

January 2022

## **3F's suggestions for the future operation of the European Labour Authority**

3F – United Federation of Workers in Denmark – has from the outset welcomed the European Labour Authority (ELA) as a positive contribution to ensuring fair working conditions in the EU.

Of ELA's overall objectives, 3F considers ELA's most important task to be the prevention of social dumping and undeclared work across borders. In this context, 3F finds it essential that ELA contributes to the important enforcement of the existing national and European collective bargaining agreements and other legislative framework concerning wage and working conditions.

On this background, the following are key priorities for 3F in the future ELA operation:

- 1. A well-distributed and easy-to-understand "case description"-format for national social partners.** To successfully contribute to a strengthened enforcement of EU rules on mobile workers and to combat social dumping and coercive practices, it is essential that ELA is made aware of the relevant cross-border industrial arbitrations and rulings. In this respect, the trade union movement has a special responsibility due to its local enforcement insight into cases that require ELA's support. For ELA, ETUC, national authorities and other relevant enforcement bodies to succeed, an easy-to-understand, intuitive and well-distributed format for reporting cases is essential. Therefore, 3F considers it desirable that the current "case description" (ELA/MB/2020/061) appears in all 24 official EU languages to ensure that the relevant local and national trade union organisations can report within the format. In addition, it could be useful to develop a concise and illustrative 1-2 pages handout material or a video which should also be available in all 24 official languages. This would enable national authorities and social partners to share knowledge about ELA and its function.

ELA/MB/2020/061

**Case description for a concerted or joint inspection**

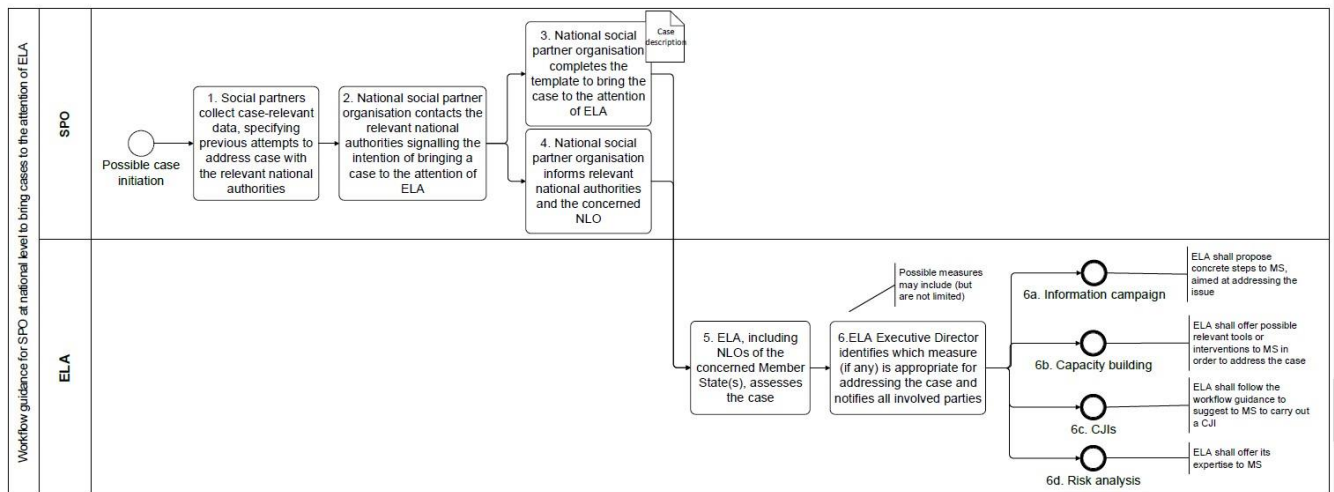
*This inspection shall be carried out in accordance with the law or practice of the Member State where the inspection takes place. This Agreement shall not affect any existing bilateral/multilateral agreements nor memoranda of understanding concluded by the participating Member States. The parties to this Agreement shall only complete those parts that bare relevance for the case at hand.*

