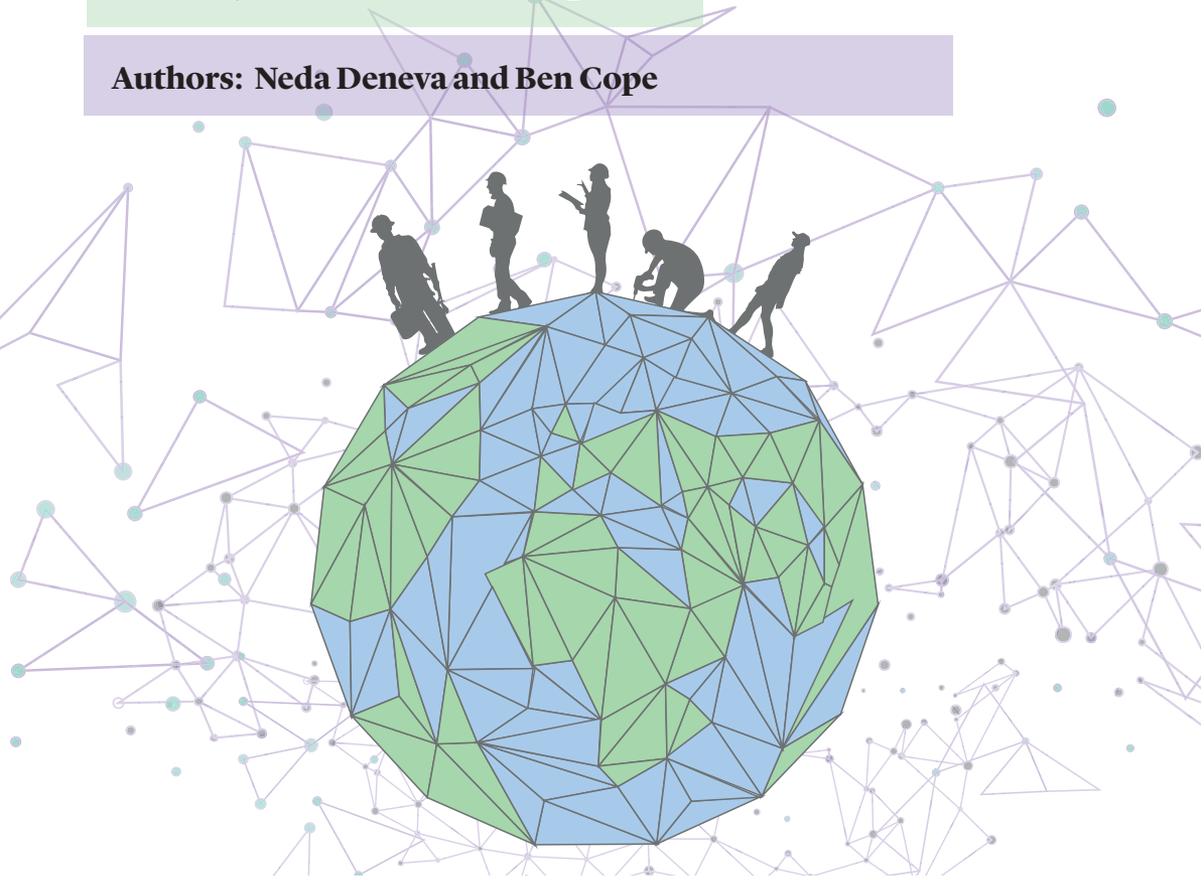


Towards Shared Interests between Migrant and Local Workers

Recommendations for Policymakers and Practitioners

Precarity and Social Citizenship

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About the Project

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

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

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

Summary

This brief explores the relationships between precarious working conditions and social citizenship as they relate to migrant labour. In so doing, we focus on a two-way relationship. On the one hand, the rise of precarious labour (short-term and agency work) is fuelled by migrant labour's lack of the full-range of native citizen rights (e.g. lower wage expectations, short-term residency rights, and limited welfare provision, etc.). On the other hand, precarious working lives result in limited access to social citizenship given that social welfare and citizen rights are provided on the basis of permanent labour. This means that migrant workers suffer from a double bind of working in precarious fields and of being more exposed to precarity on account of their lack of citizen rights. Moreover, the combination of precarious labour and obstructed social citizenship hampers migrants' integration into their host society, thus fuelling social tensions. We discuss these issues based on five case studies examining migrant labour in a variety of occupational sectors in five EU countries: all-inclusive hotels in Bulgaria, multinational supermarket chains in the Czech Republic, temporary workers in Poland, the commercial cleaning industry in Italy, and domestic and care work in Spain. From different old and new EU countries and across a variety of sectors, we see in these 5 cases how precarious migrant labour is both the cause and effect of new challenges to social citizenship. We argue that this is an urgent challenge that needs to be addressed at the EU level.

