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Supporting mobile migrant labour: The role of the trade union movement

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POLICY BRIEF

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SUPPORTING MOBILE MIGRANT LABOUR – THE ROLE OF THE TRADE UNION MOVEMENT

Jan Cremers

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AUTHORS

Jan Cremers
Tilburg Law School
j.m.b.cremers@tilburguniversity.edu

INTRODUCTION

This paper discusses the possibility for the trade union movement to perform assumed, expected, or allotted tasks in the area of workers' mobility and cross-border labour migration. It aims to give an overview of support activities performed by the trade union movement towards mobile and migrant labour in the EU. It is neither meant to be an exhaustive nor a complete picture of supporting activities.

In the European Union, the social partners can play a vital role in the process of drafting and concluding legal and conventional components of the EU acquis. In addition, the social partners are seen, in certain areas, as relevant stakeholders in the implementation of EU-Directives and Regulations. Moreover, they play a role as assigned actors in the application or observance of implemented social policies. In many respects, they are supposed to deliver adequate information to all workers, whether a union member or not. And in the end, several EU Directives empower collective actors like the trade unions with legal instruments to defend workers' rights. All in all, unions are considered the collective voice.

The paper starts with a brief explanation of rights that can be derived from a labour relationship as formulated in international and European conventions and regulations. The labour relationship is not only the key point of reference for determining the nature and extent of employers' rights and obligations towards their workers, but also the starting point for rights-based labour mobility. It is the condition that determines the application of labour and social security law provisions addressed to workers, in order to guarantee the necessary protection. Several rights are formulated irrespective of the juridical status of the worker and are therefore relevant for mobile migrant labour. Besides, this entitlement is often guaranteed for every type of worker residing and moving legally within the EU.

The second paragraph focuses on the EU acquis with the objective to provide an overall picture of relevant parts of the acquis that allocate (certain) tasks or competences to the trade union or the social partners in the area of rights-based labour mobility. The related work can be seen as an important contribution to the implementation of the social EU acquis and its application. Moreover, this contribution goes far beyond the social dimension, as it touches directly on the functioning (and the success or failure) of the internal market and the related free movement of citizens and workers.

Thirdly, some examples are treated of practical experiences with support activities. The focus is on forms and instruments of information, advice, support, and counselling initiated by the trade union movement and related to mobile and migrant labour in the EU. This section ends with an overview of barriers and limitations faced by the organisers of these activities.

The final paragraph looks at the support needs in the evolving Single Market and ends with suggestions and recommendations for more direct material assistance from both the EU and the Member States to the supportive work.

Basic aim of this paper is to identify some noteworthy practices and to contribute to the debate about the collective defence of the interests of mobile and migrant labour through trade union activities as a contribution to fair and rights-based mobility in the EU.

1 RIGHTS THAT CAN BE DERIVE FROM A LABOUR RELATIONSHIP, INDEPENDENT FROM THE LEGAL STATUS

In this context, it is interesting to start with the rights that workers, independent from their legal status, can derive from being in a labour relationship. These rights, with high relevance for rights-based labour mobility, are enshrined in sources of international rights and sources of European or EU-rights.

At international level, the core of eight ILO-standards is an important reference. The standards provide, inter alia, for the right of association and collective bargaining, prohibition of forced and child labour and discrimination in work and employment. An additional protocol prescribes prevention, protection, and compensation. For instance, all victims of forced or compulsory labour, irrespective of their presence or legal status in the national territory, shall have access to appropriate and effective remedies, such as compensation (Protocol 2014). Moreover, each ILO-Member shall develop a national policy and plan of action for the effective and sustained suppression of forced or compulsory labour in consultation with employers' and workers' organisations, which shall involve systematic action by the competent authorities and, as appropriate, in coordination with employers' and workers' organisations, as well as with other groups concerned (article 1 of the protocol). At the level of the Council of Europe, the European Convention on Human Rights sets forth several similar fundamental rights and freedoms (such as the prohibition of slavery and forced labour, the right to form or join trade unions, right to an effective remedy, prohibition of discrimination). Individuals can bring complaints against any of the forty-six member states

to the European Court of Human Rights after they have used up every possible chance of appeal at the national level.

At EU-level, the Treaty of the functioning of the EU and the EU Charter of Fundamental Rights refer to the international standards treated beyond. The European Pillar of Social Rights, adopted in 2017, sets out 20 principles to support fair and well-functioning labour markets as well as social protection and inclusion, including housing. Moreover, several EU Directives set minimum standards and aim to improve overall working conditions, with a protection targeting all workers. Some protect migrant workers more specifically. Relevant for migrant labour are also legal frameworks governing, for instance, corporate responsibility or public procurement that can include specific obligations regarding labour rights or liability for companies and employers (along supply and sub-contracting chains), and sanction and complaint mechanisms in case of violations (Berntsen et al. 2022, Keith 2022, Carta & Neidhardt 2022).

The EU-Charter lists several basic provisions, such as the prohibition of slavery, trafficking and forced labour (article 5), respect for private life (article 8), the freedom of association (article 12), the right to education (article 14), the equality between women and men, including in employment, work and pay (article 23) and equality before the law (article 20). Relevant in this context is the right to engage in work, the freedom to seek employment in any Member State and the entitlement to working conditions equivalent for all workers that are authorised to work in the EU territory (enshrined in article 15 of the Charter). Workers and their representatives are guaranteed information and consultation in good time (article 27), workers and their organisations have the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action (article 28). Moreover, protection against unjustified dismissal (article 30), the right to fair and just working conditions (article 31), and the entitlement to social security benefits of everyone residing and moving legally within the European Union and to social and housing assistance in order to ensure a decent existence (article 34) are laid down in the Charter.

In Member States with labour legislation related to working time, sickness pay, mandatory minimum wages and holiday pay and/or generally binding collective agreements, all workers, whether organised or not, can derive rights from these provisions. In some Member States, the case law goes further and provides rights related to dismissal, liability, wage claims and compensation.[1]

In addition, the Court of Justice of the EU (CJEU) limited Member States' discretion to define who is a 'worker' under national law and expanded the protective scope of EU employment legislation. The CJEU held, for instance, that employment law applies to third-country nationals (TCNs) who do not hold a regular residence permit. This decision clarified that migrant workers are 'workers', regardless of their status, and that they can derive rights from employment law and connected labour standards.[2] In other cases, the equal treatment of workers was, irrespective of the legal status, confirmed for parental leave.

The EU recognises the importance of collective bargaining, and respects in its acquis the responsibility of the partners that conclude collective agreements. It recognises that guarantees and practices existing in each Member State as regards this role of the social partners will not be affected. In the bargaining area, the Member States show wide variety. In some countries, agreements are binding for all workers in the sector that is covered, whether a trade union member or not. In other countries, the agreement is binding only for the employers and workers as defined in the agreement or the application of the agreement is strictly limited to the signatures (and their membership). In some cases, compliance control and enforcement can be a task of the bargaining partners or of institutions created by the partners, including investigative and redress competences on behalf of the workers concerned, with or without their consent. In other cases, enforcement and redress can only be reached via civil procedures. Nevertheless, from a juridical point of view, it is legitimate to consider that collective agreements, which are made generally binding for all workers and undertakings, also should be respected independent from the legal status of the worker. Control of compliance with the content and outcome of collective bargaining and the control and enforcement of collective agreements, whether generally binding or not, belong to the core part of the trade union work. This is an exclusive work area for the partners in collective bargaining and will not be treated further in the frame of this paper.

Ergo: a brief analysis of the appropriate international, national, European and EU labour stand-

1 Although the legal framework for the protection of the labour rights of labour migrants is present in the generic labour law, the implementation of these rights, for example through a wage claim if wages are not paid (in full), proves to be difficult in practice. Workers often do not know their rights, they are afraid to lose their income and job, and procedures can be arduous and cumbersome. This is not treated here (see, for instance: Cremers 2019).

2 CJEU's judgment in Tümer, concerning the application of the EU's Directive on insolvency of employers to irregular migrants, confirmed that EU employment law in principle also applies to third-country nationals in general, including (but not limited to) irregular migrants. Migrant workers are 'workers', regardless of their residence status. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62013CJ0311&from=EN

ards reveals that several general rights can be derived for all workers, including workers that make use of rights-based labour mobility. This includes the right to engage in work, to an entitlement to working conditions and equivalent pay for all workers, and the right to protection against unjustified treatment. To secure the rights is another story. A worker will not often refer to the general standards, let alone bring breaches before court. The standards can, however, function in the EU as the (legal) background for support action when trade unions address victimisation or when they engage in judicial and/or administrative procedure on behalf or in support of workers and their family members.

2 TASKS AND COMPETENCES ENSHRINED IN THE EU ACQUIS

2.1 Overall provisions and the involvement of trade unions

In general terms, the social partners are fairly integrated as relevant stakeholders in the functioning and developing of the European Union and their role is recognised at EU level. Basically, Article 3 of the Treaty on the functioning of the European Union (TFEU) prescribes that the Union is to promote social justice and protection. The TFEU guarantees adequate protection and provides the collective defence of interests to all (Title X on Social Policy). In Article 152 of that Title the EU recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. Articles 151 to 160 guarantee among others: proper protection, equal treatment, combating of exclusion and defence of interests of workers. An appropriate consultation of management and labour on the possible direction of Union action must contribute to this. The TFEU seeks to facilitate dialogue between the social partners, respecting their autonomy and the European Commission has created a budget to assist in that process. Moreover, at EU level, there is a special procedure for the implementation of agreements concluded between the social partners, i.e., representatives of management and labour.

This involvement of social partners with the set-up of parts of the EU acquis is often succeeded by assigned and connected implementation activities at European and national level, during the transposition into national labour law and/or in processes of bipartite or tripartite talks and negotiations. Besides, in some member states, social partners have the tradition and the right to implement important aspects of EU social policy via conventional bargaining, in collective agreements.

The TFEU also speaks about the employment opportunities for workers in the internal market. Title XI formulates, in Article 162, the establishment of the European Social Fund. Its objective is to render the employment of workers easier and to increase their geographical and occupational mobility within the Union, and to facilitate their adaptation to industrial changes and to changes in production systems, in particular through vocational training and retraining. Other relevant references are the Community Charter of the Fundamental Social Rights of Workers and several parts of EU Directives and Regulations.

Regarding EU Directives and Regulations, it is possible to divide between general provisions on the one hand and specific provisions for mobile workers on the other hand. Several Directives that are dedicated to employment issues also provide the principle of equal treatment between third country nationals and Union nationals, particularly as regards the freedom of association and the right to strike, and concerning terms of employment, working conditions and social security benefits. Regarding the general provisions, there are at least three areas that are linked to trade union action.

A first and basic area is contributing to the dissemination of relevant information

Regarding the provision of information for those workers who plan to make use of the freedom of movement, a vital role is dedicated to the *European network of employment services* (EURES). EURES facilitates the free movement of workers by providing information and employment support services to workers and employers, and by enhancing cooperation and information exchange between its member organisations. The EURES Regulations lay down principles and rules on mobility support services and on promoting individual employment opportunities, thereby also promoting mobility on a fair basis.[3]

The target group is relatively broad, activities should be targeted towards the public which can be EURES potential clients such as jobseekers, unemployed, youth, graduates, employers, employees. In principle, services shall be available to all workers and employers across the EU. In practice, the focus has mainly been much, in particular in cross-border regions, on the so-called 'frontier' workers, i.e., workers pursuing an activity as

3 See the consolidated version of Regulation 2016/589 that amends Regulation 492/2011 in this respect: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02016R0589-20190731&from=EN

an employed person in a Member State who reside in another Member State to which they return as a rule daily or at least once a week.

