

Panel Discussion "**New Insights - Cross-border Employment and Temporary Staffing**" to be held on December 15th at the www.CeeTheOpportunity.eu seminar at the Van der Valk Hotel in Leusden

Circulated to the Ministry of Social Affairs and Employment, ambassadors from and based in Central and Eastern European countries, policy officers and directors of concerned companies, institutions and the press.

This letter is written by Lugera with the attempt to inform policy makers about the factual situation of the employment of foreign workers from the CEE countries in The Netherlands. It has been noted by Lugera that most policy makers in The Netherlands and including the Ministry have no understanding of the real problems and as long as those are not addressed no solutions will be found. Trying to solve imaginary problems will never be the answer to improvement. This paper can also be downloaded from www.lugera.nl.

Krakow, December 1, 2014

Dear Reader,

We would like to bring the following matters to your attention with regard to the draft document 'Labour Migration' from the Labour Migration Commission of the Dutch Social and Economic Council (SER), the current public debate in the Netherlands on labour migration from Central and Eastern Europe (CEE) and the positions of the FNV trade union and the Dutch Labour Party (PvdA).

We are holding a panel discussion on December 15th on the topics addressed in this letter. We have invited ambassadors, union representatives (FNV, CNV) and several other organizations which work in this area. The FNV has reversed its initial commitment to attend the discussion and intends to demonstrate in front of the hotel.

We are concerned about the nature of the current public debate on this issue, which has been mainly led by the FNV and the PvdA. We note that the majority of information reported by the media completely ignores the actual reality. The debate on this issue in the Dutch Senate has also been problematic, in our opinion, and it is unclear to us why it does not seem possible to identify the real problems and address them.

We are particularly concerned by calls for a ban on Central and Eastern Europe (CEE) employees in The Netherlands. Our comments on these issues are based on our daily experience with recruitment.

The following topics and concerns are addressed in this letter:

1. Potential displacement of Dutch employees
2. Potential unfair competition regarding employment conditions
3. Potential downward wage spiral
4. Equal work, equal pay
5. Potential unfair competition from foreign agencies
6. A1 Payrolling (temporary employee hired abroad and working in the Netherlands) claimed to be unfair as lower social contributions are paid
7. Nationalism and xenophobia
8. Potential erosion of the Dutch social security system by A1 Payrolling
9. Paying the price for benefits received

10. Level playing field for companies and workers
11. Law enforcement, rogue traders, sham arrangements
12. Law enforcement more difficult than introduction of new laws
13. Suggestions and Solutions

1. Potential displacement of Dutch employees

The recently published reports of the SER (Dutch Social and Economic Council) and the SEO (Economic Research Institute) demonstrate that no displacement is occurring. Dutch employers hire CEE employees as they are unable to find Dutch workers to undertake unskilled work at the statutory minimum wage. In addition, CEE workers are significantly more productive.

The SER report calculates that the increase of migrant workers from 10,000 to 20,000 caused 32 Dutch workers to lose their jobs. After 2007, the report found no negative impact and no displacement.

2. Potential unfair competition regarding employment conditions

No Dutch employer may pay less than the legal minimum wage. All employers in The Netherlands must comply with the relevant Collective Labour Agreement (CLA), i.e. foreign employers and employment agencies placing staff in The Netherlands must comply with Dutch CLA's. Dutch legislation and EU directives are unambiguous on this matter. As a result, there is no question of unfair competition as regards employment conditions. On the contrary, under the 'equal work, equal pay' banner, CEE employees enjoy better working conditions than they would otherwise.

It is our experience that Lugera customers in the The Netherlands do not directly request CEE employees, but rather due to a shortage of Dutch workers they have had to look elsewhere. A CEE employee is more expensive than a Dutch employee in the same job at the same company with regard to the following:

- housing
- local transport
- international transport
- giving work instructions can be time consuming and expensive due to language problems
- written instructions need to be translated
- support must be provided in the event of illness, doctor visits, hospital visits
- additional resources needed for guidance during working hours and free time

We can categorically state that Lugera temps enjoy better working conditions than Dutch workers in the same position for the same company.

