

Background Note

Dedicated hearing with social partners on a European Labour Authority

In his 2017 State of the European Union address, President Juncker stated that EU rules on labour mobility should be enforced in a fair, simple and effective way. To this end, President Juncker proposed that a European Labour Authority be established to strengthen cooperation between labour market authorities at all levels and better manage cross-border situations. In line with the Commission's Work Programme, the Commission is scheduled to present a proposal in the first semester of 2018.

The Commission is currently exploring various options as regards the exact delineation of objectives and modalities of a European labour Authority, including building on and improving existing instruments in the area of labour mobility.

The current note presents a preliminary outlook on which the Commission wishes to get the views of different stakeholders to feed into the design of the European Labour Authority.

1. Challenges

The free movement of workers and the freedom to provide services are fundamental pillars of our Union. The exercise of these freedoms depends upon well-functioning cross-border mobility of labour. Intra-EU labour mobility involves some 12 million citizens who are working, seeking a job or are being posted in another Member State. This figure also includes cross-border workers¹.

An extensive body of EU legislation establishes workers' rights in cross-border situations and coordinates social security regimes. EU law also sets out specific provisions to support the implementation of rules and facilitate the exchange of information between Member States².

National authorities are in charge of rule enforcement in line with Treaty competences. Nevertheless the Commission considers that there is a need for a European structure or body to support systematic cooperation on cross-border activities involving labour and on social security matters between Member States. In particular, the main challenges concern:

- **Fragmented cooperation arrangements between Member States** due to the stratification of separate networks in the areas of posting of workers, undeclared work, and social security coordination, compounded by the development of bilateral agreements between Member States in these different areas over time;
- **Insufficient capacity of national authorities to cooperate effectively and implement existing legislation**, which is often due to a lack of resources, linguistic and digital capacity, and access to relevant information;

¹ Source: *2016 Annual Report on intra-EU labour Mobility*.

² See Enforcement Directive on the posting of workers (2014/67/EU) and Regulation No 883/2004 on the coordination of social security systems

- **A partial regulatory framework**, notably regarding the absence of fora for dispute settlement beyond social security coordination and standard procedures and support for the organization of joint labour inspections;
- **Insufficient knowledge of and difficulties in addressing multi-faceted and evolving phenomena** involving in some cases blurred boundaries between the posting and free movement of workers, social security coordination (including possible tax fraud), undeclared work, and in certain cases human trafficking. National authorities are not well placed to carry out analysis of developments in these areas at European level.

Moreover, access to and sharing of information, as well as transparency regarding rights and obligations in the field of employment and social security systems in cross-border situations remains insufficient for both individuals and organizations.

At the EU level, important steps forward have been made with the EURES portal for job-seekers, Electronic Exchange of Social Security Information (EESSI) in the area of social security coordination, and the extension of the Internal Market Information (IMI) system for administrative cooperation in the field of posting. This notwithstanding, poor access to and sharing of information negatively affects the mobility decisions of workers, companies and the self-employed, while also reducing the effectiveness of controls and inspections. Challenges include:

- *For national authorities:* **time-consuming data collection process for cross-border employment and social security matters and difficulties in sharing information with national authorities in other Member States** charged with enforcement and inspection. This includes routine exchange of information but also investigation in the areas of undeclared work, fraudulent forms of posting of workers, circumvention of social security coordination rules and letterbox companies;
- *For businesses:* **possible lack of transparency regarding national administrative requirements for cross-border activities**, owing to fragmented sources of information, making it difficult for them to comply swiftly with national administrative procedures and rules on terms and conditions for workers;
- *For mobile workers or job-seekers who wish to work in another country:* lack of transparency regarding their rights and knowledge of where to find **guidance and support**, also with a view of minimizing the risk of being exposed to abuses abroad.

2. Objectives

The establishment of a European Labour Authority should contribute to ensuring fairness in the single market. Bringing together national liaison officers with permanent staff, it would be an effective organ to support national administrations, businesses, and mobile workers on cross-border employment and social security matters.

As such, a European Labour Authority could strengthen operational cooperation between competent labour authorities and social security institutions at all levels and better manage cross-border situations. The Authority could also support labour mobility by providing easier

access to information for individuals, employers and organisations concerned. This would restore trust in the Internal Market, enhancing its functioning and fairness, and promote the opportunities offered by the European labour market both for businesses and workers alike. Concretely, the objectives of the Authority would be:

i) Improving cooperation at EU level on cross-border mobility and social security coordination matters

The European Labour Authority could strengthen current administrative cooperation and mutual trust among national authorities on all matters involving cross-border mobility and social security coordination. It could ensure the exchange of information requested by one authority to another Member State's authorities and assist logistically (e.g. translations). It could help with both the setting-up and operation of joint cross-border inspections. The Authority could provide both logistical and legal support to the operational activities of a joint investigation. On matters of undeclared work associated with human trafficking, the European Labour Authority could cooperate with Europol and Eurojust.

The Authority could also be tasked with an independent dispute settlement role between national authorities regarding cross-border matters. To facilitate implementation and enforcement of European labour mobility and social security coordination legislation across borders, the European Labour Authority could further contribute towards capacity-building of national enforcement bodies.

The European Labour Authority could use its European perspective and operational experience to request studies and forward-looking risk assessments.

ii) Improving access to information and transparency regarding rights and obligations in the field of labour mobility and social security systems

Simultaneously, the European Labour Authority could facilitate cooperation between national authorities tasked to provide information to mobile citizens and businesses operating across borders about their rights and obligations.

It could contribute to facilitating and supporting the exchange of relevant information among national authorities, including through the digitisation of existing procedures, allowing for timely investigations by national controlling authorities and reduced administrative burdens for businesses.

Moreover, the Authority could improve the access to information for mobile workers and businesses operating across borders. In this regards, it could perform the function of an information clearing house and provide a digital information portal for mobile workers.

3. Questions

1. Do you share the above analysis of the most significant challenges linked to improving cooperation at EU level on cross-border employment and social security matters?
2. Drawing on existing structures, tools and legislation, how could the Authority effectively support cooperation at an operational level among Member States for the smooth handling of procedures and to become more effective in fighting cross-border fraud and abuse? Do you see the need to review any existing structures or tools to better achieve these goals?
3. How could the Authority improve the availability of information to individuals and organisations concerned with labour mobility (national controlling authorities, businesses, mobile workers or job-seekers who wish to work in another country) in an efficient and effective way? Which type of information should the Authority help exchanging as a priority and by which means?
4. How could the Authority provide added value in enhancing and extending current procedures and *fora* for addressing differences in the social security coordination and labour mobility areas?
5. Which organisational structure would you consider to best enable the Authority to efficiently carry out its tasks?
6. In which ways can social partners contribute to and support the initiative?