**Subject:****Reference number:**

- 1. Background on the case**  
*Please provide a general description of the initial complaint or information. Briefly list all relevant information about the case and evidence already available, for example via preliminary research or joint risk assessment, investigations already carried out, including identified infringements, and provide information about actions already taken to tackle the problem at national or EU level, the results of those actions and the involvement of other Member States or stakeholders (if applicable).*
- 2. Sector and entity(-ies) to be inspected in each Member State**  
*Please specify the sector and, if possible at this stage, the name of the company(-ies) to be targeted.*
- 3. National coordinator(s) of the inspection**  
*Please provide the contact details of the entity and person in charge of the national coordination of the proposed concerted/joint inspection for the requesting Member State and, if possible, for the other Member States concerned.*
- 4. Other stakeholders and number of participating persons**  
*Please specify all other involved national or international organisations including, if relevant, social partner organisations.*
- 5. Number of companies and mobile workers concerned by the inspection**  
*Please specify the estimated number of companies and mobile workers (including posted, self-employed, other status (e.g. company owner, volunteer) directly concerned by the case so that ELA can assess the impact of the possible infringements on workers and/or on the labour market.*
- 6. Estimated costs to be paid by ELA and other support**  
*Please provide details on the support requested to ELA for the inspection, including the roughly estimated costs involved (transport, accommodation, interpretation, legal advice, IT-tools, etc.).*

**2. Information available to national authorities and social partners.** In order for ELA to function ideally, it is essential that the knowledge, data and experiences that national social partners and authorities have regarding mobile and migrant workers are made available to ELA. Similarly, it is essential that national authorities and social partners have access to ELA's insights, data and experience of mobile and migrant workers. In this context, it is crucial to note that, in several countries including Denmark, the trade union movement play a key role in the enforcement of collective bargaining agreements and labour laws. It is therefore essential that they have access to information on an equal footing with public authorities. 3F believes that in cases where national trade unions have taken on tasks that are handled by the authorities in other countries, trade unions should be able to use ELA in the same way as the authorities. For instances when holiday or pension schemes in Member States need to be validated. This is also called for in cases where precise information is required on how a given scheme operates and how calculations of these are made. In carrying out this task, the trade union movement should be granted the same access to ELA as the authorities. The national trade union movements can also contribute with knowledge on trends, issues, risk assessments and new business concepts closely linked to mobile and migrant workers.

Figure 1. Workflow guidance for SPO at national level to bring cases to the attention of ELA



Explanatory Notes

**3. Effective response time.** With all due respect to the challenges related to both the start-up of ELA and COVID-19, 3F, like the ETUC, is concerned with response time when it comes to processing ELA cases. ELA’s workflow guidance for social partners (ELA/MB/2020/058) sets out and illustrates the process for national social partners to refer a case to ELA. For this, it is 3F’s experience that the speed with which the relevant enforcement bodies respond to cases concerning migrant and mobile workers is crucial. Partly because the workers concerned are often employed in and posted from another Member State for a limited period. Partly because the companies abusing the rules are often temporary subcontractors on projects. Therefore, 3F wants the assessments indicated in points 5 and 6 of Figure 1 to be addressed quickly.

**4. The creation of national labour market liaison units.** As part of the operationalisation of ELA, 3F proposes the creation of national labour market liaison units. These would coordinate efforts between relevant national enforcement actors such as the social partners, labour inspectorates, the police and tax authorities. The national labour market liaison units would be able to support the work of the 27 ELA National Liaison Officers by collecting national data, experience, statistics and information on the free movement of labour. The labour market liaison units could also be responsible for the national distribution of knowledge about the inspection support and the possibility to register a case via ELA. In a Danish context, 3F proposes that the Ministry of Employment should take on the task of the labour market liaison unit – preferably with

a strategically and locally anchored unit. This prompts a natural cooperation between the labour market liaison unit and the existing joint authority action against social dumping, anchored in the Ministry of Employment.

- 5. Control of legal posting.** One of the main challenges of migrant labour identified by ELA is the many bogus postings that take place across borders in the EU. As shown in the training material “*EU Labour mobility regulatory framework (Free movement of workers, Posting of workers)*” on ELA’s website, there are about 3 million postings in the EU every year. A number of these postings are unfortunately bogus with serious enforcement challenges.

## Non-genuine posting

### Main elements to be considered:

- ✓ Registered office
- ✓ Recruitment place
- ✓ Contractual situation
- ✓ Place of substantial business activities
- ✓ Place where the employees are employed
- ✓ Number of contracts with clients
- ✓ Turnover
- ✓ Other

**Sector specific** – agricultural (seasonal workers), transport, food industry, construction.

The **work of posted workers** is supervised, managed and planned from host country even though it is claimed that this is done from home country (through letterbox company).

The **recruitment** often takes place in host country or is organized from host country.

The **employment contracts** and documentation falls under laws of the home country even though the workers never appeared there.

