

Exploitation in the Agri-Food Sector in Europe

*A Comparative Analysis of the Impact of Migration and Labour Regimes
in Producing Migrants' Vulnerabilities*

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Abstract

Although political attention has been devoted to the exploitation of migrant farmworkers in Southern Europe, migrant workers also experience exploitive practices in the agri-food systems of Northern EU countries. Building on critical studies on vulnerability and exploitation and on migration and labour regimes, and drawing on the papers in this Special Issue of EJML, this article critically compares labour migration policies and models for labour market regulations in Northern and Southern European countries (specifically Italy, Spain, Sweden, Germany and the Netherlands), underlining how policies and legislation on migration and labour mobility have contributed to creating specific situational vulnerabilities – especially with respect to the interplay of legal status, nationality and gender – which are exploited within agri-food systems. While there have been relevant national initiatives aimed at addressing the rights of migrant farmworkers during the pandemic, in most of the examined European countries these have mainly consisted of short-term and reparative measures which fail to address the root causes of vulnerabilities to exploitation.

Keywords

exploitation – situational vulnerabilities – migrant workers – agri-food system – gender

Introduction

The employment of foreign workers is a structural component of the agri-food sector in most European Union (EU) countries. This migrant workforce is diversified by nationality, gender and legal administrative status. While there is a presence of undocumented migrants, non-EU agricultural labourers are also seasonal mobile workers and there is a significant presence of asylum seekers and beneficiaries of international protection, especially in some countries such as Italy. This diversification in terms of legal status challenges the idea that labour exploitation occurs mainly in cases of irregular migrants. Indeed, cases of exploitation, including trafficking, often also involve EU citizens or non-EU migrants in regular conditions.¹

Although political and academic attention has been devoted to the sub-standard working conditions and exploitation of migrant workers in Southern Europe – especially in Italy and Spain – these practices are by no means confined to the agri-food system of this area of Europe. As the articles in this Special Issue show,² migrant workers also experience abusive working conditions in agriculture and food production in Northern EU member states such as Germany, the Netherlands and Sweden.

Furthermore, most institutional and political attention focuses on extreme cases of exploitation – such as forced labour and/or trafficking of workers – adopting mainly a criminal law response to target abusive employers and traffickers. Yet, this approach to exploitation tends to neglect those forms of exploitation that are less sensational and conspicuous, but are an integral part of the functioning of labour market segments such as the agri-food sector. At the same time, it tends to overlook the interplay of structural factors creating the conditions of vulnerability to exploitation, including, for instance, the

1 Natale, F., Kalantaryan, S., Scipioni, M., Alessandrini, A. and Pasa, A. (2019). *Migration in EU Rural Areas*. Publications Office of the EU, Luxembourg; UNODC (2020). *Global Report on Trafficking in Persons*. United Nations publication, Vienna; FRA (2015). *Severe Labour Exploitation: Workers Moving within or into the EU*. Publications of the European Union, Luxembourg.

2 Iossa, A. and Selberg, N., 2022. Socio-legal Aspects of Labour Market Segmentation in the Agri-food Sector in Sweden. *European Journal of Migration and Law* 24, pp. 241–264; Siegmann, K.A., Quaedvlieg, J. and Williams, T., 2022. Migrant Labour in Dutch Agriculture: Regulated Precarity. *European Journal of Migration and Law* 24, pp. 217–240; Schneider, J. and Götte, M., 2022. Meat Plants and Strawberry Fields Forever? Precarious Migrant Labour in the German Agri-Food Sector before and after COVID-19. *European Journal of Migration and Law* 24, pp. 265–286; Corrado, A. and Caruso, F.S., 2022. Essential but Exploitable: Migrant Agri-food Workers in Italy and Spain. *European Journal of Migration and Law* 24, pp. 193–216.

inconsistencies of national and EU legislation and policies on migration and labour rights.³

The impacts of these factors have emerged more noticeably during the crisis caused by the Covid-19 pandemic, which has shed light on both the ‘essential’ role played by migrant workers for the functioning of core sectors – such as the agri-food sector – in European countries, and the exploitative conditions experienced by these workers, revealing the structural character of exploitation in these sectors. In this sense, the Covid-19 pandemic has raised the question of which labour shortages are genuine, and which are connected to a shortage of dignified job opportunities.⁴

Against this background, building on critical studies on vulnerability⁵ and exploitation,⁶ and on migration and labour regimes,⁷ and drawing on the analysis of the papers in this Special Issue, this article intends to contribute to scholarly debate on the protection of the rights of migrant farmworkers by critically comparing labour migration policies and models for labour market regulations in Northern and Southern European countries (specifically Italy, Spain, Sweden, Germany and the Netherlands), and investigating the role of these policies in creating specific vulnerabilities to exploitation in the agri-food

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- 3 Corrado, A., Caruso, F., Lo Cascio, M., Nori, M., Palumbo, L. and Triandafyllidou, A. (2018). *Is Italian agriculture a ‘Pull Factor’ for irregular migration – And, if so, why?*. Open Society Foundations, Brussels.
 - 4 Corrado A. and Palumbo, L. (2022). Essential Farmworkers and the Pandemic Crisis: Migrant Labour Conditions, and Legal and Political Responses in Italy and Spain, in: *Migration and Pandemics*. A. Triandafyllidou (Ed.), pp. 145–166, Springer, Switzerland.
 - 5 Fineman, M.A. (2008). The Vulnerable Subject: Anchoring Equality in the Human Condition, *Yale Journal of Law and Feminism* 20 (1), pp. 177–191; Butler, J. (2004). *Precarious Life: The Powers of Mourning and Violence*, Verso, London; Mackenzie, C., Rogers, W. and Dodds, S. (2014). Introduction: What Is Vulnerability and Why Does It Matter for Moral Theory?, in: *Vulnerability: New Essays in Ethics and Feminist Philosophy*. C. Mackenzie, W. Rogers and S. Dodds (Eds.), pp. 1–29, Oxford University Press, Oxford.
 - 6 Marks, S. (2008). Exploitation as an international legal concept, in: *International Law on the Left. Re-examining Marxist Legacies*. S. Marks (Eds.), pp. 281–307, Cambridge University Press, Cambridge; Mantouvalou, V. (2018). Legal Construction of Structures of Exploitation, in: *Philosophical Foundations of Labour Law*. H. Collins, G. Lester and V. Mantouvalou (Eds.), Oxford University Press, Oxford; Skrivankova, K. (2010). *Between Decent Work and Forced Labour: Examining the Continuum of Exploitation*. Joseph Rowntree Foundation, York; LeBaron, G. and Phillips, N. (2018). States and the Political Economy of Unfree Labour. *New Political Economy* 24(1), pp. 1–21.
 - 7 Mezzadra, S. and Neilson, B. (2013). *Border as Method, or The Multiplication of Labour*. Duke University Press, Durham, NC; De Genova, N., 2013. Spectacles Of Migrant ‘Illegality’: The Scene Of Exclusion, The Obscene Of Inclusion. *Ethnic and Racial Studies* 36(7), pp. 1180–1198; Fudge, J., 2018. Modern Slavery, Unfree Labour and the Labour Market: The Social Dynamics of Legal Characterization. *Social and Legal Studies* 24(4), pp. 414–434.

sector. In particular, the first section focuses on the notion of exploitation as a continuum and on the concept of vulnerability, paying attention to its 'situational' dimension. The article successively looks at the situational vulnerabilities of migrant farmworkers in Europe, highlighting how relevant legal and policy frameworks on migration and labour mobility contribute to producing and fostering migrants' vulnerability to dynamics of exploitation. The last section takes into account EU and national legal and policy responses to address labour exploitation during the current pandemic, exploring to what extent the Covid-19 crisis has provided an effective opportunity to enforce labour rights and strengthen migrants' rights.

