis, 2015; Voss et al., 2013). After the UK ensured

[18] In the UK a distinction is made between workers and employees. Employees are entitled to more rights than workers (see for more information: BEIS, 2015).

that the derogation from the 'day one' rights provided for in the draft directive was possible also under the European Directive, the directive was passed by the European Parliament in June 2008 (Keter, 2010). The 'Swedish derogation act' as laid down in the European directive gives an additional opening to deviate from the equal pay principle after 12 weeks. This is only possible when agency workers are offered a permanent contract by a TWA and the TWA also pays the worker between assignments (a zero-hour contract does not count). In the UK context it was decided that the pay in between assignments should be at least half of the pay received during the previous 12 weeks of assignment and it should be above the National Living Wage.

Recently, a review was executed, called The Independent Review of Employment Practices in the Modern Economy (also referred to as the Matthew Taylor Review). The review examines current employment practices and whether and how they need to change to keep pace with 'modern business models'[19]. The practices of TWAs are part of this review, but the review is not limited to it. The review was published on July 11, 2017 (Taylor et al., 2017). An important conclusion for the TWA sector is that '*Government must take steps to ensure that flexibility does not benefit the employer, at the unreasonable expense of the worker, and that flexibility is genuinely a mutually beneficial arrangement*.' (Taylor et al., 2017: 44). Moreover, the review points out that the rules on the information that should be provided to agency workers before they accept work, need to be reviewed (Taylor et al., 2017: 46). Moreover, the review suggests that temporary agency work should be used with more care by companies: they should not '*use agency workers over a longer period of time as a substitute for effective workforce management.*' (Taylor et al., 2017: 48). The review suggests that temporary agency workers should get the right to request an employment contract directly with the user company when they have been engaged with the same hirer for a year. The review also suggests that the reinforcement of employment rights should be improved. Most importantly for vulnerable workers is that the review states: '*Vulnerable individuals should be able to rely on the state to protect them, challenging unlawful practices and taking action to enforce rights. Only then can we ensure that unscrupulous businesses are not able to use exploitation as a technique to gain competitive advantage.*' (Taylor et al., 2017: 57). Importantly for TWAs, the review suggests to remove the 'Swedish Derogation Act' from the Agency Workers Directive. The UK government announced that it '*will now be engaging with stakeholders across the country, including those who represent employers and employees, to understand their views ahead of publishing a full government response later in the year*'[20].

A specific part of the TWA sector – those working in agriculture, horticulture, food packing and processing of shellfish – is more intensively regulated. Since October 2006, these agencies need to be licensed by the GLAA, based on the Gangmasters Licensing Act of 2004.

[19] https://www.gov.uk/government/groups/employment-practices-in-the-modern-economy
[20] https://www.gov.uk/government/news/government-employment-practices-reviewer-outlines-7-principles-for-good-quality-work-for-all, derived on 17-07-2017.

Before it was put in legislation, the sector had already started its own licensing system in 2000 in response to a market situation that drove down the costs of labour resulting in very low payment in some sectors. This license and inspection system was on a voluntary basis, but reinforced by supermarkets that required their suppliers to only make use of licensed agencies (Scott, 2007). However, as a consequence of the accident of February 2004, when Chinese cockle pickers died on Morecambe Bay, politics were prepared to give the licensing system a legal basis and the Gangmasters Licensing Act was accepted in 2004 and consequently the GLAA was set up (Scott, 2007). It became operational in 2006. In the words of the GLAA the '*licensing standards effectively encapsulate all UK legislation between the employer and the worker and the labour hire company, and the company that uses them, around health and safety, tax, social security, leave, whether a company is fit and proper and whether the company is operating in a way which actually creates forced labour and breeches the ILO forced labour indicators'* (quote from the interview held with the GLA in the context of this study). When a TWA active in the sectors that fall under the licensing requirement violates the licensing standards, the license is revoked. The GLAA works on the basis of complaints, with information coming from government departments, police, workers, NGO's, Citizen Advice Bureaus and other TWAs. It has a hotline occupied by staff that speaks various languages. Until recently, the GLAA had no power to investigate criminal events in case they run into forced labour. This was changed recently when GLAA moved from the Agricultural department to the Home Office and got additional authority based upon the Immigration Act 2016. A change in control and rights was passed along with it. It now has the possibility to investigate criminal offenses related to a breach of the Gangmasters Licensing Act of 2004 in combination with a breach of the Minimum Wage or an offence under the Employment Agencies Act of 1993 (GLA brief issues 50&51, 2016). This new role is still under development. In the words of the GLAA, they are no longer constraint by working in an organization whose remit is agriculture. Following the new position of the GLAA, the current aim of the organization is to become the '*go-to organization if you have a combination of offences'* (quote from the interview held with the GLAA). Therefore, their name has changed to Gangmasters and Labour Abuse Authority. In the new situation the GLAA will be in a better position to prosecute. Moreover, a national director of labour market enforcement was installed by the government, whose role it is to hover above all inspectorate organizations and coordinate all different enforcement activities to make them more effective in targeting exploitation. This means that the different inspectorate organizations are centralizing their intelligence gathering rather than each working independently. The first person to fulfil this position is Sir David Metcalf, who was appointed on January 5, 2017.

Recently, there is a focus in legislation on combatting forced labour rather than overall protection of employment conditions. In 2009, a stand-alone act on forced labour offence was passed which gives legal possibilities to prosecute in situations of forced labour (section 71 of the 2009 Coroners and Justice Act). In 2015, the more encompassing Modern Slavery

Act was passed. This Act includes, among other things, bigger penalties for trafficking and the establishment of an independent anti-slavery commissioner. The Modern Slavery Act also includes the requirement for larger businesses to publish an annual statement with the measures taken to ensure that slavery and trafficking do not take place in their supply chains and business (Transparency in Supply Chain Provision).

The TWA sector in the UK also took up the job of self-regulation. The REC has introduced a Code of Professional Practice that all members must comply with (Recruitment and Employment Confederation, 2015). An inspection team performs spot-checks (EuroCiett, 2007), but they mostly work complaint-based running a hotline for alerts. They have also introduced a knowledge test for members about the rules in the Code of Professional Practice to avoid mistakes. This test needs to be completed every two years. Over 80 percent of the recruitment industry, which includes temporary employment agencies, holds a REC membership (Recruitment and Employment Confederation, 2015).

TWAs have received attention in the context of protecting vulnerable workers. Important in this context is the Vulnerable Workers Campaign of the TUC in 2008. The TUC set up a commission to examine vulnerable workers in the UK, mainly because the extent of the problems were unclear and because there had been some media exposure of some very bad cases of exploitation of (often) migrant workers. The research of this commission resulted in an extensive report about vulnerable workers in the UK (TUC, 2008). The report received quite some attention. However, when a new government was formed in 2010, the policy initiative was lost. The TUC, however, continued to work on the issue of vulnerable workers. The government, too, paid special attention to vulnerable workers around the time the report of the TUC was published, by setting up The Vulnerable Workers Enforcement Forum in June 2007. This commission was assigned the task of finding evidence on the nature and extent of violation of employment rights and assessing whether the existing system of enforcement was effective (Keter, 2010). The commission included members of trade unions, employers' associations, enforcement agencies and advice bodies. Their recommendations (BERR, 2008) led to the Employment Act of 2008, which strengthened the enforcement framework. More concretely, it gave EASI increased powers of investigation and the possibility to raise penalties.

The GLAA, trade unions, REC, government bodies (especially about the minimum wage) and some NGO's all did some work in informing labour migrants about their rights in order to prevent exploitation. The main approach was by translating documents into the languages of the people arriving in the UK (Polish) and by producing leaflets with information in several languages.