Apart from the exchange and pooling of vacancies and job application, one of EURES' objectives is to promote transparency and information exchange on the European labour markets, including on living conditions and on the opportunities for acquisition of skills. Working conditions are neither explicitly mentioned as an objective in Article 2 of the original implementing Commission Decision of EURES (Decision 2003/8/EC) nor in Article 6 of the consolidated acts, although one of the considerations in Regulation 492 states very clearly that workers wishing to move should also be regularly informed of living and working conditions. This was later on recognised and made operational in the Commission's Decision and in the revision of the Regulation. The provision of information on the labour market as well as on working and living abroad is meant to be a key feature of the EURES website. However, the task to provide information about the country of destination is in essence still linked to mobility support services and to assist workers seeking employment. It is not so much seen from the perspective of supporting workers, once they have started in another Member State, who seek protection and redress or who are confronted with irregularities. As such, EURES has no explicit task in protecting workers.

In the cross-border partnerships that EURES promotes and assists not only the Public Employment Services of all the regions are involved, but also trade unions and employer organisations. Relevant in this respect is the EURES Charter.

§ *COMMISSION DECISION of 23 December 2002 implementing Council Regulation (EEC) No 1612/68 as regards the clearance of vacancies and applications for employment)*

Article 8

EURES Charter

2. On the basis of the principle that all vacancies and applications for employment that are made public by any of the EURES members and partners must be accessible throughout the Community, the EURES Charter shall, in particular, establish:
   (a) descriptions of the activities that the EURES members and partners shall carry out, including:
   [...]
   (ii) the development of transnational and cross-border cooperation, including employment and social services, the social partners and other institutions concerned, with a view to the improvement of the functioning of the labour markets, their integration and improved mobility;
   (iii) the promotion of coordinated monitoring and assessment of obstacles to mobility, skills surpluses and shortages and migration flows;
   (b) the operational objectives of the EURES system, the quality standards to be applied as well as the obligations of the EURES members and partners, which include:
   [...]
   (ii) the kind of information, such as labour market information, information on living and working conditions, information on job offers and requests, and obstacles to mobility, which they have to supply to their customers and to the rest of the network

After the decision to create the European Labour Authority (ELA), relevant parts of the EURES work were connected and linked with the ELA-work, notably in the area of information provision. ELA was designated the authority that shall improve the availability, quality and accessibility of information of a general nature offered to individuals, employers and social partner organisations regarding rights and obligations deriving from the Union acts. The aim with the founding of ELA is to strengthen consistency in the provision of services to individuals and businesses. Therefore, ELA coordinates the EURES network since 2021. This can have the effect that the relatively narrow focus of the information tasks of EURES is broadened up to more general and overall issues of free movement of workers. In the medium to long term, ELA's goal is to maximise synergies between EURES and all other ELA activities, especially provision of information, and improve EURES' services from a digital and technological point of view.[4]

A second important area is the overall observance and enforcement of rights

ELA has, according to its founding Regulation, explicit tasks in the area of enforcement and redress.[5] According to the concluded legal text, the European Labour Authority will support Member States in providing information and services to citizens and business, facilitate cooperation and the exchange of information between Member States, and support them through concerted and joint inspections in order to fight abuse, fraud, and undeclared work. The ELA will also carry out the role of mediating between Member States in cases of disputes. Overall, the role of the social partners is recognised. In

4 Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority.

5 https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32019R1149

order to rely on the expertise of the social partners, a stakeholder group has been established that regularly meets with the ELA-management. Also, the possible involvement of trade unions in compliance control is endorsed. Consideration 19 of the Regulation states that where trade unions are in charge of inspections at national level, concerted and joint inspections should take place in cooperation with the relevant social partners. The same reasoning is applied towards cooperation with the social partners in the analytical work and the risk assessment, in order to keep track of emerging trends, challenges, or loopholes in the areas of labour mobility and social security coordination.

ELA's main task is to assist Member States and the Commission in their effective application and enforcement of EU law related to labour mobility across the EU and the coordination of social security systems within the EU. The focus is on facilitating the operational work of national competent authorities. Given the diversity of the national competences in this area, this facilitation (logistical support, assistance, legal expertise, participation in joint activities) can be stretched out over the labour inspectorate, social security instances, tax authorities, social partners and even paritarian organisations that fulfil such tasks at national level. It is obvious that trade unions, where appropriate, will play a relevant role in ELA's activities.

§ *REGULATION (EU) 2019/1149 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 establishing a European Labour Authority*

Article 8

Coordination and support of concerted and joint inspections

1. At the request of one or more Member States, the Authority shall coordinate and support concerted or joint inspections in the areas within the Authority's competence. The Authority may also, on its own initiative, suggest to the authorities of the Member States concerned that they carry out a concerted or joint inspection.
   Concerted and joint inspections shall be subject to the agreement of the Member States concerned.
   Social partner organisations at national level may bring cases to the attention of the Authority.

Article 10

Labour mobility analyses and risk assessment

1. The Authority shall, in cooperation with Member States and, where appropriate, the social partners, assess risks and carry out analyses regarding labour mobility and social security coordination across the Union. The risk assessment and analytical work shall address topics such as labour market imbalances, sector-specific challenges and recurring problems, and the Authority may also carry out focused in-depth analyses and studies to investigate specific issues. In carrying out its risk assessment and analytical work, the Authority shall, to the extent possible, use relevant and current statistical data available from existing surveys, and ensure complementarity with, and draw on the expertise of Union agencies or services and of national authorities, agencies or services, including in the areas of fraud, exploitation, discrimination, skills forecasting and health and safety at work.

A third important area is the aspect of support in seeking redress and legal aid

With reference to Article 47 of the Charter of Fundamental Rights of the European Union, Directive 2002/8/EC of 27 January 2003 seeks to promote the application of legal aid in cross-border disputes for persons who lack sufficient resources where aid is necessary to secure effective access to justice. Consideration 13 of the Directive formulates: All Union citizens, wherever they are domiciled or habitually resident in the territory of a Member State, must be eligible for legal aid in cross-border disputes if they meet the conditions provided for by this Directive. The same applies to third-country nationals who habitually and lawfully reside in a Member State.

As said in the introduction, this overview is not exhaustive. However, some prominent notions are highlighted here more detail. In a series of general EU Directives, collective actors have been granted access to justice to defend collective interests or even individual interests. This is especially the case regarding equal treatment between persons irrespective of racial or ethnic origin, or between men and women, but also in the area of employment and occupation (i.e., see below Directive 2006/54/EC). The notion of 'trade unions' is seldom used but, given the fact trade unions qualify as 'associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with' they can be considered to have access to justice. They can either act as agents of the victim of a violation of EU law or in their own right as litigants. In some Member States, for instance Belgium, the consent of a victim is only required if the victim can be identified (Dorssemont 2022).

§ *DIRECTIVE 2006/54/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 July 2006 equal opportunities and equal treatment in matters of employment and occupation*

Article 17

Defence of rights

1. Member States shall ensure that, after possible recourse to other competent authorities including where they deem it appropriate conciliation procedures, judicial procedures for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.
2. Member States shall ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his/her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.

2.2 Protection in the frame of the free movement of workers

The next paragraphs provide a more specified overview of the relevant EU acquis that enshrines elements of trade union support to mobile migrant labour, both in the frame of the free movement and in the frame of the free provision of services (with posted workers, in 2.3). Several parts of the EU-acquis protect workers in the frame of the free movement, regardless of their juridical status, against abuse of rights or against exploitation. Some of the Directives in the frame of free movement assign trade unions the right to be involved or to act on their behalf.

Regulation (EU) No 492/2011 on free movement of workers within the EU prescribes that the assigned workers' rights should be enjoyed without discrimination by permanent, seasonal and frontier workers and by those who pursue their activities for the purpose of providing services. The Regulation does not formulate access to justice as such but touches upon aspects of equal treatment and representation. Moreover, the trade unions have two seats in the national delegations of the Advisory Committee that is responsible for assisting the Commission in the examination of any questions arising from the application of the Treaty on the Functioning of the European Union and measures taken in pursuance thereof, in matters concerning the freedom of movement of workers and their employment.

§ *REGULATION (EU) NO 492/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2011 on freedom of movement for workers within the Union*

Article 7

1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment.

Article 8

A worker who is a national of a Member State and who is employed in the territory of another Member State shall enjoy equality of treatment as regards membership of trade unions and the exercise of rights attaching thereto, including the right to vote and to be eligible for the administration or management posts of a trade union. He may be excluded from taking part in the management of bodies governed by public law and from holding an office governed by public law. Furthermore, he shall have the right of eligibility for workers' representative bodies in the undertaking.

Article 23

1. The Advisory Committee shall be composed of six members for each Member State, two of whom shall represent the Government, two the trade unions and two the employers' associations.

A crucial instrument in this respect is Directive 2014/54/EU on facilitating the exercise of rights conferred on workers in the frame of free movement of workers. This Directive deals with the enforcement of migrant workers' rights and is again only applicable to EU citizens, and when appropriate, their third-country national family members (according to Article 1). It calls the free movement of workers a key element in the development of a genuine EU labour market and signals a gap between the EU law and its application in practice that needs to be addressed. The Directive requires that Member States ensure that conciliation and judicial procedures are available for all EU workers who are confronted with restrictions in their free movement rights or with non-application of the equal treatment principle. This provides migrant labour with recourse to the same enforcement mechanisms as

local workers.[6] It also opens the door for entities, such as unions, having a legitimate interest in ensuring compliance with the rights that workers can derive from this Directive.

§ *DIRECTIVE 2014/54/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers*

Article 3

Defence of rights

1. Member States shall ensure that after possible recourse to other competent authorities including, where they deem it to be appropriate, conciliation procedures, judicial procedures, for the enforcement of obligations under Article 45 TFEU and under Articles 1 to 10 of Regulation (EU) No 492/2011, are available to all Union workers and members of their family who consider that they have suffered or are suffering from unjustified restrictions and obstacles to their right to free movement or who consider themselves wronged by a failure to apply the principle of equal treatment to them, even after the relationship in which the restriction and obstacle or discrimination is alleged to have occurred has ended.
2. Member States shall ensure that associations, organisations, including the social partners, or other legal entities, which have, in accordance with the criteria laid down in their national law, practice or collective agreements, a legitimate interest in ensuring that this Directive is complied with, may engage, either on behalf of or in support of, Union workers and members of their family, with their approval, in any judicial and/or administrative procedure provided for the enforcement of the rights referred to in Article 1.
3. Paragraph 2 shall apply without prejudice to other competences and collective rights of the social partners, employees' and employers' representatives, where applicable, including the right to take action on behalf of a collective interest, under national law or practice.
4. Paragraph 2 shall apply without prejudice to national rules of procedure concerning representation and defence in court proceedings.

Article 8

Dialogue

Member States shall promote dialogue with the social partners and with relevant non-governmental organisations which have, in accordance with national law or practice, a legitimate interest in contributing to the fight against unjustified restrictions and obstacles to the right to free movement, and discrimination on grounds of nationality, of Union workers and members of their family with a view to promoting the principle of equal treatment.

In theory, this creates possibilities to act on behalf of or in support of labour migrants. The implementation in some Member States has led to concrete support possibilities. For instance, in Germany, the worker can call on a member of the works council for assistance or mediation. Although social partners, trade unions and workers' representatives are explicitly mentioned in articles that define the defence of rights or refer to the necessary dialogue, the most concrete support should come from 'a body responsible for the promotion, the analysis, monitoring and support of equal treatment' (Article 4.1). These are governmental bodies with a relatively broad mandate to promote equal treatment, to analyse the problems faced by EU workers and members of their family, study possible solutions and to provide specific assistance. The impression is that the transposition into national law has not led to effective and well-functioning governmental support bodies; workers probably will see in most cases their assistance restricted to the provision of information and of general and individual advice (Rasnača 2022). Other research also indicates that social partners are relatively little involved in support beyond this basic level, such as addressing victimisation (Giubbonni, Robin-Olivier 2016).

