



Exploitation of seasonal and migrant workers

German Trade Union Confederation's demands at the European level

The Covid-19 pandemic has clearly shown that mobile workers in Europe are an indispensable part of our society. Nevertheless, it is precisely these workers who are the least protected and vulnerable to serious abuse. National measures taken during the crisis to protect workers in standard jobs have often failed to reach mobile workers. Missing or insufficiently enforced hygiene regulations, malpractice in the sub-contracting sector and a lack of (social) insurance protection are only some of the issues that have come to the attention of the general public in many places throughout Europe during the crisis. Unfortunately, this situation is not new. What's new is that it has become much more apparent in the light of this serious public health crisis.

Germany took over the EU Council Presidency on 1 July. In view of the many scandals involving harvest workers and the meat industry, the focus will now be on improving the working conditions of mobile workers in Europe. Mobile workers are persons who work only temporarily in another country and have not or not yet moved their usual place of residence to the country of destination. This includes, for example, people from other EU countries with an employment contract with a domestic or foreign company, employees of a company based in another EU country who have been sent to Germany to provide a service, as well as (bogus) self-employed persons working across borders. Depending on the sector, certain employment models are increasingly being used, but there are also frequent changes. These depend on how the legal situation changes and new ways of circumventing them are found.

Mobile does not necessarily mean that the stay is short-term. Especially in the case of chain posting, people may work for years outside their country of residence. Some of the workers stay in the country of destination only for a certain period of time and then work in another European country. The common feature, however, is that the stay is not intended to be permanent, which is why German language skills are not normally acquired and there is often only a basic knowledge of rights and duties in the country of destination. If problems arise - for example, if wages are not paid - those affected are particularly vulnerable, as they lack the financial capacity to cope with such problems. As their stay is not intended to be permanent, they also lack local networks that could come to their aid. Since the people affected only see the situation as temporary, they are more willing to accept poor living and working conditions. Against this background, a situation arises in which mobile workers are particularly vulnerable to labour exploitation and inequality.

In order to bring about a long-term and sustainable change in the employment of mobile workers in Europe, the Confederation of German Trade Unions (DGB) and its member unions propose the introduction of **European measures** to accompany national activities. These should include problem-oriented solutions that should not be restricted to specific groups of workers or specific sectors. Crosscutting measures must be introduced which cover all mobile workers. Priority must be given to accommodation conditions, social security cover, placement activities, the unclear status of workers and employers as well as cross-border enforcement and controls.

1. CONDITIONS OF ACCOMODATION

Accommodation plays a major role for all mobile workers. It is often part of the employment relationship and is provided directly or indirectly by the employer. The provision of accommodation is necessary in many cases and is at first widely accepted by the workers.

Unfortunately, however, the experience of trade unions and counselling centres is that housing provided is often undignified: Overcrowding, poor state of repair, too few and inadequate sanitary facilities, etc. Moreover, accommodation is used to circumvent (minimum) wages through excessive rents or bed prices. In addition, tenancy is (illegally) tied to the term of employment, which creates a relationship of heavy dependence. When the employment contract is terminated, employees often have to leave their accommodation within the same day and are therefore open to blackmail, also with regard to the exercise of their employment and co-determination rights. The Corona crisis in particular has made it clear that hygiene concepts cannot be maintained under such miserable conditions.

The DGB and its member unions demand:

- ☛ A binding **EU initiative on accommodation for mobile workers** within the context of free movement of workers or other employment frameworks: where accommodation is provided by the employer, whether directly or indirectly, there must be binding minimum health and safety standards, e.g. in terms of room occupancy, size of accommodation/rooms and sanitary facilities. The minimum standards for accommodation must apply not only on the company premises, but also for "private" accommodation, e.g. in flats, boarding houses, accommodation for construction workers, etc. Compliance with the set standards must be strictly controlled. Rental payments must be decoupled from workers' wages and must not be excessive in relation to the quality of the accommodation. In any case, at least the standards laid down in the Directive for seasonal workers from third countries ([2014/36/EU](#)) should be extended to all mobile workers.