Like the other contributions to this Special Issue, this article builds on the findings of two research projects on labour conditions in the agri-food systems of EU countries, which were funded by the Open Society European Policy Institute, from 2018 to 2020, and coordinated by Letizia Palumbo, Alessandra Corrado and Anna Triandafyllidou, under the auspices of the European University Institute's Global Governance Program and Migration Policy Centre.⁸ This publication has also received funding from the EU's H2020 project VULNER (GA n. 870845).⁹

Unpacking the Legal and Conceptual Framework

Exploitation not an Exception but a Structural Continuum

Although the concept of labour exploitation is at the heart of legal frameworks concerning crimes such as 'trafficking' and 'forced labour', the term is not actually defined by any international legal instruments. Only a few pieces of national and regional legislation, such as EU legislation, contain a definition of labour exploitation.¹⁰

In fact, the notion of exploitation as such appeared for the first time in international legal framework with the 2000 UN Protocol on Trafficking in Human Beings (the so-called 'Palermo Protocol').¹¹ Before the adoption of this Protocol,

8 See Corrado, A. et al. (2018); Palumbo, L. and Corrado, A. (Eds.) (2020a). *Are Agri-food Workers only Exploited in Southern Europe? Case studies on migrant labour in Germany, the Netherlands and Sweden*. Open Society Foundations, Brussels; Palumbo, L. and Corrado, A. (Eds.) (2020b). *Covid-19, Agri-food systems, and migrant labour. The situation in Germany, Italy, the Netherlands, Spain and Sweden*. Open Society Foundations, Brussels.

9 See www.vulner.eu.

10 Di Martino, A. (2019). *Sfruttamento del lavoro. Il valore del contesto nella definizione del reato*. Il Mulino, Bologna.

11 Marks, S. (2008).

early international conventions on trafficking focused on sexual exploitation.¹² With the Palermo Protocol, exploitation appears as a new legal concept framed within a broad perspective. Although it does not contain a definition of exploitation, the Protocol offers some examples of exploitation, including ‘the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’ (Art. 3). The Protocol therefore provides an open list of forms of exploitation, leaving relevant actors with the important role of filling it with ever more examples of exploitative practices. From this perspective, the innovative aspect of the legal concept of exploitation found in the Palermo Protocol is its extent, which goes beyond the sexual dimension and is not limited to particular categories/groups.

With specific regard to EU secondary law, Directive 2009/52/EC on Employer Sanctions,¹³ by reflecting relevant provisions of the EU Charter of Fundamental Rights, defines ‘particularly exploitative working conditions’ as ‘working conditions, including those resulting from gender based or other discrimination, where there is a striking disproportion compared with the terms of employment of legally employed workers which, for example, affects workers’ health and safety, and which offends against human dignity’ (Art. 2 [i]). Despite being rather generic, this definition, which is the first (and the only) definition of exploitation contained in EU law, is extremely important as it covers diverse working conditions, considers those built on gender related discrimination, and recognizes labour exploitation as a violation of human dignity.

At the national level, some European countries have a definition of labour exploitation in their legislation. In particular, the Italian Criminal Code (CC), in its Art.603*bis*, contains the crime of ‘illegal gang-mastering and labour exploitation’, and defines exploitation by referring to indicators in relation to pay, working hours and rest, safety, working conditions, methods of surveillance and ‘degrading’ housing situations. National legislation of other EU countries, such as in the French and Belgian CCs, does not include a definition of labour exploitation per se, but defines the notion of labour exploitation in the definition of trafficking, referring to the general clause of working conditions contrary to human dignity.¹⁴

12 For instance, the 1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

13 Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

14 French Criminal Code, Article 225-4-1 and Belgium Criminal Code, Article 433quinquies.

In this scenario, characterized by the lack of a clear definition of labour exploitation – both in international law and in national legislation of many European countries – legal and political discourses and interventions tend to associate the meaning of exploitation primarily with extreme forms of abuse,¹⁵ which are seen as exceptional ‘pathologies’, connected to a dimension of contingency and arbitrariness,¹⁶ requiring mainly a criminal law response. Such an approach on exploitation has several limits, as many legal and social scholars have underlined.¹⁷ First of all, this approach overlooks the pervasive and systemic character of labour exploitation, including serious exploitation, in contemporary capitalist systems.¹⁸ Indeed, although today, especially in developed countries and particularly in Europe, the protection of workers’ rights is committed to collective bargaining and a certain degree of redistribution and social protection measures, exploitation – including severe exploitation – is a structural element of the economic and labour market systems – such as the agri-food system – of these countries,¹⁹ which are characterized by labour deregulation and flexibilization.²⁰

Secondly, and related to this, by primarily focusing on punishing individual wrongdoers and unlawful groups, this criminal law approach on labour exploitation tends to neglect the interplay of factors contributing to the construction of vulnerabilities to exploitation.²¹ In other words, this approach tends to focus only on interpersonal relations between exploiters and victims, and related unequal contractual relationships, overlooking the background conditions and structures – economic, social and legal factors – that lead to instances of injustice and exploitation at work. As a consequence, those cases that do not straightforwardly amount to crimes such as forced labour or trafficking, and in which, thus, there are not strong elements showing that consent has been vitiated, are often not considered as situations of exploitation.²²

15 Mantouvalou, V. (2018).

16 Marks, S. (2008).

17 Mantouvalou, V. (2018); LeBaron, G. and Phillips, N. (2018).

18 Mezzadra, S. and Neilson, B. (2021). *Operazioni del Capitale. Capitalismo contemporaneo tra sfruttamento ed estrazione*, Manifestolibri, Roma; Bhattacharyya, G. (2018). *Rethinking Racial Capitalism. Questions of Reproduction and Survival*. Rowman & Littlefield International, London-New York; Giammarinaro, M.G., 2022. Understanding Severe Exploitation Requires a Human Rights and Gender-Sensitive Intersectional Approach. *Frontiers in Human Dynamics* 4.

19 FRA (2015); ILO (2017). *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*. ILO, Geneva; UNODC (2020).

20 Fudge, J. and Strauss, K. (Eds.) (2014). *Temporary Work, Agencies and Unfree Labour Insecurity in the New World of Work*. Routledge, London.

21 LeBaron, G. and Phillips, N. (2018); Mantouvalou, V. (2018).

22 Mantouvalou, V. (2018).

In contrast to such a limited conception of exploitation, this article considers exploitation, as suggested by some legal scholars and experts, as a continuum of experiences characterized by an increasing level of unfair treatment, deprivation of rights and restriction of personal autonomy, ‘ranging from decent work through minor and major labour law violations, to extreme exploitation in the form of forced labour’²³ or trafficking. Within this prism, exploitation also includes cases that, while not necessarily amounting to crimes, are characterized alternatively or cumulatively by harsh or even degrading working and living conditions, low wages, inadequate safety measures, and the absence of basic social protections, especially if involving migrant workers.²⁴ By challenging simple binary oppositions, the continuum view links exploitation to relevant regulatory frameworks and status hierarchies, and recognizes the complexity and fluidity of persons’ experiences at work that ‘shift over time and space’²⁵ and are characterized by combinations of voluntariness and coercion, involving different situations of vulnerability.²⁶ The following section will focus on the notion of vulnerability in relation to labour exploitation.

