



# The European Labour Authority (ELA) and social security coordination

## KEY FINDINGS

Currently, in the field of social security coordination there is a quite complex organisational infrastructure for administrative cooperation organised around five bodies: the Administrative Commission with its Conciliation Board, the Technical Commission for Data Processing, the Audit Board, and the tripartite Advisory Committee for the Coordination of Social Security Systems. The Audit Board is attached to the Administrative Commission with the role of supervising a proper and speedy settlement of claims between national social security institutions. In its role as conciliator the Administrative Commission has set up a Conciliation Board and has laid down detailed rules for the implementation of a dialogue and conciliation procedure concerning the validity of documents and the determination of applicable legislation.

Along with other initiatives, the European Commission has recently issued its Proposal for a Regulation of the European Parliament and of the Council establishing a European Labour Authority (ELA). Thanks to its scope and setup, this could help to improve the system of information exchange and dissemination for the proper decentralised implementation of EU social security coordination law. The enhanced operational capacity of the ELA could potentially improve the cooperation mechanism especially in the elective field of disseminating and exchanging information useful for mobile workers and businesses. Further, the new agency would indeed complement the Administrative Commission's role by taking over the tasks currently assigned to the Conciliation Board, to the Technical Commission of Data Processing, and to the Audit Board.

The relevance – and potential problems – of the proposed changes should not be underestimated. Potential shortcomings are mainly due to the proposed unbundling of tasks that are currently unitarily performed within the framework of the Administrative Commission in the domain of social security coordination. In that perspective, shifting the mediation tasks to the ELA, as now proposed by the European Commission, would risk undermining the resource of 'authoritativeness' that is built on the unique – and essentially unitary – competence of the Administrative Commission to deal, both on a regulatory and an operational side, with all administrative issues and questions of interpretation arising from the provisions of the social security regulations.

Compared to the reorganisation of mediation, the proposal of shifting to the ELA the tasks currently performed by the Technical Commission of Data Processing and by the Audit Board seems to be less problematic, since these tasks have a predominantly technical nature. However, the added value of shifting those technical tasks to the ELA is not entirely clear, since the proposal does not specify what kind of concrete operational capacity the new Authority would specifically devote to perform such duties.

In the light of the findings outlined above, some recommendations are tentatively put forward: 1) preserving the unitary tasks currently performed by the Administrative Commission as far as its mediation/conciliation role is concerned; 2) making the ELA a space for regular knowledge sharing and for building mutual trust between public officials in the sphere of social security coordination; 3) investing in ELA's capacity to prevent cross-border disputes; 4) empowering the ELA to suspend the validity of portable documents (A1 form, in particular) in case of breach of the principle of mutual information and cooperation between national institutions.



## Introduction

The briefing forms part of a series of notes having been prepared in the context of a Workshop on the European Labour Authority held at the extra-ordinary meeting of the Employment and Social Affairs Committee on 24 May 2018. Other briefings cover the following topics:

- European Labour Authority: Profile and Governance by E. Vos
- European Labour Authority and Enhanced Enforcement by J. Cremers
- European Labour Authority and Support for Labour Mobility by V. Ludden / A. Jeyarajah
- European Labour Authority, EU structures and tools by S. Kraatz
- European Labour Authority: Workshop Summary Report by S. Kraatz

This note is dedicated to social security coordination, having been a fundamental tenet of the free movement of persons since the inception of the European integration process. Envisaged by the Treaty establishing the European Coal and Steel Community (ECSC Treaty), signed in Paris in 1951, the comprehensive regime of the coordination of national social security systems is, currently, provided for by Regulations (EC) Nos. 883/2004<sup>1</sup> and 987/2009 (Implementing Regulation).<sup>2</sup> With a view to modernising and simplifying existing rules, as well as to guaranteeing a fair burden sharing of social security costs between Member States, the European Commission presented a proposal of revision of the coordination rules<sup>3</sup> in December 2016, which pursues the following overall targets, namely:

- to make coordination rules fairer, clearer, and easier to enforce;
- to promote fair labour mobility;
- to prevent fraud; and
- to strengthen administrative cooperation between Member States.

