

THE NETHERLANDS

1. INTRODUCTION

The high productivity of Dutch agriculture goes hand in hand with high risks for migrant farmworkers. The Dutch Labour Inspectorate (*Inspectie Sociale Zaken en Werkgelegenheid*, ISZW) considers agriculture in the world's second largest agricultural exporter one of the top risk sectors for unfair work. In Dutch agriculture, "a flexible contract with a low wage and little certainty is the rule rather than the exception and employment agencies, contracting and payrolling are also widely used" as a result of efforts by growers "to keep prices low by reducing labour costs with all kinds of mechanisms to below the legally required minimum or collective wage."⁸³ Consequently, many migrant farmworkers in this rich country experience working poverty. Migrant workers from Central and Eastern Europe (CEE)⁸⁴ form the bulk of the agricultural labour force. About a fifth of them work at or below the minimum wage, earning an average of ten euros an hour, half the wage of other European workers employed in the Netherlands.⁸⁵

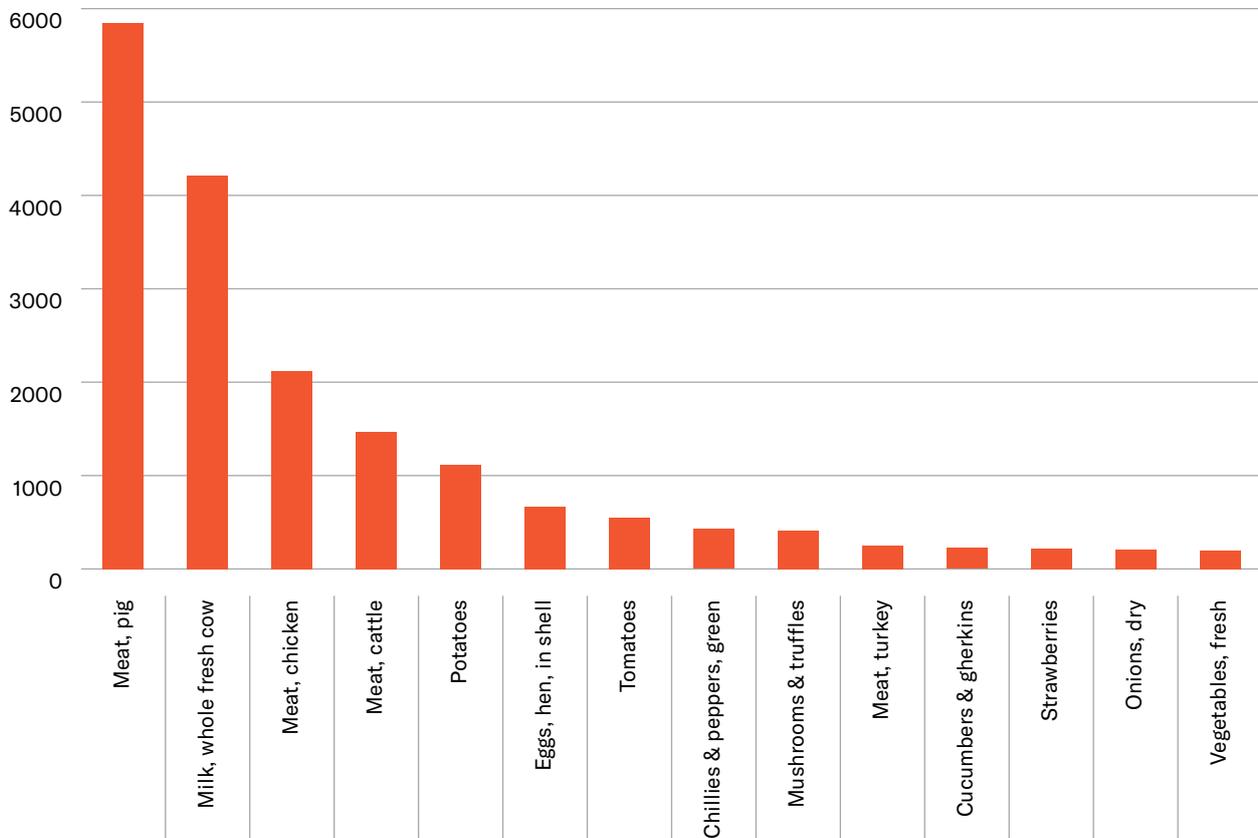
2. FACTORS DRIVING SUB-STANDARD AND EXPLOITATIVE PRACTICES IN THE AGRI-FOOD SYSTEM

