

## ETUC Resolution on Fair Labour Mobility and Migration

Adopted at the Executive Committee Meeting of 22 March 2021

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### I. Setting the scene: why both labour mobility and migration should be fair

Mobility and migration of workers has been happening in different eras and societies, and so has the abuse of workers – Europe being no exception. Ensuring workers' rights are respected is a prerequisite to the fundamental values and objectives of the EU. The rights of all workers, including asylum-seekers, refugees and undocumented people, must be respected to ensure there is true inclusion of workers, with decent terms across the whole EU.

A holistic and rights-based approach is necessary to ensure fairness and equality between local, mobile and migrant workers. Cross-border workers, such as frontier, posted, seasonal, temporary agency workers or other mobile and migrant workers, including those undocumented and undeclared, make up an essential part of the European workforce but remain the least protected, the lowest paid, and the most vulnerable. A vast majority of mobile and migrant workers work in crucial sectors, such as construction, transport, tourism, agriculture, food industry, health and social care, domestic and care work. Women make up a significant part of these sectors and are overrepresented in insecure jobs as well as in the informal economy. Mobile and migrant women are particularly marked by discrimination, social exclusion and lack of job opportunities, and are exposed to abuse, violence and harassment.

While monotonous or dangerous jobs with poor or deteriorating working conditions, low wage levels and a lack of prospects, do not sufficiently attract and retain the local workforce, the remedy cannot be to simply outsource work of poor quality to mobile, migrant, undocumented or undeclared workers, as a means to fill labour shortages and further reduce labour costs. Instead, employers should ensure higher salaries and good working conditions with equal rights and opportunities. This is the only way to prevent workers from being used to undercut each other and to fight against discrimination, racism and labour market segmentation.

The precarious employment, working and living conditions of mobile and migrant workers have been exposed and exacerbated by the COVID-19 pandemic. Still, these shortcomings are far from new. They are underpinned by structural discrimination in the labour market and by a lack of proper enforcement. In addition, the very nature of the EU legal framework further contributes to the precarious situation of these workers, as evidenced by loopholes in the protection of rights and explicit exemptions from the principle of equal treatment. Business models based on flexibility, short-termism, and profiteering of cheap labour result in structural abuse on a sliding scale from legal grey zone practices to outright forms of forced labour and human trafficking.

In view of the COVID-19 pandemic, the EU's recovery plan must ensure that no one is left behind as a result of having exercised their freedom of movement or fundamental right to engage in work, including when it comes to free access to protective equipment, testing and vaccine. Both fair mobility and labour migration are crucial components for building a more inclusive and sustainable Europe.

As a fundamental principle enshrined in European and international human rights law, equal treatment is a prerequisite that must be at the heart of the EU legal and operational framework on mobility and migration.<sup>1</sup> It is key in tackling social dumping and ensuring decent work for all workers. There can be no second-class workers – local or foreign, EU or third-country national, mobile or migrant – regardless of their employment,

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<sup>1</sup> The principle of equal treatment for mobile and migrant workers is affirmed in points 31, 449, 450, 453, 456, 461, 463, 464, 476, 489, 492, 495, 498 and 504 of the ETUC Action Programme 2019-2023 adopted at the Vienna Congress 21-24 May 2019. [Link](#).

nationality, migration or residence status. All forms of competition based on cutting labour costs and violating rights and obligations are unacceptable and undermine trust across borders. The principles of the European Pillar of Social Rights and the EU social acquis must apply also to the protection of mobile and migrant workers.

A Social Progress Protocol should be attached to the EU Treaties giving priority to social, workers' and trade union rights in case of conflict with economic freedoms in the internal market. EU legislative initiatives on mobility and labour migration should also include such a safeguard clause and ensure full respect for national industrial relations systems, and different labour market and collective bargaining models, including the autonomy of social partners.

