

European Labour Authority

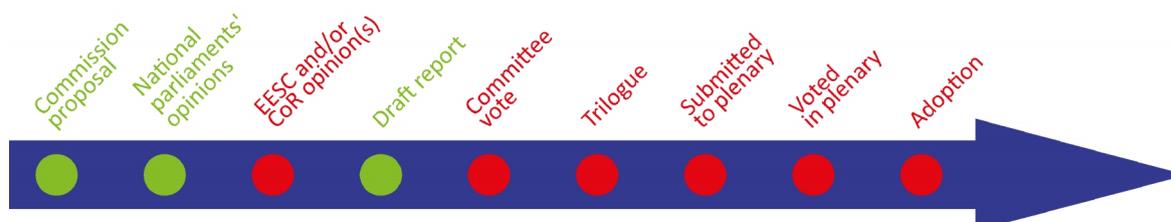
OVERVIEW

The rapid increase in the number of Europeans working in a Member State other than their own, the large number of daily cross-border commuters and the need for information on job opportunities and rights at home and abroad (ensured by good cooperation between national authorities) necessitates the establishment of a European-level coordinating body.

In response to the above circumstances, the European Commission has proposed to set up such a body – a European Labour Authority (ELA) – that would replace or reorganise, or cooperate with existing structures dealing with information for individuals and employers, mediate between national labour authorities and social security bodies, and gather viable data on posted workers and commuters.

Questions relating to the European Commission proposal concern the empowerment and role of the ELA, its internal structure and its relations to existing organisations in the domain.

Proposal for a regulation of the European Parliament and of the Council establishing a European Labour Authority		
<i>Committee responsible:</i>	Employment and Social Affairs (EMPL)	COM(2018) 131 13.3.2018
<i>Rapporteur:</i>	Jeroen Lenaers (EPP, the Netherlands)	2018/0064(COD)
<i>Shadow rapporteurs:</i>	Georgi Pirinski (S&D, Bulgaria) Ulrike Trebesius (ECR, Germany) Rina Ronja Kari (GUE/NGL, Denmark) Joelle Mélin (ENF, France)	Ordinary legislative procedure (COD) (Parliament and Council on an equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Vote on report in committee	



Introduction

Cross-border mobility has seen a sizeable increase in recent years. According to [statistics](#), 17 million Europeans lived and worked in a Member State other than that of their origin in 2017, which is almost double the figure in 2007. There are currently 2.3 million posted workers, up 68 % compared to 2010. [Posted workers](#) still encounter problems, such as getting illegally posted, having to deal with letterbox companies or being offered reduced social rights. The number of cross-border commuters on the borders of Member States – currently placed at 1.4 million – is also growing steadily. Two million [road transport drivers](#) cross internal EU borders on a regular basis. National authorities struggle with the problem of traceability with regard to these workers, due to the lack of available and viable data. There is an increasing need for information on job opportunities and on workers' rights and obligations both in the home and the host Member State, as well as for good cooperation among the labour authorities of the individual Member States.

Existing situation

Mobility of persons is one of the fundamental rights in the European Union. This includes the mobility of workers and companies. The legal basis for labour mobility is set out in Articles 46, 48, 53(1), 62 and 91(1) of the [Treaty on the Functioning of the European Union](#) (TFEU), focusing on the free movement of workers, the coordination of social security systems, the take-up and pursuit of activities as a self-employed person, the freedom to provide services, as well as the common rules applicable to international transport.

As the enforcement of these rules has been moving forward slowly, this has allowed unfair practices to appear and persist on the labour market. The proposals published in the framework of the [European Pillar of Social Rights](#), in particular in the labour mobility package, seek to remedy this situation.