Precarity in all five cases was closely linked to short term, flexible, non-standard and/or mediated employment models. These types of labour are growing, and migrants are at the forefront of these new labour models.

Short-term, flexible, or non-standard employment forms noted in the 5 national cases included part-time work (Italian cleaning sector), paid-per-piece (per hour or per kilometre in the Polish cleaning and logistics sectors), temporary employment (seasonal in the Bulgarian tourist sector or fixed-term agency contracts in the Czech and Polish cases), civil contracts (as opposed to permanent work

contracts), and irregular employment (Spanish domestic sector). *Mediated employment* forms included subcontracting (in multiple-step employment chains in the Polish logistics industry), work organised through temporary work agencies or TWAs (in Czech supermarkets and Polish food production), self-employment (the Spanish case), and work through digital platforms (Polish cleaning sector). These modes of labour often intertwine. Their growth moves societies away from the long-term, direct labour relationship characteristic of post-war European social democracies. As a result, they raise issues of access to welfare and basic income, and the representation and empowerment of workers which we address below. We highlight the ways in which these issues are related to or violate the principles of the European Pillar of Social Rights (EPSR), which enshrines such issues as equal opportunities and access to the labour market, fair working conditions, and social protection and inclusion as principles applicable across Europe.

In considering how migrant labourers' access social citizenship, we argue that it is important to distinguish two connected, but distinct aspects of this question:

1. Legal aspects: How do different migrant/citizenship statuses define access to rights? How do different working contracts and temporalities of labour determine access to rights? What is the impact of different regulatory frameworks?
2. Practical aspects: What are the actual practices (the substantive aspect) of getting access to rights? How do the everyday rhythms and organisational modes of work, and the experiences and worldviews of workers determine a worker's ability to exercise social rights?

We argue that confronting the issues of precarity and social citizenship as faced by migrant workers requires considering these two aspects in tandem. In other words, it requires legislative reform and also changed approaches to mobilising workers and empowering them to defend their rights.

Main issues

I. Short-term and mediated employment and their effects on access to welfare and basic income

1. Short-term and mediated employment of migrant workers is often promoted by migrant residency regulations. Organising the legal documentation for workers to come from abroad is generally perceived as difficult by both employees and employers, whereas work agencies specialise in dealing with regulatory issues. Thus, the difficulties of residency legislation push migrants towards temporary agency work.

For example, a Ukrainian can come to work in Poland on the basis of a certificate for work that enables him/her to be a resident for 6 months of the year. This type of regulation determines that workers will be engaged in temporary labour, and it encourages both bosses and employees to see work only in quantitative terms: Bosses see workers as depersonalised low-cost labour, and workers see work in terms of striving to earn as much as possible in a limited time, with scant regard for welfare issues. In addition, this legislation makes it difficult to change workplaces, so workers are often given work certificates by middlemen or agencies simply in order to enter the host country and then perform a series of quite different temporary jobs. Such short-termism and fraudulent practices hinder migrant applications for long-term residence or work permits, and obstruct their eligibility for welfare provision. The interrupted periods of short-term work also afflict the regularity of residence status needed for longer-term documentation of residency rights: in the case both of part-time workers in Italy's cleaning sector, and of migrant workers hired through TWAs for work in the Czech Republic and Poland, we witnessed how temporary work for non-EU migrants was combined with difficulties in legalising residence. Equally, temporary labour produces a lower annual income, which can also affect welfare provision and residence rights.

2. National welfare policies cover unemployment, sick leave, maternity leave, etc. based on standard full-time employment. Short-term employment is a barrier to consistent and uninterrupted access to welfare, both in the migrant's host and native countries. For example, seasonal workers in Bulgaria cannot apply for unemployment benefits when the minimum is 6 months of prior work and their contracts are for 3 months. Part-time workers might need double the time to reach the necessary prior working period to qualify for maternity leave or unemployment benefits. TWA employees and self-employed workers might end up with interrupted periods of being insured, which creates difficult access to health care and all other forms of social support.

Short-term workers are responsible for their own uninterrupted contribution through self-employment or they risk having low contributions (part-time) or interrupted periods of being insured. This either generates costs in the present or means lower future pensions, a prolonged working life and generally a more precarious old age. It also affects maternity coverage and health insurance. In the case of irregular or TWA workers in the Czech Republic, social contributions and health insurance are very often not covered by the employer at all and instead are the full responsibility of the worker. For migrant workers this means turning to private companies, which charge higher rates.

These risks are in direct contradiction with Chapter III of the EPSR on social protection and inclusion, including the right to social protection, unemployment benefits, old age income, and health care.