Table 5: Timeline of policies and legislation

1973	Employment Agencies Act
2000	Formation of REC as known nowadays: code of professional practice for members
2003	Conduct of Employment Agencies and Businesses Regulations
2004	Accession of 8 new member states to the EU, immediate full access to UK labour market
2004	Start information campaigns among labour migrants by GLA, REC, Trade Unions
2004	Gangmasters Licensing Act
2006	GLA(A) operational
2007	Accession of Bulgaria and Romania to the EU. Transition regime in place.
2007	Set-up of The Vulnerable Workers Enforcement Forum
2008	National agreement on temporary agency work
2008	TUC Vulnerable workers campaign
2008	Employment Act
2009	Forced labour offence
2011	Agency Workers Directive into effect
2014	End of the transition regime for Romania and Bulgaria: full access to UK labour market.
2015	Modern Slavery Act
2015	Move of the GLAA to Home Office
2016	Immigration Act → extension of the role of the GLAA

Actors on which the policies focus (beneficiaries)

When we now take all policies together, four types of legislation and regulation can be distinguished in the UK context that result in the protection of employment conditions of CEE labour migrants in the TWA sector. First, there are policies that target the honest TWAs in the sector. The REC membership with its Code of Professional Practice gives honest TWAs the possibility to distinguish themselves. In addition, the licensing scheme of the GLAA in the agriculture, horticulture, food packing and processing of shellfish sectors, is intended to limit permission to operate in these sectors to honest TWAs. Second, there are policies that target dishonest TWAs. When they violate labour law, they can be prosecuted by the inspectorate organizations. Moreover, the expansion of the role of the GLAA that can now enforce and prosecute in other areas of the labour market than the ones where they operate a licensing scheme, is also a way to target dishonest TWAs. Third, some policies and practices target labour migrants. This means mostly information campaigning to increase awareness about employment rights among labour migrants as well as efforts of trade unions to unionize them. Fourth, there are policies that target companies that use temporary agency workers. Most important is the Modern Slavery Act that includes the requirement for larger organizations to publish an annual statement with the measures taken to ensure that slavery and trafficking do not take place in their supply chains and business.

Scale of intervention

The Employment Agencies Act of 1973, the Conduct of Employment Agencies and Businesses Regulations of 2003 and the European Directive of Temporary Agency Work are legislation with which all TWAs in the sector should comply. The reach of the GLAA is much more limited. Although their information gathering authority has recently been expanded to all sectors, their licensing scheme only applies to TWAs active in the agriculture, horticulture, food packing and processing of shellfish sectors. The scope of the Code of Professional Practice of the REC only applies to member TWAs. The requirement in the Modern Slavery Act to publish an annual statement only applies to larger organizations. The inspectorate organizations cover basically the whole labour market. However, in practice, due to their limited capacity and mainly complaint-based approach, they cover only a minor part. It is difficult to assess the reach of the information campaigns among EU labour migrants to inform them about employment rights. In principle they cover all labour migrants, but it is likely that some are not reached.

Governance level

The sector is regulated by labour legislation at the level of the government and sometimes required by the EU, reinforced by inspectorate organizations, in combination with self-regulation of the sector by means of the Code of Professional Practice of employers' association REC.

Origin and amount of funding

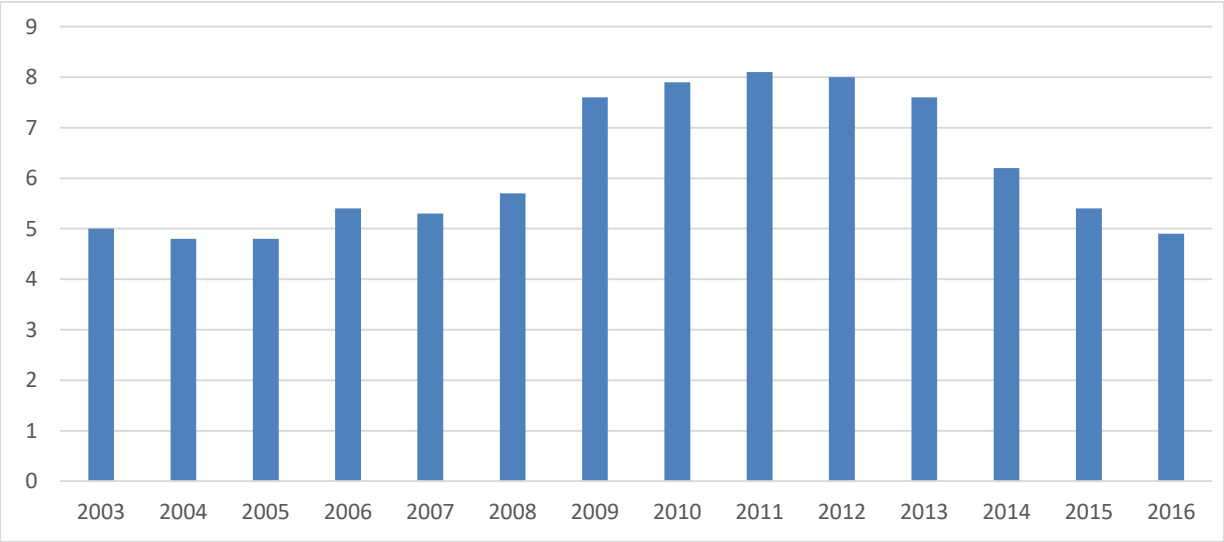
The inspectorate organizations and the GLAA are funded by the government. The employers' association REC and the Trade Unions are funded by their members.

1.2 Description of the context

Labour market conditions in the UK 2004-2016

Since the accession of the new EU member states, the UK labour market has been affected by the economic crisis. This is reflected in the unemployment rate in *figure 2*, which shows a sharp increase in the years after 2008 when the economic crisis kicked in. In 2016, the unemployment numbers were back at the pre-crisis level, which can be interpreted as a sign of a recovering economy.

Figure 5: Unemployment rate in percentages 2003-2016

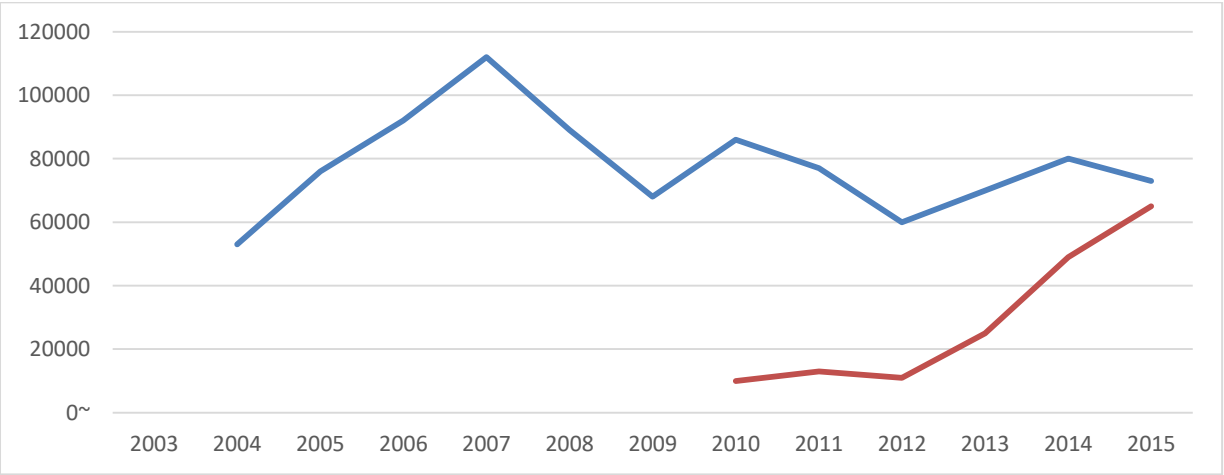


Source: Labour Market Statistics Time Series Dataset (Office for National Statistics)

CEE labour migration to the UK

Figure 3 shows the migration from the EU accession states of 2004 and 2007 to the UK in the period 2003 until 2015. One can observe a sharp increase right after 2004 in the number of migrants from the 2004 accession states, reflecting the absence of a transition regime, reaching a peak of migrants entering the country in 2007. After that year, the numbers have dropped to a figure between 60,000 and 80,000 each year. For migrants from Bulgaria and Romania, one can observe a steady and rapid increase in the number of entries since 2012 even though the permit system was only removed in 2014.

Figure 6: Labour migration from accessing countries to the UK 2003-2014



Source: Office for National Statistics

Attitudes towards immigrants

Table 1 gives some results from the survey that was conducted among the UK population as part of WP3 of the ReCriRe project. There is quite some consensus among the UK population on the statement 'I would find nothing wrong with working for a foreigner', with over 80 percent agreeing 'somewhat' or 'strongly'. The opinions are more divided regarding immigrants being a source of cultural enrichment, whether it would be a problem if an immigrant became a relative or whether foreigners should better avoid places where they are not welcome. It is important to note that these statements are not on EU labour migrant specifically but apply to all immigrants or foreigners.

