

European Support Network for Fair Mobility

Concrete considerations for the development of a Europe-wide advisory and support network for cross-border mobile migrant labour and third-country national labour migrants

Abstract:

To advance toward the objective of rights-based internal migration, as outlined in the *acquis* for a social Europe, the EU Commission should allocate adequate funds for the establishment and maintenance of an appropriate number of trade union-proximate advisory centres for cross-border mobile migrant labour and third-country migrant labour in EU countries. This advisory infrastructure is intended to offer guidance on labour and social law issues and assist target groups in asserting their labour rights, if necessary, across national borders. The advisory centres within each country should collaborate closely with trade unions and the European Trade Union Federations, forming a transnational advisory structure comprehensively. A close collaboration with the European Labour Authority (ELA) is to be established and sustained.

Initial Situation:

The introduction of the free movement of labour and the freedom to provide services has significantly increased the mobility of workers within the European Union (EU). In 2020 alone, nearly 10 million people relocated to a member state whose nationality they do not possess. This corresponds to 3.8 percent of the working-age population. Additionally, there were around 650,000 to 850,000 intra-EU seasonal workers. Worker mobility has now become a structural segment of national labour markets in all EU member states. It is foreseeable that this sector will continue to grow. Against the background of a shortage of skilled workers and targeted recruitment efforts, the mobility of third-country nationals temporary working within the EU is also expected to increase significantly.

For mobile migrant labour, particularly those who only work temporarily in another EU state, the situation is often precarious. They face the risk of being pushed into extreme labour exploitation or unfavourable working conditions. Due to a lack of an understanding of the local language and the applicable labour laws, they find it challenging to assert, let alone enforce, their rights.

Continuous violations of the rights of workers occur in this context. Unions are making concerted efforts to provide innovative support to mobile migrant labour across diverse industries and regions in various forms. However, as the workforce that is confronted with precarious or exploitative situations very often goes far beyond the rank of their members and in particular concerns temporary and mobile migrant labour, unions cannot manage this task solely from their own resources. The public funds necessary to address this societal task are currently available in some member states but not at EU level. While comprehensive support

offerings have been developed for employers, for instance through the assistance provided by the Enterprise Europe Network, there is no corresponding provision for workers.

In this area of the labour market, there is a significant gap between the vision of a social Europe and the reality. Despite various directives, the EU has not yet been able to realise rights-based intra-EU migration, as outlined in the acquis for a social Europe. To turn this vision into reality, additional measures are necessary, such as the continuous development of trade union-proximate advisory and support structures in the EU countries. These structures can be utilised to advise and cross-border mobile migrant labour.

Target Groups:

The advisory and support services should be accessible to all cross-border mobile migrant labour. Thus, for those who utilise the opportunities of the European labour market under Article 45 of the Treaty on the Functioning of the European Union (TFEU) and work in another EU country, for workers that are posted, as well as for labour migrants that come over from third-countries to work in the EU.

This includes the following groups:

- **Cross-border mobile migrant labour:**

Workers who work in another EU country for a specific period of time. Typically, they maintain their place of residence in their home country and perceive their work as temporary. This group also encompasses workers who work in multiple countries (migrant workers) and those classified as bogus self-employed workers. The situation of cross-border mobile migrant labour in destination countries varies based on the degree of labour market integration and societal incorporation. However, societal integration, access to unions, and adequate language skills are often lacking.

- **Posted Workers:**

This includes workers who have an employment contract in an EU country and are sent by their employer to work in another EU country for a certain period of time. The average duration of employment is 100 days, but it varies significantly. Some posted workers stay for a few months, then return to their home country, or continue working in another EU country. Others work as long-term posted workers for several years in one or more EU countries. Due to the transnational nature of posting and the oftentimes short duration of stay, this group faces a particularly precarious situation. They are generally not socially integrated, do not speak the language of the host country, lack networks, and have no access to support structures, unions, or other networks.