The same overall goals inspire, from a fundamentally operational perspective, the European Commission's proposal aimed at establishing a European Labour Authority (ELA).<sup>4</sup> The overarching goals of the European Commission's new initiative are as follows:

- to improve access to information by individuals and employers about their rights and obligations in the area of labour mobility and social security coordination;
- to strengthen operational cooperation between authorities in the cross-border enforcement of EU law, including facilitating joint inspections; and
- to provide mediation and facilitating solutions in cases of disputes between national authorities concerning cross-border situations (including cross-border labour market disruptions and restructuring).

In the field of social security coordination, the proposed new authority would complement and strengthen, on an operational level, some key goals targeted by the 2016 proposal of revision of Regulation 883/2004 and of the Implementing Regulation, namely those aimed at enhancing administrative cooperation with a view to **enforcing rights** and to **combatting fraud in cross-border situations**.

The remainder of this paper will address the interplay between social security coordination rules and the prospective role envisaged by the European Commission for the newly proposed authority, by focusing on the contribution of the ELA to a proper implementation of the rules on very mobile workers and in particular posted workers, as well as to the strengthening of administrative cooperation between Member States,

above all regarding the mediation of conflicts. The final paragraph will offer some very preliminary recommendations on the European Commission's new proposal.

## Mobile and posted workers and social security coordination

Posting of workers is a very topical issue also in the framework of social security coordination. As is well known, the new rules on posting, put forward by the European Commission in its 2016 proposal, are essentially aimed at:

- strengthening the administrative tools related to social security coordination;
- ensuring that national authorities have the adequate means to verify the social security status of such workers; and
- addressing any potential unfair practices or abuses in cross-border posting of workers.

Regulation 883/2004 governs posting of workers, within the title on applicable legislation, by stipulating that:

- a person who pursues an activity as **an employed person** in a Member State on behalf of an employer that normally carries out their activities there and who is posted by that employer to another Member State to perform work on that employer's behalf shall **continue to be subject to the legislation of the first Member State**, provided that the anticipated duration of such working activity does **not exceed 24 months** and that the worker concerned is **not sent to replace another posted person** (Article 12(1)); and
- a person who normally pursues an activity as **a self-employed person** in a Member State and who goes to pursue a similar activity in another Member State shall **continue to be subject to the legislation of the first Member State**, provided that the anticipated duration of such activity does not exceed 24 months. This is a **special rule** on applicable legislation, which **derogates from the *lex loci laboris* principle** provided for by Article 11 of Regulation 883/2004 **for economically active persons** (Article 12(2)).

To that end, the **A1 form/portable document (PD)** has been devised as a uniform document certifying the applicable legislation. Posted workers or their employers can request the relevant national authority in the worker's country of affiliation to provide the form. The authority shall check that the conditions stated by Article 12 of Regulation 883 are complied with and issue the A1 form 'preferably in advance' to confirm that the legislation of its country remains applicable for social security purposes. It shall also make the form available to the relevant authorities of the host Member State. The current regulatory framework leaves wide discretion as to the moment when the A1 form is to be issued. Indeed, based on CJEU case law, specifically the *Banks* case (paras. 49-57),<sup>5</sup> the Administrative Commission specified that the A1 form shall be released even after the expiry of the posting period and that it has retroactive effect. Posted workers or their employers should inform 'whenever possible in advance' social security institutions of the sending country when they pursue an activity in another Member State (Article 15 of the Implementing Regulation). As part of the information provided, the A1 form also includes details on the employment status, which is key for the core of posted workers' employment rights.

The issuing of A1 documents may pose – and in fact poses – significant problems:<sup>6</sup>

- the national authorities might provide the document with **some delay**, also considering the need to check information with local branches or authorities;
- at the same time, the company might need to send the worker abroad in due time following an **urgent request**, resulting in an unfavourable situation;<sup>7</sup> and, above all, this is particularly

problematic when companies require the authorisation to post a worker abroad **for more than 24 months or to extend the period of posting beyond this deadline**. This procedure may take some months, during which the worker might remain in the host country without the A1 form. Procedures do not follow standard patterns, but entail an assessment on a case-by-case basis by the involved authorities, some of which adopt a restrictive approach;

- widespread risk of (suspected) **fraud or abuse** in issuing A1 form.