A recent Directive (EU-2019/1152), the revision of the so-called Written Statement Directive (Directive 91/533/EEC), aims to improve working conditions to every worker in the EU by promoting more transparent and predictable employment relations. Already under the 'old' Directive, trade unions played a key role in some Member States. The written statement could serve as a tool to be used by labour inspectorates and trade unions to monitor working conditions and detect undeclared work. It also could contribute to the understanding among workers of the essential aspects of their working conditions and rights, including the possibility to seek redress if one's rights were violated. In Ireland, for instance, workers could submit already under the 'old' Directive their complaints to a 'Rights Commissioner'. Trade unions helped to fill in a complaint and were sometimes members of the competent authority. In Sweden, a dispute resolution mechanism was created involving negotiation between the employer and the trade union.[7]

6 This enforcement route is probably problematic for mobile migrant labour, given the fact no cases have been brought to the CJEU based on it (Rasnača 2022).

7 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31991L0533

The revised Written Statement Directive provides all workers with the right to be informed of the essential aspects of their employment relationship (Article 4). Moreover, Article 7 speaks about additional information for workers that work in a Members State other than the Member State in which he or she habitually works. Workers shall have the possibility to submit a complaint to a competent authority or body such as a labour inspectorate or a judicial body and to receive adequate redress when a worker has not received in due time all or part of the documents prescribed in Article 4 (Article 15.1b). National legal systems must provide access to effective and impartial dispute resolution and a right to redress for infringements of any of the rights established under the Directive (Article 16). There is reference to trade union involvement in the implementation and to enhanced social dialogue with a view to implementing the Directive.[8]

§ *DIRECTIVE (EU) 2019/1152 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 (on transparent and predictable working conditions in the European Union)*

Consideration 39: […] Redress could be subject to a procedure by which the employer is notified by the worker or by a third party such as a worker's representative or other competent authority or body that information is missing and to supply complete and correct information in a timely manner.

Consideration 49: The Member States […] should also, in accordance with national law and practice, take adequate measures to ensure the effective involvement of the social partners and to promote and enhance social dialogue with a view to implementing the provisions of this Directive.

Article 16

Member States shall ensure that workers, including those whose employment relationship has ended, have access to effective and impartial dispute resolution and a right to redress in the case of infringements of their rights arising from this Directive.

Article 21

4. Member States shall, in accordance with their national law and practice, take adequate measures to ensure the effective involvement of the social partners and to promote and enhance social dialogue with a view to implementing this Directive.

8 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1152

2.3 Protection of posted workers

Other EU-Directives protect workers, posted in the frame of the free provision of services, regardless of their juridical status, against abuses, by assigning (collective) rights to act. The (revised) Posting Directive aims to prescribe adequate enforcement procedures available to workers and/or workers' representatives. This includes trade union action and support. The Enforcement Directive already stated that posted workers may lodge complaints or engage in proceedings either directly or, with their approval, through relevant designated third parties, such as trade unions. Trade unions and other third parties, such as common social partner institutions, or legal entities which have, in accordance with the criteria laid down under national law, a legitimate interest in ensuring that the Enforcement Directive and the Posting Directive are complied with, may engage, on behalf or in support of posted workers or their employer, and with their approval, in any judicial or administrative proceeding.

§ *DIRECTIVE (EU) 2018/957 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL – 28 June 2018 (Revision of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services)*

Article 5

Monitoring, control and enforcement

The Member State to whose territory the worker is posted and the Member State from which the worker is posted shall be responsible for the monitoring, control and enforcement of the obligations laid down in this Directive and in Directive 2014/67/EU and shall take appropriate measures in the event of failure to comply with this Directive.

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

Member States shall in particular ensure that adequate procedures are available to workers and/or workers' representatives for the enforcement of obligations under this Directive

§ *DIRECTIVE 2014/67/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL – 15 May 2014 (the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services)*

Consideration 34: effective complaint mechanisms should exist through which posted workers may lodge complaints or engage in

proceedings either directly or, with their approval, through relevant designated third parties, such as trade unions or other associations as well as common institutions of social partners.

Article 11

Defence of rights – facilitation of complaints – back-payments

1. For the enforcement of the obligations under Directive 96/71/EC, in particular Article 6 thereof, and this Directive, Member States shall ensure that there are effective mechanisms for posted workers to lodge complaints against their employers directly, as well as the right to institute judicial or administrative proceedings, also in the Member State in whose territory the workers are or were posted, where such workers consider they have sustained loss or damage as a result of a failure to apply the applicable rules, even after the relationship in which the failure is alleged to have occurred has ended
2. Paragraph 1 shall apply without prejudice to the jurisdiction of the courts in the Member States as laid down, in particular, in the relevant instruments of Union law and/or international conventions.
3. Member States shall ensure that trade unions and other third parties, such as associations, organisations and other legal entities which have, in accordance with the criteria laid down under national law, a legitimate interest in ensuring that this Directive and Directive 96/71/EC are complied with, may engage, on behalf or in support of the posted workers or their employer, and with their approval, in any judicial or administrative proceedings with the objective of implementing this Directive and Directive 96/71/EC and/or enforcing the obligations under this Directive and Directive 96/71/EC.

2.4 Specific rules for third-country workers

It has been noted that some Directives limit the equal treatment referred to in Regulation 492 to EU citizens. In the parts of the acquis listed above third-country nationals are sometimes explicitly included, sometimes excluded. Directive 2004/38/EC can illustrate the exclusion.

§ *DIRECTIVE 2004/38/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL – 29 April 2004 (the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States)*

Article 24

Equal treatment

1. Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence.

On the other hand, some special legal arrangements were concluded in the last decades for third-country workers. In the Directives that specifically deal with third-country national workers, such as the Seasonal Work Directive or the Sanctions Directive, explicit rules on enforcement are formulated.

Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers (hereafter the Seasonal Work Directive) aims to provide measures in the fields of asylum, immigration and protection of the rights of third-country nationals.[9] The objective is to contribute to the efficient management of migration flows and fair treatment of third-country nationals staying legally in Member States. Social partners have to be consulted, where appropriate, in the listing of sectors of employment which include activities that are dependent on the passing of the seasons.

The Seasonal Work Directive obliges the Member States that issue third-country nationals with an authorisation for the purpose of seasonal work, to also provide them with information in writing about their rights and obligations under the Directive, including complaint procedures. It is a Directive that prescribes that the workers' accommodation must be adequate. Sanctions against employers and liability to pay compensation apply to non-respect of any outstanding obligations. This also applies to activities with subcontracting chains. Article 23 on equal treatment underlines several trade union related aspects, such as the right to strike and take industrial action, in accordance with the host Member State's national law and practice, freedom of association and affiliation and membership of an organisation representing workers or of any organisation whose members are engaged in a specific occupation, including the rights and benefits conferred by such organisations, i.e., the right to negotiate and conclude collective agreements, without prejudice to the national provisions on public poli-

9 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0036&from=EN

cy and public security. Furthermore, Article 24 that settles the monitoring of rights, where provided for under national law for national workers, gives organisations representing workers' interests access to the workplace and, with the agreement of the workers, to their accommodation. Moreover, Article 25 states that seasonal workers may lodge complaints against their employers directly or through third parties, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring compliance with the Directive. These third parties, and it is logical to consider the trade union movement a third party, may engage either on behalf of or in support of a seasonal worker, with his or her approval, in any administrative or civil proceedings, excluding procedures or decisions concerning short-stay visas. Research on trends and challenges of mobility in the EU reveal, however, a severe lack of access to information regarding the working conditions and employment rights of seasonal workers, and the way to claim these rights. Even more, so far, no information is available on cases brought before the courts on behalf of seasonal workers (Rasnača 2022).

To a certain extent, Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (hereafter the Sanctions Directive), follows the same reasoning. Its objectives are regulating and preventing illegal immigration. It includes liability beyond the direct employer and compensation to workers of any outstanding obligations. Third-country nationals have, according to Article 13 of this Directive, the rights to lodge complaints directly or through third parties, such as trade unions or other associations. Third parties which have, in accordance with the criteria laid down in their national law, a legitimate interest in ensuring compliance with this Directive, may engage either on behalf of or in support of an illegally employed third-country national, with his or her approval, in any administrative or civil proceedings provided for with the objective of implementing the Directive. Designated third parties should be protected against sanctions, when helping to lodge complaints.

In a 2021 Communication on the application of Sanction Directive, the European Commission explicitly refers to the trade union movement, where it is said that

> *the Employers Sanctions Directive requires the establishment of specific mechanisms through which irregular migrants can file a complaint to competent authorities either directly or through third parties (e.g. trade unions, employees' associations and non-governmental organisations) including when they are no longer present in the Member State'.*

The Commission sees the cooperation of public authorities with social partners and non-governmental organisations as a key activity 'to

> *facilitating complaints, as they often have direct contact with the workers and can raise awareness, inform the irregular migrants of their rights, build mutual trust and help the workers identify situations of undeclared work and labour exploitation in order to file a complaint'.*

The role of social partners and non-governmental organisations is also very important to facilitate complaints and expose situations of exploitation. The same reasoning applies to the development of information and awareness raising campaigns. Therefore, Member States should

> *support trade unions and civil society organisations in providing information and advice, legal assistance and other services to irregular migrant workers.'* [10]

The Single Permit Directive and Long-Term Residence Directive complement the instruments applying to third-country national workers legally residing in an EU Member State. They set out a series of rights and grant equal treatment with nationals of the EU Member State in which they reside in relation to working conditions, access to employment as well as freedom of association and membership of trade unions.[11]

2.5 Some specified labour rights and rules

Several specific parts of the acquis that deal, for instance, with temporary agency work, health and safety or working time, with temporary and mobile worksites, seasonal work, the international road transport sector and the recently adopted mobility package can be relevant as well. These Directives and Regulations (sometimes) formulate provisions for mobile workers, independent from their status, on equal treatment, on health and safety issues, working time and other labour or employment related conditions. They include articles that refer to the right of workers and their representatives to be informed and/or consulted on measures taken. Other articles provide workers with participation rights ensuring whenever necessary proper coordination between workers and/or workers' representatives in undertakings carrying out their activ-

10 https://home-affairs.ec.europa.eu/system/files/2021-09/COM-2021-592_en_0.pdf

11 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011L0098
https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32003L0109

ities. Several of these 'social' parts of the acquis also provide the social partners with possibilities to implement measures or to derogate from the application for objective or technical reasons or reasons concerning the organisation of work through collective agreements (European Commission 2016). These provisions can have a direct impact on the position of mobile migrant labour and/or allocate certain tasks to workers' representatives, including trade unions.

The Temporary Agency Directive 2008/104/EC fully applies to migrant labour. The Directive explicitly talks about the role of the social partners in the implementation. It also formulates the obligation for the user undertaking to provide suitable information on the use of temporary agency workers when providing information on the employment situation in that undertaking to bodies representing workers set up in accordance with national and Community legislation (Article 8). Consequently, the user undertaking must inform its workers' representatives if temporary (migrant) workers are to be employed. Temporary agency workers may be taken into account for the purpose of calculating the threshold in the temporary agency and/or in the user company above which bodies representing workers are to be formed (Article 7). Moreover, Member States shall ensure that workers and/or their representatives have adequate means of enforcing the obligations under the Directive (Article 10 Penalties). In assessments of the Temporary Agency Directive, it is said that the application of these obligations in practice is rather rare. It is quite probable that the application in case of recruited temporary mobile migrant labour is non-existent.[12]

Directive 2020/1057/EU that fits in the mobility package lays down specific rules with respect to posting drivers in the road transport sector. In that Directive, it is recognised that social partners can play a role in checking compliance with the obligations set out in different Posting Directives. Member States must 'take the measures necessary' for such compliance control. It is possible for Member States to establish a national system where the competent social partners' organisations carry out controls regarding compliance with Articles 4 and 7 of Directive 2002/15/EC (the Directive that regulates the organisation of the working time of persons performing mobile road transport activities), in situations where the social partners, through collective agreements, have decided on derogations in line with Article 8 of the Directive 2002/15/EC.