The conditions applicable to posted workers are regulated by the Posting of Workers Directive ([96/71/EC](#)), which provides a framework to protect the social rights of posted workers and to prevent social dumping. The directive was completely revised in 2018. The [revision](#) introduced changes in three main areas: a) the remuneration of posted workers, which is now equal to that of local workers, even in the case of subcontracting; b) the rules on temporary agency workers, which are now more coherent; and c) long-term posting, where after 12 months of posting, host-country rules start to apply to posted workers. Member States will be able to ensure that posted workers are covered by representative collective agreements in all sectors. According to the principle of the 'same pay for the same work at the same workplace', posted workers can benefit from the same rules as local workers as soon as they take up a job.

Social security of workers, which differs significantly from one Member State to another, is governed by Regulation ([EC](#)) [883/2004](#) on the coordination of social security systems and Regulation ([EC](#)) [987/2009](#) on the procedure for implementing it. The basic principles of these regulations are that citizens are covered by the legislation of one country at a time and only pay contributions in one country (prevention of overlapping benefits); foreign citizens have the same rights and obligations as the nationals of the country where they are covered (principle of equal treatment or non-discrimination); previous periods of insurance, work or residence in other countries are taken into account (principle of aggregation); and cash benefits from one country may generally continue to be received if the citizen is living in a different country (principle of exportability). The revision of these regulations, initiated by a [Commission proposal](#), is ongoing. This revision seeks to:

- clarify the circumstances in which Member States can limit access to social benefits claimed by economically inactive mobile EU citizens;

- establish a coherent regime for the coordination of long-term care benefits by introducing a separate chapter for their coordination and by defining and listing those benefits;
- propose new arrangements for the coordination of unemployment benefits in cross-border cases;
- establish new provisions for the coordination of family benefits;
- reconcile the conflicting rules contained in relevant legislation;
- clarify the relationship between the two regulations and the Posting of Workers Directive in terms of the provision of services.

Set up in 1993, [EURES](#) (European Employment Services), one of the three axes of the Employment and Social Innovation programme ([EaSI](#)), is a cooperation network aimed at enhancing the free movement of workers within the EU-28, as well as Switzerland, Iceland, Liechtenstein and Norway. EURES is made up of the European Coordination Office, the national coordination offices of the countries involved and partners, such as public and private employment services, trade unions and employers' organisations. EURES provides its services through an internet portal and a network of approximately 1 000 advisers across Europe, who maintain contact with jobseekers and employers.

The [European platform](#) to enhance cooperation in tackling undeclared work has been operational since 2016. In addition to preventing, deterring and combating undeclared work, the platform is to report undeclared jobs. Because of the country-specific nature of undeclared work, Member States may decide on their level of involvement in the platform's activities, the measures to take at national level and the authorities to represent them. In addition to the EU-28, four representatives of cross-industry civil-society organisations, elected by the social partners themselves, are members of the platform.

In 1991, the Council adopted [Directive 91/533/EEC](#) on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship. In the framework of the REFIT programme, in December 2017 the European Commission adopted a [proposal](#) for a directive on transparent and predictable working conditions across the EU. The proposal aims to ensure that workers are provided with an updated and extended information package on their obligations and working conditions at the very start of employment. Furthermore, the proposal creates new minimum standards to ensure that all workers, including those on atypical contracts (for instance, domestic workers, marginal part-time workers or workers on very short contracts), benefit from more predictability and clarity as regards their working conditions.

All the above-mentioned initiatives seek to regulate and coordinate specific parts and aspects of the labour market or workers' rights. There is, however, an increasing need to coordinate and harmonise all these facets of labour under the direction of a single authority at European level.

Parliament's starting position

The European Parliament has provided support for the creation of a system of labour inspectorates at national level on numerous occasions. This was expressed, for example, in its 14 January 2014 [resolution](#) on effective labour inspections as a strategy to improve working conditions in Europe, in its 14 September 2016 [resolution](#) on social dumping in the European Union and in its 19 January 2017 [resolution](#) on a European Pillar of Social Rights. In this last instance, the Parliament called for further EU support to be provided for institutional capacity-building, for example as regards the [European network of public employment services](#), the electronic exchange of social security information ([EESSI](#)) and the [European platform tackling undeclared work](#), which could evolve in the longer term towards a European system of labour inspectorates.