3. Short-term employment creates barriers to a decent annual income. In some cases, the annual income of both migrant and local workers is below the minimum of the country. Yet, due to their part-time, short-term or per-piece working contract, their hourly or monthly wage corresponds to the minimum requirement. Seasonal workers in Bulgaria only receive salaries for the active months of the tourist season (3 to 4 months). Part-time workers in Italy only receive payment for 3 hours per day. Such short-term contracts therefore contravene the

basic premises of social welfare provision inscribed in the notion of minimum wages, and thus are in contradiction with the EPSR Chapter II.5a and d, 6, and Chapter III.14 on the right to fair wages and adequate minimum wages, preventing in-work poverty and the abuse of atypical contracts.

4. Mediated employment — in other words work where, as a result of outsourcing or agency provision, the work is not performed for the same entity that pays the worker — is increasingly becoming the norm across a swathe of business sectors and company types and sizes. Mediated labour creates a divided labour force whereby those who work directly for a firm have different rights, responsibilities, and pay than those provided by temporary work agencies. In our study, this was the case for TWA workers in both supermarkets in the Czech Republic and factories in Poland. This is in direct contradiction with the principle of equal pay for equal work. In addition, the triangular employment relationship — where an agency pays a worker, while he or she works for an employer who pays the agency — means that the terms of the work contract are necessarily in tension with the reality of the work performed and who it is performed for. Agencies are honest about the need to sell labour to employers as cheaply as possible; the outcome being both that worker welfare provision will be kept to a minimum and that it is not clear how or to whom to stake claims for better terms of labour.

5. Short-term and mediated labour frequently bring together young migrants just entering the job market and elderly native and migrant workers unable to qualify for better jobs. This was the case both of workers in Bulgarian holiday resorts and in factory work in Poland. These two different groups are both vulnerable in terms of welfare provision and see short-term labour as an opportunity for different reasons.

6. Short-term and mediated labour generally occur in restricted welfare infrastructures when compared to permanent labour: Short lunch or toilet breaks for factory or supermarket workers, finding places to wash for longhaul drivers, or travelling from job to job for cleaners are all the workers' responsibility.

This tends to lead workers to privilege entrepreneurial ingenuity rather than welfare provision or worker solidarity in the stories of their working lives.

II. Representation and empowerment of workers

7. The indirect relations between workers and employers in cases of mediated employment create barriers for workers to negotiate and address problems. This can be seen in the cases from Poland and the Czech Republic, where TWA workers perform daily work in a factory or supermarket, but are paid by an agency who 'rents' them to perform services. This contractual fragmentation makes representation of rights or the empowerment of workers very difficult.

8. Trade unions have a limited role in guaranteeing fair working conditions in cases of mediated employment (in the Polish and Czech cases, TWA workers were excluded from trade union activity), short-term employment (temporary workers in Bulgarian tourism), and irregular labour relations (domestic workers in Spain). Traditional trade unions shy away from or have not yet found working mechanisms to recruit temporary workers, and to offer them protection and negotiate the improvement of labour conditions. Collective agreements are not in place for mediated employment. Hostile attitudes to migrant workers as another threat to the labour conditions of local workers are seen among some traditional trade unions, as witnessed in the Bulgarian tourism sector. This results in a lack of the representation to which temporary workers are entitled (Article 7, Directive 2008/104/EC on the representation of temporary workers), and to their exclusion from social dialogue (Article 33, Directive 2000/78/EC on the promotion of dialogue between social partners, as well as Article 6, p. 5 of Directive 2008/104/EC on the facilitation of a social dialogue in order to improve access to training and child-care facilities for temporary workers). It is also not in-line with the EPSR, Chapter II, 8 on social dialogue and the involvement of workers.

9. A specific obstacle for representing and empowering non-EU workers comes from the fact that in some countries, such as Poland, a work visa or work permit

are tied to one particular employer. This disproportionately increases control over workers, opens possibilities for exploitation, violates contractual labour conditions, and limits the avenues for filing complaints (unless the worker is willing to leave the country).

10. Technology increasingly enables work to be coordinated and controlled across continents (logistics) and within cities (professional cleaning), and to be restructured in domestic spaces (for example, through a web platform to connect cleaners and clients). This opens up new modes of assessing and evaluating work, new flexible regimes of labour, and it means that workers have less occasion to meet and share experience or information. This Uberisation of labour in different sectors gives workers choice, in the sense of how much and when to work, but it is based on a flexible piecework structure that makes empowerment problematic.

11. The situation of irregular workers — those who do not have proper authorisation for their stay, work, or employment contract — is particularly dire. They often fall or remain invisible to institutional labour protection mechanisms. And, when labour violations are recorded in their cases, these are treated as secondary to the worker's contravention of immigration regulations. In these cases, workers are often deported prior to having the possibility to file a labour rights violation complaint. The Spanish domestic sector is a case where the law has no provision for inspections, for regulating employers or for enforcing contributions to social security.

