

LEGAL MEMORANDUM

TO: European Labor Authority
European Commission
European Trade Union Confederation

FROM: Alternatives Européennes Association (transparency register
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SUBJECT: RIGHTS OF MOBILE YOUNG WORKERS

I. BACKGROUND

In 2020, at least 17 million European citizens live or work in another Member State.

Among these European citizens are a large number of mobile young workers.

The objective of this memorandum is to lead to the establishment of a special program and dialogue with the newly established European Labor Authority. The aim would be, in the long run, to build an advocacy case for the European Commission and European Labor Authority in order to promote the rights of these mobile young workers.

II. FACTS

In the context of European integration, the principle of the internal market has always been a cardinal point. The internal market is based on what are commonly known as the "four freedoms": the free movement of services, goods, capital and persons.

The freedom of movement of persons, in its economic accession, is presented in a dual manner: the freedom of movement of workers and the freedom of establishment.

The freedom of movement of workers was affirmed as early as 1957 in the Treaty of Rome and then taken up again in the Treaty of Lisbon in 2009 and Article 45 of the Treaty on the Functioning of the European Union.

Thus, this central text of European legislation provides for "*the abolition of all discrimination, based on nationality, between workers of the Member States as regards employment, remuneration and other working conditions*".

Consequently, any national of a Member State of the European Union who leaves his or her country of origin to work in another Member State must enjoy these rights and equal treatment with nationals.

These principles were subsequently reaffirmed by a number of European directives and regulations and then transposed in the Member States.

However, more than sixty years after the establishment of the Treaty of Rome, one may ask what the reality is?

Studies conducted by the NGO European Alternatives show that there are still significant issues and disparities related to young mobile workers.

Indeed, while the right to mobility is well respected in so far as European citizens have the material possibility to move to another Member State and work there, deeper difficulties are felt on practical aspects.

First of all, there are difficulties linked to the status of employee, particularly in terms of discrimination. On average, a young mobile worker is much more likely to be a victim of discrimination than a native worker. For example, many young mobile workers will be discriminated in terms of remuneration, since they will be paid less than nationals for an equivalent position and level of qualifications. In addition, they will be more likely to work in precarious jobs than nationals (fixed-term contracts, temporary work, etc.). Finally, they have difficulties in knowing the labour law applicable in their host country and will therefore be more vulnerable to misconduct by their employers and will find more difficulties to defend their rights since they do not know them properly.

On the other hand, there are some difficulties related to citizenship itself. Indeed, young mobile workers will find more impediments to settle in another Member State. In particular, it will be more complicated for them

to find housing, as they may be discriminated against or for documentation reasons. In France, for instance, many landlords ask tenants to provide their last three pay slips, a certificate from a national guarantor and/or a receipt for the rent for their old accommodation. However, a young mobile worker may not have all these documents, which can cause great difficulties in finding accommodation.

These citizenship problems, although not direct causes of the status of employee, are closely linked and must be taken into consideration. Indeed, a citizen who is not able to find housing or to have adequate health insurance will not be able to work properly and in a decent way.

More recently, there is another problem related to the Covid-19 pandemic. Indeed, this crisis has highlighted those who have been dubbed "essential workers". These are workers who perform tasks that are particularly necessary to society, so that they have been forced to continue their work despite the containment measures. These are workers in health, food, human services and safety occupations.

These essential workers have been hard hit by the crisis because they are on the front line and have direct links with the public. Moreover, they unfortunately lacked protection, especially at the beginning of the pandemic, and therefore put themselves in danger in order to protect us and allow us to live a "normal" life despite this health crisis.

But who are these essential workers?

It so happens that the essential workers are mostly young and disproportionately mobile workers. Young mobile workers are over-represented in this type of precarious and unskilled work. Even if young people are less likely to contract a severe form of the disease, it is clear that many of them are much more exposed than the rest of the population and thus run a particular risk to their health, and risk propagating the virus. If young mobile workers are in a weaker position to ensure the protection of their rights at work, including their rights to health and safety, then they need the protection of public authorities and of trade unions.

All of these problems are extremely serious since they highlight an infringement of the rights and freedoms of European citizens, even though they should be protected by the Treaties and the most fundamental principles of the European Union.

What European regulations apply to protect these young workers?

III. LEGAL PROVISIONS

As stated at the outset, the single market is a central point of the European Union. Thus, freedom and equality between workers are enshrined in European law through multiple and diverse sources.

Indeed, these principles are enshrined in primary legislation (A) but also in secondary legislation (B).

A. Primary legislation principles

Primary legislation of the European Union refers to the treaties which are basis or ground rules for all EU action.

In this demonstration, reference should be made to the Treaty on the European Union (TEU), the Treaty on the Functioning of the European Union (TFEU) and the Charter of Fundamental Rights of the European Union (CFREU).

The TEU provides for the establishment of the internal market, which implies freedom of movement for workers. It then promotes the fight against social exclusion and discrimination of all kinds¹ and lays down a principle of equality between all European citizens².

It thus lays the basis for the rights of young mobile workers, i.e. the right to work in another Member State while being socially included and protected from any discrimination.

