



PICUM Recommendations for the revision of the European Labour Authority Mandate

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Introduction

PICUM's membership and expertise focuses on migrant workers in precarious and/ or irregular employment in Europe.

PICUM strongly welcomes the intentions to extend the mandate of the European Labour Authority (ELA) to better protect the rights of migrant workers, both when in posting situations and otherwise.

This document sets out PICUM's recommendations for how to strengthen ELA's role and activities

to better protect migrant workers. We would recommend that these suggestions be taken forward into the legislative proposal as required and through political and practical impetus.

At the same time, we underline the importance of clear safeguards to ensure that the activities of ELA in no way involve or strengthen the risks of migrant workers facing immigration enforcement as a result of labour inspections or other activities on labour authorities.

Recommendations for ELA actions to increase protection of migrants' rights

Considering the objectives and tasks assigned to the ELA, we would suggest the following concrete actions that could be undertaken to better protect migrants' rights.

In some cases, it would be necessary or beneficial to make an explicit reference in the legislation, and we would recommend corresponding changes

be made in the EC proposal for a revised ELA Regulation.

At the same time, not all actions require changes in the Regulation (i.e. the action is possible based on the existing mandate and could be reinforced also through political and practical impetus).

Facilitating access to information

In our experience, it is crucial for migrant workers to receive the contact details of organisations supporting migrant workers in their country of work. It can be difficult for people – both pre-departure and on arrival – to process information about rights, obligations and procedures. People are most receptive to information when they are already working and experience doubts and difficulties. It is

also crucial for information to be in a language that people can understand, and provided in a context where there is trust. Specialised migrants' rights NGOs and trade union centres, and associations of migrant communities, are the best placed to provide this information and support people to address their range of needs.

Therefore, it would be impactful if the ELA could facilitate access to independent and accessible information including personalised advice and supports, **by always including the contact details for specialised support organisations in the information it provides to individuals during information campaigns and during inspections.**

Cooperation and exchange of information between Member States

The enforcement of labour rights of posted migrant workers is a major challenge both for workers and labour authorities. One of the areas highlighted in Article 7 is for ELA to facilitate and support cross-border enforcement procedures relating to penalties and fines. While already done to

some extent, it would be useful if there could be more emphasis on ELA's role in facilitating and supporting cross-border enforcement procedures related to labour rights, for example regarding unpaid salaries (in the broad sense, including e.g. unpaid sick or holiday leave).

ELA should provide **particular support to national authorities to exchange information and cooperate for the cross-border enforcement of labour rights claims.**

Coordination and support of concerted and joint inspections

Although labour inspections are primarily the competence of member states, concerted and joint inspections coordinated by ELA are supported with public funds from the EU budget. Therefore, ELA should have the mandate to incorporate good

practices for the protection of workers' rights, whether or not such practices are implemented by the participating member states. This also adds value to ELA's role, building the capacity of national authorities.

In particular, ELA should facilitate the provision of information to workers by always **cooperating directly with (a) designated migrant worker support organisation(s) in the country where the ELA-coordinated inspection will be held, to organise their participation in the inspection** in order to provide accessible and independent information and advice to workers identified during the inspections.

Where such cooperation does not yet exist on national level, **ELA should build the capacity of national authorities to develop cooperation agreements with third parties to this end.**

At the least, ELA should guarantee that interpreters for migrant workers' languages that are likely to be found on site are present during the inspection, and ensure that the contact details of independent support organisations are provided.

ELA should also ensure that cooperation during concerted and joint inspections is well defined and understood, in particular if an authority responsible for immigration enforcement might participate.

ELA should seek to avoid that workers would face negative repercussions following an ELA-coordinated inspection.

When making the arrangements for a concerted and joint inspection, and clarifying the terms and conditions for carrying out the joint inspection, the scope and purpose of the inspection, **ELA should encourage that safeguards are put in place to avoid risks that workers face immigration enforcement as a result of a concerted and joint inspection.**

Support to capacity building

It would be beneficial if ELA's range of activities of support to capacity building for member states could include [migrant workers' rights](#), whether stemming from the EU employment acquis, immigration law, or otherwise.