Table 6: Attitudes towards immigrants and foreigners, 2016 (%)

	Immigrants are a source of cultural enrichment	I would find nothing wrong with working for a foreigner	It would not be a problem if a foreigner became my relative	It would be better for foreigners to avoid places where they are not welcome
Strongly disagree	4	4	13	12
Somewhat disagree	25	15	31	34
Somewhat agree	57	39	43	38
Strongly agree	14	42	13	15
Total	100	100	100	100

Source: ReCriRe Survey United Kingdom

1.3 Political framework

The business department of the UK government (which has changed name on several occasions during our window of observation) has had eight successive Secretaries of State since 2004. Until 2010, these were member of the Labour Party, in the persons of Patricia Hewitt (2001 → 2005), Alan Johnson (2005 → 2006), Alistair Darling (2006→2007), John Hutton (2007→2008) and Lord Mandelson (2008→2010, divided into two periods). From 2010 until 2015, the department has been led by a Secretary of State from the Liberal Democrats: Sir Vince Cable. Since then, the department has known a Secretary of State from the Conservative party, first in the person of Sajid David (2015→2016) and currently Greg Clarck.

2. The official discourse: how are policies described?

In this chapter we discuss how policies are described in official documents before we move to the views of stakeholders in the next chapter. We start with how problems are formulated (§2.1), next we describe which tools and actions have been developed in response to the recognized problems (§2.2). We end with an analysis of the different groups targeted by the policies (§2.3) and the evaluation instruments implemented (§2.4).

2.1 Problem and problem-setting in official documents

In all government communication about the TWA sector, it is stressed how important the flexibility is that agency work can offer to both employers and workers. Although this need for a flexible labour market is heavily stressed, in government communication as well as in communication of the employers' associations and the trade unions[21], the principle of fairness is also mentioned in documents about agency work. Unfair treatment of agency workers compared to directly hired employees is stressed as a problem in the UK labour market and the right balance between flexibility and fairness as the goal to be reached.

> '*[…] we need flexibility opportunity and fairness. Most people would agree that it is not right that an agency worker can spend months or even years on a job while always being paid less than a permanent employee doing the same thing. That is why the government welcomed the agreement of the CBI and TUC in May 2008.*' (BIS, 2009:3)

> '*The government considers that this declaration (the agreement between CBI and TUC on temporary agency workers red.) provides the basis for the introduction of measures to promote fairer treatment for agency workers while retaining the important flexibility that agency work can offer both employers and workers.'* (BRR, 2008:1).

Problems in the TWA sector with dishonest agencies are recognized as a risk, especially when workers are outsourced to the agricultural and shellfish sectors. In other sectors the risk is less broadly identified. This becomes most clear in documentation regarding the introduction of the Gangmasters Licensing Act (2004).

> *'The general purpose of this Bill is to make the operation of Gangmasters more transparent, thereby ensuring that they comply with the legal obligations they owe to*

[21] Example from a TUC report: '*The TUC recognises that agency working can play a legitimate role in the UK labour market, assisting employers to respond to shifts in demand, to cover for short-term absences and to meet short-term skills needs. Agency working can also assist some individuals to accommodate caring responsibilities and provide younger workers and recent graduates with valuable experience of working in a given sector before making a permanent commitment to an occupation or profession.*'(TUC, 2009)

their employees or workers. The Bill is therefore designed to promote the rights of gang workers and eliminate forced labour in the relevant sectors.'
[…]
'It is not envisaged that the Act will apply to the majority of employment agencies. The activities set out in clause 2(3) are limited by clause 2(4). This clause relates to the work done by the gang worker, not the industry of the principal.' [22]

The TUC has described the specific issues in the TWA sector in most detail in their report on their Vulnerable Workers Campaign (2008). They emphasize that they have run into many good practices in the sector, but also encountered 'multiple examples' of violations of employment rights of workers employed by TWAs. They also point out that migrant workers are especially vulnerable in the TWA sector.

'*This included workers being asked to complete health and safety forms that they didn't understand (which employment agencies then signed on their behalf), agencies refusing to pay workers for work they had completed, workers being denied breaks during 12-hour shifts and workers experiencing unlawful deductions from minimum wage pay for costs including the renewal of security badges and health and safety training. In extreme cases we heard from migrant workers who had paid hundreds of pounds in bonds to employment agencies, had had their passports confiscated, and been paid significantly below the national minimum wage*.' (TUC, 2009: 127).

In their report, the TUC mentions that the specific vulnerability of migrant workers in the TWA sector for exploitation is caused by their lack of power.

***'**Workers were often powerless in relation to the agencies employing them, being totally dependent upon these labour providers for work, and in some cases accommodation.'* (TUC, 2009: 127)

Another problem that the TUC pointed out in their report on Vulnerable Workers (2008) is a lack of capacity of inspectorate organizations. They mention a lack of resources, but also a lack of information sharing between different bodies.

'However, it has also become apparent to us that the existing enforcement infrastructure is poorly resourced, meaning that often the necessary proactive and preventative work is simply not feasible. During the course of our work, it has become apparent that, should a worker report a problem outside the remit of an enforcement agency, there can be legal barriers preventing officers from sharing information with other relevant agencies.' (TUC, 2009: 136)

[22] Quote from the Gangmasters (Licensing) Bill, Explanatory notes (accessed on July 13, 2017): https://www.publications.parliament.uk/pa/cm200304/cmbills/017/en/04017x--.htm

Next, the TUC indicates a general low awareness about employment rights among workers in the UK as well as among employers. The awareness tends to be lowest among the most vulnerable, including migrant workers. This increases the risk of exploitation.

> *'Many trade unions reported that migrant workers have particularly low awareness of their employment rights, which can be exacerbated by limited understanding of English*.' (TUC, 2009: 37)

Moreover, the TUC reveals that the lack of organization among both temporary workers and migrant workers means that they stay in a position of vulnerability. If they would join a trade union this would improve their situation.

Finally, the TUC states that the way employment rights are reinforced within the UK – by employment tribunals – falls short in the cases of vulnerable workers. Underlying reason is the risk these workers run of losing their job when they take a case to the tribunal. Also the potential gain by bringing a case to a tribunal is low.

> '*Even if workers successfully challenge exploitation at tribunal, many find their awards remain unpaid. In our survey of employment rights advisers, over a quarter of respondents (28 per cent) reported that ET awards that were upheld were not then enforced and a further 60 per cent indicated this was occasionally the case.*' (TUC, 2009: 134)

2.2 Tools and actions in official documents

To tackle the problem described in official documents of balancing fair treatment and flexibility, the government, CBI and TUC mention the importance of the Agency Workers Directive. In the implementation process, the fairness principle weighs heaviest for the TUC, whereas government (BEIS department) and employers pay more attention to the difficulties for business to apply the new legislation and thus to the flexibility argument. This is illustrated by the TUC opposing the timing chosen by the government to only start applying the legislation in October 2011, whereas the national agreement on which the legislation is based already dates back to 2008.

> *'Agency workers are particularly vulnerable in terms of job and income insecurity during times of recession and would benefit from increased employment protection. The TUC is therefore seriously disappointed by the Government's announcement that new legislation will not be commenced until October 2011 which is one of the latest dates permitted by the Directive. We believe there is a pressing case for equal treatment rights to be introduced as a matter of urgency.*' (TUC, 2009: 6)

To tackle the problem of labour exploitation in general and more particularly related to the TWA sector, the Gangmasters Licensing Act was adopted, the GLAA (at that time called GLA) was installed and the Modern Slavery Act was introduced. Since the introduction of the GLAA licensing system in 2006, there have been various bills attempting to extend it to other sectors based on the argument that worker exploitation by TWAs is also taking place in other sectors. These bills have been rejected or withdrawn. However, since May 2017, the GLA (since that moment called GLAA) has the role of investigating labour abuse and labour exploitation across all sectors of the UK labour market. Part of the justification of this extension comes from the Modern Slavery debate that has played an important role recently and has led to the Modern Slavery Act. In this debate, the definition of Modern Slavery has been broadened from sex exploitation and domestic exploitation to labour market exploitation and this is where the new tasks of the GLAA come in. The link to tackling Modern Slavery is made explicitly on the website of the GLAA:

> *'The changes in the Act that will directly affect the GLA are as follows:*
> - *[…]*
> - *A broader remit and stronger powers to tackle labour exploitation across the economy, introducing the capacity to search and seize evidence and investigate modern slavery where it relates to labour abuse and other offences'*[23]

The approach of the UK of addressing problems with dishonest TWAs by linking it to modern slavery is further illustrated by the two new commissioners of Anti-slavery and Labour Market Enforcement working closely together:

> '*For the first time, the 3 agencies are centralising their intelligence, enabling the director [of labour market enforcement, red.] to draw up an annual strategy targeting sectors and regions which are vulnerable to unscrupulous employment practices. He is also working alongside the Independent Anti-Slavery Commissioner to better tackle exploitation and slavery in the labour market.'*[24]

Especially relevant for reducing labour exploitation under the Modern Slavery act is the supply chain transparency.