With the aim of addressing such problems, the new rules put forward by the European Commission under its 2016 proposal for a revision of the Regulation on Social Security Coordination are devoted to strengthening the administrative tools related to the social security coordination of posted workers, in order to ensure that national authorities have the adequate means to verify the social security status of such workers and to address potential unfair practices or abuses. Changes include, for example

- an increased obligation upon the competent authorities to properly assess the facts before issuing the A1 form;
- the introduction of precise deadlines for issuing the A1 form, as well as for answering a request for information (25 days, reduced to two in case of urgent requests);
- the entitlement for social security institutions, labour inspectorates, and tax and immigration authorities to directly exchange relevant information (as of now, designated national liaison offices are in charge of sharing information at transnational level); and
- the withdrawal of the A1 form with retroactive effect in case of fraud (proposed Article 5(1) of the Implementing Regulation).

The idea behind these provisions is to ensure closer cooperation between Member States, which is highly recommendable *per se*. In this regard, the creation of a digital European social security card, where social security records are traced, could help to make relevant information easily available in the host country without posing a significant administrative burden on either sending companies or competent institutions.

A step forward to prevent fraud would be to issue the A1 form upon proper verification of actual compliance with the conditions set out in the regulation, and not upon mere administrative compliance. This approach would be backed also by declaring invalid the A1 forms that have not been duly completed. This strategy seems to find support in the recent decision of the Court of Justice of the European Union (CJEU) in Case C-359/16, *Altun and Others* (EU:C:2018:63), where it was ruled that ‘when an institution of a Member State to which workers have been posted makes an application to the institution that issued E 101 certificates for the review and withdrawal of those certificates in the light of evidence, collected in the course of a judicial investigation, that supports the conclusion that those certificates were fraudulently obtained or relied on, and the issuing institution fails to take that evidence into consideration for the purpose of reviewing the grounds for the issue of those certificates, a national court may, in the context of proceedings brought against persons suspected of having used posted workers ostensibly covered by such certificates, disregard those certificates if, on the basis of that evidence and with due regard to the safeguards inherent in the right to a fair trial which must be granted to those persons, it finds the existence of such fraud’ (paragraph 61).

## ELA - implications for mobile and posted workers and social security coordination

The European Commission’s proposal on the ELA addresses issues specifically relating to posting in some relevant passages:

- as far as **sharing information** is concerned, Article 6 mandates the authority to improve the availability, quality, and accessibility of information offered to individuals and employers on workers in cross-border situations, 'including posted workers' (letter c); and
- as far as **social security coordination** is concerned, the ELA is entrusted with a mediation role in the event of disputes between Member States regarding the application or interpretation of EU law (Article 13).

In its specific operational capacity, **the ELA may certainly improve the exchange of relevant information, and enhance administrative cooperation between national authorities** by promoting cross-border joint inspections; and encouraging the dissemination of best practices of mutual cooperation (e.g. the transnational agreements already in place between competent authorities of sending and receiving countries).

According to the Impact Assessment supporting the establishment of the European Labour Authority,<sup>8</sup> having the right information when moving abroad to access social protection rights or to exercise the freedom of movement may still be hard. Whereas progress is being made through the creation of the 'Single Digital Gateway', and the website 'Your Europe' providing some basic information on mobile citizens' rights, **most information needs to be sought directly on the national authorities' single webpages**, which may offer little information or support in a foreign language.

**In this respect, the ELA should monitor the performance of Member States in making the necessary information available.** It should also provide support to mobile citizens wishing to know their social rights when moving abroad. To this aim, the possibility to **create synergies between ELA staff and the personnel of the European Employment Services (EURES)** could be considered, inasmuch as National Liaison Officers seconded to the ELA can support EURES by informing citizens on their social security rights when moving abroad. **The ELA could provide a comprehensive and unitary space for employers and workers to know their rights and duties.**

The **ELA may certainly play a positive role for mobile workers** in general, and for that specific category of very mobile individuals represented by **posted workers, in particular**. Cooperation with administrative bodies in the sending countries remains crucial to obtaining missing information. This is particularly relevant, when it comes to social security coordination, since the competent authorities of the host State are not in the position to check whether social security contributions are paid in the sending country, unless a request is filed with the relevant authority of the sending State.