With a view to implement the ETUC Action Programme 2019-2023, and against the background of the COVID-19 pandemic and recent EU policy developments<sup>2</sup>, the rationale and structure of this Resolution is as follows: (I) EU rules, and realities, on intra-EU mobility and labour migration from third countries are increasingly intertwined.<sup>3</sup> (II) When falling within the scope of relevant EU labour law both mobile and migrant workers may enjoy the same working conditions. (III) In their interaction with intermediaries, the same rules may apply to seasonal, posted and temporary agency workers, be they mobile or migrant. (IV) The same holds true in subcontracting chains. (V) Whereas social security coordination is regulated at EU level for all workers, the personal scope of such entitlements is defined at national level. (VI) Similarly, EU and national migration rules are limited to the regulation of the entry and stay of migrant workers, refugees and asylum seekers. (VII) Finally, effective enforcement remains key to protect the rights of both mobile and migrant workers, whereby undeclared and undocumented workers find themselves in particularly vulnerable situations.

## II. Ensuring decent working and living conditions

People working side by side in the same workplace, or in the same sector, must be treated equally in all working conditions. The principle of equal pay for equal work in the same place must be upheld together with the principle of equal labour costs, while ensuring full respect for national laws and practices. The application of relevant collective agreements, in their entirety and to all workers on a territory must never be deemed a restriction to the free movement of workers or services.

ETUC calls on the EU to introduce legally binding minimum standards on **decent accommodation** for all mobile and migrant workers when it is provided, either directly or indirectly, by the employer. To ensure respect for national labour market models, it must be possible that such standards are implemented in full also through collective agreements. They should guarantee access to living and sanitary facilities, meeting both quantitative and qualitative criteria as well as applicable health and safety standards, including respect for privacy. As evidenced by the COVID-19 outbreak, physical distancing is crucial.

Rental agreements should be concluded in writing and be **separate from employment contracts**. To avoid the creation of dependence, the duration of the tenancy must not be tied to the term of employment. The rent should be proportionate to the quality of the accommodation and not be automatically deducted from the worker's remuneration. Free time spent in the accommodation provided by the employer should be free from work-related duties. Labour inspectorates and/or other competent enforcement authorities at national, local or sectoral level should have access to rental agreements and housing facilities, in order to ascertain that the accommodation meets the standards set by EU or

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<sup>2</sup> Adoption of the European Migration and Asylum Pact, with proposals and consultations in the area of labour migration. See section VI.

<sup>3</sup> For the readability of this Resolution, the text consistently uses the terminology of 'mobile' and 'migrant' workers, whereby 'mobile' workers are defined as EU (and EFTA) national mobile workers, and 'migrant' workers as third-country national migrant workers. The text addresses issues regarding mobile and migrant workers jointly, as well as separately.

national legislation, or collective agreements. Special attention should be given to protect domestic and in-care workers, who live and work in the home of the employer or customer.

The Commission should address mobile and migrant workers in the forthcoming EU Strategic Framework on **Health and Safety at Work**, to ensure their overall safety even in times of crises. It must take due account of the specific conditions of these workers, reiterating employers' obligations and setting out preventive and protective measures to ensure safe working and living conditions; including access to necessary equipment and facilities, quality accommodation, safe transport and decent meals. Employers should ensure instructions and trainings are available in languages spoken by the workers. The Strategic Framework should promote cross-border standards to facilitate the proof and recognition of occupational diseases of workers with flexible careers, working in different Member States, in different workplaces and for different employers.

To promote sustainable development and social progress, EU funding and grants should contribute to decent work. To this end, the **Common Agricultural Policy (CAP)** should be made conditional upon beneficiaries' respect for decent working and living conditions in line with EU and national rules, as well as applicable collective agreements and ILO Conventions.

To ensure **access to information** for mobile and migrant workers, ETUC calls for a correct, timely and ambitious transposition of the Transparent and Predictable Working Conditions Directive 2019/1152 (TPWCD). Workers should be informed about their rights at work in writing in their own language, before they travel, and be given a written employment contract. This should include information about applicable collective agreements, as well as social security rights, access to healthcare and municipal registration obligations. To address the temporary nature of mobile work, this obligation should apply also to shorter assignments.

Workers should have access to information on how to join a union and **counselling services**<sup>4</sup> provided by social partners, civil society organisations or public employment services, including complaint mechanisms to report abuses and discrimination. Trade unions must be given access to workplace premises and accommodation facilities, to provide information. Union busting, and punishments for mobile and migrant workers joining local trade unions, must be sanctioned. ILO Convention C135 on Workers' Representatives must be fully respected.