> *'The Commissioner demands a consistent response across the UK in order to ensure that victims are properly supported and those who offend are pursued and prosecuted accordingly. His 5 priority areas are:*
> - *[…]*

[23] http://www.gla.gov.uk/whats-new/press-release-archive/16516-powers-and-remit-to-change-at-gla/, accessed on July 10, 2017.
[24] https://www.gov.uk/government/news/sir-david-metcalf-named-as-the-first-director-of-labour-market-enforcement, accessed on July 10, 2017.

- *Private Sector Engagement to encourage supply chain transparency and combat labour exploitation]*' [25]

To tackle the problem that migrant workers and temporary agency workers are not organized by trade unions, several trade unions have set up campaigns directed at these target groups. Moreover, (language) courses for migrants have proven to be an important tool to organize them.

> '*In addition to helping migrant workers improve their English language abilities, the union (GMB, red.) has linked the provision of education to its recruitment activities. The learning centre has developed into a meeting place for local migrant workers and a venue where they can access advice and guidance*.' (TUC, 2009: 78)

2.3 Description of the target population in official documents: goals, explanations, motivations and attended results

There are four different target groups that can be distinguished in the UK policies: 1) dishonest TWAs, including traffickers and slave masters, 2) honest TWAs, 3) user companies, and 4) CEE labour migrants.

Breaches of the law by TWAs fall now under the responsibility of the GLAA. Dishonest TWAs are labelled by this organization as those TWAs where 'serious abuse and exploitation' are observed.

> *'GLA inspections and investigations may identify that a person or business may be breaching labour market legislation wider than the sector of the labour market that is controlled by the GLA's licensing regime. Inspections by the authorised GLA Officers into potential breaches of EAA and/or NMW in the wider labour market would be carried out under the additional inspection powers. This may also identify criminal offences including obstruction, which they are authorised to investigate. The GLA may use these powers in serious cases of abuse and exploitation where breaches of the 1973 and 1998 Acts occur together or a breach of one or more of these Acts is combined with a breach of the Gangmasters (Licensing) Act 2004.'* (GLA, 2017b)

The modern Slavery Act targets the most serious breaches of labour exploitation, those that can be labelled as trafficking or Modern Slavery. Persons involved in these acts are described as:

> *'Traffickers and slave masters use coercion, violence, threats and deception to manipulate and exploit vulnerable people as commodities for the purpose of profit and*

[25] http://www.antislaverycommissioner.co.uk/about-the-commissioner/the-commissioner/, accessed on July 10 2017

criminal gain.' (IASC, 2015:1)

Part of the Modern Slavery Act is to involve the private sector in combating it. Means of doing this is to make supply chain transparency obligatory for large organizations.

> '*The Modern Slavery Act contains a world-leading provision requiring large companies to disclose action they are taking to ensure their UK and global supply chains are slavery free. I will be engaging with the private sector to encourage supply chain transparency. I want to work in collaboration with businesses across the UK to ensure they are doing everything they can to make certain their supply chains are not tainted by slavery.*' (IASC, 2015:4)

Targeting migrant workers in policies is mainly done by trade unions in terms of organizing them and providing services to them, for example language courses. The main terms of describing them and defining their characteristics is in terms of their language command: those that have only a basic understanding of the English language are addressed. Moreover, they are addressed in terms of their knowledge about their employment rights.

2.4 Monitoring activities and evaluation in official documents

The independent anti-slavery commissioner has to write an annual report about his activities to reduce trafficking and modern slavery.

The Independent Review of Employment Practices in the Modern Economy (also referred to as the Matthew Taylor Review), was initiated to evaluate current employment practices and whether and how they need to change to keep pace with 'modern business models'.

3. Planning, implementation and evaluation of the policies: the views of stakeholders

In this chapter we discuss the views of stakeholders. We will start by describing the methodological approach (§3.1), after which we will describe the problems in the TWA sector with regard to employment conditions as observed by the inspection organizations active in the sector, the government, trade unions and employers (organizations). This description intends to give an overview of the problems that are targeted by the regulation of the sector (§3.2). Next we will discuss the views and approaches of the government

(§3.3), employers' associations (§3.4) and trade unions (§3.5), as the actors deciding about the national and sectoral policies and practices developed to regulate or protect the employment conditions of labour migrants in the TWA sector.

3.1 Problems observed by actors

The actors involved in the TWA sector recognize several problems in the TWA sector. The actors involved in regulating the TWA sector in the UK most of all stress that problems with dishonest TWAs are not really seen as an issue of the sector but rather as offenses of criminals. The actors mention that criminal elements earn money in the TWA sector by abusing migrant workers in various unsubordinated ways, for example by charging for travel costs, not paying them for travel during working hours, charging work finding fees and selling insurance that is not necessary (it is meant to be voluntary but for these workers it is not). In addition, the GLAA reports to have run into situations where labour migrants were used by TWAs to dodge taxes. Costs were deduced from wages of labour migrants for travel to work and meals (and later paid back) to lower the gross amount that is taxable and below the threshold above which employers need to pay contributions to the National Insurance system and social security benefits. In the long term, this meant that workers would not have the right level of social security benefits, although their pay in the short term was slightly higher. The GLAA states that the problem is the whole system behind it, in which misleading workers is part of the business model:

> '*All that they are doing all the time is using the workers as a commodity. To supply them to gain you know, an amount of money from which they get a profit. And to maximize the profit by charging them for insurance, charging them for being part of the scheme on travel and subsistence, charging them for travel, charging them for accommodation, and charging them in ways that actually breach national minimum wage laws*.'

Another problem detected by actors in the sector evolves around labour migrants working in the care sector being employed by TWAs. These migrants often live in the accommodation connected to the workplace. This leads to situations in which they are on call 24/7 and are denied any free time. Living in accommodations connected to the workplace, moreover, makes them specifically vulnerable for exploitation, because they depend on the TWA for both their housing and their work.

According to the social actors in the sector, the underlying cause of the problem is the fact that the accession of the new member states offered business opportunities for TWAs: they gained access to a whole group of new workers. Having such a big supply of new workers at hand also meant that it was easier to treat them badly, e.g. never calling workers back, letting people show up for work just in case there is work and let them wait for an hour and then send them home if not needed without any pay.

The GLAA observes that the offenses of TWAs have become more complex with the growing complexity of the sector. It is no longer '*just the man that gathers a few people who met in the pub, sees in the street, calls and says, hey come work for me*.' Nowadays, TWAs are more professional, they have offices and often are part of a chain. Moreover, there are international collaborations between TWAs, or TWAs have offices in other countries. This change of landscape has made the sector more difficult to control.

Also some issues are mentioned around regulation of the sector. First of all, regulation of the sector relies heavily on self-regulation. The problem mentioned is that the REC membership with the code of professional practice mainly covers the big firms, because these organizations are members. Therefore, the small agencies fall outside (self-)regulation by membership. Moreover, the inspectorate organization EASI is not as effective as it could be. There are several issues mentioned by the actors. First, they work complaint-based and do no intelligence gathering themselves. The problem observed here is that exploited migrant workers are not very likely to file a complaint, because: 1) they have to know about their rights in a context they are not totally familiar with, 2) they have to know about how to enforce their rights, and 3) they have to take on their employer: it is questionable whether they will do this because they are often in a vulnerable position. Second, actors in the TWA sector and experts also stress that the capacity of the inspectorate organizations is not enough to effectively enforce good practices in the sector. There are few inspectors working at EASI, ten according to the GLAA. Third, it is hard to inspect all TWAs, because apart from the sectors that need to be licensed by the GLAA, there is no obligation to register. For this reason, it is hard to know where the TWAs are. Fourth, there is not sufficient, specifically trained police to target trafficking and there is no budget to train more of them.

The trade unions see the use of the Swedish Derogation Act as a problem. According to them, it is used as a loophole to avoid having to pay equal wages after 12 weeks. However, in contrast, the REC doesn't see this as a problem. According to its statistics, it is used in about 8% of the cases. It does not believe it is a loophole, but a market solution: user companies sometimes feel it is reassuring that there is a permanent contract between the TWA and the worker. According to them the issue is that it is sometimes not properly implemented, not the use of the Swedish Derogation Act itself.

Finally, the actors in the sector mention that the ignorance of labour migrants about their rights adds to their vulnerability for exploitation, as well as their lack of power when they enter the country. When they arrive, they often need income quickly, especially because they have often paid quite a lot of money to come to the UK. In this situation they are especially vulnerable for exploitation, because they are more likely to accept a job with lower standards.