12. Precarious workers of all types (short-term, irregular, and in mediated employment) risk being invisible to labour control agencies, who have no access, model, or time frame to control contracts and working conditions for non-standard employment. At the same time, precarious workers have limited access to control organs — either because of their status of being on a non-permanent or informal contract or because of language, limited time, fear of losing job or even expulsion from the country (when a labour inspection office is in cooperation with a border control agency).

Recommendations

I. Short-term and mediated employment and their effects on access to welfare and basic income

1. The flow of labour migrants to the EU is an economic and social necessity, thus policies must be framed to both provide protection for workers and enable their integration into their host societies — through access to welfare provision and facilitating the exercising of citizen rights. This will both protect migrants from precarity and enable migrants to act as citizens of their host countries, reducing social tension. To this end, residence requirements for extra-EU workers should be simplified and not tie migrants to a single employee or a limited number of days per year.

2. The trend of temporary work contracts, part-time workers, and paid-per-piece workers is growing, especially through use of subcontractors like TWAs. It should be recognised at the state level as a legitimate form of long-lasting employment for many workers, rather than as an exception. This means policy changes at the state level to:

- a) Incorporate more forms of protection against unequal pay, against lower than the annual minimum income, against shifting risk to the employee via paid-per-piece arrangements.
- b) Reformulate conditions for access to unemployment benefits, to maternity and paternity leave, to pension age and pension calculation so as to not exclude or discriminate against short-term workers.

3. Develop clear and accessible information in several relevant languages on employment and social security rights and regulations that is made available for both local and migrant workers on:

a) Workers' rights concerning equal pay and equal employment conditions.

b) Regulatory procedures related to migration regarding visas, residency, and work permits, for instance.

c) Workers' rights on access to health care and social services in general and, more particularly, on the employer's responsibility to pay contributions.

d) Prepare coherent hands-on documents/leaflets with instructions for workers in mediated employment covering: the responsibilities of the formal employer and the company the worker's labour is leased to; how to read a pay-slip; where to turn in case of an employment accident or questions in regard to working schedule, salary payment, and access to social security.

4. Special attention should be paid to the feminisation of precarious labour and to the restricted access to social rights for women this entails. National welfare systems should adopt models of providing leave for pregnant women and maternity/paternity leave that are not strictly tied to full-time employment and provide more options for part and fixed-term workers. In addition, irregularly working women and migrant women are much more likely to have limited access to welfare support during pregnancy and maternity leave. As part of the work-life balance, in agreement with Directive 2008/104/EC, §11, work-life balance policies for parents and carers must be promoted at the state level for short-term and mediated employment. The responsibility of TWAs and companies making use of agency labour with regard to the above-mentioned Directive must be made clear in the relevant legislation and policy frameworks of States.

II. Representation and empowerment of workers

5. Trade Unions should play a much bigger role in organising, protecting, and informing workers in short-term and mediated modes of employment, irrelevant of their status as local or migrant workers. Special temporary workers' unions or union sections should be promoted as a way of protecting the additional vulnerabilities of temporary workers both at the level of individual states and at the EU level. Our cases show that newer autonomous trade unions are much more open to short-term workers and migrant workers (the cases of Italy, Bulgaria, and Poland). A dialogue should be encouraged within and beyond and within traditional unions, in which unions must take a more proactive role in informing and reaching out to workers.

6. Trade unions should treat migrant workers not as a threat but be open to involving them as members and seek their common interests with local workers. Precarious working conditions and social citizenship violations are much more likely to become more aggravated if local and migrant workers are pitted against each other through a social dumping strategy. A discussion with trade unions at the national and ETUC levels, as well as the further promotion of migrant worker participation should be encouraged.

7. NGOs dealing with migrant issues have an important role to play in flagging key aspects of short-term and mediated labour as experienced by migrant labourers. They can defend the interests of migrant workers, provoking dialogues with various social partners, such as sensitising trade unions to the experiences of migrant labourers, and also foregrounding among the migrant community different aspects of the relation of work to social citizenship. Migrant labourers, disenchanted by the failures of social citizenship provision at home, need to have forums to exchange ideas about the problems, potentials, and meanings of their work experiences.

8. Labour inspection agencies also have an important role to play:

- a) The agencies should focus on protecting the rights of workers. They should not target and punish workers working irregularly but rather employers who have chosen to hire them without documents.
- b) The connection between labour inspection agencies and border authorities should be severed so that workers are not afraid to file complaints fearing they might lose their work permit or be expelled from the country based on a report from labour inspection to migration or border authorities.
- c) Labour inspection agencies should develop mechanisms for stricter control and protection of short-term workers under non-standard and mediated employment conditions, including non-announced checks on working conditions, working hours, contribution payments, etc.
- d) Labour inspection agencies should be more flexible in dealing with migrant complaints by providing clear information in accessible languages, accepting mediated communication through a translator and accounting for the fact that migrants might need to leave the country during proceedings.



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