In line with this, 3F suggest that ELA has a special attention on industrial arbitration and rulings on social dumping related to bogus postings. This includes checking whether the company exists in the posting country and that it is not just a letterbox company in the host country and making sure that the posting company pays taxes and social security contributions etc.

- 6. Posted third-country nationals.** The exploitation of posted third-country workers in Denmark and other European countries is a growing problem. In Denmark we have seen it in the cases of Filipino drivers in Padborg and Ukrainian construction workers in Copenhagen. The issue of posted third-country nationals is addressed by ELA, which has organized a series of seminars on the topic in collaboration with Professor Sonila

Danaj of the European Centre for Social Welfare Policy and Research. Professor Danaj addresses the particular cross-border challenges posed by posted third-country nationals. In particular, she highlights the problem of limited transnational cooperation on enforcement, data and information exchange regarding the illegal exploitation of third-country nationals. In light of this, 3F calls for ELA to work actively to identify and prevent speculation in the exploitation particularly of skilled and unskilled third-country nationals.

- 7. Connection to the European personal labour card.** The challenges of mobile and migrant workers in the EU mainly exist due to the lack of transnational enforcement tools. In this context, 3F, FH, ETUC and the Danish government propose a European personal labour card linked to the European social security card/social security number as an enforcement tool for ELA. The card can help ensure compliance with existing EU legislation, improve cooperation between national authorities to ensure fair movement within the EU and contribute to an efficient exchange of information and verification of data.
- 8. Blacklisting/exclusion mechanism/register.** One of the main aims of ELA is to tackle social dumping. Social dumping is neither fair to the companies that face unfair competition nor to the workers who are underpaid and exploited. Unfortunately, companies that underpay and exploit cross-border workers are often repetitive offenders. After major cases, these companies often continue their fraud and abuse, in some cases, under the same names, while other times they create new companies under new names, but with the same owners and the same set-up. To promote ELA's enforcement work, the creation of a European exclusion mechanism and register, for example in connection with a revision of the Public Procurement Directive, would be helpful. The European exclusion mechanism and register could be helpful by excluding and registering main suppliers and subcontractors who continuously engage in social dumping, money laundering, mafia activities, use illegal labour or participate in human trafficking and forced labour. This would enable ELA, contracting authorities, public authorities and social partners to navigate the supplier field.
- 9. Enforcement challenges related to platform work.** An increasing proportion of migrant workers in the EU are atypical workers, including platform workers. However, experiences show that ELA's enforcement of the rules for these workers can face not only legal challenges but also practical obstacles due to the digital systems on

which digital labour platforms operate. This was the case when the Swedish Work Environment Authority wanted to inspect working conditions at Uber and Uber Eats as part of an investigation into whether Uber should be classified as an employer. The inspectors asked the Uber headquarters in Stockholm for further information, but Uber was not legally obliged to cooperate because the tasks distributed to the drivers/riders were in practice distributed by another platform company, registered in the Netherlands. This example illustrates that the issue of jurisdiction can be an obstacle to the performance of both national and ELA's labour inspections.

#### **10. Respect for the division of competences in the EU.** 3F

welcomes that one of ELA's functional areas is to contribute to inspections and supervision. However, it is crucial to 3F that ELA respects the division of competences as set out in Articles 151-153 TFEU. It states that "*the Union shall support and complement the activities of the Member States*" in the labour market field. On this ground, 3F welcomes the fact that ELA has a clear intergovernmental character and involves national authorities and social partners in its operation and work. It is important for 3F that ELA respects the national labour market models as set out in ELA's provisions. The social partners, who have valuable knowledge of the conditions in the national and local workplaces, can contribute greatly to the work of ELA, including through the stakeholder group.

#### **11. Geographical representation in ELA's staff.** It is important that ELA actively seeks a balanced representation of staff (both permanent and temporary) from all geographical parts of the EU. This is to ensure employees' crucial knowledge of the divergent national labour market models, systems, enforcement methods, languages and rules.

#### **3F**

#### **United Federation of Workers in Denmark**

[www.3f.dk](http://www.3f.dk)

#### **Copenhagen**

Kampmannsgade 4  
1790 Copenhagen V  
Denmark

Contact 3F's Head of EU-affairs

Nadja Abelgren Olsen at  
[nadja.olsen@3f.dk](mailto:nadja.olsen@3f.dk)

#### **Brussels**

Rue du Luxembourg 47-51  
1050 Brussels  
Belgium

Contact 3F's Senior EU Consultant

Nadia Deis at  
[nadia.deis@3f.dk](mailto:nadia.deis@3f.dk)