Situational Vulnerability

Vulnerability is a contentious and highly debated concept.²⁷ By questioning the view of vulnerability as something static, abstract or fixed and inherent to specific categories of people, individuals or groups, philosophical and legal scholars – especially feminist scholars²⁸ – have rightly underlined the idea of vulnerability as a condition of shared humanity, and simultaneously as related to people’s positions in society and in power relations. In this sense, in their taxonomy of different sources of vulnerability, Mackenzie, Rogers and Dodds²⁹ have developed the concept of ‘situational’ vulnerability, which is caused and/or accentuated by personal, social, political, economic or environmental situations of individuals or social groups, including abusive interpersonal and social relationships and sociopolitical oppression or injustice. The category of situational vulnerability highlights ‘the ways that inequality of power,

23 Skrivankova, K. (2010), p. 16.

24 Giammarinaro, M.G. (2022).

25 Zou, M., 2015. The Legal Construction of Hyper-Dependence and Hyper-Precarity in Migrant Work Relations. *The International Journal of Comparative Labour Law and Industrial Relations* 31(2), pp. 141–162.

26 Giammarinaro, M.G. and Palumbo L. (2021). Vulnerabilità situazionale, genere e diritti umani. Analisi normativa e della giurisprudenza italiana e sovranazionale sullo sfruttamento lavorativo, in: *Diritti umani in crisi? Emergenze, disuguaglianze, esclusioni*. G. Gioffredi, V. Lorubbio and A. Pisano’ (Eds.), pp. 45–62, Pacini Giuridica, Pisa.

27 Mackenzie, C. et al. (2014).

28 Fineman, M.A. (2008); Butler, J. (2004).

29 Mackenzie, C. et al. (2014).

dependency, capacity, or need render some agents vulnerable to harm or exploitation by others'.³⁰ Along this perspective, vulnerability is not opposed to nor does it exclude agency. Instead, it recognizes the ways persons act, negotiate and make their choices within contexts marked by structural injustices and inequalities.³¹

Vulnerability is, therefore, a socially embedded condition. It is variable in its form and its intensity, depending both on individual characteristics and the positionality of a person in social relations and hierarchies of power. Such a situational conception of vulnerability is strongly related to the theory of intersectionality,³² as the form and intensity of vulnerability to abuse and exploitation are different according to the interplay of gender, class, age, race, nationality, legal status, dis/ability, educational backgrounds of each person, etc.

Looking at the notion of vulnerability in relevant EU legal documents, the situational conception of vulnerability, with respect to exploitation, can be found in the definition of the position of vulnerability contained in Directive 2011/36 /EU on trafficking, which defines the position of vulnerability as 'a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved' (art. 2(2)). Rather than limiting vulnerability to the person's inherent characteristics, this definition significantly stresses the importance of considering the structural factors that leave a person without any concrete and real alternative but to 'accept' being involved in exploitative relations and conditions.

Such a situational conception of vulnerability can be also found in the 2005 Council of Europe Convention on trafficking,³³ and it has been considered in relevant case law of the European Court of Human Rights (ECtHR), such as in the landmark decision *Chowdury and Others v Greece* of 2017 (No. 21884/15), concerning forty-two undocumented migrant workers from Bangladesh who worked on a strawberry farm in Greece in conditions of severe exploitation. In this case, the ECtHR found a violation of Article 4(2) (Prohibition of slavery and forced labour) of the European Convention on Human Rights, paying specific attention in its reasoning to the situational dimension of vulnerability of these workers. Indeed, the ECtHR considered the different factors – in particular the condition of 'irregular migrants without resources and at risk of being arrested, detained and deported' (para 95) – producing a situation of vulnerability in which labour exploitation became the only feasible choice in the face

30 Ibidem, p. 6.

31 Giammarinaro, M.G. and Palumbo L. (2021).

32 Crenshaw, K., 1991. Mapping the Margins: Intersectionality, identity politics, and violence against women of color. *Stanford Law Review* 43, pp. 1241–1299.

33 Council of Europe (2005). *Explanatory Report to the Council of Europe Convention on Action against Trafficking*. Warsaw, para 83.

of a worse alternative. In line with this perspective followed by the ECtHR, some recent national court decisions, especially in Italy, have also focused on the contextual dimension of vulnerability to exploitation, taking into account the structural elements that, case by case, cause it.³⁴

On the basis of these considerations, vulnerability should be considered as produced and/or exacerbated by the interplay of personal and structural factors. These latter factors refer to those policies, acts and norms producing structural injustices that – as political and feminist scholar Iris M. Young argued – place large categories of persons ‘under a systematic threat of domination or deprivation of the means to develop and exercise their capacities’.³⁵ As several studies on the situations of vulnerability of migrant workers have highlighted,³⁶ these structural factors include, for instance, migration and labour regimes that can ‘selectively filter, differentiate and include subjects in transit’³⁷ fostering their differential social and labour inclusion in the host countries, in terms of access to rights and protection. Discourses and ideologies of racialization and gender imbue and intensify these dynamics. As feminist scholars have pointed out,³⁸ women workers’ situational vulnerabilities cannot be understood without considering the ways patriarchal norms, and in particular the division between production and social reproduction, pervade political and legal frameworks, intertwining with other social hierarchy and discrimination grounds, such as race, nationality and class.

The Construction of Vulnerabilities to Exploitation in the Agri-Food Systems of Europe

While in Northern European countries, such as Germany, the recruitment of foreign seasonal farmworkers dates back to the 19th century,³⁹ in other European countries, such as Mediterranean countries including Italy and Spain, with a more recent history of immigration, the growing presence of migrant workers

34 Giammarinaro, M.G. and Palumbo, L. (2021).

35 Young, I.M. (1990). *Justice and the Politics of Difference*. Princeton University Press, Princeton.

36 Mantouvalou, V. (2018); Federico, V. and Baglioni, S. (2021). *Migrants, Refugees and Asylum Seekers' Integration in European Labour Markets*. Springer, Switzerland.

37 Mezzadra, S. and Neilson, B. (2013).

38 Giammarinaro, M.G. (2022); Rigo, E., 2020. La straniera. Mobilità, confini e riproduzione sociale oltre lo straniero di Simmel. *Teoria Politica* x, pp. 263–275; Fraser, N., 2018. From Exploitation to Expropriation: Historic Geographies of Racialized Capitalism. *Economic Geography* 94(1), pp. 1–17.

39 Kępińska, E. and Stark, O., 2013. The Evolution and Sustainability of Seasonal Migration from Poland to Germany. *International Review of Economics and Finance* 28(1), pp. 3–18.

in the agricultural sector constitutes a relatively recent phenomenon,⁴⁰ beginning in the last decade of the 20th century.⁴¹

Unlike in Northern European countries, in Southern European countries such as Italy and Spain the agri-food sector has historically been characterised by the presence of small and medium sized family businesses, tending to be oriented towards local markets. This scenario has changed with the significant transformations that have affected agri-food systems in Europe, especially since the 1980s, within the dynamics of post-Fordist development and neoliberal globalization. This transition has also been supported by EU agricultural policies that have promoted competitiveness in the global market.⁴² This has resulted in Italy and Spain becoming the producers of about 40 per cent of all fresh products in the EU.⁴³ Moreover, unlike in many Northern European countries (such as Germany, Sweden and the Netherlands), in Southern countries, especially in Italy, the expansion of large scale retailers is quite a recent phenomenon, only starting in the mid-1990s.⁴⁴

However, despite these differences in migration history and agri-food production, in both Northern and Southern European countries the increasing recourse to a 'migrantized' labour force⁴⁵ has served to support the capitalist development of the agri-food system. Indeed, continuous intensification, capitalization and innovation of agri-food production and processing has resulted in the recourse to a low-wage, flexible and exploitable migrant labour force to cope with market and price pressures from large retail groups.⁴⁶

This system has been facilitated by the features of agricultural work – such as seasonality – and the fact that this sector is historically characterized by weak labour regulations and high rates of irregularity. At the same time, as discussed below, this system takes advantage of the situations of vulnerability of certain migrant workers and of their weak bargaining power, which are themselves consequences of the inconsistencies of European and national legislation and policies in the field of migration, social and labour rights.⁴⁷

40 King, R., Lazaridis, G. and Tsardanidis, C. (Eds.) (2000). *Eldorado or fortress? Migration in Southern Europe*. Macmillan, New York.

