

Evaluation of the European Labour Authority

Contribution from the Netherlands

FOSTERING FAIR AND DECENT LABOR MOBILITY AND FAIR RECRUITMENT IN THE EU

The Netherlands supports the activities that the European Labour Authority (ELA), together with Member States and national labour inspectorates, undertakes to promote fair labour mobility. The free movement of workers and services brings many benefits to Member States, citizens and companies. EU mobile workers, including third country nationals (TCN) that may legally reside and work in the Union, make an important contribution to our economies.

At the same time, intra-EU labour mobility also has significant downsides, particularly in certain economic sectors with predominantly low skilled work¹. In host countries, there is ample pressure on public space, public facilities and social cohesion. In countries of origin, there is a significant risk of brain drain. Most importantly, mobile workers are too often treated as 'second-class citizens' and often face abuse and exploitation. They do not receive the labour circumstances, employment rights and living conditions they are entitled to. Too often they are victim of unfair recruitment practices by mala fide intermediaries or temporary employment agencies.

This is unworthy of the EU and at odds with our European values. Therefore, more action at the EU and national level is needed to foster fair and decent labour mobility and fair recruitment within the EU. Competition should be based on quality and innovation and not on labour conditions and labour standards. This is pivotal for mobile workers and contributes to a level playing field for bona fide companies. All workers in the EU are entitled to equal treatment and decent working and living conditions. To maintain sufficient support for the European Union, it is important that everyone can reap the benefits of the single market.

PRIORITIES FOR THE EVALUATION OF ELA

In this regard, we look forward to the Commission's evaluation of the ELA. In this position paper the Netherlands present its priorities for this evaluation. ELA is at the final stage of its first cycle of its existence. The organization has well defined structures, budget and staff. During the upcoming years the ELA has to take the next step to make more impact. A clear political signal from the Member States, the European Parliament and the European Commission is needed to enable ELA to use its full potential to support Member States in realizing fair and decent labour mobility, including for TCNs within the European Union. At the same time, we argue for further clarifying and strengthening ELA's mandate.

i. *Posting of third-country nationals (TCNs)*

ELA plays an essential role in addressing the challenges related to posting of TCN workers. Posting of TCNs must be firmly anchored in ELA's mandate and its activities. This requires clear political commitment from the Member States, the European Commission and European Parliament. Therefore, the Netherlands supports a more explicit incorporation of posting of TCNs in ELA's mandate. Posting of TCNs is a growing phenomenon of labour mobility in the European Union. Posted TCNs are a vulnerable group who run a higher risk of unfair, unhealthy and unsafe working conditions. TCNs are not always aware of their rights or in a position to invoke their rights. They depend on their employer for their work and residence permit. It is difficult to contact this group of workers. Enforcement is challenging and complex as sufficient information about, for example, the legitimacy of the posting and the conditions under which the employees are being posted, is often lacking. Mobile workers are often posted immediately to other EU-Member States by temporary work agencies or intermediaries once they have obtained access to the EU. The challenges related to the posting of TCS were also highlighted by the ELA study of February 2023. To tackle these challenges the ELA needs to promote and support cross-border cooperation between enforcement authorities of the Member States. More clarity is also needed about the conditions that need to be fulfilled in order to consider this type of posting as legal. An important question, for example, is whether third-country nationals have actually worked in the Member State of entry before they are posted and whether the 'sending' service

¹ Sectors such as the construction sector, the transport and logistics sector, the horticulture sector and the meat sector, HIVA Paper A4_Engels (kuleuven.be)

provider carries out activities in the Member State of first entry and how this is monitored. In this regard, there is a need for clarification of concepts from the case law of the EU Court of Justice, such as 'lawfully and habitually employed'.

ii. *Effective use of ELA's research mandate*

ELA receives many signals from parties from different Member States about (cross-border) abuses. The ELA is in a position to observe the challenges related to labour mobility from a European perspective. To increase effective enforcement of European legislation for fair labour mobility and social security coordination, political commitment is needed to enable ELA to make full use of its research mandate. ELA needs the necessary provisions on the exchange of (personal) data, emulating the mandate of Europol and Eurojust in these matters. Not only with regard to (scientific) research and risk-driven analyses of abuses and signals, but also with regard to the processing of personal data, which should enable ELA to carry out in-depth analysis into specific issues or individual cases. This should be clearly and explicitly reflected in the mandate of ELA. It also requires clear, transparent and proactive communication by ELA about its method for collecting, processing and publishing data, in accordance with the General Data Protection Regulation (GDPR). In addition, ELA should support Member States, where necessary, with the development of information gathering capacity at national level. And, ELA should be able to gather information on its own initiative regarding abuse and exploitation.

iii. *Joint inspections*

The Netherlands sees great added value in the joint inspections coordinated by ELA. In order to give better follow-up to signals of abuses perceived by ELA, ELA should make full and better use of the possibilities under the current mandate and play a more proactive role in initiating joint inspections. Therefore, it should be made clear in the mandate of ELA that joint and concerted inspections must take place with the cooperation of Member States to follow up serious indications of abuse and/or exploitation resulting from research and investigations conducted by ELA.

iv. *Information provision on fair labour mobility*

The Netherlands considers it necessary to improve access to information in the home countries of mobile workers. Still too many workers are misled with false promises or wrong expectations about their rights and obligations regarding working and living conditions in the "host countries" before they come to other Member States for work. This makes some of them vulnerable for abuse. Posted TCNs are particularly vulnerable. We encourage ELA to further improve the provision of information in Member States (of origin) about working and living conditions in other EU Member States through, e.g., the EURES contact points in the Member States.