3. Potential downward wage spiral

There can be no question of a downward wage spiral from the statutory minimum wage, as no employer may pay less than this amount. However, the SER report did find a correlation between a rise in the number of migrant workers and a decline in wage levels, although the fall in wages was small. Given a 20% increase of migrant workers, wage levels were found to drop by 0.3% - 0.5%. For a gross salary of €1,800, this represents a decrease of €5.40 - €9 per month. In addition, it confirms what everyone knows very well - CEE temporary staff, like all temporary workers, are covered by the CLA for temporary workers. This means there has been no reduction in wages for Dutch temporary staff and no downward wage spiral.

4. Equal work, equal pay

It has been argued that 'equal work, equal pay' must be the basic principle in this area and that this would not be the case with CEE employees, as they would be paid less than Dutch workers. As we have made clear above, this is not the case. In addition, most CEE workers enjoy more benefits than Dutch employees and CEE workers receive a better overall remuneration package, which is reflected in the following additional services provided to Lugerers temps. (Other legitimate employment agencies also provide similar services):

- refund of international travel expenses
- monthly food package
- supplementary travel and accident insurance with additional benefits in the event of disability or death
- housing
- additional housing services
- internet and cable TV
- transport to work
- assistance with doctor and dentist appointments and hospital visits
- taxi service for doctor, dentist and hospital visits
- translation services, support with banking issues
- repatriation services, reception of relatives.

For some industrial customers of Lugerers, CEE staff earns more in total than temporary Dutch workers undertaking the same jobs. However, equal pay is always paid for equal work. The CEE temporary workers receive more in terms of their total remuneration package.

5. Potential unfair competition from foreign agencies

Unfair competition from foreign employment agencies is not possible in the Netherlands as Dutch legislation, EU directives and the legislation in the home country of the employment agency must be respected. As all employment agencies (Dutch or foreign) must comply with all relevant legislation there can, by definition, be no question of unfair competition.

6. A1 Payrolling claimed to be unfair as lower social contributions paid

Under A1 Payrolling (worker employed abroad and working in the Netherlands) social contributions vary between 10.5% and 35%. Temporary workers are not entitled to social benefits in the Netherlands, but only to social benefits in their home country. This can be a cost advantage for a foreign employment agency, but this is offset by the extra costs described in the preceding paragraphs. *And it should be noted that A1 Payrolling by a foreign employment agency can never be cheaper than the direct employment of a CEE employee by a Dutch employer.* This means A1 Payrolling is only a cost benefit when compared to a Dutch staffing agency.

7. Nationalism and xenophobia

(Xenophobia is the unreasonable fear of that which is perceived to be foreign or strange.^{[1][2]} It comes from the **Greek** words ξένος (*xenos*), meaning "strange", "foreigner", and φόβος (*phobos*), meaning "fear".^[3] Xenophobia can manifest itself in many ways involving the relations and perceptions of an **ingroup** towards an **outgroup**, including a fear of losing identity, suspicion of its activities, aggression, and desire to eliminate its presence to secure a presumed purity.^[4] Xenophobia can also be exhibited in the form of an "uncritical exaltation of another culture" in which a culture is ascribed "an unreal, stereotyped and exotic quality".^[5] [Vienna Declaration and Programme of Action](#) urges all governments to take immediate measures and to develop strong policies to prevent and combat all forms and manifestations of racism, xenophobia or related intolerance, where necessary by enactment of appropriate legislation including penal measure.^[6] Source: Wikipedia)

The steady stream of statements from union representatives of both the FNV and from a number of political parties supporting a ban on CEE workers is very unfortunate at a time of rising levels of nationalism and xenophobia. Comments from the FNV are of particular concern and serve to increase negative attitudes towards foreigners. It is clear that CEE employees are not displacing Dutch employees and there is no question of a downward wage spiral or of unfair competition, so it seems the unions simply do not want foreigners from the CEE in the Netherlands. Lugera is an East European based agency and this hurts us in particular. Dutch industry and the Dutch people have always been warmly welcomed in CEE countries and the Netherlands and the CEE countries enjoy a very good business relationship. It would be very damaging if this good relationship was put at risk.

8. Potential erosion of Social Security system by A1 Payrolling

The employment of CEE temporary staff in the Netherlands substantially weakens the social welfare system and the government will be faced with very high payments of social security benefits to migrant workers for long periods. The fact of the matter is that migrant workers are entitled to most Dutch social benefits when employed in The Netherlands.