Another category of mobile workers that may face significant obstacles in exercising social security rights is that of **cross-border and frontier workers commuting on a regular basis** from a Member State to another. The 2016 European Commission proposal envisages important changes to social security regulations especially concerning access to unemployment benefits by cross-border workers. Yet, these changes would not be able to tackle problems arising from insufficient cooperation between national authorities. The ELA could play a positive role by dedicating specific attention and operational efforts to obstacles faced by very mobile, cross-border workers, especially when their status as frontier workers according to Regulation 883/2004 is questioned by the competent authority, which may deem the worker not to reside in, or return to the home country, or whether administrative practices in place in the involved countries hamper the exercise of frontier workers' rights. For instance, the presence of tight deadlines for applying for a sickness benefit in Germany, on the one hand, and lengthy procedures to get the illness certificate in the Czech Republic, on the other, may lead Czech frontier workers to lose social protection when sick.

## Administrative cooperation and social security coordination

Currently, there is a quite complex **organisational infrastructure for administrative cooperation** structured around five bodies:

- the Administrative Commission with its
- Conciliation Board (Article 72 of the Basic Regulation),
- the Technical Commission for Data Processing (Article 73 BR),
- the Audit Board (Article 74 BR), and
- the Advisory Committee for the Coordination of Social Security Systems (Article 75 BR).

While Article 72 of Regulation 883 mandates the **Administrative Commission** to deal with all administrative questions and questions of interpretation arising from social security regulations, the tripartite **Advisory Committee** acts in its advisory capacity to examine general questions with regards to the coordination system and to formulate opinions for the Administrative Commission.

The Administrative Commission is, since the very origins of coordination law, a fundamental actor in ensuring an effective and smooth cooperation between Member States' competent authorities and institutions. As a specialised body of the European Commission, it performs fundamental tasks for that purpose.

The main assignment of the **Technical Commission** is to support the Administrative Commission in its task to improve procedures in exchanging information and to ensure the transmission of data between institutions by electronic means under a secure framework. The **Audit Board** is attached to the Administrative Commission with the role of supervising a proper and speedy settlement of claims between national social security institutions. In its role as conciliator the Administrative Commission has set up a **Conciliation Board** and has laid down detailed rules for the implementation of a dialogue and conciliation procedure concerning the validity of documents and the determination of applicable legislation (Decision A1 of 12 June 2009).<sup>9</sup>

In the abovementioned Decision A1, the Administrative Commission has established a **dialogue and conciliation procedure** concerning the validity of documents, the determination of the applicable legislation, and the provision of benefits under Regulation 883/2004. The main goal of that decision is to improve the Administrative Commission's capacity to play its fundamental role of ensuring an effective and efficiently functioning cooperation between the authorities and institutions of the different Member States.

The Decision A1 on the conciliation mechanism establishes a quite **complex dialogue procedure in two stages** (Article 5). In cases where there is doubt about the validity of a document or about the correctness of supporting evidence stating the position of a person for the purposes of Regulation 883/2004 and of the Implementing Regulation, or there is a difference of views between Member States about the determination of the applicable legislation (as is typically the case for disputes concerning posted workers):

1. in the first stage of the dialogue procedure, the requesting institution contacts the requested institution to ask it to provide the necessary clarifications on its decision and, where appropriate, to withdraw or declare invalid the relevant document, or to review or amend the decision; yet, if the institutions cannot reach an agreement during the first stage of the dialogue procedure, or if the requested institution has not been able to complete its investigation within six months of receipt of the request,



2. the competent authorities of the Member States concerned may decide to initiate a **second stage of the dialogue procedure or to refer the matter directly to the Administrative Commission**. In such a case, this body shall try to reconcile the points of view of the Member States concerned within six months of the date on which the matter was brought before it. And it may decide to refer the matter to the Conciliation Board set up for that purpose under the Rules of the Administrative Commission.<sup>10</sup>

Such a procedure may appear to be a cumbersome and at times ineffective mediation mechanism,<sup>11</sup> whose positive outcomes essentially depend on the Administrative Commission's capacity to mediate between the different points of view and positions of the Member States concerned. Being a **voluntary mechanism for mediating conflicts of interpretation/application** of the social security regulations, it fundamentally rests upon shared beliefs and assumptions about the *bonum commune* of preserving a well-functioning system of administrative cooperation. And at the end of the day, in case of persistent and divergent interpretative stakes of the Member States concerned, the **only legally binding and definitive solution could come from the Court of Justice of the European Union (CJEU)**. Indeed, on many occasions, the CJEU has recognised the importance of the conciliatory role of the Administrative Commission<sup>12</sup> in cases in which no agreement is reached between the national institutions and authorities involved concerning the validity or the content of a document certifying the applicable social security legislation.