2.1 Trends and patterns in agri-food migrant labour

With a 7% share of Gross Domestic Product (GDP), agriculture has remained a significant sector in the Netherlands. Dairy and meat production have dominant roles in agricultural output (Figure 1). Horticultural production of flowers and vegetables is crucial for price-competitive exports and is characterised by a high labour intensity, with the workforce largely composed of migrant workers. For this reason, this section of the report focuses especially on employment in horticultural production, but recognises the incidence of similar unfair labour practices in other sectors, such as the meat industry.⁸⁶

FIGURE 1

Gross production value by main agricultural product, 2016 (million euros)



Source: FAOSTAT.⁸⁷

Migrant labour has long been a structural component of the Dutch agricultural industry, with CEE migrants becoming the predominant migrant labour force after the EU expansions in 2004 and 2007.⁸⁸ Recruitment agencies and agriculture are identified as the top employers of CEE migrants⁸⁹ with estimates of about 275,000 and 49,000 jobs respectively. According to official statistics, Polish

farmworkers form a third of the agricultural labour force.⁹⁰ Recently, the migrant agricultural labour supply has shifted further East,⁹¹ i.e. Romania and Bulgaria, probably as a result of difficult work and low wages.⁹² Male migrant workers represent a slight majority in agriculture, with the share of female farmworkers ranging from 36% (Polish nationals) to 20% (Romanian migrants).

TABLE 3

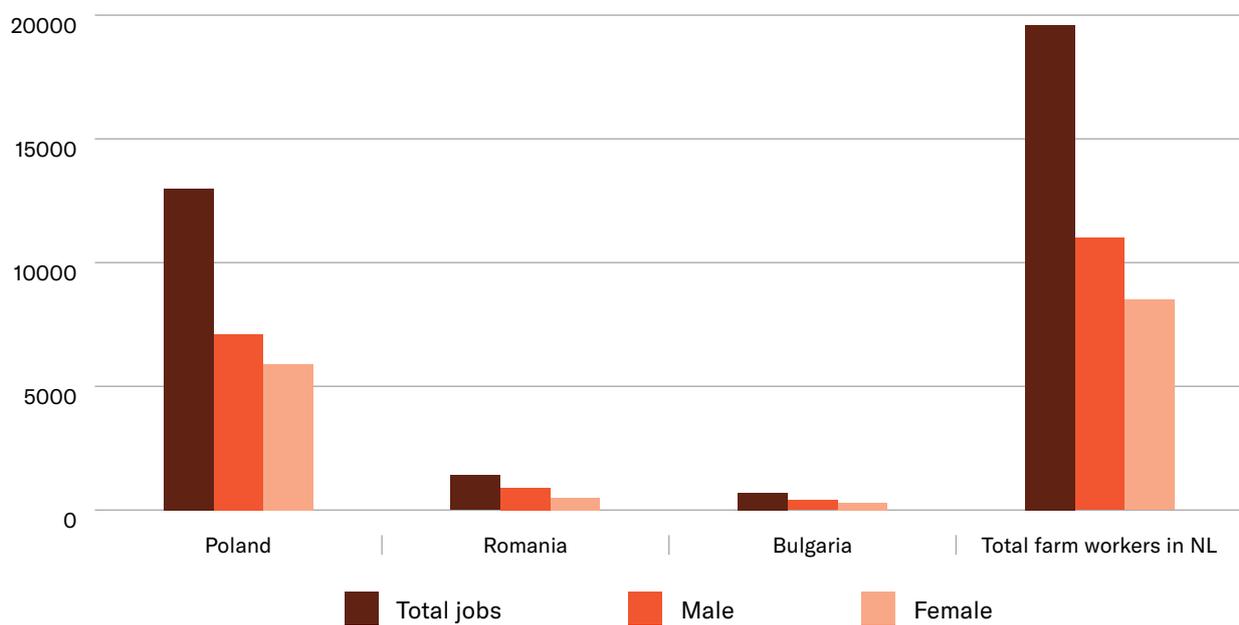
Migrant employment in agriculture by main countries of origin, 2017 (thousands)

	POLAND	ROMANIA	BULGARIA	TOTAL FARM WORKERS IN NL
Total Jobs	13.0	1.4	0.7	19.6
% Registered	32.3%	21.4%	28.6%	41.3%
Male	7.1	0.9	0.4	11.0
% Registered	29.6%	22.2%	25.0%	39.1%
Female	5.9	0.5	0.3	8.5
% Registered	35.6%	20.0%	33.3%	44.7%