The words of Johan Cruyff seem appropriate here:

"Before I make a mistake, I see it coming and then don't make it."

Under A1 Payrolling a worker remains insured in their home country. The advantage for the worker is that financial matters, such as pension provision, remain unchanged. EU law has been framed to make it as easy as possible for people to work for a temporary period in EU countries other than their home country. It should also be noted that in reality some Dutch social services are in fact inferior to those provided in CEE countries.

It is our belief that the Minister, the PvdA and the FNV are making the same mistake as their predecessors in insisting that migrant workers must be employed permanently in the Netherlands. Below we give a simple example of the possible cost for the Dutch state:

If 400,000 migrant workers in the Netherlands were employed permanently, all these employees would be entitled to child allowance and other allowances (housing, health care, etc.) and unemployment benefits. This would represent an average of around €5,000 per employee annually, which would add up to €2 billion in total. Revenues from social insurance would be considerably lower. The loss to the Dutch treasury could be around €600 million a year (and probably much higher because benefits continue to be paid if a CEE employee is no longer working in the Netherlands). Therefore, the government should be actively seeking ways of having CEE employees work in the Netherlands while social insurance is paid in the home country. The EU Temporary Agency Work Directive provides an excellent legal framework for this and there are long standing arrangements to deal with this issue within the EU. A1 Payrolling of CEE workers is the best solution for the Dutch treasury (revenue received from income tax and no spending on social benefits), for the competitiveness of Dutch businesses and also for the temporary worker, who receives a

higher net spendable income. There are also great advantages for the CEE countries as they enjoy a trade balance surplus and benefit from the fact that workers will make less use of social services while they are employed in the Netherlands.

The next government will face a huge challenge (in our opinion, probably an impossible task) to limit the damage that is being done by insisting on the permanent employment of CEE workers in The Netherlands. This has been demonstrated by recent developments regarding Morocco. If the Minister led A1 Payrolling in the right direction, i.e. strict enforcement of the current law, then the PvdA and FNV could sleep peacefully again - labour migrants would only be working temporarily in The Netherlands and they will not be costing the state money, but rather generating revenue for the treasury. Nor will they be displacing Dutch jobs and Dutch business can continue to operate efficiently and profitably, a not unimportant matter.

"Before I make a mistake, I see it coming and then don't make it." Or are we going to make it again?

9. Paying the price for benefits received

The prosperity of the Netherlands is due to Dutch international business acumen and the country's open economy. One million Dutch people are employed by foreign companies in the Netherlands. A third of all jobs in the Netherlands are export-related. Dutch imports are worth €480 billion and exports are worth €540 billion. Dutch industry is one of the 5 largest investors in the CEE countries. CEE countries are a big source of income for The Netherlands and all Dutch people benefit greatly from this. However, everything has a price and it seems that the government wants the benefits, but not to pay the price – which could perhaps be considered a negative aspect of the Dutch merchant mentality, i.e. being willing to take the maximum benefit, but not willing to pay the price that must be paid. The Netherlands is the second largest exporting country in total in Europe and the largest exporter of agricultural and horticultural products in Europe. The Netherlands benefits from its good image in Europe and the leaders of the Netherlands should be mindful not to damage this. The Netherlands needs CEE employees and should welcome the best possible compensation being paid to CEE employees. The EU directive on the hiring of temporary staff provides an extremely well-thought-out framework for this.

10. A level playing field for companies and workers

As long as everyone adheres to the legislation, there is, by definition, a level playing field. It should be noted that there is no level playing field in Central and Eastern Europe for businesses competing against multinationals from Western Europe. Due to the enormous advantage that companies from Western Europe have in terms of knowledge, financing and capital, it is almost impossible for local companies to compete successfully with them. When CEE companies look to do business in Western Europe (which is not common), it is not appropriate to complain about the lack of a level playing field.

