

Fair Work in Europe

Transnational structures for good and safe work

Report on the hybrid conference on 15.03.2023



In the EU, more and more people are working across borders. But labour exploitation and disregard of occupational safety at work are no exception. Again and again, new possibilities are being used to circumvent collective agreements, undermine obligatory minimum wages or exceed maximum working hours. The trade unions' demand for »same pay for the same work in the same place« is still no reality for many mobile workers from Eastern Europe – and also for those of other countries.

The conference »Fair Work in Europe« explored how trade union-related structures for information, advice and support of mobile workers can be strengthened or newly created at the European level. Counsellors reported from their practise, a study on the role of trade unions in supporting mobile workers in Europe was presented and stakeholders from politics, state administration and trade unions discussed options to protect mobile workers from exploitation and thus provide a framework for European labour mobility in the long term.

The first panel, with reports on the experiences of advisors from the Counselling Network *DGB Faire Mobilität* and the *Fair European Labor Mobility* Project, focused first on the construction sector. Benjamin Luig from the *European Migrant Workers Union* and sector coordinator for the construction and agriculture sector at *Faire Mobilität* reported on his practical experience. Many posted workers in the construction industry are employed as "unskilled workers" who receive correspondingly lower wages, even though they actually do fully qualified work. Often they do not speak German, which makes them socially isolated and often victims of exploitation. Many overtime hours are not fully paid, sometimes not at all. Again and again, after a deduction from the wage at the beginning of the employment, no further wage is paid. The issue of social security is also difficult. Many employees work undocumented, get deregistered from social security during their employment, are registered only shortly before an accident or are sent back seriously injured to their home countries.

Mirela Caravan works for the Romanian trade union federation *Blocul National Sindical* (BNS), primarily with seasonal workers, posted workers or workers employed directly in Germany as "self-employed". From her perspective of a country of posting, she confirmed the exploitation practice described. As an example, she reported about 50 posted Romanian construction workers in Nürnberg, who received only a fraction of the promised 2,000 euros per month or were not paid at all for months and then asked for support at *Faire Mobilität*. Often, the German client pays the sending companies, but regularly they do not pass on any wages. It turned out that the sending company in Germany declared bankruptcy, but the employees could not receive insolvency benefits here. The affected employees then turned to Mirela Caravan in order to claim their wages directly in the sending country Romania and, above all, to obtain the original employment contracts there. Mirela Caravan is now seeking legal assistance in order to file a class action.

There are many questions that go beyond the borders of a single country. Where can lawsuits be filed against whom? Can the general contractor be held liable? What happens in the case of serious work accidents in Germany and compensation from the employers' liability insurance association, even if the person concerned is back in the country of assignment? On these and other points, there is close cooperation between *DGB Faire Mobilität* and the Romanian side.

The next round of reports from the practice dealt with international transport and logistics. Anna Weirich from the advisory network *DGB Faire Mobilität* reported about the manifold problems that the drivers have. Whether they have signed a German contract or one abroad makes a big difference. Almost all of them drive on contract in Western Europe, but do not have a permanent residence in one of these countries. In fact, they live in their trucks. This results, for example, in the problem of how they are supposed to get mail. If they give their employer their postal address, things quickly disappear - especially if they are foreign companies, which are often only letterbox companies. In addition, the order chains are complex. For example, a German company hires a freight forwarder, who hires a subcontractor who has the truck, who then hires drivers from country X, usually with wages that do not correspond to the German minimum wage. Often the drivers do not pay the pension insurance for years, so in the end there is hardly any pension. The situation is similar with health insurance.

Marko Tanasić, among other counsellors for the project *Fair European Labor Mobility* (FELM) on the side of the *Slovenian Trade Union Confederation ZSSS* described the problems from the Slovenian point of view. The business model in the transport sector is based on social dumping, companies are registered in Eastern European countries, which recruit workers there with too few alternatives, but who then work in Western Europe. The wage model is based on the minimum wage of the Eastern European country plus daily rates. In fact, the minimum wage of the Western European countries is not paid, although a corresponding claim often exists. Because of the cross-border nature of the issue, Marko Tanasić works closely together with *DGB Faire Mobilität* to enforce drivers' rights in such cases.