41 Corrado, A. et al. (2018).

42 Corrado, A., De Castro, C. and Perrotta, D. (2017). *Migration and Agriculture. Mobility and change in the Mediterranean area*. Routledge, London.

43 Molinero-Gerbeau, Y. (2020). La creciente dependencia de mano de obra migrante para tareas agrícolas en el centro global. Una perspectiva comparada. *Estudios Geográficos* 81(288), pp. 1–27.

44 Corrado, A. et al. (2018).

45 Molinero-Gerbeau, Y. (2020).

46 Corrado, A. et al. (2017).

47 Corrado, A. et al. (2018); Palumbo, L. and Corrado, A. (2020a).

Restrictive, Temporary and Precarious Labour Migration Pathways

Especially since the end of 1990s, EU countries have increasingly striven to prevent and contain irregular migration while significantly reducing legal entry channels for third-country nationals, in particular for low- and medium-skilled workers, with some exceptions for seasonal workers. EU policy-making has followed and supported this trend, focusing mainly on highly skilled workers and paying minimal attention to human rights and long-term inclusion.⁴⁸ For instance, the Seasonal Workers Directive 2014/36/EU⁴⁹ is de facto the main EU instrument regulating the legal migration of low-skilled third country nationals. However, this instrument is premised on an employer-driven approach and provides member states with wide discretionary powers over the implementation of the provisions concerning the rights of seasonal workers.⁵⁰ This has contributed to national policies and legislation providing seasonal workers with insufficient entry channels and limited access to rights.

Indeed, as the papers in this Special Issue have underlined, in many Northern and Southern European countries, channels for the admission of seasonal workers – including bilateral agreements with third countries and quota systems for this category of workers – have proven unable to meet labour demand in agriculture. In Germany, for example, according to the Employment Ordinance,⁵¹ which has been reformed with the transposition of the EU Seasonal Workers Directive in national legislation,⁵² the employment of third-country nationals as seasonal workers requires bilateral agreements. However, none of these were concluded before 2021. In the Netherlands, administrative obstacles and related costs prevent employers from applying for the recruitment of third country national seasonal workers. In Italy, the number of workers to be admitted is defined in a yearly government decree (*Decreto Flusso*) setting annual quotas for different categories of workers (Law No. 40/1998). Yet, this entry mechanism has proven to be inefficient. Moreover, annual quotas for both seasonal and non-seasonal migrant workers have been

48 Guild, E. (2014). *The EU's Internal Market and the Fragmentary Nature of EU Labour Migration*, in: *Migrants at Work: Immigration and Vulnerability in Labour Law*. C. Costello and M. Freedman (Eds.), OUP, Oxford.

49 Directive 2014/36/EU on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

50 Rijken, C. and De Lange, T. (2018). *Towards a Decent Labour Market for Low Waged Migrant Workers*. Amsterdam University Press, Amsterdam.

51 Employment Ordinance of 6 June 2013 (Federal Law Gazette I, p. 1499), last amended on 31 May 2021 (Federal Law Gazette I, p. 1253).

52 Section 15a of the Employment Ordinance, which entered into force in August 2017; see “Act on the Implementation of European Union Residence Law Directives on Labour Migration” of 12 May 2017, BGBl. I, pp. 1106–1120.

limited, especially between 2012 and 2019.⁵³ In Spain, the recruitment system for third-country migrant farmworkers, known as ‘contracts in origin’ or ‘contracts at source’ (*contratación en origen*), has experienced limited quotas since 2011 (as a consequence of the 2008 economic crisis), and mainly applies in the rural areas of Huelva and Lleida through bilateral agreements with Morocco,⁵⁴ and recently also with Honduras and Ecuador.⁵⁵

In addition to establishing inadequate entry channels, being hard to apply and/or with limited quotas, all these recruitment systems rely on an employer-driven mechanism, tethering migrants’ legal permissions to work and reside in the host state to employers’ needs. At the same time, these systems provide seasonal workers with limited access to rights and protection. For instance, seasonal workers have no right to family reunification and have limited access to social rights.⁵⁶ This restrictive approach – as Ruhs has critically underlined – relies on the idea that a limitation of certain rights constitutes a sort of ‘price’⁵⁷ that unskilled migrant workers have to pay in order to have the chance to migrate regularly to higher-income countries.⁵⁸ This is also related to, and simultaneously accentuates, the temporariness characterizing their status, which precludes their social and labour inclusion in the host countries on a long-term perspective.

In many European countries seasonal migrant workers are allowed to change employers. However, due to their temporary and precarious legal status, most seasonal workers are less likely to raise issues about employment and working conditions and change employers.⁵⁹ This dynamic has led to workers being more ‘docile’ and willing to accept abusive work conditions.⁶⁰ In practice, the ever-present threat of losing permission to stay and work,⁶¹ and related difficulty in finding another job in a limited period, have a disciplinary effect on the behaviour of migrant workers, exacerbating their position of vulnerability.

Yet, forms of exploitation of third country seasonal farmworkers are also widespread in the agri-food sector in countries such as Sweden, whose labour migration system has been defined by the OECD as the ‘most open

53 Corrado, A. et al. (2018).

54 Corrado, A. and Palumbo, L. (2022).

55 Corrado, A. and Caruso, F.S. (2022).

56 Rijken, C. and De Lange, T. (2018).

57 Ruhs, M. (2013). *The Price of Rights: Regulating International Labor Migration*. Princeton University Press, Princeton.

58 Zoeterweij, M.G. (2017). The Seasonal Workers Directive: Another Vicious Circle?, in: C. Rijken and T. De Lange (2018), pp. 129–148.

59 Ibidem.

60 Hellio E. (2017). Undocumented Male and Seasonal Contracted Female Workers in the Agricultural Labour Market of Huelva, in: A. Corrado et al. (2017), pp. 198–216.