11. Law enforcement, rogue traders, sham arrangements

Every legitimate employment agency suffers from dishonest competitors. It is our belief that the FNV union has chosen LugerA as a scapegoat as LugerA is the only A1 staffing agency which operates in a completely open and transparent manner (see www.LugerA.nl). The companies that are breaking the rules cannot be so easily identified by the FNV. However, we share the anger and frustration of the FNV and the Minister regarding companies and agencies who knowingly and repeatedly evade paying taxes and contributions and pay less than the statutory minimum wage. LugerA is regularly confronted with malpractice and we regret that it is still possible for rogue dishonest companies and individuals to operate in the Netherlands.

The Code Orange declared by Minister Asscher has nevertheless surprised us. In our view, adequate legislation, both national and EU, is already in place to tackle abuses. However, we still welcome the tightening of legislation, as we believe this sends a strong signal and gives us hope that the issue of rogue agencies will be addressed. We believe the major problem is a lack of law enforcement in The Netherlands and that the Dutch inspection authorities do not possess sufficient capacity to cooperate with their foreign colleagues. Lugera actively offers its support in the various CEE countries in which we operate as regards these issues.

Mailbox firms that undertake A1 payrolling -the EU Directive is clear on this matter. A foreign company may not staff employees through A1 Payrolling in The Netherlands if it has no substantial activities in the country of employment. Its activities abroad must be substantially larger than its business activities in the Netherlands. In our opinion, enforcement should be far stronger in this area.

Sham arrangements - mailbox firms represent a sham arrangement as would also be, for example, a Dutch employment agency operating a branch in Poland to send temporary workers from Poland to the Netherlands. This problem would be easy to tackle using existing legislation.

An example of an initiative by Lugera - in one of the CEE countries in which we operate it was possible to 'buy' an A1 certificate from the local Social Insurance Institution. To obtain an A1 certificate for an employee, the company and the employee must meet certain requirements. We have found the checks on the granting of these certificates in the other CEE countries in which we operate to be rigorous and correct. However, in one of the CEE countries, the management of the local A1 issuing branch were corrupt and were 'selling' A1 certificates for €125 (5 executives x €25). Lugera's policy is totally uncompromising regarding corruption and this unfortunately led to long delays in obtaining A1's. We approached the Dutch Embassy and they agreed to tackle the issue with us. We lobbied for a fair system and A1's are now distributed legally in this country and the corruption has been stopped. A number of Dutch 'agencies' operating in this country lost their NEN 4400-2 certification and are no longer SNA registered as a result. This represents a big step forward and was achieved by Lugera, a relatively small company, and this points the way for what the Dutch government can achieve.

12. Law enforcement is more difficult than the introduction of new laws

The Ministry has identified several thousand fraudulent employment agencies, but the impression that I gained from parliamentary questions is that inspections remains at the planning stage. That is unfortunate. In our opinion, the government should commit to 100% control and undertake an annual audit at every employment agency and also annually inspect every employer (as is the case in a number of CEE countries) - this would put a quick stop to abuse.

Our company, Lugera, is frequently inspected. In recent years, we have had dozens of tax inspections, labour inspections, SNCU inspections in addition to the inspections of certifying companies. Our results from these checks are always outstanding, but considering the large amount of inspections and audits Lugera receives compared with other agencies, it is our belief that Lugera is subject to 'special treatment'. However, at the end of the day, our customers and our temps continue to enjoy the substantial benefits of A1 Payrolling services, which continue to be a success for everyone.

13. Suggestions & Solutions

We recommend the following:

1. It would be of great help if opinion leaders and policymakers would look deeper into the facts and communicate more accurately on these issues.
2. Introduction of compulsory NEN 4400-2 certification for all A1 Payrollers (at present NEN 4400-2 is not required).
3. Introduction of compulsory SNA registration for all A1 Payrollers.
4. Introduction of compulsory travel and accident insurance for employees under A1 Payrolling.
5. Foreign companies undertaking A1 Payrolling should be required to register with the Chamber of Commerce in the Netherlands (currently only required for foreign employment agencies)
6. NEN 4400-2 certification should be extended with an A1 qualification test in the country of employment.
7. Law enforcement should be intensified. Regular inspections of all Dutch and foreign employment agencies should be undertaken.
8. A1 Payrolling of certified A1 Payrollers should be encouraged at hiring companies in the Netherlands.
9. Finally, discrimination against CEE residents by mainstream political parties and trade unions is totally unacceptable and must be actively addressed by the organizations themselves, the representatives of CEE countries and by the EU.

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