The **Public Procurement Directives** 2014/23, 2014/24 and 2014/25 should be revised to effectively tackle abuse, undeclared work and social fraud, including in cross-border situations, while ensuring effective implementation in full respect of national labour market models. The revision should strengthen the existing social clause through enhanced monitoring and enforcement, including the possibility to disregard abnormally low bids and exclude contractors and subcontractors who engage in social dumping, abusive practices or discrimination. To be eligible, operators should fully respect the fundamental right of workers to bargain collectively and ensure full compliance with applicable agreements and working conditions in accordance with national law and practice.

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<sup>4</sup> The UnionMigrantNet is the European network of contact points providing assistance and information to migrants  
<https://www.unionmigrantnet.eu/>

### III. Affirming the obligations of intermediaries

The abuses of the **Temporary Agency Work Directive** 2008/104 (TAWD) in cross-border situations call for better enforcement and an assessment of the legal framework, to ensure clear provisions on decent working conditions and full equal treatment for both mobile and migrant workers on fixed-term agency work contracts. The assessment should address obligations to pay wages in accordance with applicable collective agreements and the prohibition of deductions of wages. It should examine the need for a minimum number of working hours per week or month, a maximum share of agency workers in one user undertaking or workplace, a maximum time period of deployment and a maximum number of consecutive contracts a worker can hold with an agency to preserve the temporary nature of temporary agency work. An EU register and certification of all temporary work agencies operating in the internal market could enhance monitoring and prevent artificial arrangements. Agencies who do not comply with the TAWD should be sanctioned and banned from operating.

The assessment of the TAWD should draw on the already existing possibility for Member States to improve oversight under Article 21 of the Seasonal Workers Directive 2014/36 by determining that the placement of seasonal workers shall only be carried out by public employment services, with a view to examine its extension to also include other groups of workers or sectors where abusive agency work is common. Member States may, in accordance with Article 4 of the TAWD, also introduce further **measures to limit and regulate the placement of temporary agency workers**. This should include the possibility for sectoral social partners to restrict or prohibit agency work in certain occupations or industries to fight abuse. Such measures, which are in the public interest, should not subject Member States to accusations of disproportionately restricting the freedom to provide services.

The **accountability of private recruitment agencies** operating in the internal market should be regulated at EU level, to enhance their transparency and obligations. To protect workers' rights, minimum requirements and quality standards should be ensured in accordance with ILO Convention C181 on Private Employment Agencies and the TPWCD, while also improving monitoring and access to complaints mechanisms. Recruitment agencies with cross-border operations should inform workers accurately in writing in their own language about their rights and all relevant aspects of their employment, prior to their departure and regardless of the duration of their contract. Recruits should also have access to information about available counselling services offered by trade unions, public entities and non-governmental organisations. Charging workers recruitment fees or other recurring fees associated with their employment, either directly or indirectly, must be banned. Placement costs for all types of recruitment should be borne entirely by employers.

The permissibility of **posting of agency workers** must be scrutinised against the background of persisting cross-border social fraud and letterbox companies. Workers with no previous period of employment in the Member State of residence must not be considered posted, but as being habitually employed in the Member State where they physically work. The requirement of 'substantial activities' of the employer agency should be assessed against this habitual place of agency work. If there is no or hardly any activity of temporary agency workers in the Member State where the agency is registered, such posting operations must be considered bogus, and consequently the social security legislation of the Member State of destination should apply. In this context, it should also be recalled that the Posting of Workers Directive does not prevent Member States from limiting or forbidding chain-posting. In the same spirit, Member States should also be entitled to request work permits of **migrant posted workers** for longer periods

in genuine posting, without being subject to accusations of disproportionately restricting the freedom to provide services.