12 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0104&from=EN
https://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=207

2.6 Recapitulation

The principle of free movement of workers provides EU-citizens and legally residing third-country nationals, the right to freely choose their job within the EU. Additionally, the free provision of services with posted workers can lead to a temporary stay in another constituency, with a hard core of minimal labour standards that must be observed. In practice, mobile workers are confronted with precarious working, housing, and living conditions. Member States have the duty to work towards an improvement of these conditions. In the previous paragraphs, a series of tasks and roles, which are assigned or allocated to the trade union movement in connection with the advocacy of mobile migrant labour, has been listed. All these tasks and roles have a direct impact on the genuine functioning of the mobility in the internal market. In most cases, the trade unions are supposed to act on behalf of all workers involved. This is for instance very manifest in the presumed assistance of posted workers or third country nationals, although it is obvious that these categories of temporary and mobile migrant labour are very difficult to unionise. We focus in this resume on the level of assigned functions that stem from the EU (and its Member States).

a As social partner, the trade union movement is involved in the preparation, the drafting and conclusion of the social parts of the EU acquis, resulting in Recommendations, Regulations or Directives.
b Both at EU-level and in the Member States, the trade unions are seen as relevant stakeholders regarding the implementation (and national transposition) of EU social policy.
c Several parts of the EU acquis refer to the trade unions as 'third parties' that monitor the control and observance of the social provisions and the workers' rights that can be derived from this acquis.
d Trade unions are expected to contribute to the provision of adequate information to all workers and the raising of awareness about workers' rights.
e Trade unions are key stakeholders when it comes to provide guidance and advice, and to assist all workers involved in cases of irregularities.
f With reference to the tackling of irregularities, the trade union movement is often seen as one of the important actors that can deliver legal assistance and guide or support access to court.

Rights-based labour mobility asks for instruments that guarantee genuine recruitment and that tackle circumvention of basic rights in the home and the host country. But these instruments are in many cases, when irregularities in cross-border labour

mobility must be handled, neither effective, nor dissuasive (Cremers 2018). Most national instruments are unable to cope with the disguise of employment relationships as soon as transnational elements enter as a result of mobility. Compliance control with rights-based mobility is therefore hampered. The instruments to inform workers about their rights are spread over too many disciplines, whilst checking for irregularities in the social domain and verifying the lawfulness of mobility are restricted by territorial borders and by limited national competences (Cremers 2020). Research has made clear that the presence of mobile migrant labour is not temporary; individual workers are perhaps temporary present on the market, but the performed work is structural and will be carried out by successive 'temporary' labour migrants. The search for cheap labour has led to transnational employers' recruitment practices that complicate the ability to defend workers' interests and to represent the workforce, including mobile workers. Unions must deal with recruitment strategies and business models that cross borders with a flexible layer of non-standardised employment arrangements. If unions lack the necessary resources, including the legal capacity, to check and investigate respect for the applicable rules in case of rights-based mobility, the national regulatory framework meant to provide rules/procedures for adequate earnings and working conditions, and to guarantee legal protection no longer functions. Pricing and allocation are then 'ruled' informally by market forces with large parts of the workforce invisible and unrepresented. In situations of permanence of 'temporary' migration and cross-border mobility, support asks for long-term strategies and structural funding, in order to enable the assigned roles and tasks.

3 PRACTICAL EXPERIENCES WITH SUPPORT ACTIVITIES

3.1 A variety of activities

Industrial relations in the EU Member States can be characterised as a patchy model of unity in diversity. However, one form of collective voice is present in all Member States, i.e., the trade union movement, although with a broad variety of strength and power. Not only the power balance is varying, also the traditions, instruments, and trade union related institutions, which deal with cross-border workers' interests in general and with mobile migrant labour in particular, vary largely. Basic task of the trade union movement is to defend workers' rights and to improve their situation, with and on behalf of their members through industrial action, collective bargaining, and social dialogue. But compliance with fundamental standards and workers' rights is important for all, also for workers who stay outside the scope of trade union representation. The increasingly deregulated and highly dualized nature of the labour market, with most migrants employed in under-represented sectors, poses serious challenges to trade unions that want to act as the agents and advocates for migrant rights (Davis & Jubany 2015).

The EU acquis recognises in the Treaty and in several Directives and Regulations the role of the trade union movement. First, there is the overall involvement at EU and national level with the 'architecture' of the EU social policy (functions a and b, as listed in 2.6). In this field, the annual EU general budget guarantees the necessary financial means to cover expenditure to promote European social dialogue.[13]

Beyond this, trade unions are supposed to be directly involved in practical support and empowerment (functions c to f). Although the EU has allocated a budget for the promotion of fair geographic and professional mobility of workers (including the coordination of social security schemes), in order to overcome the obstacles to free movement of workers, this part of the budget has no structural provisions for direct support of mobile workers by workers' representatives or third parties that goes beyond the information tasks and campaigns on labour standards and applicable workers' rights.[14]

13 These measures should among others help workers' and employers' organisations to address the overarching challenges facing European employment and social policy, as laid down in the Action Plan to implement the European Pillar of Social Rights: EU's General Budget 2022 – Title 07 – Investing in people, social cohesion and values https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022B0182

14 The EU's general budget speaks in one paragraph (07 20 03 01) about the installation of networks of experts at EU-level and the coverage at EU-level of the costs of studies, meetings of experts, information, and publications. Under the same title, funds are made available for actions aimed at providing better service and raising public awareness, including measures aimed at identifying migrant workers' social security and employment problems, and for the development of information and actions to make members of the public aware of their rights with respect to free movement of workers and the coordination of social security schemes.

However, in practice, unions deal with such direct support in a variety of activities:

- Guiding and supporting workers in case of problems
- Control of compliance and regularity
- The collection and verification of relevant information and of (written) evidence
- Information/advice how to seek access to judicial and complaint mechanisms and to deal with barriers for complaints
- Advising on and providing adequate instruments (language skills, practical information, training)
- The creation of easily accessible counselling offices.

In the next parts, different support tasks (functions c to f, as listed in 2.6), which can be linked to the EU acquis, are treated and illustrated with a non-exhaustive selection of practical examples. The description of support experiences is not detailed. The initiatives' websites are included in the description for more details. The focus is on the practical execution of support tasks.

3.2 Providing adequate information and raising awareness of workers' rights

Across the whole acquis, the necessity of adequate information related to the free movement of workers is stressed. Very often, this information should come from the social partners or the trade unions. In the analysis of the EU acquis, it became clear that in certain fields, for instance, the assistance in the frame of EURES towards frontier workers has been established in a structural manner. This is less the case for mobile migrant labour in general. Let's have a look at some examples.

EXAMPLE A

Informing cross-border workers in several Euregions

The term Euroregion usually refers to a transnational co-operation structure between two (or more) parts of different European countries. Euroregions represent a specific type of cross-border regions. Since 1976, transnational co-operation structures have been established between trade unions in 46 Euroregions, under the name Inter-Regional Trade Union Councils (IRTUCs), with the aim to inform cross-border and frontier workers about their rights and to assist them in these regions. Several IRTUCs cooperate with EURES, the European cooperation network of employment services, in partnerships with the objective to support the mobility of workers and employers. IRTUCs bring together the regional trade union organisations of national ETUC-affiliated confederations in cross-border regions. The regional trade unions provide detailed information and offer advice, often in cooperation with EURES. Additionally, some IRTUCs publish information leaflets in other languages and are active cross-border socio-economic committees that exist in several regions. In most cases these cooperation structures deal with cross-border commuters, but some structures also deal with cross-border work and mobility in general.
An overview of IRTUCs:

https://www.etuc.org/en/publication/map-interregional-trade-union-councils-2019

The trade union work in the Euregions, together with EURES, led to the publication in 2004 of a 'Guide for European Mobile Workers' that was several times revised and updated. The fifth edition is an updated version that incorporates the changes to the legal basis as of July 2022. It includes chapters on the legal bases of the free movement right for workers in Europe (Part 1) and on different forms of mobility for workers (Part 2). The guide (with summaries in 7 languages) is geared particularly to those who inform and advise mobile workers Europe-wide, including EURES advisers who are trained by the European Commission in issues of the mobility of workers at national and cross-border level and are active in employment services, trade unions or employers' organisations.

https://www.etuc.org/en/publication/guide-mobile-workers-europe-2022

As pointed out, the focus in the EURES-related information activities is first and for all dedicated to frontier work and nearby borders. This is reflected in the often-bilateral dimension of the work of the IRTUCs, with information activities that do not go beyond the directly involved neighbouring countries. Most councils have collected very detailed information on rights and obligation for frontier workers, and they can refer to case law that deals with items such as child benefits, family allowances or disability schemes. They are less experienced in free movement situations from further abroad.

EXAMPLE B

Informing cross-border workers – regional example

To give one example of IRTUC-activities: in the North of Italy bordering to Slovenia, the Consiglio Sindacale Interregionale Friuli Venezia Giulia /Slovenia (CSI FVG/SLO) goes back to an initiative that started in 1992. The website of this IRTUC provides publications in both Italian and Slovenian on relevant labour legislation and social security issues, as well on methods for redress. The actions target the neighbouring regions. The site has different webpages for pension rights, tax issues, social assistance and family benefits, and unemployment.

https://www.csifvgslo.org

Sometimes this work goes back to a long tradition of cooperation, for instance because the unions involved have had joint activities in the field of frontier workers or of traditional flows of regional migration. This clearly is an advantage; unions have developed mutual trust; they often apply a division of labour, and they have a good understanding of the diverse cultures and traditions. In some cases, the cooperation goes beyond the provision of information and covers advice.

EXAMPLE C

Informing and advising cross-border workers

Transregional cooperation between Dutch and Belgian unions, led by the Interregional Trade Union Council Scheldt-Kempen, resulted in 2017 in the booklet The alphabet of the frontier worker. It provided frontier workers with a well-documented overview of the sometimes-complicated labyrinth of legislation, legal acts and regulations that are applicable in their working life. This publication (in Dutch), the alphabet of the frontier worker, was a comprehensive booklet with information for workers that work cross-border or intend to do this.

