

ETUC Position on a European Labour Authority - ensuring fairness for workers in the single market

Adopted at the Executive Committee Meeting of 13-14 December 2017

Key messages:

- **The European labour authority should act as a support service for national enforcement authorities; it should support trade unions to pursue cases across borders; play a mediation role between national authorities for instance on social security disputes; and help to improve national implementation of EU labour and social security law.**
- **The ETUC welcomes the proposal for a European labour authority but we have set a red line that it must not interfere with social partners' autonomy and it must not undermine national systems that involve trade unions in enforcement and inspection.**
- **A key role for the European labour authority should be promoting better enforcement of EU labour and social security rights and the fight against unfair competition and cross border social fraud.**
- **The ELA must enjoy appropriate tools to carry out its tasks effectively, including obligations on member states to cooperate and provide assistance, share databases that combine the EU Social Security Number and company information, the possibility to trigger infringement proceedings and maximising possibilities for joined up enforcement from tax, company and state aid compliance.**
- **The ELA must be an independent body, benefitting from its own financial resources, with close participation of the social partners, both in its development and supervision.**

Introduction

In his speech on the state of the Union, President Juncker announced a proposal to establish a European Labour Authority ('ELA') to strengthen cooperation between 'labour market authorities' and to better manage cross-border situations, to promote fair mobility including initiatives such as a European Social Security Number.

This position paper lays out ETUC first demands for a European Labour Authority ('ELA'). A European labour authority is needed to achieve fairness for workers in the single market but should not be misused to threaten or undermine social partners autonomy and national systems for enforcement (section 1). The ELA should have a key role to play to eradicate cross-border social fraud (section 2). To fulfil that role, the ELA needs to be independent and sufficiently well-funded (section 3).

Section I - Why do we need a European labour authority? To achieve a fairer single market for the workers

Free movement of services is a fundamental pillar of the Union and EU initiatives to further boost companies' mobility are numerous. In contrast, enforcement of legal obligations in general, and of social norms in particular, primarily remains a national

competence. EU intervention in this area essentially consists in coordination of national rules and exchange of information between Member States.

Enforcement of social norms is therefore fragmented. There is also insufficient capacity of the competent national authorities to address highly mobile and complex business models. These insufficiencies are exploited by unscrupulous companies for the purpose of evading national and European social rules. The lack of efficient enforcement leads to severe exploitation of workers and increasing fraud to social security regimes¹.

The objectives of the ELA should be:

- To promote effective enforcement of EU Labour and Social Security Rights,
- To combat unfair competition, to promote enforcement of equal pay for equal work and fair rules of the game for the single market;
- To assist trade unions to secure the rights of workers in cross border situations and to pursue cases on behalf of workers cross borders;
- To enable better prevention, detection and monitoring of cross-border social fraud, and undeclared work. Cross-border social fraud should be understood as covering at least the following: the respect of fundamental rights, working conditions, rights to social security and social protection, health and safety;
- To serve an irregularity signalling function for noncompliance or ineffective enforcement of EU labour and social security rights;
- To provide a one stop shop for information to workers on their rights and to companies on their obligations and to provide a route to more specialised information and support with regard to labour mobility.

Patchwork of insufficient enforcement tools

Internal Market Information system (IMI). IMI is an IT tool put in place by the Commission, with a view to facilitate exchange of information between national authorities via in particular the use of standard templates. Authorities in the host country send a request to the competent authorities in the country of origin of posted workers, asking for further information on the existence of genuine economic activity in the alleged country of origin.

The IMI is an administrative instrument, without any operational dimension. A request does not necessarily trigger inspections in either country. There is no early warning system of possible fraudulent activity, and national capacities are not enhanced. This last point is particularly problematic as the administrative burden is unequally shared among receiving and sending Member States.

Social Security administrative commission. Workers are covered by the social security regime of their state of employment, which is not deemed to change in the case of temporary posting to another country. A1 forms issued by the Member State of origin certify the payment of the contributions. A1 forms are binding on the host Member States but are easily forged. Enforcement measures merely consist in dialogue and conciliation procedures between the national authorities.

The administrative commission put in place to facilitate exchange between Member States is not an operational body. It is hampered by long delays, poor information and cumbersome procedures.