3.2 The planning phase: the government's approach according to third parties

Note: The relevant government departments (BEIS, Home Office) were unfortunately not in a position to take part in this research because of their occupation with the Brexit and at the time the fieldwork for this research took place (2016/2017). We have therefore based this section on information from third parties. The information here can therefore not be interpreted as the opinion of policy makers in the departments themselves.

According to the experts interviewed, the problems with dishonest TWAs are by the UK government framed as problems with criminal elements in the labour market. Dishonest TWAs are seen as '*organized crime infiltrating supply chains'.* Regulation of problems in the TWA sector is consequently framed as 'tackling criminals'. It also means that the grey areas of violation of employment conditions are generally not addressed. The framing of problems with dishonest TWAs as a criminality problem rather than a labour market issue is illustrated by the recent move of the GLAA to the Home Office were they are part of the Crime and Policing department and not of the Business department. The issue has been incorporated within the modern slavery debate that became a very central debate in recent years. The agenda setting of this debate was started by Theresa May, who as a Home Secretary was very keen on tackling modern slavery. Where the debate about modern slavery centred on sex exploitation and domestic work in its early years, it has now been broadened towards covering crime in the labour market and therefore now entails dishonest TWAs.

Experts point out that the framing of dishonest TWAs as a criminal issue rather than a labour market issue actually makes it easier to regulate it and to develop legislation in the UK context, because regulating business is not seen as a favourable thing whereas targeting criminals is. This is the outcome of the free market ideology that best describes the UK industrial relations system. The focus over the last decade has been one of deregulation and 'cutting red tape' rather than regulation. Nevertheless, the preference for the absence of regulation also means that only particular problems are targeted (e.g. dishonest practices by TWAs) rather than an overall approach being developed for regulation of the TWA sector.

The general preference for a light regulation of the labour market is based on the conceptualization of employers by the government as decent people. There is a believe that in the absence of regulation, people will '*generally do the right thing*'. The general believe that little regulation is preferable is reflected in the reluctance of UK governments to implement EU directives. For a while, many where no enacted and then many were implemented at once. In this context, the National Agreement on Temporary Work Agencies was signed between the Labour government, TUC and CBI. However, in line with the preference for little labour market regulation, it was implemented in the softest possible

way (with the equal pay principle only starting after 12 weeks), in order to ensure labour market flexibility.

According to the government's approach to regulating the TWA sector, there needs to be proof of things going wrong before legal action is taken. The example is the introduction of a licensing system for TWAs operating in the agriculture, horticulture, food packing and processing of shellfish sectors. This was introduced after the Morecambe Bay accident in 2004, when 23 Chinese cockle pickers died. The government recognized the high risk of worker exploitation by TWAs ('gangmasters') in these sectors and therefore introduced the licensing system to be operated by the GLAA. There has been some discussions over the years whether the licensing system of the GLAA should be extended to TWAs active in other sectors of the labour market and at various times bills were put forward to initiate it. These bills never passed Parliament because of the overall preference for light regulation and insufficient proof of a high risk of worker exploitation in other sectors. Moreover, according to the GLAA, the BEIS department sees the GLAA licensing system as ineffective.

That the government has a preference for a light legal regulation of the labour market also means that they prefer the setting of voluntary standards by sectors themselves. The setup of private certification schemes by sectors is actually more or less reinforced by the recent legislative requirement of supply chain transparency for larger companies (Modern Slavery Act). After all, ensuring a clean supply chain is a lot easier when you know that companies in your supply chain that have a certificate of their own sector are clean. The REC provides such a private certification scheme for the TWA sector. This means that the sectoral self-regulation is mainly driven by the employers' association in the TWA sector.

The government has recognized that the fragmented approach with having many different inspectorate organizations for different kinds of labour rights makes a coherent strategy of inspection difficult. With the move of the GLAA to the Home Office department, the hope is that this will be easier, because all inspectorate organization now fall under the same government department.

Experts interviewed observe a change in the flavour of the debate over the years. When 2004 approached and the A8 countries accessed the EU, the general feeling was that the labour migrants that would arrive as a consequence were much needed in the labour market to take the jobs UK citizens were unwilling to take. As a result, trade unions, employers' associations and the government were all in favour of immediate access of labour migrants from the accessing countries to the labour market of the UK. Consequently, there was no transition period. However, over time, people started worrying about the number of people entering the UK labour market. In response, a transition period was introduced for labour migrants from the countries that accessed the EU in 2008. These worries also influenced the general debate about migration, although the worries expressed most in the public debate were community based concerns rather than labour market concerns. As a response, the government committed itself to restricting migration from

outside the EU. After all, restricting the internal EU free movement is not possible. Also the Brexit debate has been linked to migration. At the time of the interviews (mid 2017), there seemed to exist several opinions in the UK: those that celebrate the possibility to restrict migration from EU countries after Brexit and those that fear the consequences for particular segments of the labour market if labour migration should drop in the future.

3.3 The planning phase: opinions and views of the sectoral employers' association

The REC was in favour of the immediate access of labour migrants from the A8 countries to the UK labour market after the accession, because they saw a need for labour in certain sectors and they have '*always been very pro-immigration*'. They would have liked to remove barriers further and to increase the possibilities for the free movement of services. They state, however, that their efforts in this area have become redundant by the Brexit.

The REC did not observe particular problems in the TWA sector after the arrival of large groups of labour migrants. They recognize that the sector has become more complex over the past decade, for example with different types of intermediaries entering the market, but they see this as a process unrelated to labour migration.

The self-regulation of the TWA sector in the UK is advocated by employers' association REC. They provide a code of professional practice to which all members need to comply. Compliance is mainly checked by running a complaint telephone line that everyone can call who has a problem with one of the REC members. However, around 2013 they introduced a compliance test which members have to pass to continue their membership. The reason for its introduction was that they felt that many violations of the code were caused by lack of knowledge. By introducing the test, they found a way to raise awareness. The test needs to be repeated by its members every two years. The REC has a structured process of investigating complaints. If the issue cannot be resolved by providing information to the violator, it is submitted to the 'standards committee'. The TUC is also part of this committee, as well as industry peers. This committee decides upon the sanctions, the heaviest of which is the exclusion from REC membership and public announcement of this. Because the reinforcement of the code of professional practice relies quite heavily on complaints from workers, the REC reaches out actively to them with information. This information is, for example, provided in job seeking offices. Moreover, the REC reinforces the effectiveness of the code of professional practice (and hence REC membership), by informing companies that use the services of TWAs about using honest agencies. The REC beliefs that the best way to address bad practices is by convincing user companies not to do business with agencies that violate working conditions.

The aim of the REC with the code of professional practice is to promote and guarantee that the part of the market that is a REC member complies, so the government inspectorate can focus on non-members.

> *'Not to say that there isn't any scrutiny, but you could adopt the risk based approach where you focus primarily on businesses that are not members to inspect. You could still find the organizations that do not know what is there and therefore they make mistakes and do not comply with law.'* (REC)

The REC recognizes that there are dishonest TWAs in the sector. They state that this can best be observed through the GLAA. However, they do not see these practices as part of the sector, but rather as criminal elements.

> *'The worst practices, we would not even call recruitment agencies, we would call them gangmasters, […] a criminal gang. And migrant workers that come here, they fall into the wrong hands, and once they are in the wrong hands it is difficult to get out. We recognize that.' (REC)*

What the REC mainly sees happening in the sector is criminal gangs that try to force migrants to earn money by getting them employed through recruitment agencies and once they earn money take it away from the migrants. They do not point to a role of dishonest agencies in this story. They see a responsibility for the sector in picking up signs of forced labour and to report these signs. However, as they do not believe it to be part of the TWA sector, they see no active role for themselves in this particular area. They point to the importance of government enforcement and the GLAA for the part of the sector where this organization is responsible for licensing.

> *'We play a key role in trying to regulate our own sector. The government inspectors have a key role to play as well. So we fought quite hard to have that enforcement maintained and increased. We had a joined message with the trade unions on that.'* (REC)

They point to the relevance of government enforcement not only to get rid of criminal elements but also because it creates a level playing field (on a minimum level) and therefore is in the interest of TWA businesses.

> *'It is also in the interest of complying agencies, a level playing field. You do not want non-complying competition to be able to charge less for their services.*' (REC)

According to the REC there is no shortage of regulation in the TWA sector and no additional laws or regulation are needed. They state that the criminal elements avoid legislation anyway, so additional legislation would not solve the issue. However, they point towards the need for efficient reinforcement, where they feel a lot can still be gained. In this context, they are also supporting the extension of the role of the GLAA, because it would help address bad practices. They are happy that there is a move in the direction of different inspectorate organizations working together in a more coordinated way.

