

## ETUC Position: For A Strong European Labour Authority

Adopted at the Executive Committee Meeting of 12 April 2018

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### Key messages:

- **The ETUC renews its strong support for the prompt establishment of the ELA in order to secure fairness for workers in the single market. In particular, the ELA should help to improve national implementation of EU labour law and social security law regulating cross-border matters.**
- **The ELA can fulfil a much-needed role in the fight against cross-border social fraud, better social security coordination, and support for mobile workers.**
- **Improvements should be made to the proposed Regulation in order to beef up the role of the ELA. In particular, Member States should not be able to refuse joint inspections or requests for information.**
- **Social partners at all relevant levels must have a real influence on the work programme and priorities of the ELA. The ELA should therefore reflect the tripartite structure that already exists in other EU agencies and respect the existing EURES structure.**
- **The ETUC's red line is that the ELA must not interfere with social partners' autonomy.**

### Introduction

A proposed Regulation establishing a European Labour Authority was published on 13.3.2018<sup>1</sup>. The proposed Regulation sets out the main principles governing the establishment and functioning of the future authority.

The European Labour Authority ('the ELA') will be a decentralised agency in charge of three main tasks:

- improving access to information to mobile individuals and employers. In particular, the ELA would take over the managing of the EURES Coordination Office;
- strengthening operational cooperation between Member States to fight cross-border fraud. In particular, the proposed Regulation foresees joint inspections, cooperation and exchange of information between Member States. The ELA would also have analytical and risk assessment functions;
- providing mediation and facilitating solutions in cases of dispute between national authorities and cross-border labour market disruptions.

If all goes well in the legislative process, the ELA will be up and running in 2019 and will reach cruising speed by 2023. On the same day as the proposed Regulation, the Commission also published a Decision setting up a European Advisory Group for the ELA. The purpose of this Advisory Group is to ensure that the ELA can start its work as soon as the Regulation is adopted by the co-legislators. The ETUC will be a full member and therefore has a decisive role to play in identifying areas where enhanced cooperation is most urgently needed.

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<sup>1</sup> COM (2018) 131 final

The ETUC reaffirms its strong support for the prompt establishment of the ELA in order to secure fairness for workers in the single market<sup>2</sup> (section 1). This Resolution makes some first proposals to clarify and strengthen the role of the ELA (section 2). It also proposes to put in place an adequate working method to support the ETUC Secretariat input to the European Advisory group for the ELA (section 3).

## **Section 1: Why do we need a European Labour Authority? Some concrete cases**

The ELA is needed to promote effective enforcement of EU labour law and social security law, and to strengthen workers' rights.

Mobility of workers and companies constitutes a fundamental pillar of the EU. Efforts to boost EU-wide mobility are multiplying, including through the revision of posting and social security rules. The enforcement of these rules is lagging behind, leading to an unfair and exploitative single market. The ELA has a decisive role to play in this regard.

Cross-border social fraud often results from the fraudulent use of posted workers. Fake posting usually involves the use of letterbox practices, put in place by companies without genuine economic activity in their alleged country of establishment for the sole purpose of providing a cheaper labour force. By the time the public authorities of the host Member State obtain complete and accurate information on the situation in the Member State of alleged establishment, if at all, the companies have shut down and moved to another site. As a result, workers are severely exploited, and the single market is distorted<sup>3</sup>.

Concerning social security, the ELA can play a vital role in helping national authorities to coordinate their controls in a more systematic manner. Today, the Member State of origin is solely competent to withdraw or annul an A1 certificate<sup>4</sup>. The host Member State may only annul the validity of an A1 where the authority of the Member State of origin has not been able to respond to its request in a satisfactory manner. Administrative commissions for the coordination of social security system are in charge of liaison between the national authorities. These commissions, however, suffer from poor capacity and can only handle a few cases per year. Member States have as a result to rely on bilateral agreements. It is clear that the intervention of a European Agency would be of considerable added value.

The ELA can play a positive role in supporting mobile workers by gathering all the information in a central point, building on the work done by national contact points set up under Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement. It makes sense that the ELA takes over the management of EURES European Coordination Office as EURES also plays a role in fair mobility. The function of advice and information to employees about their rights, including trade union rights, must be maintained and strengthened. The ETUC rejects that EURES functions are reduced to mere job placement. The ELA can also ensure that services such as the EURES Portal promote quality jobs.

## **Section 2: First proposals to beef up the ELA**

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<sup>2</sup> See ETUC position on a European Labour Authority – ensuring fairness for workers in the single market, adopted at ETUC Executive Committee meeting of 13 – 14 December 2017

<sup>3</sup> See as an illustration ETUC case study in the meat industry sector: « some European businesses (...) have relocated large parts of their business to make use of low labour costs in Germany provided for by Eastern European workers. As a result, within 10 years, Germany has changed from a net importer of meat to a net exporter of meat now », ETUC report on the impact of letterbox-type practices on labour rights and public revenue( p.19)  
[https://www.etuc.org/sites/www.etuc.org/files/press-release/files/ces\\_letterbox\\_compagnies\\_gb\\_juin\\_ok\\_0.pdf](https://www.etuc.org/sites/www.etuc.org/files/press-release/files/ces_letterbox_compagnies_gb_juin_ok_0.pdf)

<sup>4</sup> The A1 form is a statement of the applicable legislation to social security matters. It is used by workers and employers to prove that social contributions have been paid in the country of origin. A1 forms are indispensable to posted workers and workers working in several countries at the same time.