¹ For concrete examples see ETUC report (2016): *letterbox-type practices: avoiding taxes and exploiting workers across the EU* <https://www.etuc.org/press/letterbox-type-practices-avoiding-taxes-and-exploiting-workers-across-eu#.WicbWEmWw2w>

Undeclared work platform. The platform allows exchange of information and best practices between national labour inspectors. Whilst fulfilling a knowledge sharing and joint training role, it is not sufficiently action-oriented nor does it have the necessary competence to tackle cross-border fraud.

What the European labour authority should NOT be about:

The ELA must not undermine or interfere with national systems and traditions with regards to enforcement of health and safety at the work place, wage and other working conditions, nor be considered as a replacement for national inspections and enforcement activities, nor must it lead to a cutting back of existing EU agencies or projects.

The ELA must not undermine or threaten social partners' autonomy. It shall not interfere with collective bargaining nor the right to take collective action.

Section II – SocialPoI? What should the ELA look like?

Activities

The European Labour Authority should be established as an Agency. National liaison officers should be seconded to the ELA as representatives of national enforcement authorities. As a support service for national enforcement authorities, the ELA should carry the following activities:

- a) operational analysis and support to Member States operations. The possibility of joint inspections should be reflected upon;
- b) expertise and technical support for national investigations and operations;
- c) strategic reports and fraud analysis (early warning system, risk assessment identifying projects, sectors, and/ or geographical zones particularly vulnerable to fraud)
- d) non-binding policy recommendations both to the EU and the Member States.

The ELA can play a mediatory role between Member States for example when A1 forms are contested.

The ELA should assist the European Commission regarding complaints and in investigating poor implementation of EU labour and social security rights by the Member States.

The ELA can improve transparency and access to information regarding rights and obligations in the field of labour mobility and social security systems. This could include:

- Pooling existing tools for cross-border mobility (for example Eures portal, EESI.), to provide a (multilingual) one-stop shop with better information for mobile workers and public authorities;
- Facilitate input and exchange of information, including the job matching portal, directly accessible by jobseekers;
- Include info on joining a trade union, industrial relations systems, wages and wage-setting;

- Provide trade unions and employers with information, support, access to resources and technical assistance for management of restructuring in cross border situations.

The ELA should recognise that trade unions also carry out essential actions to promote and protect EU employment rights. At the request from national trade unions the ELA should have a role to play to support trade unions to pursue cases across borders, including for 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. Assistance should be provided to trade unions to track employers down and to enforce judgments or awards against them.

In addition, the ELA can provide trade unions with access to essential information and practical tools for cross-border industrial relations. The ELA may establish mediation mechanisms accessible through European Trade Union Federations (ETUFs) and central management of Multinational companies only, to resolve disputes, on voluntary basis, relating to transnational company agreements signed by ETUFs and central management of MNCs.

Tools to do the job

In order to carry its transnational activities, the ELA would need to rely on efficient tools including a European register of companies carrying transnational activities. Such register should contain updated information on the countries in which the company operates, the nature of the activities in each Member State, the size and repartition of the workforce, and the turnover in each Member State. This information is essential to track down letterbox arrangements, including abusive use of temporary work agencies, and to support the implementation of EU labour law Directives, such as the European Works Council and the SE Directives.

Access to the relevant national databases in the labour law field, but also social security and tax areas would be essential for the ELA to carry out its cross-border activities. There should be an obligation for Member States to provide information on for example labour, social security and taxation legislation, and to cooperate with the ELA.

Furthermore, the ELA could manage the data generated by the possible European social security card, provided that adequate integrity safeguards are put in place. Access to the data base could also be provided to Eurofound for research and planning purposes.

The ELA should also be able to rely on competition law. For instance, a Member State failure to enforce EU labour and social security obligations could be assimilated to unlawful state aid. National companies are indeed benefitting from an unfair competitive advantage in the single market.

Section III - Issues of governance

The ELA must be an independent, action-oriented body, benefitting from its own financial resources. An EU agency, accountable to the EU institutions, should be envisaged as the preferred option. As the tasks of such body are new, the ELA should benefit from new funding. No cut-backs on other tripartite bodies

should follow as a result of the creation of the ELA.

Close institutionalised participation of the social partners in the ELA would be necessary for it to be a driver of real change and to foster new solutions to old problems. Whilst the ELA should have a fully independent executive body, a supervisory organ should be envisaged. This organ should be tripartite, including representatives of the social partners.