#### **IV. Addressing abusive practices in subcontracting**

ETUC calls on the Commission to put forward a general legal framework on subcontracting, to tackle abusive practices and to ensure **equal treatment of workers throughout the whole chain of contractors**. This legal instrument should build on positive experiences that already exist in certain industries, with the aim to cover all sectors, as well as national and cross border situations, while not harming stricter liability systems at national level or national labour market models. It should aim at increasing **transparency on liability**, allowing competent authorities, trade unions and workers to identify liable entities, or persons, and take legal actions. It should tackle artificial arrangements such as letter-box companies, bogus temporary agency work and false self-employment, by ensuring direct liability in employment relationships. The initiative should enable treating interconnected legal entities as single economic and social units, e.g. for the purpose of establishing collective representation.

The main contractor should be obliged to keep a list of all subcontracted workers, and the **length of the possible subcontracting chain should be limited** to maximum three tiers. This should not prevent Member States from retaining or introducing stricter measures at national level to protect workers. Measures such as further restrictions or bans on subcontracting in specific sectors must not be subject to 'restrictiveness' or 'internal market tests'.

ETUC recalls that **collective agreements** that bind main contractors apply to workers throughout the subcontracting chain, in particular when the collective agreements are universally applicable and the sector of activity of the main contractors and the subcontractors is the same. Abusive subcontracting practices aimed at dumping wages, circumventing or undermining collective agreements must be tackled, while ensuring full respect of national labour market models and the autonomy of social partners, including industrial systems without universally applicable collective agreements or mechanisms for *erga omnes* extension. People working side by side in the same workplace and in the same activity must enjoy equal working conditions and protection under the same collective agreement, making sure the most favourable condition always applies. Subcontracting arrangements involving the posting of workers should not be used to circumvent the relevant collective agreements in the sector of the core activity of the contract.

Subcontracting can be no excuse not to have **social dialogue**. If many different companies are involved, the main contractor must provide the necessary financial and technological means and facilities to trade unions and works councils to ensure workers' participation, before and while the works are being carried out. The trade unions and works councils of the main company should have access to all information and contractual arrangements in the service agreement between the main contractor and the subcontracting companies.

An EU legal framework on subcontracting should ensure **joint and several liability throughout the whole subcontracting chain**, relieving abused workers from the need to claim their rights and entitlements chain-link by chain-link. This full chain liability should protect workers' rights and claims under labour law and collective agreements. Including in situations such as withholding of wages, evasion of social security contributions and taxes, insolvent contractors or vanishing letter-box companies, violations of the right to organise and bargain collectively, occupational health and safety, work-related accidents, refusal of training and various forms of undeclared work. The instrument

should provide for dissuasive sanctions, effective back-payments and compensations in cases of non-compliance with workers' rights.

An **ambitious, coherent and comprehensive legal regime** on subcontracting liability is necessary to streamline the current fragmented approach to chain liability as set out by EU legal instruments on public procurement, posting of workers, seasonal workers and sanctions of employers, while remaining without prejudice to stricter liability systems at national level. A better understanding of the impact of direct subcontractor liability or derogative measures in certain industries also necessitates further in-depth examination of the implementation of the **Enforcement Directive 2014/67**. Trade unions should be closely involved in such assessment and in the development of further measures to tackle abusive practices and social fraud.

An EU legal framework on subcontracting should be complemented with an **EU directive on binding human rights due diligence and responsible business conduct**, establishing mandatory due diligence covering companies' activities and their business relationships, including supply and subcontracting chains.<sup>5</sup> However, this initiative should be without prejudice to existing and future requirements on joint and several liability in subcontracting chains at sectoral, national or European level.

Finally, EU rules on **public procurement** should not stand in the way of national efforts to address abusive subcontracting practices, but empower procuring entities to introduce conditionalities such as limiting the number of subcontractors, oblige the application of collective agreements, prohibit cash payments and require salaries to be paid to individual bank accounts. Contracting entities should be entitled to require tenderers to indicate any envisaged subcontracting in their bids. Similarly, it should be possible to disregard bids from tenderers who are found to engage in abusive subcontracting. In this regard, contractors, social partners and employees should be able to report irregularities.