During trilogue meetings, the Parliament has been contributing significantly to the scope of several directives in the domain of workers' rights and labour mobility, proposed by the Commission. Examples include the Posting of Workers (voted in plenary in May 2018), the revision of the Social

Security Coordination System (ongoing), the establishment of transparent and predictable working conditions (ongoing), and the European platform to enhance cooperation in tackling undeclared work (adopted in 2016).

Concerning the plans for setting up a European Labour Authority, announced by Commission President Jean-Claude Juncker in his [State of the European Union](#) speech of September 2017, the Parliament has stressed how important it is to properly implement the EU legislation on cross-border labour mobility, to reinforce controls, and to ensure that there is coordination between Member States as a way to promote standardisation of practices, cooperation and information exchange among their labour inspectorates.

Preparation of the proposal

In his 2017 State of the Union speech announcing the [2018 Commission work programme](#), Juncker declared that it is necessary to ensure 'that all EU rules on labour mobility are enforced in a fair, simple and effective way' through a common labour authority. This authority should have the competence to facilitate the implementation of EU legislation on labour mobility and social security coordination for all economic sectors.

On 27 November 2017, the European Commission launched a public [consultation](#) on a European Labour Authority (ELA). The consultation ended on 7 January 2018, lasting six instead of the typically required 12 weeks. A targeted stakeholder consultation was also carried out between 6 November 2017 and 7 January 2018 with Member States, public authorities, social partners and practitioners. An additional targeted stakeholder consultation in the transport sector was carried out between 12 January 2018 and 2 February 2018. Generally, Member States' governments were in favour of improving existing EU-level structures rather than creating a new EU body. Many stakeholders were concerned about the risk of duplication resulting from the ELA's co-existence with other EU bodies and structures. Some stakeholders would have preferred delegating greater responsibility to the ELA.

On 13 March 2018, the Commission published an [impact assessment](#) on the ELA, which identified two major problems that would undermine its compliance with EU rules and effective cross-border labour mobility. The first is the 'inadequate information, support and guidance function for individuals and employers in cross-border situations'. Despite EU actions to improve guidance and access to such information through the creation of several internet portals and tools, and the launch of initiatives such as the single digital gateway, challenges remain in providing tailored information and services to support citizens' and companies' mobility choices. The second problem concerns the 'inadequate cooperation between national authorities on rule enforcement'. The impact assessment explains that more effective administrative cooperation would better address challenges such as social fraud and unfair competition. The impact assessment analysed several possible scenarios:

- The baseline scenario, in which no further EU action would be taken, would contribute to persisting information gaps for mobile workers and citizens.
- In the second scenario, the ELA would essentially have a supporting function, contributing to the sharing of studies and analyses, raising awareness among stakeholders and ensuring a liaison point between existing bodies.
- The third and preferred option defines the ELA as an operational structure whose responsibilities include ensuring wider access to targeted information; ensuring that there is an interconnection between EU-provided services; issuing proactive proposals for joint inspections; and carrying out analyses and risk assessments.
- According to the fourth option, the ELA would be a supervisory body setting standards for mobility-related services, establishing mandatory requirements for information exchange and developing a code of rules for labour inspections. As

enforcement and information-gathering are considered national competences, this option has been discarded.

EPRS has published an [initial appraisal](#) of the Commission's impact assessment, which finds that the problem definition is well defined and substantiated, but that there was a lack of discussion of risks of overlaps with existing structures, a concern raised by many stakeholders.

The changes the proposal would bring

The tasks of a European Labour Authority, summarised in Article 5 of the [Commission](#) proposal, would be to:

- facilitate individuals' and employers' access to information on their rights and obligations in cross-border situations as well as their access to cross-border labour mobility services;
- facilitate cooperation and information exchange among national authorities with a view to the effective enforcement of relevant Union law;
- coordinate and support concerted and joint inspections;
- carry out analyses and risk assessments on issues of cross-border labour mobility;
- support Member States' capacity-building with regard to the effective enforcement of relevant Union law;
- mediate in disputes between Member States' authorities on the application of relevant Union law;
- facilitate cooperation between relevant stakeholders in the event of cross-border labour market disruptions.