## Administrative cooperation in the ELA perspective: a preliminary assessment

The key role of the Administrative Commission is recognised and partially preserved by the current proposal on the ELA. Indeed, the new authority is envisaged to complement the activities of the Administrative Commission inasmuch as it carries out regulatory tasks related to the application of social security coordination law. Yet, according to the Commission proposal, the **ELA takes over some very significant operational tasks** currently carried out in the framework of the Administrative Commission and **absorbs three related bodies**. Namely, it shall:

- provide a mediation function between Member States in a more general perspective;
- ensure a forum for handling financial matters related to the application of Regulation 883/2004 and of the Implementing Regulation; and
- take over the function of the Audit Board set up by those regulations, as well as dealing with matters related to the electronic data exchange and IT tools to facilitate the application of those regulations, replacing the function of the Technical Commission of Data Processing set up by those regulations.

The proposal sets out, that in the field of social security coordination the ELA would complement the activities of the Administrative Commission in so far as the latter exercises regulatory tasks related to the application of Regulation 883 and Regulation 987. However, the ELA shall take over also operational tasks currently carried out under the framework of the Administrative Commission such as providing a mediation function between Member States, ensuring a forum for dealing with financial matters as well as with matters related to electronic data exchange.

According to the operational nature and the consequent framing of the tasks of the new authority, **the core idea behind the European Commission's proposal is essentially to split the functions currently performed by the Administrative Commission into two different and yet complementary domains:**

- on the one side, the **regulatory tasks** entailing decisions on interpretative questions arising in the context of social security coordination and, more generally, the para-regulatory steering of Regulation 883/2004 and of the Implementing Regulation, which are to be firmly maintained within the competence of the Administrative Commission; and,

- on the other side, the **operational tasks** related to mediation, exchange of information, and the definition of the financial factors to be taken into account for the purpose of drawing up accounts relating to the costs to be borne by the institutions of the Member States under Regulation 883/2004, and of adopting the annual accounts between those institutions, which are to be shifted to the ELA.

For these reasons, **the ELA would take over and absorb**, in its operational capacity, **the tasks currently assigned to the Conciliation Board set up by the Administrative Commission, to the Technical Commission of Data Processing, and to the Audit Board**. The changes envisaged under the ELA proposal would appear of a minor relevance compared to the significant potential impact of the 2016 proposal on matters of administrative cooperation in social security coordination. Yet, the relevance of such changes should not be underestimated as they may pose new problems.

**The main problems** with this new division of competences may arise particularly **in the context of the mediatory functions actually carried out by the Administrative Commission** especially on matters concerning conflicts on the applicable social security legislation, as we shall see in the following paragraph. Although the enhanced operational capacity of the ELA could potentially improve the cooperation mechanism especially in the elective field of disseminating and exchanging information useful for mobile workers and businesses, **it is worth considering in general some possible shortcomings of the proposed unbundling of the tasks that are currently unitarily performed within the framework of the Administrative Commission in the domain of social security coordination**.

The **potential shortcomings of the European Commissions' proposal on the ELA** arise precisely from that prospective reorganisation of the tasks that are currently performed in a fundamentally unitary fashion by the Administrative Commission, inasmuch as **regulatory and operational tasks have been historically considered as strictly interlinked aspects** of the same overall function of improving administrative cooperation in a highly decentralised system. Such a unitary coalescence of tasks has so far been considered, even in the 2016 European Commission proposal for the revision of the social security coordination regulations, as an added value of the Administrative Commission. This is especially true for the interrelation between the regulatory and mediation tasks carried out by the Administrative Commission in the sensitive sphere of addressing questions and conflicts of interpretation (and interest) concerning the applicable social security legislation (particularly in cases of posting of workers).

In that perspective, **shifting the mediation tasks to the ELA**, as now proposed by the European Commission, **would risk undermining that resource of 'authoritativeness' that is built on the unique – and essentially unitary – competence of the Administrative Commission to deal, both on a regulatory and an operational side, with all administrative issues and questions of interpretation arising from the provisions of the social security regulations**. The 2016 European Commission proposal seems to show better awareness of such probably inextricable interlinking of regulatory and mediatory functions by enhancing both dimensions within the unitary framework of the Administrative Commission.