However, REC states that an extension of the licensing system of the GLAA to other sectors is a bad idea, because it will cost the TWAs money. They accept that it exists in the sectors the GLAA now covers, but they do not see a necessity for it either. They, however, accept that it would '*politically be very hard to get rid of it*'.

The REC states that they have a good relationship with the trade unions but that they have a fundamentally different view on flexibility of the labour market and the role of TWAs. The trade unions would like more permanent jobs, less flexibility and less TWAs, the REC does not see the development towards more flexibility on the labour market as a problem. The arguments are that, first of all, there is not so much difference between a permanent position and a temporary position in the UK context, since also a permanent position does not offer a lot of protection. Second, they consider the many options that agency workers have to move from job to job and to leave either the agency or the job if they do not like it as a form of security in itself.

> '*We see the UK as a good example of flexicurity: you get the security that you have a job. You can move. If you do not like the agency you work for, you can go, there are 10,000 agencies, you can go and register with a different agency. You do not like that job? Get a different job. That is security.*' (REC)

3.4 The planning phase: Opinions and views of trade unions

When the new countries accessed the EU in 2004, the trade unions were generally in favour of having no transition period in place. In the view of the trade unions the contribution of labour migrants has been positive because the economy has expanded as a result of CEE labour migrants arriving. They observed a big role of the TWA when labour migrants from the accessing countries arrived. First of all, because they played an active role in recruitment. Moreover, they supplied migrant labour to especially the low skilled sectors where the economy was expanding and there were a lot of vacancies.

> *'The bulk of EU labour migrants work in the low wage sectors of the economy, picking crops, farms, hotels, where the English workers do not want to work. Migrant workers have filled this gap and have been for many years.'* (Trade Union 1)

The TUC does not see labour migration as a problem; rather they are concerned about employers using migrants as well as other vulnerable groups to undermine employment conditions and an increase of the number of bad jobs. They blame the government approach of deregulation. In addition, the GMB notes that the UK cannot do without labour migrants, but states that the main issue is that they need to get paid the right amount for the job.

> *'The government focuses on the prosecution of criminals and not on creation of protection on the labour market that would protect everyone. It is about criminal prosecution of the worst end. The government cuts regulatory bodies and would call it cutting red tape, that we do not need that level of regulation. They would say the*

majority of employers are good and it is only a few [who are not] and we are catching them. This is the ideology. It is this whole approach of criminalizing a few bad employers rather than taking the holistic cross-economy approach.' (Trade Union 2)

According to the trade unions, the best approach to counteract the degradation of employment conditions would be to treat labour migrants the same as everybody else and effective enforcement of employment conditions. In contrast to the government and employers' association, they do believe that there are bad employers and bad TWAs active in the sector rather than 'criminal gangs'.

'The cause of the exploitation is the under regulation of the labour market. And they do have bad employers. Bad agencies that aren't being properly enforced in terms of the standard that they follow. It does mean that good employers are undercut. There are very few inspectors and very few prosecutions so people just think, well I can get away with that. They will just get away with paying below the minimum wage and they know it so this is why they do it.' (Trade Union 2)

The trade union movement has always had a strong anti-racist agenda and position, which is why they also have a very inclusive agenda with regard to labour migrants. However, this sometimes clashes with the views of the members. They see it as an important part of their job to get the views of their members aligned with theirs.

'*There is no difference for people in the UK whether they face posting of workers or people moving under the free movement of labour: it's always the same thing for them. It's always that there is somebody displacing them from their job working false wages*.' (Trade union 1)

'You need to join together and demand decent treatment together. So that has been a kind of internal policy process. It is kind of chicken and egg. If you have to improve the conditions on the workplace, I might be hard for people to accept that migrants aren't a threat. But it might be hard to improve he conditions of the working place if people won't join with the migrants and push for improvement together. So you kind of need them to understand that migrants are not a threat, before you have improvements in the workplace.' (Trade Union 2)

The trade unions feel they do not have any power to change things at the national level, especially now there is no Labour government. Under Labour, they got special funds from the government to try to improve the situation of vulnerable workers. Now there is a conservative government, they just campaign to keep issues of precariousness on the table. Topics for TUC campaigns are decided by its member unions that all need to agree.

'*With the Labour government we were even given a special fund called the union modernization fund. Which was meant to outreach to specifically precarious workers. TUC did a whole project for 2 or 3 years. Funded by the government: corporate commission on vulnerable employment. Here was a drive to tackling these problems. Part of the fund was also used to hire people from Polish background and other Eastern*

European background to speak to workers and actually bring them into the union.' (Trade Union 2)

The main approach of trade unions in trying to improve the situation of labour migrants is organizing them, although in some sectors it is approached more formally and special paragraphs are added to the collective agreements about migrant workers (e.g. the collective agreement of the construction industry[26]). Activities to organize labour migrants are, for example, organizing English language courses or providing space to meet and engage with each other. This has proven to be effective because labour migrants see a direct benefit in joining the union if it can help them improve their language skills. In addition, trade unions signalled that an underlying issue making labour migrants more vulnerable for exploitation was that they lack knowledge about their employment rights. Trade unions therefore provide information in different languages[27] and emphasize on their websites that it is important to join a union to be able to claim your rights.

'If you are not in a union, then although you know your rights, it could be quite unlikely your rights will ever be possible for you to realize. But mostly on the website we say join the Union if you have a problem because you are going to need our support. So we kind of join the two things together. If people are not in a trade union they are very unlikely to raise a complaint at work.' (Trade Union 2)

Nevertheless, trade unions recognize that it is difficult to organize migrant workers. The main reason is that they are often in a vulnerable situation.

'They lose their job when they go to a union, are afraid of being sent home.' (Trade Union 1)

3.5 The implementation phase: national and sectoral approach

To summarize, the planning phase in the UK has led to the introduction of additional legislation to regulate the TWA sector under pressure of the EU (Agency Workers Directive) and because of the Morecambe Bay accident (Gangmasters Licensing Act & Immigration Act). In addition, the focus has been on tackling the extreme forms of labour exploitation (Modern Slavery Act). On a sectoral level, the extension of the Code of Professional Practice of the REC with a knowledge test has contributed to growing awareness among TWAs about the standards they have to comply with. We will now move to describing the implementation phase of these regulations.

[26] Section G of the collective agreement
[27] E.g. https://www.tuc.org.uk/workingintheUK,

National level policies and regulation

The National Agreement on Temporary Agency Work (2008) between the CBI and the TUC opened the way for the finalization of the European Directive on Temporary Agency Work, which the UK had long resisted at the EU level. The most important amendment of the directive was the inclusion of a 12 week period prior to the start of obligatory equal pay (Swedish Derogation Act). According to the TUC, this ended up in the National Agreement, because it was the absolute solid demand of the CBI. The TUC decided to compromise on this point, because they felt that the sector was in great need of additional regulation. They were, however, afraid that the outcome would be that employers would let go of temporary agency workers just before the end of this 12-week period, because some employers are just looking for a cheap(er) workforce. They were afraid that it would become a loophole.

The Gangmasters Licensing Act was accepted after the Morecambe Bay incident. Since this legislation came into effect, TWAs active in the agriculture, horticulture, food packing and/or processing of shellfish industries need to be licensed by the GLAA. The GLAA tests at the start, and then retests only when there is information suggesting there is a problem. The licensing system is also reinforced by the common knowledge that when TWAs lose their license they cannot operate in the sector, which will affect their profitability. Over time, various bills have been filed to extend this licensing regime to other sectors. Also the trade unions would like to have it extended to other vulnerable sectors, for example, to the care, cleaning and construction sectors. Also the GLAA sees this as a remit. These attempts to extension have proven unsuccessful insofar. However, the investigation powers of the GLAA have been extended by the immigration act. The GLAA hopes that it will be able to collect enough evidence over the coming period to proof that extension of the licensing system to other sectors would be fruitful, because it shows that exploitation is also taking place in other sectors.

The Modern Slavery Act was introduced in 2015. This law targets the most extreme forms of exploitation, including labour exploitation. Important in the context of labour exploitation is that this law indirectly reinforces the REC's Code of Professional Conduct by the Transparency in Supply Chain Provision. This provision requires bigger companies to publish an annual statement with the measures taken to ensure that slavery and trafficking are not taking place in their supply chains and business. One measure they can take is that only REC member TWAs are used, because these TWAs have to comply with the Code of Professional Conduct. According to the TUC, the problem of the Modern Slavery Act is that it only looks at the worst forms of exploitation and '*is not actually looking at how the context could lead to forced labour'* (TUC).