## V. Effective social security coordination and protection

ETUC is calling for a prompt and fair finalisation of the ongoing **revision of the Regulations on the Coordination of Social Security Systems 883/2004 and 987/2009** to ensure the much-needed improvements for frontier, posted, cross-border and other mobile workers regarding their social security rights, aggregation periods, and the need to effectively tackle social fraud, abuse and dumping. Employers should ensure prior notification before the start of the worker's cross-border assignment. The revision must not undermine national schemes allowing frontier and seasonal workers to claim unemployment benefits also after short-term periods of employment in the Member State of last activity.

The **Electronic Exchange of Social Security Information (EESSI)** must become fully functional as soon as possible, to facilitate exchanges between social security institutions, speed up the handling of individual cases and improve the enforcement capacity of the European Labour Authority. Member States that have not fully implemented EESSI should use the opportunity of the recovery plans to digitise public administration.

For the purpose of **posting**, EESSI should facilitate prior notification, registration, data collection, as well as checks on the validity of documents such as A1 certificates. Speedy procedures must be made available to Member States to request authorities to initiate the process of the withdrawal of A1 certificates, in case they were fraudulently obtained or relied on. In the absence of procedures to address fraud, Member States must be entitled to requalify concerned workers as habitually employed in that Member State. In

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<sup>5</sup> See also ETUC Position for a European directive on mandatory Human Rights due diligence and responsible business conduct, adopted on 17 December 2019. [Link](#).

addition, the Commission should monitor trends in the posting of migrant workers, in particular with regard to the impact of differences in social security systems. Member States must not act as gateways for recruiting and posting migrant workers with the sole purpose of distorting fair competition based on labour costs.

ETUC is calling for a digital **European Social Security Number (ESSN)** to facilitate social security coordination with a view to ensure effective protection, identification, traceability, portability and enforcement of rights. ESSN should, without prejudice to national systems, complement the EU Social Security Regulations and EESSI, to ensure quick verification of insurance status and contributions. It should contribute to transparency and legal certainty for workers by helping to track complex situations and identify competent Member States. It should improve accessibility by allowing workers to request benefits remotely. With a view to enforce workers' rights, ESSN should enable labour inspectorates and trade unions to verify compliance, including through cross-referencing between social security databases. This would be helpful in the fight against social fraud in relation to abusive subcontracting, false self-employment, bogus posting, letterbox companies and non-payment of social security contributions. Clear protocols should ensure social security data is not used or shared for any other purposes.

The practical implementation of ESSN could build on the European Health Insurance Card (EHIC) and be extended to other areas of social security and labour law, with a view to include a **personal labour card** supplementing existing national social ID-cards to better enforce labour rights. It should help to determine applicable rules and monitor compliance with worker's rights with regard to place of work, place of employment, identity, working time, training, social security and insurance, as well as tax payments.

Member States should ensure **social security coverage** for all workers regardless of employment status, as set out by the Council Recommendation 2019/C 387/01 on access to social protection for workers and the self-employed, especially when it comes to access to sickness and healthcare benefits. The COVID-19 pandemic sheds light on the particular challenges of mobile and migrant workers to access social protection, such as periods of employment explicitly exempted from social security contributions for seasonal workers in some Member States, or the lack of access to sick pay for posted workers.

## **VI. Expanding and improving regular labour migration pathways**

ETUC calls for more regular and decent labour migration pathways across different skills levels and sectors. Ensuring regular migration pathways is the only way to protect workers and prevent them from abuse and exploitation. ETUC upholds an open and rights-respecting Europe<sup>6</sup>, with opportunities for migrants and their families to enter and work in the EU in compliance with ILO Conventions C97 Migration for Employment, C143 on Migrant Workers, the Recommendation on Migration for Employment 86 and on Migrant Workers 151, as well as C29 and C105 on Forced Labour. The EU should bind national legislation to respect minimum rights, certain procedural aspects, decent working standards and the equal treatment principle in favour of all workers regardless of their nationality, migration or residence status.

ETUC calls for a comprehensive and rights-based approach and recommends that the EU develop its legislative framework to cover, to a greater extent, migrants seeking work across skills levels, sectors and occupations, in consultation with social partners at relevant levels. The failure of the 2001 Commission proposal for a comprehensive policy

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<sup>6</sup> See also ETUC resolution on avenues of work for the ETUC in migration and asylum fields, adopted on 18 December 2019. [Link](#).

for migration has led to the development of a piecemeal, fragmented labour migration policy that remains problematic and discriminatory.