The only focus of the ELA must be the protection of all workers in the EU, regardless of their nationality and migrant status. The ETUC rejects that the ELA is overburdened with the task of checking and reporting on the residence status of third country nationals.

The ELA does not replace or undermine in any way national traditions for enforcement. That said, the ETUC underlines that every effort must be made by national authorities to sufficiently staff and resource their own inspections. National inspections should be in line with ILO Conventions, not the least Convention C81 that has been ratified by all Member States. Failing this, the work of the ELA will not be effective.

### **The fight against cross-border social fraud cannot be optional.**

Concerted and joint inspections will be a key tool to detect and address abuses on a larger scale than can be done today. The added value of such inspections would be greatly undermined if, as the Commission proposes, this tool was to be optional for the Member States concerned. Cross-border inspections would not replace nor undermine national competences. It should be clarified however that inspections would follow the legislation applicable in the country where they take place. National authorities should also be fully associated in the process and have full and autonomous authority. Under these circumstances, the ETUC sees no valid reason why a Member State should be able to refuse joint inspections taking place on its territory.

Trade unions at national level should be able to directly request a concerted and joint inspection. Where trade unions are themselves in charge of inspections at national level, joint and concerted inspections should only take place if the trade unions concerned so agree.

Similarly, the proposed measures on cooperation and exchange of information between Member States merely reflect the existing, voluntary, practices. The ELA should be able to take a more active stance in order to boost cross-border cooperation between the relevant national authorities.

According to the proposed Regulation, the ELA would provide mobility analyses and risk assessment and support to capacity building within the Member States. The ETUC supports these objectives to the extent that they do not interfere with matters governed by social partners at national level.

### **Mediation and cooperation – careful clarifications are necessary**

According to Article 13, the ELA would perform a mediation role in the event of disputes between Member States regarding the application or interpretation of Union law in areas covered by the Regulation. The ETUC requires some clarification on the scope of the mediation role, in particular to ensure that the exclusive focus of the ELA remains the protection of workers' rights and to ensure that the ELA does not undermine or threaten social partners' autonomy. It shall not interfere with collective bargaining nor the right to take collective action.

In addition, the proposed Article 14 suggests that the ELA could facilitate cooperation between relevant stakeholders in order to address labour market disruptions affecting more than one Member State. Clarification is also required on the purpose and functioning of this Article.

The ETUC reiterates its position, adopted by the Executive Committee in December 2017, that the ELA should recognise the essential role carried out by trade unions in promoting and protecting EU employment rights. On request from national trade unions, the ELA should be able to help social partners to pursue cases across borders, including unpaid wages, breach of employment rights and tactical bankruptcies. The ELA should also provide assistance to recover workers' financial entitlements in case of cross-border insolvency, both from national insolvency schemes and from employers. Support should

be given to enable trade unions to track down employers and to enforce judgments or awards against them.

In addition, under the proposed Article 14, the ELA should provide social partners with access to essential information and practical tools for cross-border industrial relations. The ELA could for instance provide trade unions with access to essential information and practical support to ETUFs and MNCs for example to resolve disputes with transnational company agreements and with information for example to support the establishment of EWCs or implementation agreements establishing EWCs.

While assistance by the ELA is welcomed, respect for national industrial systems is an absolute ETUC redline. The ELA must not undermine or threaten social partners' autonomy. It shall not interfere with collective bargaining nor the right to take collective action. The ETUC suggests that the proposed Recital 35 is reproduced within the body of the Regulation.

### **A tripartite governance to make full use of social partners' expertise**

According to the Commission's proposal, the ELA would be governed by a management board composed of Member States' representatives and the Commission. An Executive Director would be appointed by the management board and accountable to the EU institutions.

A stakeholder group composed of six representatives of Union-level social partners and two Commission representatives would be set up. The stakeholder group would meet twice a year and submit opinions and advice to the management board.

The ETUC considers that this structure insufficiently recognises the role and knowledge that European and national social partners already have in the tasks that will be carried by the ELA. Social partners at all relevant levels must have a real influence on the work programme, priorities as well as scrutiny of the ELA tasks. In this regard, the tripartite structure of other EU agencies such as OSHA, Eurofound and Cedefop should serve as a useful source of inspiration for the stakeholder group to be transformed into a fully tripartite Advisory Committee, adding national tripartite representation to the current composition of the stakeholder group itself.

With regard to EURES, it is particularly important to respect the existing structures. Cross-border partnerships must be integrated within the ELA on a permanent basis. EURES cross-border partnerships make an important contribution to the promotion of cross-border fair mobility. A condition for their integration is that they are sufficiently well funded.

### **An adequate funding**

The ELA will be an Agency with its own sources of financing, which is welcome. The ETUC will screen the proposed budget in order to ensure in particular that the funding allocated to the ELA is not to the detriment of other existing EU bodies (with the exception of those to be merged into it).

### **Section 3: next steps**

The ETUC will work closely with the EU institutions, governments and social partners, in a constructive spirit in order to achieve a swift and ambitious adoption of the Regulation. In parallel, the ETUC will nominate three members at senior level to the European Advisory Group for the ELA.

The ETUC Secretariat proposes to set up an email taskforce to coordinate and support our input into the Advisory Group. Affiliates will be asked to promptly nominate experts to this taskforce.