- **Third-Country Nationals:**

The shortages of skilled labour have led to an opening for migrant labour from abroad. In many EU countries, it can be observed that third-country nationals are specifically recruited and then work as mobile workers in other EU countries or are posted by employers. Additionally, there is a growing phenomenon of third-country nationals working as posted workers within the EU, based on bilateral agreements between their home country and an EU country. What these groups have in common - in addition to their frequently limited and low level of social integration and lack of access to support structures and trade unions - is their specific vulnerability: Their right of residence frequently depends on employment. It leads to increased dependency relationships where precarious working conditions, including severe labour exploitation, are tolerated to avoid jeopardising their stay. In extremis, this is the case for third-country nationals whose residence permits have expired or those who are undocumented active on the labour market.

In contrast, **frontier workers** are not encompassed by the approach outlined above; they can make use of the EURES service. While the posting of workers and seasonal work are, by definition, temporary, frontier commuters can engage in work in a neighbouring country on a longer-term basis, possibly until retirement. Nonetheless, they not only require easy access to multilingual, target-specific, and specific information but also individual on-site advisory services. Therefore, widespread individual advisory services, in the sense of available at every border between EU member states, are necessary. These services, independent of the advisory centres outlined here for cross-border mobile migrant labour, posted workers, and third-country nationals, must be permanently financed at the European level. EURES Border Partnerships should be strengthened for this purpose.

Employers should not fall under the purview of the advisory structures presented here because their needs and requirements differ significantly from those of workers. Moreover, there are already sufficient individual contact points for service providers and companies. Examples include contact persons within the framework of the Services Directive and the Enterprise Europe Network.

Structural Requirements for Establishing a Network of Advisory and Support Structures

Prior to establishing advisory and support structures for individual countries, needs analyses regarding the situation of cross-border mobile migrant labour should be conducted. These analyses should propose which industries or specific groups of workers exhibit a particularly high demand for the establishment of advisory and support structures in each country. Trade union projects and initiatives must be envisaged targeting the support of cross-border mobile migrant labour in their redress regarding labour market issues. This should be combined with propositions how such projects could fit in a future network. Additionally, union-related or union-proximate institutional settings should be identified for the implementation of counselling and support structures.

Based on the analyses, advice and support centres will initially be developed in the EU countries most affected. These centres should have a dual purpose:

1. establishing a recognisable and effective range of labour and social rights advice and support services for one or more problem areas identified by the needs analysis.
2. providing capacities with the necessary resources and expertise to develop and implement transnational networking with advisory and support structures in other EU countries.

The establishment of labour and social rights advisory structures occur on a country-specific basis in close collaboration with local stakeholders. Experience shows that deploying at least two consultants at every location is considered a quantitative minimum requirement. The number of locations established in a country depends on the general scale and specific issues of each country, and problem analyses should include suggestions in this regard.

Funding for needs analyses, required advisory as well as support centres and supranational networking should be financed via a budget from the EU Commission.

The objective is to create for the workers concerned an effective and user-friendly advisory and support structure based on the needs analysis, well-connected with advisory structures in other countries, constituting a continuous support infrastructure even if assisting organisations change.

Advisory Form and Content

The advisory structures which are closely associated with labour unions provide legal and social advice and support in enforcing the claims related to labour and social rights. They review documents and are capable of legally categorising them. Additionally, they engage with employers, general contractors, or companies in the supply chain to clarify claims in the interest of workers. They leverage access to the target audience and their experience in worker-oriented advisory work. Furthermore, they can involve the respective unions in consulting to incorporate their industry and company-specific expertise. They maintain contacts with authorities and labour inspections, but also with networks of NGOs that can assist advice seeking workers in matters beyond or outside the area of labour and social rights. They maintain close cooperation with the European Labour Authority (ELA). As a government body, the ELA would have a different role than advisory centres but could be involved in a supportive capacity. The ELA could specifically support the advisory work of union-proximate advisory centres by providing translation and interpreter services or assisting in clarifying complex issues in individual cases. Simultaneously, experiences from union-proximate, worker-oriented advisory work could be reflected in the structures of the ELA.

The consultation takes place via telephone, email, and on-site visits. Information campaigns and actions are also carried out, some of which take place digitally, reaching larger groups of cross-border mobile labour migrants to inform them about their labour rights.

Many workers use social media to learn about their rights. Advisory structures should be able to navigate these channels and use them to disseminate information and counteract misinformation.