Source: CBS.⁹³

FIGURE 2

Migrant employment in agriculture by main countries of origin, 2017



Holding EU citizenship rights does not prevent a high degree of precariousness among CEE migrant workers. Precarious work is characterised by a range of labour-related insecurities,⁹⁴ including employment and income insecurity due to zero-hour employment contracts with recruitment agencies.⁹⁵ The physically demanding work comes with health hazards (e.g. exposure to chemicals in greenhouses) or work insecurity, while workers are threatened with dismissal when they request sick leave.⁹⁶ With possibilities for training being rare, skill reproduction insecurity is high too. Last but not least – as is also highlighted in a study on Italy (especially with regard to Romanian workers) – low trade union membership among migrant workers in agriculture⁹⁷ and some growers' efforts to prevent unionisation⁹⁸ result in CEE migrant workers lacking a collective voice in the labour market and therefore representational security.

Most of the complaints about severe violations of labour rights that FairWork – an organisation fighting labour exploitation in the Netherlands – receives from the agricultural sector do not involve labour exploitation and human trafficking as defined in the relevant national, EU (e.g. Employer Sanctions Directive 2009/52/EC⁹⁹) or international frameworks (e.g. the 2000 UN Protocol to the UN Convention on Transnational Organized Crime¹⁰⁰). Rather, these complaints stem from EU migrants being employed through recruitment agencies. This can be described as a sort of “regulated precariousness” deriving from an “agency contract that puts people in a highly dependent position and which people are often unaware of at the time they come to the Netherlands, and that gives them virtually no rights.”¹⁰¹

BOX 5: THE IMPACT OF TECHNOLOGICAL INNOVATION ON LABOUR CONDITIONS

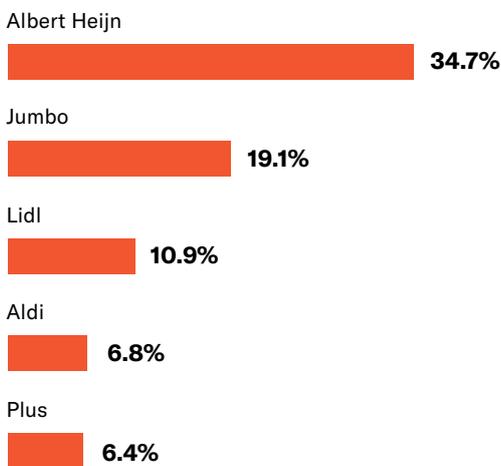
Being among the forerunners in the field of innovation in agricultural technologies, the Netherlands has been referred to as the Silicon Valley of agriculture.¹⁰² The impact of such innovation has been ambiguous.¹⁰³ For instance, a shift in strawberry cultivation from open fields to greenhouses enables all-year production, potentially providing workers with more stable incomes and a reduction in the time spent working outdoors in difficult weather conditions. However, the downside of these improvements may be fewer overtime payments and harsher conditions in terms of heat and humidity in the greenhouse. In addition, technological upgrading of the agricultural production process is more likely to lead to more precarious conditions in terms of high labour intensity and income insecurity.¹⁰⁴

2.2 Value chain dynamics

In the hourglass-shaped agri-food chain in the Netherlands, a highly concentrated group of retailers wields significant power over both a large number of farmers and millions of consumers.¹⁰⁵ The five largest supermarkets in the Netherlands – Albert Heijn, Jumbo, Lidl, Aldi, Plus – hold a combined market share of 78% (Figure 3).

FIGURE 3

Main supermarket market shares, 2018 (%)



Source: Distrifood.¹⁰⁶

As in Germany, the power of supermarkets is compounded by the role of international buying groups (IBGs) which “coordinate procurement across borders to obtain the lowest possible prices for well-known brands and/or basic private label groceries.”¹⁰⁷ Several retailers participate in one or more of these IBGs. Aldi and Lidl are notable exceptions. They can be considered IBGs in their own right as to a large extent they centralise their procurement internationally.¹⁰⁸

Dutch retailer participation in IBGs exacerbates the financial power they wield with regard to negotiating lower prices with food producers/distributors as they can resort to competitive tenders not just domestically but internationally. This enables them to unilaterally impose practices that “grossly deviate from good commercial conduct, good faith and fair dealing,”¹⁰⁹ such as retroactive delisting of suppliers unless they offer price discounts. While pushing for economies of scale in agriculture, IBGs can escape taxation through cross-border schemes.¹¹⁰ As is also stressed in the case studies on Germany and Sweden as well as those on Southern European countries,¹¹¹ the downward price pressure means that growers employ all available methods to survive, including a dependence on low wages and insecure contracts for migrant workers.¹¹² These detrimental effects of retail concentration on workers seem to be permitted under current competition law “[a]s long as consumers benefit from the lower resulting prices.”¹¹³