In recent years, the cooperation has been broadened up in joint actions with the Interregional Trade Union Council Meuse-Rhine, leading to the participation of the German DGB. In partnership with EURES and the ETUC, the councils produced a Fair Mobility Tool, an interactive site that aims to inform and advice (future) cross-border workers on cross-border mobility and related issues of taxation, working conditions and social security. Visitors of the site can follow a test (in Dutch, French or German). Based on their answers, the tool informs about the applicable social security, tax and pay regulations. This outcome is combined with a report about possible errors or misunderstandings. The cooperation will be extended to more councils along the German-Dutch borders.

https://issuu.com/abvv/docs/abc-grensarbeid

https://fairmobilitytool.eu

In some situations, initiatives targeting information dissemination are only based on activities in a host country, but with tools that address all workers concerned and with the use of social media in several relevant languages. For this dissemination, the unions develop autonomous activities or cooperate with NGOs or governmental institutions. In countries with strong joint and bipartite traditions, this support often goes hand in hand with campaigns in specific fields, such as occupational health and safety, pensions or holiday schemes. Websites and social media have made this work easier. In the construction sector, websites were produced at EU-level, partly jointly by the social partners, partly by the European trade union federation.[15] The site of the EFBWW provides construction workers with information on wages, working conditions and rights for all the European Countries in all European languages. It gives useful links and contacts of union representatives ready to help and support workers in case of need.[16]

EXAMPLE D

The use of social media

In 2016, the Irish trade union SIPTU created the SIPTU Migrant and International Workers Support Network. It is a network of migrant shop stewards and activists from various sectors (manufacturing, services, health, transport) from all over the island of Ireland. SIPTU organises trainings for the network members

15 The social partners' website was produced in 2015 and is not updated: http://www.posting-workers.eu

16 https://www.constructionworkers.eu/en

mainly in the areas of employment law, organising, current employment/political issues etc. Prior pandemic those trainings were taking place twice a year in different Irish cities. The network uses a Facebook page to communicate with workers. On that page, informative videos are shown in different relevant languages, for instance in Portuguese.

https://www.facebook.com/SIPTUMigrantAndInternationalWorkersSupportNetwork

The target groups are rather divers, varying from labour migrants to undocumented workers, and in recent months workers from the Ukraine. The provided information is therefore broader than only on labour market issues and decent working conditions. It is also about regularisation issues, health care, integration in society and essential jobs. During the pandemic, the network distributed information to workers in Russian, Romanian, Lithuanian, Latvian, Polish and Portuguese.

In this type of support, the information that is handed over is in almost all cases for free for all workers. In some cases, the information is not only available at national level, but also can be obtained at regional level. In such a situation, the intervention from the union side often goes beyond the basic provision of information and leads to assistance and counselling.

EXAMPLE E

Social media, languages and regional support

The Austrian trade union confederation ÖGB started with the assistance already decades ago. The activities span over several areas, such as a helpdesk, with information and free advice on working conditions, pay and allowances, working time, overtime and holidays. Among the target groups are seasonal workers and construction workers, and in the last decade transport workers.

https://www.oegb.at/themen/gleichstellung/antidiskriminierung/muttersprachliche-beratung-des-oegb-bringt-allen-beschaeftigten-

Mobile and temporary labour migrants learn about the activities through social media, dedicated webpages, and contacts at local level. ÖGB also started a YouTube channel with an explanation in 5 short videos (different languages, including English) of the appropriate pay and working conditions.

https://www.youtube.com/watch?v=ahwm_RAgDoo

Interesting is a campaign that the ÖGB launched for the retention of the counselling activities and legal advice in the necessary mother tongue (next to German, in Arabic, Turkish, Kurdish, Bulgarian, Russian, and Romanian, with Hungarian in some border regions). The government had plans to withdraw from funding. However, trade union action that aimed to continue with this type of assistance was successful and the continuation for 2022 and 2023 was achieved. The advice is for free, and support can be reached through several regional offices of the union.

https://www.oegb.at/der-oegb/bundeslaender/oberoesterreich/muttersprachliche-beratung

In the Mediterranean area, the counselling is very much dominated by the presence of (illegal) workers from third countries. The assisting work is therefore more oriented to 'classical' migration rights, the tackling of labour exploitation and the assistance of undocumented workers. However, in certain sectors, such as domestic work or basic manufacturing work, there is support of mobile migrant labour.

EXAMPLE F

Third-country nationals in the forefront

In Spain, the trade unions are very active in informing labour migrants about their rights with the main focus on third-country nationals, and the regularisation of persons already residing.

https://www.ugt.es/el-trabajo-es-el-motor-de-las-migraciones

Most prominent sectors are agriculture, domestic work. The objective of the service desks that the unions have installed in several regions is to assist immigrants in carrying out the administrative procedures necessary to request different permits related to immigration, such as residence and work permits, or procedures for family reunification. This service deals with queries, whether in person, by telephone or by email, and assists in the applications related to immigration, including administrative appeals.

For instance: https://andalucia.ccoo.es/noticia:614043--CCOO_pone_en_marcha_en_Almeria_un_servicio_para_asistir_a_personas_inmigrantes_en_la_realizacion_de_tramites_relacionados_con_extranjeria

The information centres also provide training and initiatives that contribute to inclusion and integration.

For instance: https://www.ugt-pv.es/cms/index.php/temas/centros-de-informacion-y-asesoramiento-sociolaboral-para-inmigrantes-ciasi/11537-se-renueva-el-proyecto-de-migracion-centros-de-informacion-y-asesoramiento-sociolaboral-para-inmigrantes

For specific sectors and/or specific items, leaflets are made in different languages, including Romanian, to inform workers about their rights or to protect them against abuses.

One example of a guide for health and safety in different languages: https://es.ccoo.cat/salud-laboral/guias-sindicales/guia-accidentes-de-trabajo-para-inmigrantes

EXAMPLE G

The assistance of Italy's hidden labour force

The Italian agri-food chain is regularly in the media for its labour exploitation. The trade unions have often warned for the infiltration of the mafia and the illegal and abusive recruitment practices in this sector. They provide local support to workers that are mainly coming from third countries and initiate campaigns for legal help and assistance.

https://www.integrazionemigranti.gov.it/AnteprimaPDF.aspx?id=3540

https://www.cgil.it/ci-occupiamo-di/legalita-e-sicurezza/2022/11/29/news/flai_cgil_e_osservatorio_placido_rizzotto_presentato_il_vi_rapporto_agromafie_e_caporalato_-2535134

Next to these campaigns, the unions have installed migrant service offices or local labour chambers that inform workers coming from foreign countries (EU and non-EU) about their civil and social rights. The offices provide information, assistance and help for individual problems concerning residence permits, family reunifications, entry visas, Italian tests, and assistance for sending the paperwork to the competent bodies. The service is dominated by work related to the problems of third-country nationals. The focus is on domestic work, the agri-food chain, construction, and hospitality.

For instance: https://www.uilbergamo.it/contenuto/immigrazione

https://www.cgilreggioemilia.it/wp-content/uploads/2022/07/volantino-in-lingue-ufficio-migranti.pdf

https://www.lavoro.gov.it/priorita/Documents/XII-Rapporto-MdL-Stranieri-2022.pdf

This section illustrates with a few examples that the trade union movement has produced leaflets, service desks or websites with (basic) information for mobile migrant and/or posted labour. This is an activity that is rather widespread, with a variety of initiatives. The initiatives are partly the result of the work of the Interregional Trade Union Councils (IRTUCs), at regional/interregional level. The IRTUCs are partners of the EURES Cross Border Partnerships. EURES trade union advisers (who have followed the EURES basic training) are providing information to cross border and frontier workers. In most of the information examples mentioned (except the Irish example that was completely funded by the unions and the Austrian example that was funded by the union and the state), the fact that there is a fall-back position to structural means coming from EURES certainly has contributed to the continuity of the initiative. Once established, such a more continuous initiative enables the partners to apply for financial support from the European Social Fund or other types of funding for specific campaigns or activities. The fact that the trade unionists involved easily can meet, because of the nearness to each other, facilitates the contact. Moreover, they often speak each other's language in these border regions. In general, these conditions are absent in cases with mobile migrant labour coming from more distant countries.

For another part, the work is carried out in autonomous trade union work, sometimes the result of a long tradition of involvement in mobility issues, sometimes the work of the international department of the union, sometimes the result of participation in transnational projects, very often on a temporary basis with few staff and resources.

3.3 Provide guidance and advice, and assist workers in cases of irregularities

The provision of guidance and advice is in general terms hampered by the fact that mobile migrant labour is often (kept) invisible for the ordinary workforce and its representatives. Combined with language barriers, this means that there is quite a high threshold to overcome for the trade unions if they

have to play a role as an agent for all workers. Cooperation between trade unions in a host and a home country and long-term strategies are, for instance, necessary means to remedy these problems.

EXAMPLE H

Assisting posted workers in agriculture in France and Bulgaria

The region Centre Val de Loire has a high presence of posted workers in agriculture. The initiative in the frame of the EURODETACHMENT-project and in cooperation with the French inspection services DGT, involved stakeholders in both countries. The partners, including trade union PODKREPA (Bulgaria) and the regional branch of the food and agricultural workers union FGA-CFDT (France), formulated a cooperation plan, referring to an official cooperation agreement between both countries (signed in 2008), and installed a steering committee. Following video reports broadcast on the internet, testimonials from Bulgarian workers who worked for agencies were documented. Joint inspections that were carried out in France and continued in Bulgaria made clear that it was necessary to inform employees, user companies and Bulgarian employers through a structured action. The key idea was to talk to all relevant stakeholders.

In 2019–2020, the initiators organised information meetings in places close to the workplace, combined with field work carried out by the trade unions. They produced information in Bulgarian on dedicated websites and brochures on labour law regulations and redress instruments for workers as well as on the provisions of relevant regional collective agreements. They also targeted the main user undertakings in an effort to prevent dubious recruitment practices. Unfortunately, direct meetings in the home country had to be cancelled, because of the pandemic. Afterwards, other meetings were held online. During the action, the organisers dealt with items such as fraud, the functioning of inspections services, remuneration and (the lack) of pay slips, social security contributions and allowances, agencies, and mobility. The use of a questionnaire in Bulgarian proved to be extremely useful. They found an important lack of knowledge among workers about their rights. In general terms, some conditions for success were formulated: a constant flow of information, activities in the worker's native language, improved mutual trust among the unions and the inspection services, improved credibility of involved stakeholders. The action was positively assessed and led to a stronger partnership between the unions.

EXAMPLE I

Hungarian-German cooperation in the metal sector

The project Fair European Labour Mobility that started in 2019 supports the enforcement of fair wages and living conditions across national borders. The project builds on the cooperation with partners in the European Trade Union Confederation and international trade union councils. One example is the German-Hungarian cooperation in the metal sector. This cooperation goes back to a long-term relationship of the Hungarian Metalworkers' Federation VASAS with the German IG-Metall. The cooperation has led to activities in both countries.

Although the number of foreign workers in Hungary is still just around 2–3 %, the priority of trade unions to organise them has started to change. VASA not only deals with Hungarian workers posted to Germany or Austria, but also with foreign workers in Hungary. The topic of mobile migrant labour has become part of the training activities. Hundreds of workers were directly involved in training activities. In the working method, VASAS always tries to have an agreement with the employers, so that they can meet labour migrants in Hungary at the workplace.

Part of the project is to reach out and help workers in case of posting to Germany or Austria. Hungarian posted workers get in touch most of time via the German 'Fair' offices or the German and Austrian unions. Items are the application of the law in both countries, and the violation of workers' rights. The unions control regularity and collect and verify relevant information, keeping in mind that a case can end up before the court where every detail can be important. Without proper evidence a worker cannot win a court case. Competent local authorities often lack the resources and the will to go after cases (for instance, letterbox companies). The funding of the EU is crucial for these activities. The union would otherwise have serious difficulties with the assistance, also because many labour migrants are non-unionised in the country of origin.

What we see in these examples is that a mixture of activities has been developed over a longer period. Although at the beginning the aim was to inform workers with campaigns about their rights, the partners also envisaged to assist workers in case of irregularities and to effectively assert these rights. The objective to not only inform workers, but also to defend their interests only succeeded partially before the deadline of the (temporary) project was reached. The limited nature of the funding, combined with the time pressure and deadlines, created thus a barrier for more continuous action.