The EU directives (such as the Blue Card, ICT, and Seasonal Work) that were created to open regular channels are poorly used. The **Seasonal Workers** Directive has proven to be inadequate in ensuring that the rights of migrant workers are fully respected, despite its aim of guaranteeing broad equal treatment. For this reason, the Commission should assess its implementation. Moreover, the effective enforcement of the Intra-Corporate Transfer Directive 2014/66 is challenged by artificial arrangements.

The EU should support the inclusion of domestic workers into the social acquis, encouraging Member States to ratify the ILO Convention C189 on **Domestic Workers** and ensure the application of all employment standards to domestic workers. All Member States should include domestic work in general labour migration schemes.

ETUC has expressed serious concerns that the [European Pact on Asylum and Migration](#) adopted by the Commission on 26 September 2020 risks fuelling anti-migrant politics and division in society by enabling Member States to sponsor deportations, as an alternative to accepting their international human rights responsibility to enable people to claim asylum in their countries. It was a gross perversion of language for this scheme to be called an approach of 'solidarity'. In this regard, the Executive Committee adopted the **ETUC Statement on the New Pact on Migration and Asylum**<sup>7</sup> on 6 February 2021.

ETUC regrets that the Pact on Asylum and Migration only announced a very limited number of proposals on **labour migration**, which moreover have been over-shadowed by the large focus on deportations and border controls. It is of great disappointment that labour migration has been framed around the EU's need for 'attracting talents and skills'<sup>8</sup>.

ETUC considers the Commission's proposal to **review the Single Permit Directive** 2011/98 (SPD) an opportunity to increase labour market coherence and mobility, and to tackle labour exploitation. This could be achieved by expanding its scope and application, in particular by extending the use of applications from within the country and including seasonal workers, and by clarifying the continued validity of permits in case of loss of employment to look for alternative work. These are vital tools to facilitate job-matching and labour mobility, and to tackle potential abuses stemming from dependence of migrant workers on a particular employer.

ETUC welcomes the Commission's announced revision of the **Long-term Residence Directive** 2003/109 as an opportunity to strengthen the status granted to residents, in particular in relation to reducing the years of residence required to be eligible and strengthening intra-EU mobility rights.

ETUC is critical about the Commission's proposal on the launch of the so-called '[Talent Partnerships](#)' and is concerned about the trend towards the use of bilateral labour migration agreements and partnerships with third countries as a means of labour migration governance. Those that are in place or may be developed need enhanced safeguards, protection and rights for migrant workers. The announced 'Talent Partnerships' should build on lessons learnt from the pilot projects and have an adequate regulatory framework addressing areas of potential improvement identified by stakeholders, including trade unions. The framework should be strengthened to include minimum standards for the receipt of EU funds, in addition to those covered by the SPD. It should address the need for transparency, information and involvement of social partners at relevant levels, coverage of recruitment fees and travel costs by employers,

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<sup>7</sup> See also ETUC Statement on the New Pact on Migration and Asylum. [Link](#).

<sup>8</sup> The Commission proposed a 'Skills and Talent package', which includes a revision of the Single Permit Directive 2011/98 and the Long-term Residence Directive 2003/109, as well as the exploration of an EU Talent Pool for skilled workers.

as well as access to information for workers, including labour and trade union rights, complaints and redress mechanisms.

ETUC calls on the Commission and the Member States to promote **fair recruitment standards**, including bans on abusive practices and recruitment fees. This should build on the extensive work on ethical recruitment policies and principles of the [ILO](#) and the [WHO](#) Global Code on the International Recruitment of Healthcare workers, including social partner initiatives such as the [EPSU-HOSPEEM Code of Conduct](#). In addition, the [ITUC Migrant Recruitment Advisor](#) tool allows migrant workers to review the performance of recruiters against the ILO Fair Recruitment Principles, address grievances and inform evidence-driven fair recruitment.