61 De Genova, N. (2013).

labour migration regime' among OECD countries.⁶² Since 2008 the Swedish labour migration regime has required that migrants apply for a job offer posted by an employer/company in Sweden before requesting a work permit (Aliens Act 2005:716, Ch. 6, Art. 2). However, as Iossa and Selberg have highlighted,⁶³ Sweden's labour migration scheme can be construed as a factor driving – or at least enabling – demand for work with sub-standard working conditions in agriculture. Indeed, migrant farmworkers often claim that the conditions (such as salary) stipulated in the job offer have not been respected by employers. Furthermore, even in this system, work permits are temporary. Extensions need to correspond with new job offers from the employer, while a permanent residence permit can be awarded only if the migrant has been working for at least four years in a seven year period (Aliens Act 2005:716, Ch. 5, Art. 5). Therefore, similarly to what happens in the other examined EU countries, this dimension of temporariness and dependency on employers fosters migrants' weak bargaining power and consequently makes them vulnerable to exploitation. In this sense, as Iossa and Selberg stressed, the intertwining of the Swedish autonomous model for labour market regulation and the national employer-driven and 'open' regime for labour migration, contributes to a system that can lead to exploitation of migrant workers.⁶⁴

Moreover, the Swedish case reveals how the transposition of the EU Seasonal Workers Directive has challenged a migration regime applying to all labour migrants, by re-introducing a sectorial legal entry route for agricultural and forestry work in Sweden. This paradoxically has contributed – through the application of different collective agreements depending on the employer being a Swedish-based company or a foreign or Swedish-based temporary work agency – to the fragmentation and segmentation of the national labour market and the precariousness of migrant workers.⁶⁵

Therefore, despite their differences, temporary migration programs (including seasonal migration programs) generally 'do not give migrants the right to free choice of employment [...] are inflexible to the needs of migrant workers, and give unequal power to the employer'.⁶⁶ As a result, these systems contribute to producing migrants' conditions of vulnerability and, at the same time, to confining a migrant labour force to specific sectors, which profit from those specific situations of vulnerability.

62 OECD (2011). *Recruiting Immigrant Workers: Sweden 2011*. OECD Publishing, Paris.

63 Iossa, A. and Selberg, N. (2022).

64 Ibidem.

65 Ibidem.

66 Crepeau, F. (2014). *Report of the Special Rapporteur on the human rights of migrants. Labour exploitation of migrants*. UN Human Rights Council 3 April 2014, A/HRC/26/35.

On the other hand, due to inadequacies in the implementation of entry channels for seasonal foreign workers and/or their limited quotas, in all the above-mentioned Northern and Southern European countries (i.e. Italy, Spain, the Netherlands, Germany and Sweden) labour demand in the agri-food sector has also been offset by undocumented migrants, Eastern EU nationals (especially Romanians, Poles and Bulgarians), and regular non-EU migrants with a residence permit but not for seasonal work. These latter include, for instance, migrants with a student visa working on the fields in Germany, or refugees and asylum seekers on Italian fields.⁶⁷ In this scenario, the different situations of vulnerability in which migrant persons find themselves – for instance, with respect to legal status, nationality and gender – seem to translate into a variety of possibilities for their exploitation in the agri-food system.⁶⁸

In the case of undocumented migrants – as stressed above in the *Chowdury* case of the ECtHR – the condition of irregularity represents a crucial element in creating and exacerbating situations of vulnerability. In the case of regular migrants – such as, for instance, refugees and asylum seekers – the situation of precarity makes them particularly vulnerable to exploitation. The example of numerous non-EU asylum seekers and beneficiaries of international protection in Italian agriculture is emblematic in this regard.⁶⁹ This significant presence shall be considered in connection with the lack of adequate channels for entry (especially for work reasons) as well as pathways to regularization, which has resulted in the asylum system becoming the main option for gaining legal status for many migrants whose labour is in demand.⁷⁰ Some scholars have talked about a process of ‘refugeesation of the agricultural workforce’⁷¹ to highlight the rising number of refugees and asylum seekers employed in Italian agriculture, particularly in seasonal cultivation. In this context, for asylum seekers especially, the interplay between the inadequate implementation of asylum procedures and the absence of appropriate hosting and inclusion measures in the country has produced a condition of ‘hyper-precarity’⁷² that fosters their exposure to dynamics of exploitation. Moreover, the fact of being hosted in a reception centre often constitutes an element used by employers to

67 Corrado, A. and Caruso, F.S. (2022); Schneider, J. and Götte, M. (2022).

68 Palumbo, L. and Sciarba, A. (2018).

69 Corrado, A. and Caruso, F.S. (2022).

70 Geddes, A. and Petracchin, A., 2020. Italian Migration Policy and Politics: Exacerbating Paradoxes. *Contemporary Italian Politics* 12(2), pp. 227–242.

71 Dines, N. and Rigo, E. (2015). Postcolonial Citizenship Between Representation, Borders and the ‘Refugeeization’ of the Workforce, in: *Postcolonial Transition in Europe: Contexts, Practices and Politics*. S. Ponzanesi and G. Colpani (Eds.), Rowman and Littlefield, London.

72 Zou, M. (2015).

further lower asylum seekers' wages, considering that workers do not need to pay for accommodation. These dynamics clearly show the systemic nature of exploitation, which also relies on the compression of the costs of social reproduction of workers.⁷³

As discussed in the following section, dynamics of exploitation also involve EU migrant workers. Indeed, in all the examined Southern and Northern European countries, Eastern EU migrant workers (particularly Poles, Romanians and Bulgarians) represent an important pillar of the agri-food sector, being employed in both seasonal and permanent cultivation, as in the case of the greenhouses of Sicily (Italy) and the Netherlands. The ability these workers have to easily cross EU internal borders produces a 'circular migration' that facilitates their exploitation, especially in low regulated sectors such as agriculture and in a context of competition on labour costs within the European internal market.⁷⁴

Posting, Subcontracting and Intermediary Practices as a Method to Compress Social and Labour Rights

A further key problematic factor that needs to be considered in the construction of vulnerabilities to exploitation is the competition on labour costs both in the European internal market and on the global market, within a general context of increasing flexibilization and deregulation of the labour market. This is especially true in labour-intensive sectors such as the agri-food sector, where there is a significant recourse to subcontracting and/or posted work as a way to hire cheap labour, driving down wages and employment protection.⁷⁵ While there are situations involving evident unlawful practices, most concern practices that twist the law and profit from loopholes and ambiguities in the relevant EU and national law in the field of labour mobility and social rights.⁷⁶

The recourse to posted work in agri-food systems as a method to compress labour costs, circumventing relevant EU and national legislation, is quite widespread in Northern European countries. For instance, as Siegmann et al. have underlined,⁷⁷ in the Netherlands a common technique among businesses is to create companies or affiliates in member states where labour

73 Rigo, E. (2020).

74 Palumbo, L. and Corrado, A. (2020a).

75 Cremers, J. (2020). Market Integration, Cross-Border Recruitment, and Enforcement of Labour Standards, in: *Posted Work in the European Union*. J. Arnholtz and N. Lillie (Eds.), pp. 128–146, Routledge, New York.

76 Verschuere, H., 2020. The role and limits of European social security coordination in guaranteeing migrants social benefits. *European Journal of Social Security* 22 (4).

77 Siegmann, K.A., Quaedvlieg, J. and Williams, T. (2022).

costs are low, such as Poland, and then post workers to Dutch client firms. This provides employers with the opportunity to bypass relevant labour and social security regulations, compressing the rights of workers, in particular of EU mobile workers. This, in turn, causes unfair competition and social dumping dynamics within the European internal market. It is worth underlining that such dynamics of social dumping have also been fostered by relevant rulings of the Court of Justice of the European Union (CJEU) on posted work, such as the decisions in the *Laval* case (no. C-341/05), which subordinated the protection of fundamental labour rights to the functioning of the internal market. The recent Directive 2018/957 amending the Posted Workers Directive 96/71 has been adopted to strengthen the rights of posted workers and to ensure fair competitive conditions for companies. The real effectiveness of this Directive will largely depend on its implementation and enforcement at the national level.⁷⁸

In general, many abusive and exploitative labour practices in agri-food production – whether these are related to posting work, subcontractors, employment agencies or other intermediaries – take place in a ‘grey zone’ through gaps and shortcomings in relevant legal framework concerning social and labour rights. These abusive practices are often associated with complex, opaque and semi-legal recruitment arrangements that make these practices hard to detect and address.⁷⁹

In such a ‘grey’ frame, indirect employment through agencies plays a crucial role, providing workers with staggered economic and social entitlements, and consequently increasing their vulnerability. The case of the Netherlands is again significant in this regard. As Siegmann et al have highlighted,⁸⁰ the interplay between relevant Dutch labour and tax regulation, and relevant EU legislation, facilitates the action of recruitment agencies, which frequently use zero-hour employment contracts which deny migrant workers any guarantees or protection and keep them in a position of constant ‘disposability’. This type of contract thus increases workers’ dependency on employers and, in consequence, further undermines their bargaining power, exposing them to abuses.