Anna Weirich underlined the importance of transnational cooperation by referring to the case of a Serbian driver, i.e. a "third-country national", who was hired by a Slovenian company to drive exclusively in Germany for almost two years. He would have been entitled to the German minimum wage, but did not receive it from the Slovenian company. Now he is fighting for back pay and is trying to contact the German freight forwarder to demand it. If possible, something should be achieved out of court, because court proceedings are expensive.

Mirela Caravan says that her union supports wherever possible, even if the people concerned are not union members. But only if they are members, the union can represent them in court. She underlined the importance of advice in the language of origin; *DGB Faire Mobilität*, for example, also has Romanian-speaking advisors in Germany. Benjamin Luig emphasized the increasing importance of free trade union-related advice also for non-members, as the problem structures - e.g. the chains of subcontractors - are becoming more and more complex. Here, the networks of the European trade union federations are also becoming increasingly important. The ETUC has a committee for migration issues, and there is a

network of consultants linked to the ETUC. Likewise, the sectoral federations such as EFFAT or ETF have networks that can provide support depending on the case.

Afterwards, the importance of the *European Employment Agency* (ELA) for the advisory networks and the role of the *European Employment Services* (EURES) – the Europe-wide network that promotes intra-European mobility in the area of the labor market across borders – was discussed. The information systems of ELA are certainly useful, but even more important are concrete inspection possibilities. In Romania, for example, EURES has a very good cooperation with the trade union federation, joint information events are organized. But EURES is not an organization for the enforcement of employee rights. This is where the counselling project FELM steps in, which can currently handle cross-border cases in six EU countries, Poland, Romania, Slovenia, Hungary, Germany and Austria, and will hopefully continue to be supported by the EU in the future.

Following this thematic block, Jan Cremers presented the results of his study "Support for mobile labor migration- the role of the trade union movement" for the Hans Böckler Foundation. The study discusses possibilities for trade unions to successfully cope with assumed or attributed tasks in the field of free movement of workers and cross-border labor migration in the EU. It is a contribution to the debate on how and in which form trade union activities can better protect the interests of mobile migrant workers to archive labor mobility based on comprehensible rights. Starting from the rights that can be derived from an employment relationship and based on an analysis of relevant parts of the EU regulatory framework, the study provides an overview of trade union frameworks and practical experiences with forms and instruments of information, support and advice.

As social partners, trade unions are involved in the preparation, drafting and conclusion of the social parts of the EU acquis that result in recommendations, regulations or directives. The related activities of trade unions can be seen as an important contribution to the implementation not least of the social dimension of the EU acquis, as they directly affect the functioning (and success or failure) of the internal market and the related free movement of workers. Trade unions are expected to contribute to the provision of adequate information to all workers and to raise awareness of workers' rights and concerns, to provide guidance and advice to all workers and to support them in cases of irregularities. They are important actors who can provide legal assistance and guidance or accompany access to justice.

The conclusion of the study is that the greatest attention from the EU gets to the provision of information. Financed projects address a wide range of problems (violations of EU regulations, circumvention practices, undocumented work, fake posting and labor exploitation). But cross-border cooperation, which goes beyond the provision of information, is hampered by the lack of permanent structures. Interventions from the trade union side often go beyond the basic provision of information to support, advice and advocacy. In fact, information and advice for all mobile workers is fundamentally a public task. The support structures of trade union-related advice centers such as *DGB Faire Mobilität* on a transnational level are therefore an important component of the internal market project. The support of the people who embody the free movement of workers must be a constant and permanently financed key principle of the EU and can only be generated through the development of consolidated structures and a continuous practice.

In the last block of the event, representatives from politics, trade unions and supporters discussed with decision-makers from European and German institutions the question of how to create framework conditions for a fair European labor market.