Secondly, the TFEU prohibits any discrimination on grounds of nationality³. In addition, it includes an entire chapter on workers' rights⁴. Thus, it provides for the free movement of workers within the Union, the abolition of all discrimination and the harmonization of the social security systems of the various Member States⁵.

Finally, the CFREU lists several rights guaranteed to European workers. First of all, there is the reaffirmation of a principle of non-discrimination

¹ Article 3 of the Treaty on the European Union

² Article 9 of the Treaty on the European Union

³ Article 18 of the Treaty on the Functioning of the European Union

⁴ Title IV, Chapter 1 of the Treaty on the Functioning of the European Union

⁵ Articles 45 to 48 of the Treaty on the Functioning of the European Union

based on nationality⁶.

Furthermore, the Charter promotes fair and equitable working conditions for every European worker. This right implies respect for the health, safety and dignity of workers and the limitation of their working time⁷.

In the event of conflict in the course of their work, the Charter confers on workers a right to collective bargaining and action to defend their interests⁸.

Finally, under the Charter, workers must benefit from a system of social security and social assistance. These social benefits and services are payable in respect of maternity, sickness, industrial accidents, old age, housing assistance and unemployment. The arrangements for benefits must be in accordance with Community law and national practice⁹.

All these eminent principles enshrined in primary law were subsequently reaffirmed and extended by secondary law (B).

B. Secondary legislation principles

Secondary legislation – which includes regulations, directives and decisions – are derived from the principles and objectives set out in the treaties.

These sources of secondary legislation take the form of directives (i) and regulations (ii).

i) Directives

As far as the directive is concerned, there are two main texts on the rights of young mobile workers.

Firstly, Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

The latter provides in particular for freedom of movement as the foundation of the internal market with all the rights deriving therefrom (residence, work, equal treatment, right to health).

⁶ Article 21 2° of the Charter of Fundamental Rights of European Union

⁷ Article 31 of the Charter of Fundamental Rights of European Union

⁸ Article 28 of the Charter of Fundamental Rights of European Union

⁹ Article 34 of the Charter of Fundamental Rights of European Union

Finally, Directive 2014/54/EU on measures facilitating the exercise of the rights conferred on workers in the context of freedom of movement for workers.

This directive refers more specifically to workers and the fundamental rights conferred on them and in particular:

- the right to employment;
- rights in the areas of pay, dismissal, health and safety;
- social benefits;
- the right to be unionized;
- access to training and housing.

Finally, these principles are underpinned by a number of European regulations listed below.

ii) Regulations

The rights of young mobile workers are protected by the following regulations:

- Regulation 883/2004/EC on the coordination of social security systems;
- Regulation 492/2011 on freedom of movement for workers within the Union Text with EEA relevance;
- Regulation 883/2004 on the coordination of social security systems;
- Regulation 2016/589 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labor markets;
- Regulation 2018/1724 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services;
- Regulation 2019/1149 establishing a European Labor Authority.

It thus appears that many rules exist at European level to protect young workers. However, the real challenge lies in their effective and egalitarian application within each Member State.

How can we ensure the effective and equal application of these rules at Member State level?

IV. DISCUSSION

According to all these issues, there is an important question about the role of the European Labor Authority established by the regulation 2019/1149 abovementioned.

A. European Labor Authority Role

The European Labor Authority was set up by Regulation 2019/1149 to promote the effective application of the regulations provided by the European Union in terms of the rights of mobile workers and the coordination of social security systems. The ultimate aim is to strengthen fairness and confidence in the internal market.

i. European Pillars of Social Rights

The role of the European Labor Authority builds on the European Pillars of Social Rights enshrined at the Social Summit for Fair Jobs and Growth in Gothenburg Sweden on 17 November 2017.

These pillars promote the access to equal opportunities¹⁰ and fair working conditions for all European citizens¹¹. These pillars put forward social rights in terms of job security, wages, information, social dialogue, work-life balance, health, safety, data protection and social protection.

These are fundamental rights and direct corollaries of the European treaties, directives and regulations which are not always respected in principle. Thus, the ELA, as guarantor of these pillars, has a duty to intervene in order to bring about change and enable the effective application of these rules.

ii. Means of action

The Regulation establishing the ELA sets out a number of means of action which could be relevant to the worrying situation of young mobile workers.

¹⁰ Article 3 of the European Pillars of Social Rights

¹¹ Chapter 2 of the European Pillars of Social Rights

□ **Concerted and joint inspections**

This is particularly the case for concerted and joint inspections¹², which make it possible to carry out investigations in one or more Member States. The evidence gathered may subsequently be used as evidence in possible legal proceedings against the Member States concerned by the inspection.

Concerted and joint inspections may be carried out:

- at the request of one or more Member States
- at the request of social partner organizations at national level
- on the own initiative of the proposing authority to the authorities of the Member States concerned¹³.

In the absence of a request by a Member State or a social partner organization, it might be appropriate to carry out a concerted and joint inspection of the authorities of the Member States whose investigation has shown shortcomings in the care of young mobile workers.