Until recently, the Dutch (and EU) agricultural supply chain was governed by the Principles of Good Practice set forth in the Supply Chain Initiative (SCI),¹¹⁴ which, however, has no enforcement powers and espouses voluntary training and dispute resolution through internal processes.¹¹⁵ Importantly, the Dutch government has recently proposed a national regulation to transpose the EU Directive on unfair trading practices.¹¹⁶

Dutch suppliers, IBGs and industry groups reject assertions that they engage in unfair trading practices.¹¹⁷ In contrast, the Dutch Arable Farmers Union (*Nederlandse Akkerbouw Vakbond*, NAV) has highlighted “that about three-quarters of the affiliated farmers had experienced unfair commercial practices.”¹¹⁸

Civil society organisations such as Oxfam Novib and SOMO suggest that existing legislation is insufficient to protect national, EU and extra-EU suppliers¹¹⁹ and are also concerned about the ability of the inspection mechanism to track and efficiently respond to complaints.¹²⁰

2.3 Recruitment practices

As in Germany and Sweden, indirect recruitment enables growers of horticultural products to pass on downward price pressures to a flexibly employed and poorly paid migrant workforce. This includes posted workers and hiring through agencies which act as subcontractors to growers.

According to the 1999 Flexibility and Security Act, a worker's contract with an employment agency is a regular contract with the exception of the first 26 weeks. Employers are allowed to deviate from the legal rules through a collective bargaining agreement (CBA). The two CBAs that govern such agency contracts distinguish different phases: during the first phase, the contract may be terminated at any time and workers are only paid for hours worked, while workers in the second phase must be offered a permanent contract and receive payment even if there is no work for them.¹²¹ Agriculture tops the list of sectors with flexible employment relations in the Netherlands.¹²² In 2017-2018, a total of 184,000 migrants were made available to the Dutch labour market through the two main employment agencies' associations. 72.8% of the workers were Polish and 46% worked in the food industry, greenhouses or farming.¹²³

The phasing of labour rights is problematic as employment agencies avoid workers progressing beyond first-phase contracts.¹²⁴ This is beneficial for both the agencies, which receive higher recruitment fees based on repeated contracts, and for growers, who save money on wages and fringe benefits. For workers, in contrast, continued employment with a first-phase contract implies a constant risk of dismissal and high income insecurity. The fact that EU citizenship entitles dismissed CEE farmworkers to modest unemployment benefits¹²⁵ appears to be factored into growers' and agencies' business models,¹²⁶ with the cost offloaded from businesses to taxpayers, while in the media unemployed CEE migrants are widely framed as Dutch welfare state scroungers.¹²⁷

Workers' multiple dependencies on agencies further weaken their bargaining power. CEE migrants'

employment, housing, transportation and medical insurance contracts are often interlinked and mediated through the employment agency.¹²⁸ There are two common ways in which this connection is turned into a profitable business model. First, housing expenses are often inflated and when they are deducted from workers' earnings they reduce the agency's labour costs. In addition, as in Germany, fines imposed on migrant workers for spurious reasons (e.g. using the wrong detergent in a washing machine) represent another common mechanism for reducing wages.¹²⁹

Prevailing gender norms aggravate this situation for female workers. For instance, Polish women have difficulty refusing their employers' demands. They often move to the Netherlands to send earnings to their family in their country of origin. However, for those with children in the Netherlands, when their child is sick, they do not dare to take leave for fear of dismissal.¹³⁰ As a result, workers are hesitant to report labour rights violations "as the chances of being dismissed for a critical attitude are high."¹³¹ This form of disciplining workers is especially effective because workers risk not only losing their jobs but also their accommodation in the event of conflict.