Furthermore, there is an intention to create a pool of existing tools for cross-border mobility (for instance, EURES or the European job mobility portal, the EU social security coordination, the European Health Insurance Card, the EU Blue Card) in order to provide a one-stop shop for citizens, businesses and public authorities. Another aim is to build on existing agencies and structures to better manage cross-border and joint activities, for instance in terms of skills forecasting, health and safety at work, management of restructuring and tackling undeclared work. Consequentially, the European Labour Authority would cooperate with the following institutions:

- the European Foundation for the Improvement of Working and Living Conditions;
- the European Centre for the Development of Vocational Training;
- the European Agency for Safety and Health at Work;
- the European Training Foundation;
- the European Job Mobility Portal;
- the European Platform tackling undeclared work.

The European Labour Authority would function as a European agency, and its regulation would build on the [common approach](#) on EU decentralised agencies endorsed in 2012 by the Parliament, the Council and the Commission.

The European labour authority should be established and functional in 2019 and reach its full operational capacity by 2023.

On the same day as the proposal, the Commission also published a [decision](#) to establish a European advisory group for the European labour authority, with the task to ensure that the ELA can start its work as soon as the regulation is adopted.

Advisory committees

The European Economic and Social Committee (EESC) and the Committee of the Regions (CoR) are still working on their opinions on the proposal. The EESC expects to adopt its [opinion](#) in September 2018 (Rapporteur: Carlos Manuel Trindade, Workers –Group II, Portugal), while the CoR is due to adopt its [opinion](#) in October.

National parliaments

The deadline for the subsidiarity check by the [national parliaments](#) was 21 May 2018. The parliament of Sweden (Riksdag) was the only one to submit a [reasoned opinion](#). In this opinion, it expressed the view that the proposed role of the ELA to serve as a mediator between Member States and to support joint inspections is problematic. The Riksdag considered that the 'overall objective of the ELA can be achieved to a sufficient extent by the Member States through improved cooperation within the framework of existing processes and structures'.

Stakeholders' views

The European Trade Union Confederation (ETUC) [expressed](#) its strong support for the establishment of the ELA, which should help to improve the national implementation of EU labour and social security law, and thereby contribute to regulating cross-border issues, fighting cross-border social fraud and supporting mobile workers. According to the ETUC, improvements should be made to reinforce the role of the ELA (for instance, Member States should not be able to refuse joint inspections or requests for information). Furthermore, social partners should have real influence on the ELA's work programme and priorities. The structure of the ELA should therefore reflect the tripartite structure of other EU agencies and be compliant with the EURES structure.

In its [position paper](#), BusinessEurope – the confederation of European business – stated that it supports policy-makers' effort to combat fraud in cross-border situations. However, it expressed doubts about whether the establishment of a European Labour Authority would be an efficient and cost-effective way of achieving this aim. In its opinion, streamlining existing structures (or setting up an EU help-desk) would be possible without having to create a new agency.

According to the European Association of Craft, Small and Medium-sized Enterprises ([UEAPME](#)), the European Labour Authority's main challenge would be to provide tangible added value that complements what existing European structures and bodies are already offering European citizens and businesses, while fully respecting the competences of national authorities. UEAPME stresses that the ELA should become a one-stop shop for information that does not have any regulatory power, interpretation capacity or EU legislation competence.