□ **Labor mobility analyses and risk assessment**

In addition, the ELA has the possibility to carry out an analysis and risk assessment linked to mobility¹⁴.

Within this framework, the Authority could then assess the level of coordination of social security systems, the risks of discrimination and possible difficulties in terms of health and safety at work. These are recurring issues that emerge from the survey conducted by European Alternatives, so it might be relevant to look into the issue and carry out in-depth analyses.

The Regulation provides that the authority may, at the end of the analysis, report on its findings and indicate possible remedial action.

□ **Support to capacity building**

On the other hand, the authority has a role in supporting capacity building¹⁵. Within this framework, the authority could draw up guides to

¹² Article 8 of the Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019

¹³ Article 8 of the Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019

¹⁴ Article 10 of the Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019

¹⁵ Article 11 of the Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019

good practice and set up awareness-raising campaigns to encourage national authorities and companies to protect the rights of young mobile workers.

□ **Dialogue structure**

Moreover, it is regrettable that it is impossible for European citizens to have a direct dialogue with the ELA. Communication channels should be set up in the future so that a European citizen in difficulty can communicate with the authority in order to ask questions or explain any problems he or she may encounter. This communication could be done, for example, through the ELA website. To date, the ELA website offers a link to general platforms set up by the European Commission such as "Solvit" or "Your Europe" but it could be relevant to have a platform specifically dedicated to the rights of European workers protected by the ELA.

B. Trade Union Role

In the context of the protection of young workers, trade unions can play a role at local level as a privileged interlocutor between worker and company.

In practice, however, there is a certain distance between trade unions and workers, in particular because of the decreasing rate of unionization.

Moreover, trade unions have a greater weight within large companies and industries. Thus, we observe that a whole category of workers, especially younger workers, have very little contact with unions.

Action should therefore be taken to bring trade unions and young mobile workers closer together in order to establish a dialogue and find solutions to the difficulties set out in this memorandum.

In addition, it can be observed that trade unions have a privileged place within the ELA as they are members of the Management Board¹⁶ and stakeholders¹⁷. Furthermore, they have the possibility to bring cases to the attention of the European Labor Authority¹⁸.

¹⁶ Article 17 of the Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019

¹⁷ Article 23 of the Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019

¹⁸ Article 8 of the Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019

Finally, young mobile workers may sometimes have difficulties in getting in touch with trade unions when they are not in their Member State due to a lack of information or knowledge of the trade unions in the State where they work. In order to overcome these difficulties, special contact should be encouraged between these young workers and the European Trade Union Confederation (ETUC) as the major trade union organization representing workers at European level.

Furthermore, it is clear from the ETUC's manifesto and action program that its action program focuses on three main objectives:

- A strong economy that serves the people;
- Stronger unions for democratic values and democracy at work;
- A core of ambitious social standards.

The cause of the young mobile workers that we defend fits perfectly within these objectives and should therefore be defended by the ETUC.

C. Employers' role

Employers also have a role to play in these issues. Indeed, they must be the guarantors of their employees' safety and well-being at work.

The employer is under such an obligation without prejudice to the nationality and country of origin of his employee. Thus, employers could carry out simple actions to inform and protect their employees such as guidelines or privileged interlocutors for young mobile workers who would like to be informed of their rights or to report any difficulties they may encounter.

Furthermore, the employer must guarantee equal treatment between all employees - especially in terms of salary, opportunities for development and types of contract - regardless of their nationality.

D. National authorities' role

As stated above, companies must implement actions to promote the social rights of young mobile workers. However, any obligation must be

accompanied by monitoring, so the action of these companies should be supervised by one or more authorities.

In addition to the action of the European institutions, it appears that national authorities could have a role to play. They could carry out monitoring at local level, which would then be carried out as close as possible to the companies.

This presumed role of national authorities can be deduced from two sources:

- **The Social Pillars of the Gothenburg Summit:** which must be implemented jointly by the European institutions, the Member States and the social partners;
- **The Treaty on the Functioning of the European Union:** which provides for the existence of shared competence between the European Union and the Member States for all policies relating to the internal market and social policy¹⁹.

Finally, action taken by national authorities can have a certain added value in that it would allow better account to be taken of national specificities.

V. CONCLUSION

As a conclusion, young mobile workers face many difficulties in terms of social rights. These rights conferred by the European treaties, directives and regulations must be protected in particular by the European institutions.

This is all the more true today with the Covid-19 crisis which directly endangers the health and safety of these young mobile workers in their role as essential workers.

¹⁹ Article 4 of the Treaty on the Functioning of the European Union

In this context, the ELA has an important role to play in accordance with the regulation of 20 June 2019 which establishes it. We therefore ask the ELA to take steps in this direction with the implementation of:

- concerted and joint inspections;
- analyses and assessments of the risks linked to mobility;
- a report indicating possible corrective measures;
- support for capacity building in the Member States (guidelines, awareness campaigns, etc.)
- an online dialogue and information platform for young mobile workers.

Furthermore, we also call on trade unions, national authorities and employers as stakeholders to promote the fundamental rights of these young mobile workers who are too often forgotten.