**For the same reason, the proposal of shifting to the ELA the tasks currently performed by the Technical Commission of Data Processing and the Audit Board seems to be less problematic, since these tasks have a predominantly technical nature**. Nevertheless, the **added value** of shifting those technical tasks to the ELA is not entirely clear, since the proposal does not specify what kind of concrete operational capacity the new Authority would specifically devote in order to perform such duties.

## Conclusions and recommendations

Along with other European Commission's initiatives, the recent proposal aimed at establishing the ELA could significantly contribute to the overall improvement of the goal of a well-functioning system of information exchange and dissemination for the proper application of EU social security coordination law. Thanks to its significant operational capacity, the ELA could indeed complement the Administrative



Commission's role, in addition to supporting the uniform and effective application of the coordination of social security systems, governed by Regulation 883/2004 and by the Implementing Regulation, for the sake of facilitating free and fair mobility of workers within the EU.

An **effective link between the functions of the ELA and those of the Conciliation Board** of the Administrative Commission may find its basis in Article 33 of the proposal on the ELA. **National liaison officers seconded to the ELA** can facilitate information sharing also by directly answering questions posed to their Member States. Therefore, whereas the Administrative Commission could continue to carry out its conciliation tasks in case of disputes, the ELA could **prevent such disputes**. Yet, this means that the implementation of the provisions in Article 33 should be properly monitored. Indeed, whenever relevant information is not physically available from remote locations, as it may be the case for social security contribution and employment records, national liaison officers may find it difficult to intervene in case the relevant authority in their Member State fails to cooperate. A possible solution to prevent barriers to data access from weakening the role of the ELA could be to **empower this authority to suspend the validity of PDs (e.g. the A1 form)** in case of a breach. Such possibility could be further developed by allowing for the suspension after the applicable deadline has expired without a reply being given by the issuing institution, or upon the condition that the Member State requiring the suspension of the PD has concrete evidence that suggests that the certificate was obtained fraudulently.<sup>13</sup>

At the same time, the **Administrative Commission** would be probably best suited to perform its tasks if it could **continue to unitarily deal with all administrative issues and questions of interpretation** concerning the uniform application of the social security coordination system. Indeed, EU social security coordination law has traditionally considered those functions – and especially the regulatory and mediation tasks as envisaged by Article 72 of Regulation 883/2004 – to be unitarily dealt with within the framework of the Administrative Commission.

In the light of the analysis outlined above, while a **positive evaluation can be given of the prospective operational role of the ELA in improving access to information by individuals and employers** about their social security rights and obligations, as well as in **strengthening administrative cooperation** between national authorities in cross-border enforcement of relevant EU law, including facilitating joint inspections, we would **recommend evaluating carefully plans to split the tasks currently performed in a fundamentally unitary way** by the Administrative Commission, particularly as far as the mediation function is concerned.

For these reasons, we would propose the following recommendations:

- **preserving the unitary tasks currently performed by the Administrative Commission** as far as its **mediation/conciliation role** is concerned. While the ELA could take over the tasks currently assigned to the Technical Commission of Data Processing and to the Audit Board, the Administrative Commission should continue to perform its task of facilitating mediation and conflicts resolution in the realm of social security coordination;
- **creating a space for regular knowledge sharing and for building mutual trust between public officials:** fostering shared knowledge among competent bodies on relevant social security law provisions applicable in countries from/to which flows of workers take place is a key aspect of the ELA's operational mission; trainings and peer review meetings on these aspects will help social security authorities to better understand the necessary contextual elements to frame relevant facts occurred abroad, as well as to address cross-border problems more efficiently. In this respect, one should not underestimate the added value of creating regular chances to meet for officials in charge of dealing with cross-border issues, as this will help to establish a climate of mutual trust. For similar reasons, the tasks of supporting joint inspections and the enforcement of sanctions are to be welcomed. The ELA's activities should enable national authorities to quickly address and sanction cases of letterbox companies,

which currently exploit lags due to the lack of cross-border coordination between authorities, in order to cease their activity and move to another country once inspections are ongoing;