ETUC will promote a structured dialogue with the Commission, the economic and social partners at relevant levels and civil society, to elaborate common views and policy proposals, for improving **regular, safe and effective pathways** for labour migration and for the better assessment and recognition of skills and qualifications, access to quality jobs and the labour market for migrant workers.

Considering the adoption of the [European Skills Agenda](#) on 1 July 2020, ETUC believes that migrants, refugees and asylum seekers should be treated equally irrespective of skills and qualifications level<sup>9</sup>, as different countries have various labour market segments. Therefore, all workers should have the possibility to validate their skills and competences and receive quality apprenticeships, as well as reskilling and upskilling to be integrated in the labour market based on flexible learning pathways to match their specific needs and take into account their different age-cohorts.

The **European Pillar of Social Rights and its implementing Action Plan** should be interpreted in a way that fully protects all migrant workers. The EU Action plan on Integration and Inclusion 2021-2027 needs to contribute to achieve the EPSR objectives ensuring equal treatment and opportunities to migrants that reside and work in the EU. In a common effort to raise working and living standards of European workers, migrants cannot be left aside. Regularisation pathways are important policy tools to promote social inclusion and regularisation of employment relationships.

ETUC calls on Member States to provide **regularisation mechanisms** for people present on European territory without a residence permit. Especially given the large numbers present in Europe, including those who have a return decision but cannot return or be deported (300,000 a year in the EU), who are often also subjected to exploitative conditions. At the same time, all discriminatory immigration practices and discourses adopted by different Member States must be repealed, putting in place new and effective immigration policies aimed at ensuring true inclusion and greater social cohesion.

As a reaction to the COVID-19 crisis, some Member States have adopted regularisation [measures](#) to support undocumented people. Trade unions are key allies for effective regularisation, and should be involved in the design, implementation and evaluation of such measures. The Commission should encourage other Member States to apply similar measures to prevent and reduce irregularity and social exclusion.

## VII. Improved enforcement and protection of all workers

**Undocumented and undeclared workers must be able to claim their employment rights.** Limitations to the enforceability of labour rights, based on whether a worker has a work permit, rather than the factual existence of an employment relationship, and laws that criminalise workers, are incompatible with labour rights. Workers' residence status

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<sup>9</sup> See also ETUC Position on the European Skills Agenda and future skills strategies. [Link](#).

should be decoupled from the individual employment contract to avoid abusive lock-in effects. Undocumented workers should be provided with possibilities to regularise their status and be protected against unlawful or irregular forms of employment. Transitional residence permits are a good practice at national level and should be promoted across the EU.

**Effective complaint mechanisms must be available for all workers regardless of status**<sup>10</sup>. Firewalls between labour inspectorates and migration authorities must ensure undocumented migrant workers do not run the risk of detention or deportation due to interactions with labour inspectors or pursuing judicial remedy. Similarly, **supporting and organising undocumented migrant workers**<sup>11</sup> by trade unions is essential in helping workers claim their rights. Joining a union remains key for the successful inclusion of migrants in communities and societies.

ETUC will engage in a structured dialogue with the Commission to identify avenues to improve the **Employers Sanctions Directive** 2009/52, including providing residence permits for workers reporting exploitation and reinforcing labour inspectorates. Residence permits linking residency to one single employer should be phased out and replaced by permits allowing migrants to change employers. Furthermore, it is necessary to monitor the full implementation of the Directive and its effectiveness. It should be applied to ensure sanctions are enforced on employers, while undocumented workers are protected and do not face immigration enforcement.

The inclusion of a possible role for the **European Labour Authority (ELA)** in the efficient implementation of the Directive, as set out by the Migration and Asylum Pact, must in no way entrench the role of national labour authorities in not only sanctioning employers but reporting undocumented workers to migration authorities, rather than upholding their labour rights. If ELA is to play a role it must be from the perspective of ensuring the independence and efficiency of labour inspectors in the role of enforcing labour rights for all workers, including mobile and migrant workers regardless of status.