2. SOCIAL SECURITY PROTECTION

Particularly in the mobile workers' segment there is a lot of social security abuse: it is easier for companies to circumvent the rules on social security contributions or to benefit from gaps in the coordination of social security systems. The so-called A1 certificate is a key reference point for checks on the social security status of mobile workers. With an A1 certificate, workers and other gainfully employed can prove whether - from the point of view of the issuing body - the social security law of the country of residence (home country) or the regulations of another foreign country apply to them, even if they are working in Germany. Unfortunately, at present A1 certificates can be applied for and submitted subsequently after an inspection without any consequences. This practice leads to abuse. In the event of an inspection fraudulent companies often claim that the workers have only just started working in the host country. The actual start of work is thus concealed and the workers are quickly insured in their home country if necessary. In addition, the possibility to submit the certificate at a later stage prolongs the inspection process. Unfortunately, most mobile workers don't know whether and where they are paying social security contributions, or only realise that they are not insured when they fall ill. The lack of digitisation at national and European level in the area of application for and control of A1 certificates makes controls even more difficult.

In addition, some Member States even offer reduced social security contributions for posted workers (workers temporarily providing a service in another EU country). In other cases, companies pay contributions not on the actual wage but on a notional, much lower wage - or not at all. Slovenia, for example, allows companies that post workers to pay social security contributions not on the basis of the actual wage of the posted workers, but on the basis of 60% of the last known average wage of all workers in Slovenia. Companies take advantage of the lax controls for issuing A1 certificates and the capped social security contributions in Slovenia to send workers from, for example, neighbouring countries to all of Europe without them ever having worked in Slovenia.

Furthermore, some Member States (including Germany) allow short-term employment without social security contributions. In Germany, this possibility is used in particular for seasonal workers at harvest time, where almost exclusively mobile workers are employed. Exemption from social security contributions presupposes that short-term employment may not be taken up on a professional basis and may not serve to secure a livelihood. In reality, however, it is difficult to check whether the conditions for exemption from social security contributions in Germany are met. Employers do not contact the social security agencies of the workers in the country of origin and as a result seasonal workers are sometimes not covered by social security at all or only inadequately. Hence, workers do not have adequate social security cover in the event of unemployment or illness. They also lack the opportunity to accumulate pension entitlements even if they have been in the same job for years.

All workers in Europe, whether employed or self-employed, must be covered by all branches of social security, as decided by the Council in its Recommendation on access to social protection (2019/C 387/01). This includes accident insurance cover. It must be possible to check the social security status of workers quickly and clearly at any time. Especially in times of pandemics, this helps social security funds to generate urgently needed revenues and protect employees in case of illness.

The DGB and its member unions demand:

- ☛ Successful conclusion of the current negotiations on the **revision of the so-called "883 Regulation"** on the coordination of social security systems ([883/2004/EG](#)) and its implementing regulation ([987/2009/EG](#)). There must be clear regulation that the A1 certificate must always be applied for before the start of the assignment abroad, as required by the compromise between the Council and the European Parliament of March 2019. The application and control system for the A1 certificate will, however, only be significantly facilitated by the introduction of a **European electronic real-time register**, through which the current social security status can be called up at any time across borders. In the long term, this register must be accompanied by the introduction of a **European social security number**.
- ☛ The **abolition of periods of employment free of social security contributions** in all Member States, harmonised at EU level, and a legally binding rule that all employees are covered by social security regardless of their employment status and place of employment, as decided by the Council in its Recommendation on access to social protection for workers and the self-employed ([2019/C 387/01](#)).
- ☛ Abolition and **prohibition of "social security discounts"** for posting companies.

3. PLACEMENT AGENCIES

Mobile workers in Europe are often placed abroad via domestic or foreign private agents (often for high fees, some of which must be paid monthly). This is a largely unregulated market. The DGB is aware of numerous cases of abuse in the context of private placement. Strong disparities in income and living standards mean that even trained professionals can be deceived with false promises about employment and income in Germany. Experience in the recruitment of foreign workers shows how much damage can be done to all those involved if transparency about working and living conditions is not created from the outset and different expectations and levels of knowledge collide. In the recruitment and placement market, quality, transparency and coordination between all the actors involved must be established. Job placement must not be left to the "free market". The EU must ensure that no parallel undercutting systems of recruitment at the expense of workers are established in private placement, and that this applies to all sectors. Especially in home care, the monthly placement fees are almost as high as the wages paid.