Academic views

In May 2018, the European Parliament's Policy Department for Economic, Scientific and Quality of Life Policies organised a [workshop](#) with the participation of several academic representatives. The main discussion points highlighted during this event and in other relevant publications and studies were as follows:

- The empowerment of the ELA: The legal basis in the labour domain set out by the Treaties should not be changed; it is therefore not possible to establish a European inspection system in the labour domain; however, stronger and more unified action would be necessary in order to fight unfair competition and social dumping.
- The importance of a well-functioning mediation mechanism: There is a need to adopt a set of guiding principles for conducting a mediation procedure, as well as for a scenario for cases where conflicting sides cannot come to an agreement. The

relationship between the ELA mediation mechanism and the European Court of Justice should also be specified.

- Information delivered to the ELA: More clarity is needed concerning the scope and quality of information delivered to the ELA. Data exchange should take into account cybercriminality and security aspects. The conditions of use of existing EU portals and tools, such as the Single Digital Gateway, the Internal Market Information System (IMI), and the Electronic Exchange of Social Security Information (EESSI), should be specified.
- The ELA and social security coordination: [An intervention](#) exploring the role of the ELA with regard to social security coordination [pointed out](#) how important it is to ensure cooperation with the sending countries' administrative bodies in charge of social security, in order to obtain missing information concerning posted workers and commuting frontier workers. Furthermore, the ELA should monitor the performance of Member States in making the necessary information available. It was underlined, however, that the added value of shifting certain tasks, such as mediation between Member States, from existing bodies (for instance, the Administrative Commission responsible for social security coordination) to the ELA, is not entirely clear.
- The ELA and EURES: A [study](#) points out that despite the potential gain of having a 'single stop shop' in the form of an authority, there could be overlaps in competencies between the ELA and EURES. Consequently, additional coordination or clarification might be needed. The proposed separation of the EURES portal's technical management from its content management, to be handled respectively by the Commission and the ELA, is also likely to result in a more complex operational environment.
- The structure of the ELA: According to another [intervention](#), as designed, the ELA's internal structure poses a number of problems. More specifically, while its tasks would involve providing information, carrying out inspections and enforcing European labour law, it would have no power to intervene in the Member States' affairs in this domain. Furthermore, unlike other agencies, the ELA would have no stakeholders' representatives on its management board. That is why the study proposes instead to create a separate stakeholder group that would solely have a consultative function. Contrary to other agencies, the Parliament would have no say in the appointment of its executive director.

Legislative process

On 13 March 2018, the European Commission published a [proposal](#) on the establishment of a European Labour Authority.

The proposal was presented at the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council meeting on 15 March 2018. On 16 May 2018, the Council Working Party on Social Questions discussed the impact assessment of the proposal. Most delegations considered that the legal basis and the policy context were clearly explained and did not raise other concerns.

Within the European Parliament, the Committee for Employment and Social Affairs (EMPL) is responsible for the dossier. The rapporteur (Jeroen Lenaers, EPP, the Netherlands) was appointed on 28 March 2018. He published his [draft report](#) on 22 June.

In the Council, the proposal is being discussed by the [Working Party on Social Questions](#).

EP SUPPORTING ANALYSIS

- Mari Tuominen, [EPRS Initial Appraisal of the Commission Impact Assessment on the European Labour Authority](#), Briefing, EPRS, European Parliament, May 2018.
- Nora Milotay, [European Pillar of Social Rights for more social Europe](#), Briefing, EPRS, European Parliament, September 2016.
- Monika Kiss, [Posting of Workers Directive](#), Briefing, EPRS, European Parliament, June 2018.
- Monika Kiss, [Understanding Social Dumping in the European Union](#), Briefing, EPRS, European Parliament March 2017.
- Susanne Kraatz, [European Labour Authority: Workshop summary report](#), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, June 2018.
- [The European Labour Authority and Social Security Coordination](#), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, May 2018.
- [European Labour Authority and Support for Labour Mobility \(EURES\)](#), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, May 2018.
- [The European Labour Authority and Enhanced Enforcement](#), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, May 2018.
- [The proposed European Labour Authority: Profile and governance](#), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, May 2018.

OTHER SOURCES

[European Labour Authority](#) 2018/0064(COD), European Parliament, Legislative Observatory (OEL).

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