Many indirect contractual relations stretch the boundaries of legality, e.g. in the form of bogus schemes in which the worker's actual situation differs from that presented.¹³² Polish migrants are most often recruited through employment agencies in Poland that are local offices of Dutch companies or Polish agencies collaborating with Dutch agencies.¹³³ The steep rise in the numbers of one-person agencies in Poland suggests that CEE countries are being used as conduits for employment contracts offering employers opportunities to circumvent collective bargaining agreements (CBAs), thus lowering wages and social security costs.¹³⁴

Illegal recruitment from abroad involves a wide range of practices that violate regulations on immigration and labour standards. Among these, underpayment of migrant workers through both poverty wages and wage theft is the most significant and growing illegal practice identified by the Dutch Labour Inspectorate.¹³⁵

BOX 6: ACHIEVING COMPETITIVE ADVANTAGE AT THE EXPENSE OF MIGRANT WORKERS

In February 2019, a large-scale case of illegal practices was punished with a fine of 134,000 euros, 240 hours of community service and two years' suspended imprisonment. A labour intermediary invented an operation that involved selling strawberries, raspberries, asparagus and mushrooms before harvests to a foreign legal entity owned by the intermediary, while in fact no transfer of ownership took place. The crop was then harvested by migrant workers from Poland employed by the foreign company. This mechanism enabled income tax and social security contribution evasion and allowed the products to be sold at a lower price to Dutch retailers. Both the intermediary and about twenty large growers involved earned millions of euros in untaxed profits.¹³⁶ The ISZW sees such fraudulent practices as one of the main causes of unfair competitive pressure on other growers, which has resulted in mass bankruptcy.¹³⁷

3. DEMAND MEETS SUPPLY: MATCHING EMPLOYMENT NEEDS AND MIGRANT LABOUR

3.1 The impacts of migration and asylum policies

While undocumented migrants represented an important pillar in the Netherlands' greenhouse economy during the 1980s and 1990s,¹³⁸ since the turn of the millennium regular CEE migrants have taken over their role.¹³⁹ Only a small number of the workers supported by FairWork are undocumented migrants.¹⁴⁰ A 1998 Linkage Act excluded undocumented migrants from welfare state entitlements and connected immigration and social policy-related databases. Due to this connection, undocumented workers try to remain below the radar even in cases of severe labour rights violations.¹⁴¹ Since that period, restrictive border policies have been complemented with internal migration control and expulsion policies to reduce the number of migrants already in the country.¹⁴²

There remains a "single permit" combining a work visa and residence permit for seasonal agricultural work (up to 24 weeks) for which an employer or candidate can apply.¹⁴³ However, administrative hurdles and associated costs combined with the

continued availability of CEE labour currently make this process a less attractive option for growers.

As for asylum seekers' access to employment, they have no right to work during the 6-month decision period after an asylum claim. Assuming the decision period is extended, the applicants may then undertake an internship. They may also search for a job, but their employer will have to apply for a work permit for them and their earnings will be capped.¹⁴⁴ These restrictions probably explain the lack of evidence of asylum seekers being employed in Dutch agriculture and other sectors.

3.2 Policies against labour exploitation

EU enlargement has been accompanied by measures that facilitate an erosion of labour rights guarantees. Legislation such as the Posted Workers Directive,¹⁴⁵ the Services Directive¹⁴⁶ and the Social Security Regulation¹⁴⁷ "allow for the posting of employees who were hired in one member state to work in another member state with the social protection and wages of the sending country, unless specifically regulated by the destination country."¹⁴⁸

Even if national labour rights guarantees are not undermined by such mechanisms, the flexibilisation of the Dutch labour market increases the risk of

labour exploitation. The multiplicity of legally sanctioned working relationships, the emphasis on fostering entrepreneurship and the possibility of turbo-liquidation¹⁴⁹ create opportunities for fleeting entrepreneurship and the low chance of being apprehended creates the space for unfair contractual relations to flourish.¹⁵⁰

Currently, only an estimated 3,5% of companies are being monitored annually by the Labour Inspectorate due to a decrease in funding and the resulting limited capacity.¹⁵¹ In 2018, the Inspectorate aimed to monitor merely 1% of all companies where unfair labour practices are a potential risk.¹⁵² All of this can have severe consequences for workers. A union representative offered the example of a group of seasonal Polish workers who reported burns suffered while handling chemical substances during their work to the ISZW. The Inspectorate finally reacted after three months, but the affected workers had already returned to Poland.¹⁵³

While inspectors themselves insist that no advance notice is provided to employers,¹⁵⁴ representatives from *Federatie Nederlandse Vakbeweging* - FNV, the largest Dutch trade union, have shared examples of growers being alerted beforehand and therefore preparing for inspections, with workers being briefed. Private conversations with workers are essential¹⁵⁵ but do not seem to take place regularly, especially due to widespread language barriers.¹⁵⁶ These barriers also mean migrant workers are often unaware of grievance procedures to claim their rights. If they are aware of the procedures they often refrain from using them because they are cumbersome and costly.¹⁵⁷