ELA must urgently become fully operational to support and strengthen the capacity of national labour inspectorates and authorities, as well as social partners; in order to **promote fair labour mobility and tackle cross-border fraud and abuse**, while respecting national enforcement agencies and strategies as well as national labour market models and the autonomy of social partners. Information provision and exchange should contribute to enhanced legal certainty of workers as regards their rights and applicable jurisdiction to cross-border employment relationships.

ELA must commit to a proper **social partner involvement**, not only for the purpose of respecting national law and practice, but also to develop joint efforts towards improved cross-border enforcement. This entails accessible, transparent and non-discriminatory procedures for national social partners to submit cases to ELA, and assurances for their effective follow-up.

ELA should develop **sectoral approaches and targeted strategies** to address issues such as abusive practices in subcontracting, temporary agency work, false posting, false self-employment, letter-box companies, exploitation of undocumented migrant workers and undeclared work. It should contribute to better data collection on mobile and migrant workers, in full respect of data protection rules, thereby strengthening risk assessments and evidence-based policy making. ELA should assist Member States in implementing rights-based approaches to enforcement in accordance with ILO Convention C81 on Labour Inspection, including when it comes to protecting the rights of undocumented workers and addressing abusive recruitment practices.

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<sup>10</sup> See PICUM 'A Worker is a Worker: How to Ensure that Undocumented Migrant Workers Can Access Justice'. [Link](#).

<sup>11</sup> See ETUC & PICUM publication 'TRADE UNIONS: Organising and Promoting Undocumented Migrant Workers' Rights. [Link](#).

As the **European Platform tackling Undeclared Work** integrates into ELA, ETUC will engage with the Authority and the Platform to promote rights-based approaches allowing undeclared and undocumented workers to transition to declared employment and regularisation. Working undeclared is not the choice of a worker, and fundamental labour rights should never be made dependent on employment, migration or residence status. The ambition of ELA and the Platform must be to not only tackle cross-border undeclared work, but to also prevent undeclared work at national level from taking on a cross-border dimension. The tackling of artificial arrangements such as bogus self-employment is crucial, as it deprives workers from their rights under labour and social legislation, as also highlighted by ILO Recommendation 198 on Employment Relationship.

**EURES** plays an important role in informing mobile and migrant workers about their rights. As the network becomes integrated into ELA, it should strengthen the involvement of social partners at all levels. In addition, ELA and the Commission should ensure dedicated **EU funding** for capacity-building and specialised counselling services provided by trade unions for mobile and migrant workers in order to promote a fair and inclusive labour market. Member States should cooperate with social partners to enable and support such counselling, and where relevant also **promote collective bargaining** to strengthen the rights and protection of mobile and migrant workers.

**EURES cross-border partnerships** make an important contribution to the promotion of fair and voluntary cross-border mobility in border regions. Regional social partners and the Inter-Regional Trade Union Councils (IRTUCs) improve the quality of cross-border mobility by identifying existing obstacles and ensuring cross-border workers enjoy equal rights. ETUC calls on the Member States to strengthen existing and future EURES cross-border partnerships with the full involvement of regional social partners. To this end, the partnerships should be integrated in the European Social Fund+ on a permanent basis, with ear-marked and sufficient funding.

To prevent **double taxation** and other kinds of discrimination or disparities in the income taxation of cross-border workers such as frontier workers, multi-state workers, international transport workers, posted workers, sportspersons and artists, Member States should adopt specific solutions at bilateral or multilateral (EU) level. The COVID-19 pandemic has demonstrated the need for such taxation agreements to better consider teleworking arrangements, to avoid double taxation of cross-border workers forced to temporarily work from their country of residence.

Finally, ETUC calls for mobility arrangements in **trade agreements** to ensure fair competition based on equal treatment and effective enforcement of labour standards. This must be a crucial component in the implementation of the Trade and Cooperation Agreement between the UK and EU, as well as the agreement with Gibraltar. To prevent mobile workers and migrants from falling between systems, legal certainty must be ensured with regard to social security coordination and applicable working conditions in the country of destination. Similarly, any future Framework Agreement between the EU and Switzerland must respect the existing Swiss flanking measures to uphold workers' rights and ensure a level playing field. The EU must guarantee coherence between its internal and external policies in full compliance with the principles of the Social Pillar.