Very often workers do not proactively seek advice; rather, they do so when problems have already arisen. In these cases, in addition to clarification and advice, support in enforcing rights is usually necessary. This often involves mediating between workers and employers with the aim of achieving an extrajudicial resolution. In other cases, professional assistance through unions or legal support must be organised. The support provided by advisors in enforcing rights is limited to the extrajudicial realm. However, they can initiate and prepare legal proceedings in individual cases.

Trade Union Affiliation

The advisory structures should be located within a union or a union-proximate organisation in the respective country. Unions play a central role in the architecture of the EU – as social partners, as social policy actors, as the social movement that, based on its experiences of the realities of the working world, demands improvements in working conditions and the strengthening of workers' rights. Advising and supporting the vulnerable workers described above requires a special trust relationship that government entities like the ELA cannot provide, as workers fear sanctions or, in the case of third-country nationals, the loss of residence permits. Unions also have the necessary experience to comprehensively inform, advise, and support workers. In the event of legal violations and the infringement of workers' rights, they advocate for the enforcement of these rights. Moreover, they possess the necessary industry-specific expertise.

Transnational Coordination

In many cases, it is necessary for advisory and support structures to operate transnationally. Since employment is cross-border, the advisory must be organised correspondingly. For posted workers, for example, the legal situation in their host and home country must be clarified, and the relevant organisations in the host and home country must be contacted.

This collaboration of advisory structures, as experiences show, does not happen automatically but must be developed through accompanying measures. Therefore, EU-wide coordination

should promote the networking of advisory centres. National advisory structures should be supported by this transnational coordination office, closely linked to the ETUC and European sectoral confederations. The coordination office should also be in regular communication with the ELA, which supports the work of the coordination office and national advisory structures.

The coordination centre organises multi-day exchanges of experts, meaning visits between advisory and support structures, during which case scenarios are discussed, and contacts with relevant organisations and authorities are established. In addition, regular transnational workshops are offered for advisors, where peer case advisory is conducted, and country- and industry-specific information is exchanged. Furthermore, in the respective countries, specialist meetings are organised, to which unions, regional authorities, and other stakeholders can be invited to promote networking.

Sector-Specific Coordination

In some sectors - such as international road transport, seasonal agricultural work or construction - the legal framework is extremely complex, and employment relationships have a specific structure. In recent years, the trade unions have, therefore, in close cooperation with the European Trade Union Federations developed a series of cross-border projects that targeted the reach out, information and support to workers in their sector. The future transnational support network will be tasked with the tie-up of these activities and the assessment and incorporation of the gained experiences. It has to reflect on the creation, and to provide the conditions for the constitution and the retainment of new focal sector initiatives, coordinated at transnational level in collaboration with the respective European Trade Union Federation and its affiliates.

Language Skills and Interpreter Pool

Many cross-border mobile labour migrants do not have sufficient language skills in the destination countries. Experience shows that a common language is most suitable for establishing a relationship of trust. Additionally, complex legal content is best conveyed in the respective native language. Therefore, it is advisable for advisory and support structures to offer services in the languages of the respective mobile worker groups. Therefore, the aim should be to ensure that the advisors at least possess the language skills of the main origin groups. Due to possible language diversity, a shared interpreter pool should also be established, which advisors can use.

Accompanying Analysis and Public Relations

To illustrate the problems faced by cross-border mobile labour migrants who come into contact with advisory structures and to highlight trends in specific sectors and countries, advisory and support structures should have the capacity to work on exemplary cases and describe them. Additionally, the consulting activities should be statistically recorded and evaluated. The respective sectoral coordination also develops sector descriptions that illustrate the specific problems of each sector throughout the EU. The analyses at various levels should be regularly published in a suitable form so that they can be used by EU institutions and member states in their policy-making.

Annelie Buntenbach, Jan Cremers, Micha Heilmann, Frank Schmidt-Hullmann
for the European support network fair mobility

The European Support Network for Fair Mobility is committed to permanent EU funding for trade union-related support and advisory structures for mobile and migrant workers.

Email: netzwerk@faire-mobilitaet.de