A system of public licensing of recruitment agencies was abolished in 1998 and replaced in 2004 with industry self-regulation through certification.¹⁵⁸ However, the shares of labour rights violations do not differ significantly between registered and non-registered agencies.¹⁵⁹ The industry's self-governance therefore seems ineffective.¹⁶⁰

The Dutch government has taken steps to curtail abuses in subcontracting, including a 2010 law that enables employees to recover wages from their indirect employer in the event that the agency does not pay, with the key exception of certified agencies. The implicit assumption is that certified agencies do not exploit their workers, although this is not always the case, as shown above.¹⁶¹ Subcontractors can also avoid liability by further subcontracting recruitment to a non-certified (sometimes foreign) subsidiary.¹⁶²

In this situation, Dutch civil society appear not to be vocal about unfair labour practices in agriculture. The rights of farmworkers in the Netherlands are generally not taken up by a labour movement that has not yet effectively reached migrant workers or by environmental groups pushing for alternative food systems.

3.3 The EU CAP and national agricultural and rural policies

EU CAP direct support payments to producers in the Netherlands have concentrated on dairy and beef production and have enabled farmers to invest in labour-saving technologies.¹⁶³ Horticulture, in contrast, has hardly been touched by the CAP.¹⁶⁴ As a result, the sector has remained the most labour-intensive part of Dutch agriculture.

Due to the strong Dutch greenhouse vegetable sector's market orientation, the EU market support payments (Common Market Organisation, CMO) have contributed to increases in scale and to extensive supply-driven attention for quantity.¹⁶⁵ Indeed, financial support generally goes towards large-scale initiatives and investments in capital goods.¹⁶⁶

EU market support payments have been negligible in recent years.¹⁶⁷ At national level, policies have aimed to promote sustainability and the quality of agricultural production.¹⁶⁸

4. GOOD PRACTICES

Some of the interviewees have argued that resistance against exploitative practices in agriculture must be initiated by workers themselves.¹⁶⁹ First and foremost, this requires efforts to strengthen migrant workers' associational power, i.e. "the various forms of power that result from the formation of collective organisations of workers."¹⁷⁰

In the context of Dutch trade unions' traditional focus on "tripartite bargaining in order to develop collective and social rights and institutional regulation,"¹⁷¹ the emerging new forms of outreach to migrant workers through fellow CEE citizens are promising. Rather than organising outreach activities for migrant workers by sector, the trade union FNV has started organising regional events on issues such as occupational safety and health in the Southern provinces of North Brabant and Limburg where open field horticulture is concentrated. Interested workers are trained as shop stewards in order to enable them to inform their colleagues about their rights and entitlements in their own languages.¹⁷² Such organising through cultural mediators has proven to be an effective way to take workers' social identities – beyond class – on board in union outreach.¹⁷³

5. CONCLUSIONS AND RECOMMENDATIONS

The bulk of unfair practices that affect CEE migrant farmworkers in the Netherlands can be defined as "regulated precariousness" embedded in migrant workers' high degree of dependency on their employers and shaped by skewed power relations in the agri-food chain.

The strengthening of migrant farmworkers' associational power through new forms of awareness-raising and organising is a crucial stepping stone to counter unfair labour practices. Given the limited outreach to CEE migrant workers by Dutch trade unions, trusted migrant organisations have an important role to play. In addition, municipalities could provide information during migrant registration.

Awareness-raising and organising must be complemented through strengthening 'institutional power,' defined as workers' capacity "to influence the behaviour of an employer by invoking the formal or informal rules that structure their relationship and interactions."¹⁷⁴ The effective implementation of existing labour rights guarantees requires more rigorous enforcement by labour inspection,¹⁷⁵ including an increase in the resources of the Labour Inspectorate. Its approach requires reorientation towards workers as the ISZW's most important stakeholders. Institutional innovation in the form of a streamlined civil procedure to recover unpaid wages, overtime and holiday pay, and the reintroduction of recruitment agency licensing¹⁷⁶ would be further important steps towards fair labour conditions for migrant farmworkers.

While these proposed changes harbour a potential for short- and medium-term improvements, they do not yet challenge the neoliberal European market model with its focus on facilitating companies' profit-seeking and labour-cost reduction.¹⁷⁷ Institutional innovation to guarantee fair prices for producers, e.g. through the regulation of living price benchmarks and living wages for farmworkers would represent key building blocks for humanising the agri-food chain in the Netherlands.¹⁷⁸