ELA's mandate could be extended from capacity building aimed at promoting the consistent enforcement of the Union law in all areas listed in Article 1, **to also include enforcement of workers' rights enshrined in other areas of EU law.**

Concretely, initially, this could include workshops for inspectors (practical level inspectors) on the FRA manual "[How workplace inspectors can protect third-country workers' rights - Training manual](#)".

Recommendations for ELA's legal and organisational structure

Legislative scope

While ELA should take a stronger role in protecting migrant workers' rights, it should not be made responsible for the enforcement of specific EU immigration laws. For at least 20 years, and more frequently over the last years, the ILO has been raising concerns and issuing recommendations to governments to ensure that the primary role of labour inspectors to enforce the conditions of work is not undermined by tasks related to immigration rules.¹

In some countries, resources of the labour inspectorate are used to identify undeclared work by migrant workers. Cooperation or reporting practices often result in labour inspectors carrying out simultaneous inspections with police who carry out immigration enforcement, and/or labour inspectors directly checking permits and verifying validity with - or reporting information to - police or

immigration authorities.²

While some key migration laws (including, on EU level, the Employers' Sanctions Directive, Single Permit Directive and Seasonal Workers' Directive) contain rights provisions for migrant workers, these rights and the corresponding sanctions against employers are often linked, in practice, to verifying the status of workers' work permits. Even when this is only for the purposes of imposing sanctions on employers for violating migrant workers' rights or employing undocumented workers, it can result in immigration enforcement actions against the worker. At the same time, migrant workers have a [broad range of rights](#) enshrined across different areas of law, at international, EU and national level. It is not necessary for ELA to have specific competence on migration law to take actions to support migrant workers' rights.

Considering the reality of the current tensions in the work of labour authorities - with migrant workers frequently risking immigration enforcement as a result of interaction with labour authorities - as well as current political tendencies focused on deportations, **EU migration legislation should NOT be added to the European Labour Authority's legislative scope (Article 1).**

Even if ELA would not have an explicit immigration control role, it seems likely that the tensions experienced on national level would be faced by ELA and that ELA's actions may lead to reinforced or increased cooperation with law enforcement that entails risks of immigration enforcement for workers,

1 For more information and references to the ILO recommendations see: PICUM, [Guide to Undocumented Workers' Rights at Work under EU and international law](#) (2022) and PICUM, [Data protection and the firewall: Digital technology use by labour authorities and migrant workers' rights](#) (2026).

2 FRA, [Protecting migrants in an irregular situation from labour exploitation – Role of the Employers Sanctions Directive](#) (June 2021); PICUM, [A Worker is a Worker: How to ensure that undocumented migrant workers can access justice](#) (2020).

Data processing capabilities

There could be added value if ELA has data processing capabilities and is able to contribute to investigations to prepare concerted and joint inspections, as well as monitor follow up. However, data protection safeguards will be crucial.

PICUM's recent briefing [Data protection and the firewall: Digital technology use by labour authorities and migrant workers' rights](#) reflects

on how digital tools are used by labour authorities in monitoring, inspections and data management across Europe. While underlining the potential benefits of using these technologies, it finds that - without strong data protection safeguards - these same tools can expose migrant workers, who occupy positions of heightened precarity within EU labour markets, to serious harm.

It will be crucial that the data protection safeguards go beyond references in the legal texts to compliance with the [General Data Protection Regulation](#) and [Law Enforcement Directive](#). **These new capabilities should be accompanied by concrete requirements to ensure practical implementation of privacy and data protection rules through specific data management, sharing and confidentiality protocols for the collection and processing of workers' personal data.**

For more information about components we recommend these protocols include, please see: [Data protection and the firewall: Digital technology use by labour authorities and migrant workers' rights](#).

If ELA would have access to any immigration databases (e.g. VIS, SIS, Eurodac), additional specific safeguards and implementation actions would be necessary.

Organisational structure

Greater support to workers, including migrant workers, could also be achieved through organisational resourcing. To support the Authority to mainstream fundamental rights - including labour rights, data protection and privacy rights, victims'

rights and migrants' rights - across its activities, it would be useful for the Authority to cooperate more systematically with the Fundamental Rights Agency, and strengthen its internal processes by having a fundamental rights focal point.

The Regulation could introduce **a Fundamental Rights Officer and team with the mandate and resources to support the mainstreaming of fundamental rights across the activities of the Authority and carry out fundamental rights impact assessments.**

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