Annelie Buntentbach from the European support network Fair Mobility, former member of the executive board of the DGB until 2020, agreed Jan Cremers analysis on what would actually be necessary in terms of support structure, how great the needs are, and how far the claim of a social Europe and the reality diverge. Mobile workers are in danger of quickly drifting into exploitative conditions. Websites and the provision of information, which the ELA offers very well, are not enough. What counts in the end is individual advice. As the work relationship here is the key, trade unions have an important task here -

also in advising non-members. This is in the public interest, which means that public funds are also needed for this, both in the member states and at the EU level. This must also be recognized in the EU. One-off projects are not enough; long-term structural support is needed instead. Annelie Buntentbach emphasized: "Better rules and conditions are needed in the European labor market, and at the same time workers need support to assert their rights."

Dr. Rolf Schmachtenberg, State Secretary at the *Federal Ministry of Labour and Social Affairs*, stated that Europe's strength is its functioning internal market. Ensuring this is the most important task of the EU. This also includes putting a stop to "skimming models" that only exploit differences in income; this is a public task. On the other hand, it must also be ensured that exploited workers can turn to contact points they trust and not only to state structures. Because without trust, counseling does not work. That is why the trade unions are of particular importance and why his ministry supports *DGB Faire Mobilität* with 90 percent of the budget, with the DGB contributing only 10 percent. In 2025, there will be an evaluation of the counseling network, and then it has to be evaluated whether the structure works as it is. Dr. Rolf Schmachtenberg explained how the German government intends to get involved at the European level. Studies like the one by Jan Cremers or events like today's will help to promote the understanding in the Commission that something has to change. He welcomed the participation of Agnes Jongerius as MEP, who can then support from her side. Activities are also being undertaken within the framework of the *European Economic and Social Committee* (EESC). The BMAS is currently working on the implementation of the *European Time Recording Directive*, which is expected to facilitate controls. Also in process is the regulation for full health insurance coverage for seasonal workers.

European Parliament member Agnes Jongerius participated online from Strasbourg. She reported about her fight for a European social security number or card. This would be a very good possibility to facilitate also the labor inspections. She listed the activities on the part of the *European Parliament* - the reform of the *Posting of Workers Directive*, the debate on decent housing in the labor market - and called on the member states to hire more labor inspectors. She is glad that the ELA exists and sees the upcoming evaluation as a chance to talk about an extended mandate. In this context, a European-wide Fair Mobility advisory structure must also be decided. She also supported Annelie Buntentbach's demand for a separate budget line at EU level for advice and assistance and hopes that this issue can be taken forward after the presentation of Jan Cremers' study in Brussels.

Thomas Thomma from the *European Labor Authority* (ELA) emphasized the ELA's role in ensuring rule-based, fair labor in Europe. To this end, it has determined three pillars of its work: Law enforcement and labor inspections, information exchange between member states and rapid administrative assistance, as well as information and services for employees, companies and social partners. From the German point of view, the very good cooperation with *DGB Faire Mobilität* should be emphasized. He supports the demand of the European Parliament for a right of initiative of the ELA for inspections. At the moment, the enforcement measures are based on the voluntariness of the member states, especially in Germany it is not easy to punish abuse due to the involvement of so many institutions.

Dumitru Costin, president of the Romanian trade union confederation *BNS*, stressed that trade unions must help themselves and not wait for support from the authorities. Because there may be a fair labor market at the national level, but at the European level it must not take another 50 years. Every labor market is different and everyone is in competition. In the long run, only better jobs with better working conditions will help. Required that labor migration must be in the public interest, so there must be financial support also for research at all levels. There needs to be more trade union studies on mobile labor, e.g. also on how exporting labor to other EU countries is bleeding national labor markets dry and what can be done about this. He presented an app that was developed last year with EU funding and contains important information for all mobile workers - including those from third countries.

In her conference conclusion, Anja Piel, a member of the DGB's executive board, stressed the importance of addressing such a complex issue as fair work in Europe in the complex way, as they did at today's conference. There is an increasing need for advice, as cases of abuse are on the rise. While an

app is useful, it cannot replace human counseling. It has become clear that we need more resources for advice structures, as increasing counselings are not for free. She sees it as unfair that unions provide counseling for infringement by companies without them paying a dime. Also, networking at the transnational level cannot be done by the unions only. Other funding is needed here, and it would have to be ensured that the trade unions can keep an eye on ensuring that this support also reaches the people.