EXAMPLE J

Informing labour migrants and mobile workers and signalling irregularities

A good example of tailormade information as a first step in the support is the Guide to employment of foreigners in Finland, which was produced in 2013 by the Finnish Construction Trade Union, and the Trade Union Pro in cooperation with the Confederation of Finnish Construction Industries RT. In the last decades, many of the posted workers in Finland have been Estonians and the most common sector of work has been the construction sector. The guide was intended for the entire building trade and aimed to clarify the rules relating to employment of foreign workers and thereby prevent disruption in the workplace. Attention was paid to the specific requirements set by legislation and agreements in this field. The guide explained terms of employment, social security aspects and applicable taxation, employers' obligations and items related to subcontracting and hiring out of workers. It also contained a check list for foreign workers and useful contact information.

https://www.rt.fi/globalassets/tyoelama/tyovoima/guide-for-employment-of-foreigners-2013.pdf

Beyond this provision of information, the Finnish unions can signal irregularities and report these, if necessary, to the labour inspectorate or other competent authorities, like the Finnish Centre for Pensions or the occupational safety and health administration. In practice, it also happens that the labour inspectors need to ask advice from the social partners when answering an IMI request which is related to collective agreements. In conformity with the Finnish Employment Contracts Act (55/2001), the regional occupational safety and health authorities must act in close cooperation with the social partners when supervising the observance of generally applicable collective agreements. Meetings are organised between 2 to 4 times a year, with a focus on exchanging information on migrant labour and mobility, as well as on the grey economy in the field of construction.

Mobile migrant labour is not only confronted with irregularities related to the work and work environment, but sometimes has to deal with very problematic housing and living conditions. Workers are highly dependent on their employer and/or agency for their work, transport, housing, and health insurance. The lack of alternative work and/or alternative housing, the absence of a social network, the language barrier and the patchy information in their own language, combined with a lack of knowledge of their rights, make it difficult for these workers to find their way. It is not self-evident for trade unions to deal with all these items. However, the next Danish example illustrates how through 'learning by doing', the unions became more aware of the necessity to act beyond workplaces.

EXAMPLE K

Union initiative empowers migrant construction workers

A good example of empowering labour migrants is the effort of Danish trade unions to make mobile migrant labour feel welcome. The fast-growing number of Eastern European workers after the EU enlargement challenged the norms and traditions of the Danish labour market. This could easily result in social dumping and deterioration of occupational health and safety of both immigrant and Danish workers. Workers often had no information about the applicable rights and did not receive, after arriving in Denmark, a proper introduction to the trade unions and the collective agreements that regulate their pay and working conditions.

The Danish 3F Bygge-, Jord-, og Miljøarbejdernes Fagforening started with efforts to integrate them within their union, but soon they found out this was a challenging task. The 3F section produced, for example, posters in about six or seven languages, besides Danish, providing information on how to contact the right people. The posters told at a glance about the union for construction workers and about the many initiatives directed at the migrant construction workers that form an inte-

gral part of the union. The next step was to put pressure on the employers. Leaving migrant workers outside the initiative proved however not a good idea. It makes the union weak, both financially and at the bargaining table. Therefore, the organisers changed their strategy by making the union websites more friendly for mobile migrant labour, adding homepages in different languages. They printed informative handouts in about 14 languages, including English, Polish, Lithuanian and Russian. They launched local clubs for members speaking languages other than Danish, with translation, which was paid for by the union, so the workers could participate in the democratic assemblies.

https://tema.3f.dk/bjmfimmigrant/about-the-union/clubs-in-bjmf

These local clubs are powerful, democratic institutions, where workers can meet and develop policies and make suggestions to the leadership that influence the union. The Polish club even has its own Union Magazine in Polish. Earlier, even if the mobile migrant workers found their way into these clubs, they would remain a minority, and their demands and suggestions would be brushed aside. According to the workers, this approach had an immediate effect on the work sites and changed the way workers were treated by the bosses. Wages improved, and they would think twice even about yelling at a worker on the site. The action led to an increase of membership among migrant workers, whilst the union realised that they have much broader problems to be addressed before they can even begin to talk about workers' rights. The focus is now also on lodging and living conditions, a major issue for workers who often find themselves in poor living and housing conditions. Unions ensure that the workers and their families receive safeguards like healthcare and social security in time, which further helps their integration into Danish society. 3F periodically offers free Danish classes to members who are interested in learning the Danish language.

https://tema.3f.dk/da/bjmfimmigrant

https://www.thelocal.dk/20210111/how-a-danish-trade-union-is-empowering-migrant-construction-workers-to-demand-equal-rights

3.4 Act as 'third parties' that monitor control and observance of social provisions and workers' rights

Control, observance and enforcement of social provisions and workers' rights that stem from the EU acquis are difficult tasks. Nevertheless, some of the Directives and Regulations treated in the second part of this paper allocate these tasks directly or indirectly to the trade unions. This was clearly the case for posted workers and third-country nationals although the outreach to these groups of workers is not self-evident. Some examples of experiences in this area illustrate that this task is not an obvious one.

EXAMPLE L

Acting as third party

The trade union PODKREPA (Bulgaria) and the food and agricultural workers union FGA-CFDT (France) developed an initiative with the aim to empower workers in the agricultural sector in the Centre-Val de Loire region to effectively assert their rights. In several regions of France, the FGA-CFDT union had already campaigned together with the Bulgarian union and had acted as civil party in juridical procedures, in order to defend the rights of Bulgarian workers. Over period of years, the CFDT supported posted workers who were employed without a pay slip, with deductions from their pay for travel and accommodation and other irregularities.

http://www.eurodetachement-travail.eu/synthese/informer-sensibiliser/Sensibiliser_informationFGA_FR.pdf

The cooperation that had been created made it possible to denounce the actions of dubious intermediaries and forms of social dumping. The trade unions had formalised their bilateral cooperation actions in the past and in earlier meetings of delegations, they could uncover chains of EU workers from France to Bulgaria. The cooperation led to direct contacts with workers in Bulgaria and in France.

For instance: https://fga.cfdt.fr/portail/agriculture-agroalimentaire/salle-de-presse/presse-2013/la-fga-cfdt-va-a-la-rencontre-de-salaries-migrants-en-poitou-charentes-prod_158604

https://bretagne.cfdt.fr/portail/bretagne/nos-actions/economie-regionale/la-fga-cfdt-remonte-une-filiere-de-travailleurs-detaches-bulgares-en-attendant-un-verdict-sur-des-salaries-en-france-srv1_274869

https://fga.cfdt.fr/portail/agriculture-agroalimentaire/salle-de-presse/presse-2016/salaries-detaches-la-fga-cfdt-se-felicite-du-retrait-de-l-agrement-de-vadijob-srv2_366289

https://www.ouest-france.fr/economie/social/travailleurs-detaches-la-cfdt-informe-la-source-en-bulgarie-5335160

In this example it becomes clear that, although it sometimes is possible to cooperate with employers' organisations, especially in the provision of the necessary information, the trade unions have their own role to play in the defence of the rights of the 'weaker party'.

EXAMPLE M

Monitoring control and observance

An interesting example of cooperation of the monitoring of control and observance comes from Finland. With a multidisciplinary team of stakeholders, social partners and competent authorities monitored over a period of years the treatment of posted workers on the site of a nuclear power plant, one of the biggest construction sites in Europe. Involved at the start were the Finnish Construction Trade Union, the Confederation of Finnish Construction Industries, the Regional State Administrative Agency of Southern Finland/Department of Responsibility for Occupational Safety and Health, the Finnish Centre for Pensions, and the Finnish Tax Administration.

Construction work begun in 2005, whilst the site was planned to be completed in 2010. After several delays, the completion was on 21 December 2021, and electricity production started on 12 March 2022. The construction workforce included about 3800 employees from 500 companies. 80% of the workers were foreigners, mostly from CEE countries.

The project monitoring revealed that:

- subcontracting was too extensive,
- the schedule was too ambitious from the beginning (with incomplete plans at the start),
- there was insufficient supervision of (subcontractor') work, although supervision of occupational safety and health was sufficient,
- it was not easy to identify all companies, company chains and their workers,
- foreign companies had not enough knowledge about Finnish legislation and regulations. As a result, Finnish rules were too often ignored.

Most problems related to wages, terms of employment, overtime compensation, accident insurance, organising occupational health care, accommodation, pension insurances, taxes and obeying Finnish rules on tax registration, lacking or forged A1/E101 forms. Part of the problems was the result of a lack of knowledge, unfamiliarity with the local standards and method of work, language problems, hesitance to contact and cooperate with authorities and trade unions, and a too frequent rotation of workers (every 6 months, as a result of the '183-day rule').

Key partners in the cooperation on site were trade unions representatives (construction, metal, electrical, clericals), the occupational safety and health delegate at the site, the main contractor's representative for OSH issues and representatives of the biggest subcontractors (part of the consortium). The main objectives were to safeguard:

- the minimum level of terms and conditions of employment
- equal treatment
- employment protection for employees (such as protection against unfounded dismissals).

Part of the action was the supervision and monitoring through a joint inspection. The cooperation between authorities, construction site parties and unions both for employees and employers, highlighted areas for future work and action.

http://www.eurodetachement-travail.eu/datas/files/EUR/OL3_power_plant_finland.pdf

An assessment made clear that a look ahead is necessary, cooperation must be launched before the actual work starts, regular meetings are needed, knowledge of applicable legislation and labour standards must be improved, training activities for advice and guidance to prevent problems and to lower the barrier for contacting authorities must be organised, and the presence on site of union representatives must be settled.

3.5 Deliver legal assistance and guidance when seeking access to judicial and complaint mechanisms

Exercising rights through conciliation and judicial procedures is certainly more difficult in a foreign constituency. For individual workers, the route through national tribunals and courts is an arduous

one. Relevant procedural information and national case law is in most cases not available in other languages. Courts are often unfamiliar with transnational issues, employers can close down their operations and re-emerge under different names relatively quickly, and it is difficult to master and monitor regulations that originate in another EU country's tradition (Cremers, Bulla 2012). Nevertheless, the EU charter and a series of EU Directives, for instance on equal treatment, include access to these instruments for mobile migrant labour. Trade unions are often considered the most obvious 'third party' that has to play a role.

EXAMPLE N

Defending the rights of underpaid workers

In recent years, several cases have come to the forefront with mobile workers being underpaid. One notorious case that was successfully tackled, took place in the Dutch harbour at Eemshaven. It was presented in an in-depth case study based on participant observation of union tactics to represent the migrant workers. Individual and group interviews with workers, managers, and trade union officials on two large construction sites in the Eemshaven in the northern part of the Netherlands were held to investigate the case. Several media reports could be used as well.
The workers at the Eemshaven were covered by a minimum set of local employment standards set by the legally extended collective agreements for construction and metalworking. However, enforcing these standards proved problematic, as the unions needed the workers to provide proof of payslips and work contracts, and the workers were generally too afraid of retaliation from their employers to do that without considerable persuasion. The unions wanted to enforce their collective labour agreements to prevent a downward spiral in wages and conditions which would affect their native membership as well, so they were confronted with the dilemma of representing migrant workers who were not members, were unlikely to become members, and were willing to take little or no action on their own behalf. Though the Eemshaven campaign did not significantly increase membership rates, the workers did come to regard the unions as representative of their interests, providing the unions leverage in claims against defaulting employers, and helping them to regain some control over on-site labour standards. This local success was not self-sustaining, however, but came from a concentration of trade union resources that would be difficult to scale up beyond the level of selected sites.

https://pure.rug.nl/ws/portalfiles/portal/65799864/0143831x14537357.pdf

In the last decades, the trade union movement has initiated at regional, national and European level infringement procedures and court cases with mobile migrant labour involved. Redress is the result of an uncertain path by the route of individual lawsuits that can take years in an unknown constituency and jurisdiction. These cases will not be treated here as this would bring us into an area that in most cases goes beyond the purpose of this paper.[17]

The trade union strategy is in many cases based on the aim of using the standards and complaint mechanisms of the Council of Europe and the International Labour Organisation (as indicated in section 1). Activities in support of fundamental social rights in the Council of Europe were brought before the European Court of Human Rights and the European Committee of Social Rights with the aim to proceed in a more structural way (Louis 2022).