In Germany, widespread ‘grey’/semi-legal work in the agri-food system has been facilitated by the fact that marginal short-term employment, including seasonal work of up to 70 workdays in a calendar year, is exempted from mandatory social security contributions, in compliance with equal treatment requirements of the EU legal framework (i.e. Social Security Regulation

78 Costamagna, F. (2019). *The Revision of the Posted Workers Directive as a Meaningful Way to Curb Regulatory Competition in the Social Domain?*. STALS Research.

79 Cremers, J. (2020).

80 Siegmann, K.A., Quaedvlieg, J. and Williams, T. (2022).

No. 833/2004 and the Seasonal Workers Directive 2014/36/EU). As Schneider and Götte have stressed,⁸¹ in a context of inefficient control and enforcement, seasonal migrant workers (especially EU seasonal migrant workers) – most of whom are recruited through employment agencies – work outside the social security migrant system, even if the conditions that qualify seasonal work as social security free short-term employment are not fulfilled.

While in countries such as the Netherlands exploitative practices by employment agencies in the agri-food system often involve EU migrant workers, there are also cases involving non-EU migrant workers, such as the case of Ukrainian farmworkers in Germany,⁸² and the case of Thai migrant workers in the berry-picking industry in Northern Sweden.⁸³

Employment of migrant farmworkers via agencies is also increasingly frequent in Spain and Italy, while the use of posting work is less widespread in the agri-food sector in these countries. In Spain for instance, the private intermediation of farmworkers is managed by Temporary Employment Agencies, (*Empresas de trabajo temporal*, ETTs) regulated by Law No. 14/1994 (the Temporary Work Agencies Act), which control most employment contracts in rural areas like Valencia or Murcia. As Corrado and Caruso have underlined, the ETTs organize the circulation of workers across provinces, regions or countries, managing the replacement and rotation of the labour force, contributing in this way to segmentation and flexibility, and also undermining the protection of the rights of workers.⁸⁴

In Italy, forms of labour intermediation, recruitment and organization of workers in the agri-food sector are set by temporary work agencies or cooperatives, involving both EU and non-EU workers.⁸⁵ Even in this case, while there are illegal situations, most of the time exploitative practices occur behind parallel infrastructures. In particular, the ample opportunities in terms of flexibility and labour deregulation offered by the regime concerning cooperatives has facilitated the development of the so-called 'landless' cooperatives that in practice carry out abusive subcontracting associated with 'legal' arrangements. While the cooperatives are actually managed by one person, the other members of the cooperative are often subjected to forms of exploitation.⁸⁶

On the other hand, in Italy, in a context marked by the inefficiency of official job services, the so-called '*caporalato*', a historically illegal gang-master

81 Schneider, J. and Götte, M. (2022).

82 Ibidem.

83 Iossa, A. and Selberg, N. (2022).

84 Corrado, A. and Caruso, F.S. (2022).

85 Corrado, A. et al. (2018).

86 Corrado, A. and Caruso, F.S. (2022).

system, has become de facto the main intermediation and recruitment system capable of guaranteeing in an efficient way the ‘just in time’ availability share of the labour force, allowing for a significant reduction in labour costs. While being widespread in the Southern area of Italy, the *caporalato* has also developed in the Northern regions of the country. The ‘*caporali*’ play a plurality of roles, including the control and management of workers – i.e. recruitment, transportation, housing, meals, work time and wages. Workers recruited through *caporali* are often subjected to exploitation, alongside violence, threats and blackmail.⁸⁷

Gendered Discrimination and Exploitation

Similarly to what occurs in other so-called ‘dirty, dangerous and demanding’ sectors,⁸⁸ in the agri-food sector skills and tasks are highly gendered, according to stereotyped and racialised perceptions of women’s bodies and abilities.⁸⁹ Prevailing gender norms aggravate the dynamics of disciplining and exploitation of women workers, especially migrant women workers, who are consequently often at the bottom in the hierarchy of exploitation marking the agri-food systems. For instance, migrant women farmworkers often receive lower wages than male farmworkers and tend to be more involved in irregular work. In countries such as Italy, they are often excluded from maternity and unemployment benefits.⁹⁰

The burden of reproductive and care work is a key factor that increases the situational vulnerability of female farmworkers, especially migrant women, to exploitation. As the research by Siegmann et al. in the Netherlands has revealed,⁹¹ migrant (and in particular Polish) women farmworkers with family responsibilities often have difficulties escaping their employers’ demands. The fear of losing their jobs, and thus being unable to support their family and children financially, induces them to accept exploitative conditions and, therefore, prevents them from reporting abuse. Similar dynamics occur in Italy and Spain.⁹² In the latter, in particular, these dynamics are clearly facilitated by institutional policies. Indeed, within the above-mentioned ‘contracts at source’ system, the fact of having left children to be cared for in their country

87 Corrado, A. et al. (2018).

88 Anderson, B. (2000). *Doing the Dirty Work?: The Global Politics of Domestic Labour*. Palgrave Macmillan, London.

89 Piro, V. (2021). *Migrant Farmworkers in ‘Plastic Factories’, Investigating Work-Life Struggles*. Palgrave Macmillan, London.

90 Giammarinaro, M.G. and Palumbo, L. (2021).

91 Siegmann, K.A., Quaedvlieg, J. and Williams, T. (2022).

92 Palumbo, L. and Sciarba, A. (2018).

of origin constitutes a formal prerequisite for women's selection, as it guarantees their return to their countries at the end of the harvest. Under this system therefore, care and family responsibilities have become formal elements used for the recruitment of a flexible, 'docile' and, accordingly, exploitable feminized labour force.⁹³

Our research on Spain and Italy has also highlighted how in circumstances of significant dependency on employers or intermediaries, women's labour exploitation in the agricultural sector is frequently accompanied by sexual blackmail and abuse. These dynamics take place in Italy, for instance in the rural areas of Sicily where migrant women farmworkers, in particular Romanian women, are often victims of sexual abuse by local employers or '*caporali*'.⁹⁴

The sexual abuse of migrant women in rural areas is not only connected to the labour exploitation of women farmworkers. In rural areas of Italy, for example, migrant women not only engage in agricultural work, but may also work as sex workers, waitresses or cooks in informal settlements, often in conditions of exploitation and abuse.⁹⁵

4 Reparative Responses during the Pandemic: Essential Workers, but with Temporary and Limited Rights

The global Covid-19 pandemic has sharply disclosed and, simultaneously, exacerbated the dynamics illustrated in the previous sections.

Since the first border lockdown, by immobilizing thousands of foreign seasonal workers from EU and non-EU countries, the pandemic has clearly shown the essential and chronic roles of migrant workers employed in core sectors, such as agri-food production, revealing the reality of their employment, living and social conditions, and the systemic nature of dynamics of exploitation. The crisis has, in turn, disclosed the limits of long supply chains – including in terms of price distortions, unfair competition and distribution dynamics.⁹⁶

At the same time, the pandemic has further aggravated the situational vulnerability of many migrant workers employed in the agri-food system, as it has disproportionately impacted people most affected by discrimination and social exclusion. Migrant farmworkers have reported wage deductions and

93 Hellio, E. (2017).

94 Palumbo, L. and Sciarba, A. (2018).

95 Peano, I., 2017. Global Care-Commodity Chains: Labour Re/Production and Agribusiness in the District of Foggia. *Sociologia del Lavoro* 146, pp. 24–39.