- **building a space for preventing cross-border disputes:** the proposal to have, as seconded staff, 'national liaison officers' at the ELA who are in charge of supporting cooperation or even of answering requests on behalf of their State can be a powerful tool to reinforce administrative cooperation. Yet, whereas national data are not accessible from outside the relevant country for legal or technical obstacles, these officers may have weak tools to perform their tasks other than moral suasion towards their national authorities. Making relevant data accessible and interoperable through web portals is and shall remain a complementary goal. Data from National Business Registers are becoming available through the **e-justice web portal**, which may be a relevant tool for inspections, and which could integrate some indicators useful in case of posting, such as detailed information on the presence of offices or plants in a country, and the year of establishment;
- **empowering the ELA to suspend the validity A1 Documents:** a last resort option would be to enable the ELA to suspend the validity of portable documents in case of breach of the principle of mutual information and cooperation by the institutions issuing the document and by the persons concerned, or in case of failure to answer within a given deadline. This may be especially the case of the A1 form, this way creating a strong incentive for both parties to cooperate under the rules entailed by the social security coordination regulations rather than proceed with unilateral action. Whenever the A1 is suspended, the ELA may require the payment of social security contributions and of any sanctions into an EU fund, which will refund the competent authority eventually ascertained by the Administrative Commission or by the CJEU.

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- <sup>1</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland).
  - <sup>2</sup> Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (Text with relevance for the EEA and for Switzerland).
  - <sup>3</sup> European Commission, Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 883/2004 on the coordination of social security systems and regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (Text with relevance for the EEA and Switzerland) (COM(2016) 815 final).
  - <sup>4</sup> European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing a European Labour Authority (text with relevance for the EEA and for Switzerland) (COM(2018) 131 final).
  - <sup>5</sup> CJEU, Case C-390/98, *Banks*, EU: C:2001:456.
  - <sup>6</sup> Cf. S. Giubboni, F. Iudicone, M. Mancini and M. Faioli, *Coordination of Social Security System in Europe. A Study for the EMPL Committee*, Brussels, 2017, pp. 57 ff.
  - <sup>7</sup> If, for instance, the A1 form is eventually refused but the posting period has already started, the sending company must register the posted worker in the host country from the beginning of the posting period, thus incurring unexpected costs. On the other hand, even when the A1 form is approved but delayed, the temporary lack of the form leaves companies in a grey zone. In this case, they are to choose whether to postpone the beginning of the service abroad, or to send the worker and risk receiving claims from social security institutions of the host country.
  - <sup>8</sup> European Commission, Commission Staff Working Document, Impact Assessment Accompanying the Document Proposal for a Regulation of the European Parliament and of the Council establishing a European Labour Authority (SWD(2018) 68 final).
  - <sup>9</sup> Administrative Commission for the Coordination of Social Security Systems, Decision No A1 of 12 June 2009 concerning the establishment of a dialogue and conciliation procedure concerning the validity of documents, the determination of the applicable legislation and the provision of benefits under Regulation (EC) No 883/2004 of the European Parliament and of the Council (Text of relevance to the EEA and to the EC/Switzerland Agreement).
  - <sup>10</sup> Administrative Commission for the Coordination of Social Security Systems, Rules of the Administrative Commission for the Coordination of Social Security Systems attached to the European Commission of 16 June 2010 (2010/C 213/11).
  - <sup>11</sup> According to the Impact Assessment, a small number of cases is indeed dealt with by the Conciliation Board.
  - <sup>12</sup> See, e.g., CJEU, Case C-202/97, *FTS*, EU:C:2000:75, and CJEU, Case C-2/05, *Herbosch Kiere*, EU:C:2006:69.
  - <sup>13</sup> In this regard, the CJEU, in the abovementioned *Altun and Others* case, ruled that: ‘In that context, when, in the dialogue provided for in Article 84a(3) of Regulation No 1408/71 [the current Article 76(4)(3) of Regulation 883/2004], the institution of the Member State to which the workers have been posted puts before the institution that issued the E 101 certificates concrete evidence that suggests that those certificates were obtained fraudulently, it is the duty of the latter institution, by virtue of the principle of sincere cooperation, to review, in the light of that evidence, the grounds for the issue of those certificates and, where appropriate, to withdraw them, as is clear from the case-law referred to in paragraph 43 of the present judgment’ (paragraph 54).

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