3.6 Multifunctional approaches of support

It is obvious that there is no 'one size that fits all'. Advocacy, assistance and support are formed and developed in varying local and regional situations, in different branches and sectors of the economy, sometimes embedded in long traditions of industrial relations and socioeconomic circumstances. Each approach requires different resourcing and poses different demands on trade unions (Ford 2021). This is certainly true for more labour-intensive activities like counselling or when multiple tasks and functions must be combined.

A crucial practical experience is that the position of mobile migrant labour of complete dependency often has consequences for their working life as well as for their housing and living situation. This is reflected in several of the initiatives and examples that have been treated beyond. Therefore, initiatives regularly combine different tasks and roles. In this section, we refer to three initiatives that differ substantially, because of the methods used and the target group chosen, but they have in common that multiple tasks or functions are combined.

17 Several Nordic real-life cases can be found in, for instance, the overview *Beyond dreams and belief – pictures of posting in practice and the need for an amended Posting of Workers Directive* (Jonsson 2015).

EXAMPLE O

Enforcing truckers' rights

Since decades, transnational co-operation structures have been established in international road transport.

https://www.itfglobal.org/sites/default/files/node/news/files/VNB_ITF-IUF_Report_FINAL.pdf

In the Netherlands, this work for the transport and logistics sector has been formalised in the foundation VNB. The VNB Foundation was established by the Dutch trade union FNV. VNB's key function is to promote compliance with and control and enforcement of the collective labour agreement in the professional freight and road haulage sector. VNB is very active in fieldwork in cooperation with drivers and trade unions all over Europe and has staff throughout the Netherlands. VNB also has initiated several court procedures.

https://www.fair-labour-mobility.eu/transnational-cases/++co++6dc402e2-1236-11ea-a21c-52540088cada

The VNB tasks are manifold, the foundation provides information to workers and advises the workers in case of problems or irregularities. The foundation created an app that helps drivers to keep track of their shifts and journeys. The application is part of a pay-check app for drivers. After registration, truckers can calculate with this application their wages and allowances and control their pay slips

https://www.vnb-loonberekening.nl

Based on an article of the collective agreement, the VNB conducts investigations if it suspects that the collective labour agreement is not being observed correctly by an employer. This can be initiated by a report from an employee showing that the collective labour agreement does not appear to be applied correctly. In addition, the VNB Foundation can conduct ad random surveys into a group of employers or conduct investigations into companies that are active in a market segment frequently infringing the collective labour agreement. VNB collects testimonies, documents and data from drivers and other sources across the industry, and across several European countries. A worker who reports a case remains anonymous during the entire procedure, because it concerns a collective procedure. If an employer does not want to cooperate with the investigation or does not want to rectify any violations, VNB goes to court. For individual cases, for instance related to compensation of unpaid wages, workers are addressed to the trade unions or to juridical advisers.

https://www.fnv.nl/cao-sector/vervoer/transport-logistiek/cao-transport-uitgelegd

Together with unions in other Member States and the industry federations ITF/ETF, VNB developed a so-called 'Road Transport Due Diligence Model'. The background of this model is the experience that companies on the top of production or supply chains often transfer the responsibility further down the chain, denying their own responsibility. With the Model, multinational companies on the top of supply chains are made responsible for fair working conditions in their road transport supply chain. The main objective is the recognition of trade unions as partner to monitor compliance in road transport supply chains. The overall strategy is to make multinational companies accountable and take responsibilities to remedy potential non-compliance.

Whilst the transport example is, given the nature of the sector, hypermobile with a lot of activities 'on the road', the other two examples are more office-based. Next to workplace visits, they use physical and online helpdesks and initiate together with different union organisations, regional or sectoral meetings. In the relationship with the trade unions, the division of labour is quite clear.[18] The centres provide information and guidance. The focus is on counselling, whilst the enforcement of rights is handed over to the unions. In the area of housing and living conditions cooperation with NGOs is normally sought.

EXAMPLE P

Low-threshold advice and helpdesks

Over the course of years, the German trade union movement has created more permanent support structures for mobile and temporary migrant labour. The network Faire Mobilität was established in 2011 as a trade union committed advisory and counselling structure that aimed to support workers from CEE-countries in their native language. Cur-

18 For instance: https://www.arbeitundleben.de/arbeitsfelder/beratungsnetzwerk

rently, the network runs 13 counselling centres. The centres work with qualified counsellors that speak the required languages. Important aim of the counselling is to empower people. In total 11 languages are covered. The counselling is carried out through different channels, both in Germany and in the countries of origin. The network has established an advisory board with representatives from Bulgarian, Romanian, Croatian, Slovenian and Polish trade unions, next to governmental representatives from Germany and Poland.

https://www.faire-mobilitaet.de/en

Websites and social media are used in several languages, with information on local standards, on labour legislation and on the support that can be given. The distribution of leaflets and education material, not only with general information, but also with sectoral matters in the necessary languages, has proved to be very fruitful. The lay-out is unified and therefore easy to recognise, and the helpdesks are included. These helpdesks are equipped with hotlines, and this is currently the most frequently used medium (in 2021: 2000 informative calls).

The network deploys online regional meetings, for specific target groups for instance domestic or seasonal workers, dedicated to more tailormade sectoral and local information. In cooperation with sectoral trade unions the staff participates in campaigns and visits worksites to inform workers about their rights and the possibilities for redress. The centres do not handle compliance and enforcement issues; these are handed over to the trade unions. The focus is on international transport, logistics and distribution, domestic work, meat processing industries, agriculture and the construction sector.

The funding comes from the German State (for 90%). The fact that the network has continued its work over a longer period, with community-based activities, has led to a knock-on effect, supported workers talk about their positive experience and people seeking advice are informed by their peers. The number of people seeking advice or assistance has substantially grown. The more continuous work structure also made it possible to apply for funding for projects, such as the Fair European Labour Mobility project that is organised in cooperation with Austrian, Polish, Hungarian, Slovenian and Romanian partners.

EXAMPLE Q

Counselling office for mobile migrant labour

The Danish unions established a Migrant Centre in the capital of Copenhagen that offers free information and counselling, with independent and trustworthy volunteers and staff, interpretation into several languages, full anonymity, confidentiality and collaboration with strong organisations

https://migrantcenter.dk/

Migrantcenter Hovedstaden is run by a group of volunteers with the necessary knowledge and experience of the Danish labour market, the trade unions, wage systems, employment regulations, rights and obligations. Workers do not have to be a union member to get help at the centre.

https://tema.3f.dk/da/bjmfimmigrant/nyheder-fra-bjmf-foreign-workers/migrantcenter-helps-workers-in-denmark-who-do-not-speak-danish

The centre provides help for labour migrants who experience problems at their workplaces. The trade union movement established it in the Copenhagen area. The centre is open and available for all migrant workers with an employment relationship in Denmark. Counselling is free of charge and if necessary, the centre provides interpretation. Through the counselling the migrant centre promotes the possibility of integration into society and the labour market, at equal terms. The centre's website is set up in six languages, next to Danish.

At the centre's helpdesk, mobile migrant labour will find help on questions related to general agreements, wages, holiday regulations, pensions, employment rules, and about migrant rights in Denmark, contacts with the responsible trade unions in case of a labour conflict, contacts with public authorities or other relief organisations. The volunteers do not have the competence to solve concrete labour conflicts, but they help to contact relevant trade unions or other institutions that assist and solve specific conflicts. Likewise trade unions and other organisations or NGOs can refer to the Migrantcenter Hovedstaden.

So far, several examples were treated of support in the European Union. Before the conclusions are formulated it is perhaps useful to make an excursion to experiences with union support through

assisting centres outside Europe. Labour mobility cutting across economic, social and demographic domains is certainly not an exclusive European phenomenon.

Rights-based mobility and trade union support – an excursion

The International Labour Organization published a report that deals with the issue of good practices and innovative approaches by trade union-led migrant workers resource centres. The ILO partnered with governments, civil society organisations and trade unions to establish Migrant Worker Resource Centres (MRCs). The paper highlights how MRCs are useful and effective avenues in protecting the rights of migrant workers. Although the focus was on ASEAN-countries, the report is interesting for a broader audience, and the recommendations are useful.

https://www.ilo.org/asia/publications/WCMS_849308/lang--en/index.htm

The centres promote migrant workers' rights and provide migrant labour with support through a variety of services. Trade unions commonly act as advocators, campaigners and educators to promote and protect the rights of workers, including mobile migrant workers. They also engage in dialogue with governments and employers to introduce protective policies and legislation. The MRCs offer various services to targeted groups, such as potential migrants, migrant workers, and returnees. They handle grievances, celebrate cultural events and conduct vocational training. The analysis shows that trade unions in countries of origin and destination use diverse strategies to reach out to and provide a variety of support services to migrant workers. Central to these strategies is a firm grasp of migrant workers' needs, interests and priorities. The support is often based on informal mediation to settle migrant workers' complaints, reaching migrant workers through online social media platforms and recreational or vocational activities, and leveraging peer-to-peer activities. Basic conclusion is that it is necessary to enhance capacity and to allocate more resources to this type of support.

ILO formulated at the end a series of recommendations:

- Capacity for legal advocacy and protection of migrant workers under the existing labour legislation in the countries of origin and destination must be enhanced.
- Trade unions in countries of origin and destination should continue their efforts to integrate the rights of migrant workers, especially women migrant workers, in their strategies, priorities and initiatives to better address the challenges that migrant workers face.
- It is necessary to enhance the trade unions' capacity on communication and negotiation to facilitate more effective informal mediation to resolve cases as a viable alternative to lodging administrative complaints or court cases,
- Communication strategies should be adjusted to ensure that migrant workers read, watch or listen to relevant information materials and participate in training activities,
- With more migrant workers becoming active on social media, especially since the COVID-19 pandemic, informed and targeted communication strategies must be developed to disseminate information through digital and online platforms, in addition to traditional offline strategies,
- Peer-to-peer networking activities have been an effective strategy to raise migrant workers' awareness on human rights issues and to build closer and stronger relationships with migrant worker communities,
- Collaboration with other stakeholders, such as local governments, district authorities and NGOs, has been effective in providing better support and training activities. It is necessary to enhance such partnerships and to build stronger relationships with migrant communities,
- Cross-border collaboration would enable in countries of origin and destination to systematically work together to provide services, as well as to support migrant workers.

3.7 Recapitulation

What to think of this variety of initiatives? This is a valid question, but as this is not an assessment of the different projects and initiatives, the question is more, are the conditions present to fulfil the functions allocated to unions? Do unions have the capacity, the resources, and the necessary expertise to cope with the expectations and the assigned roles and functions?

Trade unions in the EU have welcomed the free movement and the resulting intra-UE mobility as a great asset, but not without reservations. These reservations have to do with the risks of an un-

dermining of labour standards, the exploitation of mobile migrant labour and a downward pressure on working conditions, against the background of a large potential migrant workforce. Sometimes harsh criticism from the trade unions side is related to experiences with abuses and breaches. However, in general the long-term beneficial impact of rights-based mobility is not disputed.

Trade unions have been confronted in recent years with an enormous increase of the 'flexible layer' of the workforce (outsourcing, subcontracting, growth of temporary agency work, platform work and so on). This causes already at national level great difficulties in the outreach to the workforce that disappears in 'atypical' labour relations and work situations. A lot has been published about the question whether the classical union instruments focussing on working conditions are fit for purpose.