96 Palumbo, L. and Corrado, A. (2020b).

poor housing conditions, as well as other violations of their rights. In some contexts, the decrease in seasonal workers has resulted in harder and more abusive working conditions.⁹⁷

Since the beginning of the health emergency caused by the pandemic, EU institutions and national governments have adopted several measures to simultaneously address labour shortages in the agri-food sector and the conditions of situational vulnerability of farmworkers, especially migrant farmworkers.

In particular, while some countries, such as the Netherlands, took a *laissez-faire* stance with regard to bottlenecks in seasonal labour demand in agriculture, directly supporting selected groups of growers, many other EU countries adopted controversial measures such as the establishment of flights for seasonal migrant workers subject to a strict hygiene protocol. Germany was one of the first countries to arrange these flights to recruit seasonal workers coming from Poland, Romania and Bulgaria,⁹⁸ given the difficulty of recruiting locals to work in the fields. Similar flights were organized in Italy involving seasonal workers from Morocco, and in Spain involving seasonal workers from Uruguay.⁹⁹ However, in all countries these actions have been criticized for numerous violations of hygiene regulations and distancing requirements during flights, pick-up and transport to the farms.¹⁰⁰ Generally, these national interventions have tended to subordinate the protection of the rights of workers, including their right to health, to the needs of production in the agri-food sector.

At the same time, countries such as Germany focused on agreements with third countries. Although the German seasonal pilot scheme based on an agreement with Georgia for the recruitment of workers for the harvesting season of 2020 was postponed to 2021, quotas for seasonal workers were increased from 500 to 5,000. However, this scheme resulted in a sort of failure: despite 80,000 applicants competing for 5,000 slots, only around 300 people started work in the fields in 2021.¹⁰¹ Probably the hard and degrading living and working conditions of farmworkers prevented many Georgian workers from choosing to migrate and work in Germany.¹⁰²

Similarly to the Netherlands' approach, in Sweden the government has not adopted any specific migration policy during the pandemic: resident permits

97 Corrado, A. and Caruso, F.S. (2022).

98 Federal Ministry of the Interior/Federal Ministry of Food and Agriculture (2020), Concept paper on seasonal workers with regard to health protection [(SARS-CoV-2)] of 2 April 2020.

99 Corrado, A. and Palumbo, L. (2022).

100 Corrado, A. and Caruso, F.S. (2022); Schneider, J. and Götte, M. (2022).

101 Schneider, J. and Götte, M. (2022).

102 *Ibidem*.

were not extended, and migrant workers were not provided with any specific support in terms of access to benefits and services.¹⁰³

Spain and Italy have instead mainly focused on adopting measures aimed at providing undocumented or potential undocumented migrants with the opportunity to regularise their legal status. In particular, Italy has adopted a regularization scheme (Relaunch Decree (*Decreto Rilancio*) no. 34 of 19/05/2020 converted into Law no. 77 of 17 July 2020) applying only to irregular migrants working in the agri-food and domestic/care work sectors. However, significant inadequacies have limited the impact of this scheme, especially on the agricultural sector, resulting in another failure.¹⁰⁴ In Spain, the government has adopted measures to prevent targeted migrant workers from becoming undocumented due to difficulties in renewing residence permits during the pandemic. In particular, the Spanish government extended the validity of migrants' residence permits expiring during the lockdown period (*Real Decreto-ley* (RD) no. 13/2020, of 7 April 2020, and RD 19/2020 of 26 May 2020). Similarly to Italy, Spanish measures paid special attention to the agri-food sector. For instance, RD no. 13/2020 established that young third-country nationals (aged between 18 and 21 years) in possession of regular documentation could benefit from being allowed to work in agriculture. Successively, RD 19/2020 allowed migrants employed in other sectors whose jobs had been affected by the Covid-19 crisis to seek employment in agriculture. This RD provided a residence and work permit for two years (with a possible renewal of two more years and without sectoral limits) to young third-country nationals who obtained their first work contract thanks to the measure on work flexibility in the agricultural sector. This would allow these young migrants potentially to access long-term residence. The Spanish government has also rolled out specific short-term social measures (*Instrucciones*), such as lowering income thresholds and other requirements to facilitate access to permit renewals, family reunification (*Instrucciones* DGM 4/2020), and temporary residence permits based on social integration (*arraigo social*) (*Instrucciones* DGM 6/2020).¹⁰⁵ Residence permits have also been renewed for those who are unemployed or receiving income support or the minimum living income, and for those who depend on their families.¹⁰⁶

103 Iossa, A. and Selberg, N. (2022).

104 Corrado, A. and Palumbo, L. (2022).

105 The '*arraigo social*' is a temporary residence and work permit designed for those foreigners who have been living in Spain for 3 years under an irregular situation. See *Ley Orgánica 4/2000 sobre Derechos y Libertades de los Extranjeros en España y su Integración Social* (Art. 31.3).

106 Corrado, A. and Palumbo, L. (2022).

The regularization actions adopted in Italy and Spain undoubtedly constitute important measures. However, they have primarily consisted of short-term solutions, aimed at meeting seasonal labour demand and, as in the case of Italy, at reducing the number of undocumented migrant workers or, as in the case of Spain, at preventing migrants' condition of irregularity. While it is true that in Spain there have been some tentative steps towards more longer-term solutions – as in the case of measures for young third-country nationals – and less selective measures, such as support for application of the '*arraigo social*', even in this country, as in other European countries, including for instance Italy and Germany, the question of a profound change in migration policies has remained unaddressed. It is worth highlighting, in this regard, that in 2021 Spain arranged new agreements for the recruitment of seasonal workers from Honduras and Ecuador through the 'contracts at source' system. Arriving in the fields of Huelva between December 2021 and January 2022, these workers denounced degrading and sub-standard conditions, confirming once again the reality of a system built around dependency on employers.¹⁰⁷

Some differences have emerged in the national responses addressing labour rights in agri-food systems. For example, Germany introduced important provisions concerning the meat industry through the adoption, in December 2020, of the Occupational Health and Safety Control Act (*Arbeitsschutzkontrollgesetz*), which was intended to 'clean up' abusive practices around subcontracted work in the meat industry,¹⁰⁸ providing, among other things, the inclusion of migrant meat workers in the German social security system. However, as Schneider and Götte have stressed, none of these reforms apply to seasonal workers in the agricultural and horticultural sectors.¹⁰⁹ In general, in Germany, like in other European countries, seasonal migrant farmworkers have been recognized as essential, but still denied access to social rights, and in particular social security schemes.¹¹⁰

In Spain, the government has established a new increase in the minimum wage in agriculture and strengthened labour inspections in the countryside.¹¹¹ There have also been a few institutional interventions concerning housing of migrant farmworkers and their access to social rights.¹¹² For instance, in an

107 Corrado, A. and Caruso, F.S. (2022).

108 Deutscher Bundestag, plenary protocol 19/201, 2020.

109 Schneider, J. and Götte, M. (2022).

110 Bogoeski, V., 2021. How the legacy of neoliberal labour market regulation helps exclude seasonal migrant workers from social security in Germany. *Verfassungsblog, On Matters Constitutional*, April.

