

International and interdisciplinary conference

**“B/ORDERS IN MOTION: Current challenges and future perspectives”**

15-17 November 2018 at the European University Viadrina, Frankfurt/Oder



**PANEL B1: The effects of bordering practices in the field of labour law enforcement**

Norbert Cyrus (Frankfurt/Oder), Chair: Eva Kocher (Frankfurt/Oder)

Borders constitute and demarcate territories characterized by discrete jurisdictions and uneven economic performances. Such differentials provide opportunities for the organization of a variety of legal forms of cross-border labour migration like seasonal employment, posted working, self-employment or undeclared labour. Cross-border employment has been described as a mechanism contributing to an undermining of labour standards. Consequently, the regulation of labour migration has become an urgent political issue at international, European and national level. State border's part in the enforcement of labour regulations is inconsistent: It constitutes the scope for favourable employment standards but restricts the reach of efforts to assert labour standards and assigns a legally unfavourable status onto migrant workers. Existing legal regulatory frameworks show a mismatch not only between national jurisdictions. Also within national jurisdictions, legal areas like immigration-, work permit-, criminal-, labour- and social-law collide and facilitate situations of legal vulnerability for migrant workers. This panel examines the situation in selected countries with the aim to assess the effects of bordering practices in the field of labour law enforcement.

PANELISTS:

**Working for papers – blurring boundaries between legal and illegal**

**Felix Hoffmann** (Frankfurt/Oder)

For 30 years now, the greenhouse industry of Almería provides a substantial part of cheap vegetables for counter-seasonal markets of Europe. Migrant labour that is cheap due to illegalization is essential to uphold international competitiveness. I will provide an analysis how a contradictory legal situation and refraining from effective law-enforcement shape the interplay of workers and employers within the EU-Spanish migration regime. Irregular migrant workers hope to benefit from the legal opportunity to earn papers through hard work. The assigned irregular status commits migrant workers to the control of private entrepreneurs who decide substantially not only on the access to employment but also on the chance to regularize a stay. Consequently, a classical segmented-labour-market is effectively extended to a veritable legalization-market. “Legality” turned into a commodity that is more a subject of barter than of jurisdiction – thus inducing a commercial normalization of irregular migration.

## **Inconsistent control practices: The Polish experience in the admission of short-term workers**

**Monika Szulecka** (Warsaw)

The paper deals with inconsistencies in border and migration control policies with Poland as case. One year before joining the Schengen zone, the Polish government had introduced a simplified admission procedure for seasonal workers from Ukraine and other Non-EU countries. The simplification meant that employers interested to hire foreign workers for temporary jobs did not have to apply for a work permit (which was then costly and time-consuming) but merely have to declare intent. Based on employers' declarations registered in local labour offices, the Polish consulates issue visa and thus facilitate not only access to the labour market but also to the Polish territory and Schengen area. Simplified admission policy used to refrain from any control mechanisms. The scale of registered employers' declaration increased from 156 000 in 2008 to 1.7 million in 2017. This development was also triggered by an industry of intermediaries pursuing tricky procurement of visa issuance as a business. In 2018, in response to the EU Directive on Seasonal Work and observed problems stemming from insufficient control over the declaration procedure, the government introduced changes of restrictive character. The paper considers the role of control institutions and (lack of) control instruments in the implementation of the policy admitting foreigners to labour markets. It will explore the changing regulations with a special focus on border control practices and analyse contradictions between various policy tools.

## **Boundaries and Tensions in Combatting Human Trafficking for Labour Exploitation: legal rules and practice in Switzerland**

**Johanna Probst & Anne Laurence-Graf** (Neuchatel)

The understanding of trafficking in human beings (THB) for labour exploitation in law reveals tensions between different relevant legal regimes. Taking a Swiss perspective, we propose, in a first step, to examine the relationships between international and national legal rules that apply to victims and perpetrators of THB. We suggest that, in theory, these rules do not contradict each other but rather complement and are compatible with each other. Turning, in a second step, towards the empirical situation in Switzerland, we will explore how these different legal regimes, namely labour law, law on foreigners, victims' protection law and criminal law interact and sometimes compete in practice when it comes to the prosecution of THB for labour exploitation. Regarding concrete cases occurring in Switzerland, we will finally analyze the impacts of legal regimes EU citizens and third country nationals are subjected to in Switzerland, concentrating on the practical consequences of different case configurations for victims of THB. This exploration sheds light how the permeability of geopolitical borders impacts the drawing of boundaries between jurisdictions when humans are treated as goods