Sectoral policies and regulation

Important regulation of the TWA sector at the sectoral level is the Code of Professional Conduct of the REC. This Code of Professional Conduct already existed but has recently been

extended with a knowledge test to reduce the number of breaches of the Code due to lack of knowledge.

Also the trade unions are active on the sectoral level. Most importantly, the TUC installed the Commission on Vulnerable Workers and the report they produced was received well. However, when the economic crisis started, it lost its momentum and the policy initiative was lost on the national level. They continued to work on the issue of vulnerable workers overall and migrant right in particular.

Information campaigning

Both TUC and REC do information campaigning for labour migrants to inform them about their legal rights. Both provide the information in many different languages. In addition, the REC informs TWAs about what they need to do to get a license and informs user companies on what they need to do to be compliant. Moreover, they produced a spot the signs guide, for people to recognize situations of forced labour.

3.6 The evaluation phase

There are several official evaluations of the implemented policies taking place. The independent anti-slavery commissioner has to write an annual report about his activities and the Independent Review of Employment Practices in the Modern Economy (also referred to as the Matthew Taylor Review). However, unofficially the actors involved in the TWA sector evaluate its regulation.

According to the TUC, the Swedish Derogation Act in the Agency Workers Directive turned out to be a loophole abused by employers and TWAs. Therefore, they have filed a complaint with the European commission because of the widespread use of the Swedish derogation.

Experts also note, however, that getting rid of dishonest TWAs might be ineffective in the current model. The reason is that legislation does not help to reduce these practices, because they operate at the extreme margin of the law anyway, if within the law at all. They also get away with it because the workers they engage with are not very likely to file a complaint: they do not know the law, their situation is too precarious to do so, or it is too expensive to go to court. The fact that there is no external organization monitoring proactively whether TWAs adhere to the law, makes the current system of reinforcement ineffective.

The GLAA is an exception. Experts and social actors all agree that it is quite effective in the part of the TWA sector where it operates a licensing system.

Whether the Code of Professional Conduct of the REC is effective, is difficult to say. No evaluation has taken place whether fewer or no breaches of the law occurred among member organizations.

The TUC states that it is difficult to evaluate the spread of information about employment rights among migrant groups. '*We know it has been read online several thousands of times*' (TUC), but this is the only indication they have.

4. Summary and conclusions

Although all relevant actors in the UK – government, employers and trade unions – support the freedom of movement of workers within the EU and, therefore, welcomed the opening of the British labour market to labour migrants from the accession countries in 2004 and 2007, there were also concerns about the potential impact on the employment conditions. Due to the large gap in wages and employment conditions between the 'old' EU member states and the 'new' member states, a large inflow of labour migrants that would be prepared to work under worse conditions than the British standards, might exert pressure on employment conditions with a crowding-out effect as a result. To prevent this from happening, the UK government did not postpone the opening of the British labour market, but trusted on the prevailing policies and regulations. Because a large part of the labour migrants from the new accession states found employment through TWAs, we focused in this study on the policy and regulatory response in this sector and the perception of the actors involved.

In the context of the UK, regulation of the TWA sector at the national level is primarily a government responsibility, whereas employers' association and trade unions are consulted on an ad hoc basis. Since many years, the government has a strong preference for a light regulation of the labour market. However, in recent years it has become sensitive to (labour) exploitation and the need for more effective enforcement of labour rights to combat exploitation. Characteristic for the government approach is, that they do not consider exploitation of labour migrants as a consequence of a lightly regulated sector, but as criminal activities that should be fought accordingly. To this end, the 'Gangmasters and Labour Abuse Authority' (GLAA), that licenses only TWAs in the agricultural and shellfish sectors, became authorized to investigate criminal offences related to a combination of breach of the minimum wage, TWAs and a modern slavery offence in other sectors. Moreover, the Modern Slavery Act was adopted, a director of labour market enforcement was appointed to promote the coordination of the work of the different inspectorate bodies and an anti-slavery commissioner was installed. However, these measures should not primarily be considered as stricter regulation of the labour market or the TWA sector, but rather as fighting criminality. Moreover, due to their limited capacity and mainly complaint-based approach, the inspectorates can only monitor a minor part of the labour market.

At the sectoral level, the TWA-employers' association REC, that represents over 80 per cent of the recruitment industry, plays the most important role. The REC has introduced a Code of Professional Practice that all members must comply with. Inspection is mostly complaint-based. REC has also introduced a knowledge test for members to avoid mistakes. TWAs that do not comply with the code can lose their membership. According to the REC, this kind of self-regulation is sufficient to safeguard a well-functioning TWA sector. In their view,

exploitation of labour migrants is caused by criminal TWAs that are not a member of the REC and should be banned from the sector.

The trade unions play a role in their attempts to organize workers in the TWA sector, including labour migrants, and along with other workers in the context of the organizations where they work. They recognize it is hard to organize workers in the TWA sector, because of the temporary nature of their work, but also because of their vulnerable position. Labour migrants are even harder to reach due to language problems and the lack of knowledge of their rights, although they try to overcome this problem by providing information in various languages. In general, the unions are far more critical regarding the functioning of the TWA sector than the employers. In their view, the existing regulations, such as the Swedish Derogation for equal pay after the first 12 weeks, create too much room for abuse and exploitation.

Altogether, the policy approach distinguishes three target populations: 1) labour migrants, 2) TWAs, and 3) user companies. Policy makers use categorization for the first two target groups whereas no further distinction is made in the policy approach towards companies that use labour migrants through TWAs: there is a uniform approach towards this group.

In the target group of labour migrants, the policy approach distinguished labour migrants from different countries, adjusting the language in which they are approached in order to enhance the effectivity of the policy. Also quantification is used in terms of nationality: the approach focuses mainly on labour migrants from Polish origin as this is the largest group.

Within the target population of TWAs, also a categorization approach is used based upon the behaviour of the TWA: do they violate the working conditions of labour migrants or not. Dishonest TWAs are perceived and labelled as criminal elements in the UK and therefore not a labour market issue but a criminality issue. Variety in TWAs was thus used by policy makers to define the target group for regulation and persecution. More specifically, it enabled them to prosecute the dishonest TWAs and to keep the rest of the sector free from regulation. No quantification is used, as nobody has an idea about the size of the violations of working conditions of labour migrants and inherently the number of dishonest TWAs. Actually this is one of the aspects that make it very hard to regulate in the first place and to judge whether regulation is effective.

An additional categorization of TWAs that is used by policy makers is based upon the sectors in which the TWAs are active. Sectors that are perceived as high risk for the violation of working conditions fall under a system of licensing: those active in agriculture, horticulture, food packing and processing of shellfish sectors. Since there are no reliable figures on the extent of violation of employment conditions of workers in the TWA sector, it is difficult to assess the size of the problem in this sector and the TWA sector overall. This is even more the case because the system of reinforcing labour rights is complaint-based in the UK.

However, this might not work too well in the TWA sector, due to the fact that many workers, especially labour migrants, have a vulnerable position and do not know their rights and are therefore less likely to file a complaint. Trade unions therefore point out that a more pro-active approach of inspectorate organizations would be more effective to target labour exploitation in the TWA sector.

Comparing the Netherlands and the UK:

Overall conclusions

With the accession of ten new member states to the EU in 2004 and 2007, the pillars of the European Union that guarantee the free movement of labour and of services caused difficult challenges for the old member states. The labour markets of the Western member states were (gradually) opened for migrants from the new Central and Eastern European (CEE) member states. This resulted in a large inflow of labour migrants, mainly from Poland, but also from Hungary, Romania, Bulgaria and other CEE countries, into the labour markets of the old member states. This migration flow was primarily driven by the large disparities in wage levels between the old and the new member states. As consequence, labour migrants are often willing to work for lower wages and under worse working conditions than is the standard in the host countries. This may cause unfair competition with incumbent workers, which can result in companies substituting labour migrants for incumbent workers and ultimately in a general deterioration of employment conditions in the sectors and occupations in which labour migrants are employed. In this context, CEE labour migration was first seen as a migration issue. Many old EU member states imposed transition regimes to postpone (fully) opening their labour markets for labour migrants, whereas others did not deem such measures necessary as they expected mainly positive effects to occur from labour migration. These countries immediately opened their labour markets for CEE labour migrants. When the possibility for a transition phase was over after a maximum of seven years, it turned into a labour market regulation issue. To prevent potentially disadvantageous effects of labour migration while maintaining the positive economic effects, both for companies and for the migrants themselves, laws and regulations at the European level have been implemented often replenished by policies at the national level as well as at the sectoral level. At the EU level the Posting of Workers Directive, among others, is intended to regulate employment conditions of workers who are temporarily posted in another country. At the national level, governments can implement additional regulations provided they are not in conflict with the free movement of workers and of services within the Union. At the sectoral level social partners can close collective agreements on employment conditions that may or may not apply to all workers in the sector, depending on whether the collective agreement is legally extended by the government.