111 Corrado, A. and Caruso, F.S. (2022).

112 León, I., 2020. El campo pide el cese de Yolanda Díaz tras enviar inspectores de trabajo en busca de 'esclavitud'. *El Español*, May.

important decision, the Administrative Court of Huelva (decision No. 345/2020) has established that migrants living in informal settlements can register in the Municipality of Lepe, allowing them to access citizens' rights and, at the same time, to initiate a process of regularization based on social integration (*arraigo social*).¹¹³ Furthermore, the national government has announced a plan to offer up to €50,000 to employers to build residences for seasonal workers.¹¹⁴

In Italy, the above-mentioned 2020 Relaunch Decree (*Decreto Rilancio*), under its Article 103, also provided that competent national and regional authorities adopt – including through the implementation of the measures established by the 2020–2022 National Plan against exploitation in the agricultural sector and illegal gang-mastering – interventions to guarantee adequate and safe accommodation and services, as well as to combat undeclared work and exploitation. These measures should also be adopted in accordance with the actions provided by Law no. 199/2016 addressing labour exploitation and illegal gang-mastering in agriculture, which constitutes a significant milestone in the fight against exploitation, but is still inadequately implemented.¹¹⁵ The pandemic period also coincided with the running of two national programmes addressing migrant workers' conditions in rural areas of the Southern regions, coordinated by the Italian Ministry of Labour and Social Policies, with the support of the International Organisation for Migration (IOM).¹¹⁶ These actions include, for instance, a cooperation agreement between the IOM and the National Labour Inspectorate, aimed at supporting inspection activities through the use of experts in legal, linguistic and cultural mediation. These constitute important interventions. However, at time of writing, no structural interventions have been adopted to support the effective implementation of specific provisions concerning workers' transport and accommodation, and the strengthening and protection of the rights of migrant farmworkers. For example, although since 2020 quotas for seasonal workers have been increased, the employer-driven approach of this system has remained untouched. Furthermore, in Italy, like in other European countries, exploited workers' access to protection and support is still strongly dependent on their cooperation in criminal proceedings.¹¹⁷

In general, while there have been relevant national initiatives aimed at addressing the rights of migrant farmworkers during the current Covid crisis, in most of the examined European countries – with the exception to some extent

113 Corrado, A. and Palumbo, L. (2022).

114 Corrado, A. and Caruso, F.S. (2022).

115 Ibidem.

116 Corrado, A. and Caruso, F.S. (2022).

117 Giammarinaro, M.G. and Palumbo, L. (2021).

of Spain – these have mainly consisted of short-term legal and policy measures intended to mitigate the effects of the pandemic and provide migrants with some degree of social protection and temporary residence permits. These initiatives have fostered, once again, the ‘permanent temporariness’¹¹⁸ of migrant farmworkers, even if these workers represent a fundamental component of this sector and are needed on a long term perspective.

EU policies in the field of migration and labour rights have in part reflected national orientations, echoing the needs of member states to protect their exclusive competences on labour migration and social related issues. The EU Pact on migration and asylum, for instance, has not led to a change in the paradigms of migration policies, which still rely on a securitarian approach.¹¹⁹

Conclusions

Far from being an exceptional phenomenon, labour exploitation is a structural element of labour market segments such as the agri-food sector. In particular, labour exploitation is a *continuum* characterized by varying degrees of submission and/or adherence to certain exploitative situations. Along this continuum, forms of exploitation are associated with different ‘situational’ vulnerabilities, which are themselves constructed by the interplay of individual and structural factors, including the impact of migration and labour regimes.

By focusing on Northern and Southern European countries (in particular, Italy, Spain, Sweden, Germany and the Netherlands) and drawing on the papers in this Special Issue, this article has underlined that, despite differences in migration regimes and labour market regulations, in all these countries relevant policies on migration and labour mobility have contributed to the sustainment of an agri-food system aimed at lowering the price of production by compressing the rights of workers. In particular, being supported by relevant EU policies and legislation, policies of member states on migration and labour mobility have contributed to creating specific situational vulnerabilities which are utilized and exploited, each one in a particular way, within agri-food systems. In other words, the specific situations of vulnerability of seasonal workers, asylum seekers, student visa migrants or poor EU migrant workers – which

118 Triandafyllidou, A., 2022. Temporary migration: category of analysis or category of practice?. *Journal of Ethnic and Migration Studies*.

119 Borraccetti, M., 2020. Il nuovo Patto europeo sull’immigrazione e l’asilo: continuita’ o discontinuita’ col passato?. *Diritto, Immigrazione e Cittadinanza* 1, pp. 1–27.

are produced and accentuated by relevant EU and national legislation and policies – are easily taken advantage of in the agri-food sectors of many European countries.

In this context, dependency on employers and the temporary nature of legal status and/or employment relationships all play a crucial role in undermining the rights of migrant farmworkers by weakening their bargaining power and, consequently, preventing them from escaping exploitation. Gender based discriminations and power relationships constitute a further factor that produces and accentuates conditions of vulnerability to exploitation and abuses in the agri-food sector. Women with family responsibilities tend to be particularly exposed to such dynamics.

Furthermore, in a scenario characterized by labour market flexibilization and deregulation, there is significant recourse to ‘posted work’, subcontracting, and/or employment agencies, as ways to hire cheap labour. These often circumvent relevant EU and national legislation, creating a ‘grey zone’ which conceals exploitative practices.

The Covid-19 crisis has exacerbated the situational vulnerabilities of migrant farmworkers and has sharply revealed the contradictions inherent within agri-food systems in Europe and globally, shedding light on the systemic character of exploitation in this sector. European countries, such as Germany, the Netherlands, Sweden, Italy and Spain, have responded to this mainly by implementing reparative short-term legislative and policy measures to alleviate the effects of the pandemic on migrants’ situations of vulnerability and working conditions. Although it is true that Spain has taken some tentative steps towards more longer-term solutions, as in the case of measures for young third-country nationals, and has adopted several initiatives for the enforcement of labour rights in the agri-food sector, even in this country the question of a profound and structural change in migration policies and in social policies has remained unaddressed.

In general, in all the examined countries, nothing has been done fundamentally to change migration policies and legislation. Little has been attempted in terms of structural intervention supporting, for example, the effective implementation of specific provisions concerning the enforcement and protection of the rights of migrant workers, and their access to adequate housing and transport. All this has highlighted a prevailing utilitarian/economic logic behind the measures adopted during the pandemic, measures which have been aimed primarily at responding to market needs and pressures rather than fulfilling the declared purpose of protecting people in situations of vulnerability, especially migrant persons, and their fundamental rights.

At EU level, the adoption of a social conditionality mechanism in the Common Agricultural Policy (CAP), making CAP payments conditional on respect for labour standards, and negotiations for the adoption of a Directive on Minimum Wage and EU mandatory Human Rights and Environmental Due Diligence legislation, constitute important steps for a new drive, at EU and national levels, towards a more rights-compliant and sustainable agri-food system. Their effectiveness will also depend on their implementation at national level.

However, to overhaul such an unfair agri-food model of production, which takes advantage of the situational vulnerability of workers and in particular of migrant workers, it will also be necessary to rethink EU and national legislation and policies on migration and social related issues to address the social injustices and inequalities on which exploitation relies. Changes must be made in order, for instance, to support low- and medium-skilled migrant workers' social and labour inclusion on a long-term perspective, and ensure their right to social and housing assistance in accordance with Article 34(3) of the EU Charter of Fundamental Rights. At time of writing, the path towards these goals seems still to be long and arduous.