It is important that these agencies inform the workers before departure, no matter the duration of their contract, about their working conditions, social security rights and travel and accommodation, as well as applicable occupational health and safety measures, and other relevant arrangements in their own language or a language they understand

The DGB and its member unions demand:

- ☛ Introduction of a **European legal instrument on private placement and recruitment of workers** based on [Convention 181](#) of the International Labour Organisation on private employment agencies (1997). Among other things, it is intended to regulate minimum quality standards for the activities of private intermediaries and to introduce a ban on charging employees, either directly or indirectly, fees or other costs for their work. Placement costs are to be borne by the employer and should only be invoiced once. In addition, it must be ensured that "these agencies inform the workers before departure, no matter the duration of their contract, about their working conditions, social security rights and travel and accommodation, as well as applicable occupational health and safety measures, and other relevant arrangements in their own language or a language they understand" ([European Commission, July 2020](#)). The legislation should also allow Member States to stipulate that placement in certain sectors can only be provided by the public employment services. So far, this possibility only applies to seasonal workers from third countries (Art.21, [2014/36/EU](#)).

4. PARTIES TO EMPLOYMENT CONTRACTS UNCLEAR

Mobile workers often don't know for whom they work or what type of employment they have. Have they been posted or do they work abroad on the basis of their right to free movement of workers, do they have short or long-term employment contracts or are they self-employed? Often they are also not aware of the company they are ultimately working for, as the use of a large number of sub-contractors means that lines of responsibilities and management remain unclear. Written contracts often do not exist or are written in a language unknown to the workers.

The DGB and its member unions demand:

- ☞ **Rapid implementation of the EU Directive on Transparent and Predictable Working Conditions (2019/1152/EU)** in all Member States to ensure that workers are informed in writing of their working conditions as soon as possible (this must also apply to private placement). Seasonal workers should be given a written employment contract in their home country in a language they understand, in duplicate, before departure. In the course of the national implementation of the EU Directive, the gap should be closed which allows Member States to exempt workers with a work period of less than 4 weeks from the protective provisions. The European Commission must monitor the implementation of the directive in a timely manner and, if necessary, initiate infringement proceedings.
- ☞ Establishing **joint and several liability of the contracting party** at EU level. Furthermore, sub-contracting should be limited to a maximum of three tiers.
- ☞ **Establishing a legal right to labour law advice and support** for EU citizens and other migrant workers working in another EU country, as well as establishing access rights for trade unions and trade union-related advice centres to premises and company accommodation in order to inform workers about their labour rights in the country of employment, if possible in their respective language of origin.
- ☞ Establishment of a budget line by the EU Commission to create a **Europe-wide network of employee-oriented counselling centres**, taking into account experience gained to date, and establishment of a coordination office to coordinate measures in the various countries.

5. CROSS-BORDER ENFORCEMENT AND CONTROLS AT NATIONAL AND EUROPEAN LEVEL

If a health and safety authority or an inspection authority uncovers irregularities, mobile workers are often left to their own devices. Clarifying the place of jurisdiction alone can prove a complicated and protracted exercise. By then, the workers are usually already back in their home country. If the lawsuit is brought before a court in the country of destination, the workers face major language, financial and logistical problems. In addition, the inspection authorities are understaffed throughout Europe and are therefore unable to investigate this large-scale fraud. The checks that are carried out also prove to be difficult, as often no papers are available and working time recording is fraudulent.

The DGB and its member unions demand:

- ☞ Fundamental **strengthening of inspection activities** in all Member States. National inspection activities must be strongly supported at European level by the **European Labour Authority (ELA)**. Its mandate to carry out cross-border controls must now be immediately concretised and activated.
- ☞ **Definition of European minimum standards for labour inspections** (based on [ILO-Convention 187](#)) with the aim of establishing a coherent and effective occupational health and safety control system in all EU Member States.
- ☞ Introduction at EU-level of a right for associations to take legal actions, which goes beyond the participation procedures laid down in the Posting of Workers Directive ([2014/67/EU](#)).
- ☞ Mandatory introduction of a reliable, objective and **accessible electronic working time recording system** for mobile workers.
- ☞ Development of a **guideline by the European Labour Authority (ELA) for better clarification of the place of jurisdiction** for cross-border employment relationships.
- ☞ In addition, a Europe-wide patchwork of Corona-specific protective measures for mobile workers must be prevented. The Commission should be given a coordinating role. Furthermore, the **Senior Labour Inspectors Committee (SLIC)** must address the issue, agree on a priority action and then implement it in all Member States. The SLIC must work closely with the **European Agency for Safety and Health at Work (OSHA)** and the **Advisory Committee on Safety and Health at Work (ACSH)**.

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