In this report we focused on the regulation of employment conditions of labour migrants that are employed through temporary work agencies (TWAs) in two EU member states, the Netherlands and the United Kingdom, to understand the choices made by policy making actors regarding the regulation of the sector to counteract potential negative consequences of CEE labour migration. The TWA sector is especially interesting since a large share of the labour migrants from CEE countries find employment in the host countries through the intermediation of TWAs. In both countries, at least a quarter and perhaps as much as half of the labour migrants from the new member states are employed through TWAs. A comparison of the Netherlands and the UK is interesting since these countries have very different policies regarding the regulation of the labour market and largely diverging systems of industrial relations. The comparison of these two countries allows us to find out

to what extent the type of labour market policies and the industrial relations matter as far as the regulation of labour migration is concerned and the choices made by policy making actors in such different contexts. Moreover, comparing different countries with each a different approach allows us to determine which universal struggles are left regardless the political and institutional context. The research question guiding this study was therefore:
To what extent, by and for whom and with which rationales are policies formulated at a national and sectoral level to counteract potential negative consequences of increased inter-European labour migration and what are the remaining struggles?

Both the Netherlands and the UK have developed a broad array of policies and regulations on the national as well as on the sectoral level to regulate the TWA sector. A common element is that both countries focus on the same target groups, viz. (1) TWAs, (2) companies that hire temporary agency workers, and (3) labour migrants. The reason is that all three target groups may directly or indirectly affect employment conditions in the TWA sector. The role of TWAs is self-evident, since they are largely responsible for potential violations of laws and regulations regarding TWA workers. The user companies, even though they do not formally hire the TWA workers, are important actors, since they can exert a strong downward pressure on the costs of TWA workers and hence on their employment conditions. Labour migrants themselves often lack knowledge about their rights and therefore might fail to recognize that they are abused or may not know how to claim their rights.
In the Netherlands and the UK the potential problems with labour migrants and user companies are tackled in comparable ways. Information campaigns targeted at labour migrants have been set up and leaflets in several languages have been distributed to inform them about their rights. The responsibility of user companies for the employment conditions of the workers they hire through TWAs is stressed by the introduction of a legal chain responsibility. This means that companies are responsible for the employment conditions of all workers working for them, irrespective of whether they hire them directly or employ them through a TWA.
Regarding the targeting of TWAs themselves, there is, however, an important difference between the two countries. In the Netherlands, four different types of TWAs are distinguished for the sake of the policy process: (1) honest TWAs, (2) ignorant TWAs, (3) “grey” TWAs, and (4) dishonest TWAs. Ignorant TWAs violate legal regulations accidentally, due to lack of knowledge of the applicable laws and regulations. Grey TWAs deliberately operate on the boundaries of the law. They try to reduce the costs of agency workers as much as possible by devising special constructions (such as deduction of rent from the wage) that are formally legal but conflict with the intention of the law. Dishonest TWAs clearly and wilfully violate the law. In practice, these four categories of TWAs form a continuum without sharp dividing lines.
In the UK, only a distinction is made between honest and dishonest TWAs. Dishonest TWAs are not really perceived as companies that operate in the TWA sector but rather as criminal

elements that abuse the sector. As a consequence, contrary to the Netherlands, in the UK the existence of dishonest TWAs is not considered to be a labour market issue but a criminality issue which is addressed by criminal law.

The regulation of the TWA sector at the national and the sectoral level reflects the different industrial relation systems in the two countries. In the Netherlands, a neocorporatist system prevails, sometimes called the Polder model, in which the trade unions and employers' associations are regularly consulted by the government and are involved in agenda setting and policy making at the national level. About four in every five employees are covered by a collective agreement that is mostly the outcome of multi-employer bargaining at the sectoral level. Most of the sectoral agreements are legally extended to all companies in the sector. This is also the case in the TWA sector: there are two collective agreements in the sector, one of which is legally extended to the whole sector. Moreover, the social partners have set-up the SNCU organization that is responsible for monitoring the compliance with the collective agreements by TWAs. Furthermore, a private certification scheme for TWAs has been set up, which is not legally binding for TWAs but may help user companies in establishing whether a TWA is bonafide. However, the trade unions ended their collaboration with the employers in the administration of this scheme, when they noted that it is not effective in distinguishing between bonafide and malafide TWAs. Nevertheless, regulation of employment conditions in the Dutch TWA sector can be characterized as predominantly based on self-regulation by the social partners, backed by national laws.

The industrial relations in the UK are usually characterized as a system of liberal pluralism. In this system there is no direct involvement of the social partners in policy making at the national level, whereas the position of unions at the sectoral level is weak. Only about 30% of employees are covered by collective bargaining which predominantly takes place at the company level (Visser 2015). As a consequence, there is little involvement of the trade unions at the sectoral level. This is reflected in the fact that the main regulation tool in the TWA sector, a private certification scheme, the Code of Professional Conduct, is administered by the employers' association REC only, without any involvement of the trade unions. Whether this Code is effective is hard to say, since no evaluation has taken place to establish whether member organizations of the REC commit fewer or no violations of the law. The main activity of trade unions regarding migrant agency workers is their attempt to organize them at the workplace alongside other employees. Again, little is known about the effectiveness of this approach.

We conclude that the way that the Netherlands and the UK address the problem of unfavourable employment conditions of migrant workers in the TWA sector is characterized by some similarities but also by some significant differences. The differences are related to the different views on labour market regulation in general and to the difference in the industrial relations systems between the two countries. With respect to the view on labour market regulation the Netherlands considers abuses of labour migrants primarily as a labour market problem that should be tackled by (better) regulating the labour market, either at

the national level by the government or at the sectoral level by the social partners. In the UK, the dominant view is that the labour market should be regulated as little as possible. Violation of labour standards is therefore not primarily considered as a labour market issue, which may require further regulation, but as a criminal issue that should be addressed by criminal law. In this way, the UK can maintain the position of minimal regulation despite the existence of abuse of migrants.
The difference in industrial relations system between the Netherlands and the UK is reflected in the different roles of unions at the sectoral level. While the British unions are completely absent at the sectoral level, the Dutch unions have been involved in various kinds of self-regulation of the TWA sector: there are two collective agreements, there is a bipartite organization that monitors compliance with the collective agreements and a private certification scheme for TWAs has been set up, although the unions have now left the administrative organization of this scheme.

Regardless these differences in approach and considerations, there are some important similarities in the remaining struggles. In the Netherlands as well as in the UK, a major problem as pointed out by policy makers is the lack of effective monitoring capacity. As a consequence, the odds of a dishonest TWA of being caught are very low. In the UK, an important underlying problem, according to policy makers, is that the inspectorate works complaint-based rather than pro-active. In the Netherlands the Inspectorate can act pro-actively, although its capacity is too limited to pose a serious threat for dishonest TWAs. Labour migrants who are victim of abuse are not very likely to file a complaint against the TWA or the user company due to their vulnerable and dependent position. In addition, their working conditions and wages might still be better than in their own country, even though these violate the labour law or the collective agreement. This makes it even less likely that they file a complaint. In both countries, policy makers state that a pro-active approach of inspectorate organizations, on the national as well as on the sectoral level, is necessary and that their monitoring capacity should suffice to pose a credible threat to malignant TWAs to be detected. A related problem in both countries is that no-one has any idea about the size of the violations of the regulations regarding employment conditions of labour migrants and, consequently, of the number of dishonest TWAs. This lack of knowledge makes it very hard to regulate the sector in the first place and to judge whether regulation is effective, which is a problem for policy making. Due to this lack of reliable figures, we are unfortunately also not able to establish which system – that of the UK or the Netherlands - is more effective in preventing or fighting the violation of labour laws and regulations with respect to the employment conditions of migrant workers in the TWA sector.

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APPENDIX 1:

LIST OF INTERVIEWS THE NETHERLANDS

1) NBBU
2) ABU
3) SNCU
4) SNA
5) FNV
6) CNV
7) LBV
8) Labour inspection of the Ministry of social affair and employment
9) Ministry of social affair and employment
10) Municipality Westland
11) Randstad
12) Otto Workforce
13) Fairwork
14) VNO-NCW
15) WRR

LIST OF INTERVIEWS THE UK

1) REC
2) GLA
3) TUC
4) GMB
5) Linda Dickens (expert)
6) Guglielmo Meardi (expert)
7) Thanos Maroukis (expert)
8) Melanie Simms (expert)

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