Going through the experiences and examples, collected in part 3 of this paper, the answer is that the classical instruments are not fit for purpose if the aim is to empower cross-border mobile workers who are confronted with abuses and breaches of rules. As soon as a transnational dimension enters into the labour relationship the defence of workers' rights becomes more complicated. There a several reasons for this conclusion: the total dependency of mobile workers, living in an unknown constituency, kept away from the ordinary workforce, often in poor housing, insufficient health and living conditions. The variety of activities shows the necessity to look for creative, tailor-made solutions of outreach and counselling, sometimes adapted to specificities of the sector (transport, construction), sometimes more community than workplace oriented, sometimes encouraging self-organisation and training.

However, support on these issues is, so far, limited and labour-intensive. Although the acquis allows workers to seek redress assistance from independent collective voices in charge of combatting for fair and decent work, such as the trade unions, there is often a lack of resources and competences. It assumes language skills, the capacity to deal with a high turnover of workers, structural campaigns, procedures, and outreach methods. And above all, it assumes structural funding and the necessary resources for capacity building.

4 HOW TO IMPROVE THE RIGHTS-BASED MOBILITY THROUGH TRADE UNION SUPPORT

4.1 The evolving Single Market – market integration and labour mobility

With the introduction of the Single Market under the Delors Commission, after the signature of the Single European Act in February 1986, the Member States of the European Economic Community (renamed European Union in 1993) started an ambitious political and socioeconomic project of market integration.[19] The flanking social dimension, following the adoption of the Community Charter of the Fundamental Social Rights of Workers in Strasbourg in December 1989, was formulated in 47 proposals for social initiatives of various kinds, both binding and non-binding. In fact, the resulting Regulations and Directives still belong to the nucleus of the EU social policy.

The project led to a liberalisation of the capital markets and, as a result of the introduction of the free movement principles, to the removal of the borders in the national economies and labour markets. In the last decades, several scholars have criticised the fact that social Europe did not keep pace with the market orientation that dominated the project. And indeed, for a very long period inertia 'reigned' and only in recent years, new social initiatives were tabled. This is not the place to analyse this question. What is relevant here is to reflect on the consequences that the introduction of the free movement of workers and the promotion of labour mobility (in the enlarged European Union) has had on the position of the subjects of this labour mobility, the workers that are supposed or stimulated to cross borders. The challenge for the trade union movement in this respect is how to address the workers concerned.

Therefore, it is necessary to briefly mention at least four developments that are intertwined: the impact on our labour markets, the flanking national and regulatory frame, characteristics of the mobile workers and their labour market position.

The growth of the cross-border labour mobility has changed the socioeconomic context in which the national industrial relations have to function. Labour relations with a transnational character have led to changing conditions and a completely different dynamic that, for instance, has reinforced the increase of flexible labour. The appearance of a structural segment of the labour force filled with 'temporary' workers is often seen as a short-term

19 At the creation of the Single Market in 1992, the EC had 12 Member States, shortly after, in 1995 as Austria, Finland and Sweden joined, 15 Member States. The enlargements in 2004 and 2008 extended the membership to in total 28 Member States, and as a result of the Brexit, to the current total of 27 Member States.

phenomenon. However, in the meantime the presence of a mobile migrant labour force is a structural phenomenon, although the execution of the related structural work is perhaps carried out by individuals that are temporary present. Cross-border labour recruitment is nowadays an integral part of labour supply and demand on our labour markets.

With the introduction of free movement of goods, capital, services, and labour, it became easier to travel and take up work in other Member States, but it also broadened up the possibilities for cross-border recruitment. Deregulation of company law and the freedom of establishment facilitated this process. Companies established subsidiaries abroad and temporary agencies have become very active at EU-level. Control of regularity becomes problematic as soon as a transnational dimension appears in a labour relation. And as mentioned earlier on, the regime of free movement, including the freedom of establishment, is formulated EU-wide, whilst the competence of all instruments to control compliance and regularity in the social area ends at the national border.

Most intra-EU mobile workers are not individual fortune seekers, as intra-EU mobility is often the result of recruitment practices initiated by large user undertakings and an industry of temporary agencies and other intermediates that attract EU-citizens to go abroad. The expansion of intra-EU mobility is partly 'orchestrated' using middlemen, brokers and other types of go-betweens who do not always respect the principle of rights-based labour mobility. The workers become part of the 'flexible layer', which performs unattractive, temporary, and routine work under poor conditions.

The result is a gap between promises and the reality. The recruited workers have to deal with an imbalance between the education received in the home country and the education and training requirements for the assigned work, with serious risks of deskilling in the long run. They often work in less-regulated branches or occupations, invisible and unrepresented, with higher risks of exploitation and high dependency on their employer and/or agency for their work, transport, housing and health insurance. They are hired any time there is a surge in demand by user undertakings and let go when demand eases. On the other hand, their underrated work is indispensable in core sectors of the economy, with vital functions in distribution, food processing or other crucial industries, as came to the surface during the Covid-outburst.

4.2 Some reflections on the assigned tasks

In this paper, we touched upon allocated roles and tasks for the social partners, and especially for the trade union movement if it comes to the defence and protection of workers' rights in a cross-border context. Enforcement of labour law and social policy regulations is no a priori activity as it is the legislator that must guarantee compliance and enforcement. Nevertheless, the assignment of tasks is very clear in relevant parts of the social acquis. On the side of the employers, there is the important issue of corporate social responsibility, with obligations related to due diligence and respect for fiscal, social security and decent work provisions. In the case of the trade unions, the guarantee of equal treatment, the respect for labour standards as enshrined in the acquis and the safeguarding of the right to decent working and living conditions results in a series of operational tasks. And in relevant parts of the acquis, the assignment of tasks presupposes very practical trade union support activities beyond the level of the unionised workforce. This leads to and requires distinct roles at various levels in the execution of important parts of the acquis. The joint activity of social partners ends as soon as a workers' voice is required to tackle irregularities and abuses. Of course, mediation and interventions can lead to solutions of daily problems. However, at that stage, the imbalance in the rights of workers in regard to the employer impedes a direct support role of employer organisations towards workers.

At the basic level of the dissemination of information concerning the applicable regulatory frame of rights and obligations in a host country, cooperation between the social partners might be obvious. And there are several initiatives in this direction (joint websites, documentation and campaigns, informative guides – see the Finnish example).[20]

This cooperation is no longer self-evident in situations where the defence of workers' rights and/or conflicts between workers and their employer are at stake. In such a situation, trade unions have to position themselves as resources towards which mobile migrant workers can turn to. In other words, the key question is to welcome and support mobile migrant labour. This conclusion was also drawn in a report of the EU Agency for Fundamental Rights where it is said that the EU and its Member States should support the role of trade unions not only in in informing migrant workers of their rights, but also on how they can access justice (FRA 2019). Initiatives of this type require an appropriate outreach and mobilisation strategy, as labour migrants are often invisible and hard to reach. Assisting and counselling go beyond simple provision of information. These are activities that cannot adequately be tackled with the traditional trade union work at the workplace, and we have seen that it has led to looser, more flexible forms of trade union friendly

20 Some other interesting examples (both in several languages): a Danish social partner site on health and safety in construction – http://sicheren-arbeitsplatz.dk or the Dutch site of the enforcement institution, founded by the social partners in the temporary agency sector – http://www.sncu.nl

initiatives. It is imperative to install contacts points and helpdesks with staff who are acquainted with problem solving and who possess the necessary language skills.

Beyond the execution of these operational tasks that diverge from case to case (with assistance, advice and other types of support), more structural action is necessary as well. During 'fieldwork' permanent cooperation with competent national authorities (such as the labour inspectorate), and with institutions in the home country will be developed. Other structural action consists of the signalling of patterns of irregularities or the identification of high-risk situations, thus the development of alert mechanisms towards the authorities. It is important to learn from each other's experiences and exchange best practices. Mobile migrant labour finds itself often in a situation of total dependency, with intertwined problems, this often leads to structural partnerships with local and regional NGOs and the charity.

4.3 Resuming

Based on the analysis in the preceding sections, it is possible to summarise the relevant tasks and functions, allocated to the trade union movement.

First, trade unions have to contribute, in many cases in bipartite talks with employers' organisations and in tripartite talks with the governmental institutions, to a regulatory frame of labour standards and workers' rights applicable for mobile workers. These general principles are developed at international, European, and national level. This creates the possibility to refer in case of breaches to, for instance, ILO-conventions, the European Convention on Human Rights, or the EU Charter of Fundamental Rights. In theory, these general principles lead to standards and rights that apply for all workers in a labour relationship. To derive these rights in practice is not an easy task for an individual worker. Besides, the legal power of the general principles is not always transparent and the entrance to procedures is often not open for individuals. We have therefore abstracted from these standards, although they can function as persuasive arguments in cases of breaches and irregularities.

EU Directives and Regulations that refer to the free movement of workers and the free provision of services with posted workers also apply, with some exceptions, to all types of mobile workers in the EU. This part of the EU acquis must be implemented and transposed into national law and often leads to binding legislation. The practical meaning of the arising rules is the result of a process of transposition, at national and at EU-level, and trade unions have to play their role in this process.

Trade unions are supposed to inform individual workers about these rights and to supply advice and guidance. They have to look after observance and compliance, and to the practical and effective functioning of rules and (mandatory) regulations. Workers can claim the rights that are enshrined in this part of the acquis, referring to the rules as well as to enforcement and redress mechanisms. Trade unions often have the right and the competence to engage on behalf or in support of complainants. They can act as mediator or workers' voice and are supposed to assist in the enforcement of claims and to guide to or to deliver assistance in the court room.

What works and what needs to be done to improve the support? Based on the experiences that were sketched out, the following conclusions can be drawn.

Structured and continuous action

Labour migration in the form of intra-EU mobility or posting of workers is a structural phenomenon. It was and is based on one of the fundamental freedoms as planned with the introduction of the Single Market and it has initiated a mobility on our labour markets that has no precedence (apart from the displacement as a result of wars). Individuals perhaps move temporary, but the mobile workforce has, in the last decades become a structural segment of the national labour force in all EU Member States. Therefore, structural support is needed and the few examples where more structural strategies are realised clearly show the added value of this approach. Activities in certain sectors (i.e., temporary and mobile construction sites, seasonal work, transport) ask for tailormade and adapted work methods; capacity can only be built up with continuous action.

Partnership and liaison with a broad network of stakeholders

In practice, it is often difficult to split up support activities in work related issues and the housing or living conditions of the mobile workforce. The situation of temporary and mobile migrant labour, recruited under the flag of the free movement of workers or through the posting of workers scheme, is quite different from a native worker who decides to work for a temporary agency. What matters is the complete package of working, housing and living conditions. This can be illustrated by notorious cases of abuse. Trade unions will, in such situations have to refer to assistance, often turning into partnership, with NGOs, national competent authorities and legal or social services. But also contacts with the 'peer'-group and their self-organisations are relevant.

Stable funding, and possibilities for 'flexible' response

Structural action presumes the necessary staff and other resources. The presence of a permanent segment of 'temporary' mobile migrant labour asks for protracted funding, with structural means that

guarantee the establishment of stable arrangements necessary for continuous action. This stability also creates the opportunity to apply for specific funding of 'flexible' response in case it is necessary to react in the form of topical campaigns. Temporary initiatives on a project base do not have the capacity to redirect their action; this is only feasible with at least a minimum of an established work organisation.

A transnational approach

In most examined examples, the relevance of joint transnational activities was demonstrated. These joint actions create mutual trust, more awareness of the difficulties that partners have to face and a better view on the impact for both the sending and the receiving country. It will contribute to a better understanding of the differences in traditions and cultures of industrial relations. Transnational cooperation in promoting and defending rights-based labour mobility is the way to demonstrate the added value of free movement.

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Press contact
Rainer Jung, +49 (2 11) 77 78-15 0
rainer-jung@boeckler.de

Editorial
Maxi Leuchters, Company Law and Corporate Governance,
I.M.U., Phone: +49 (2 11) 77 78-145
maxi-leuchters@boeckler.de

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