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#EUROPEAN LABOUR AUTHORITY

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WHAT IS OUR AMBITION FOR THE EUROPEAN LABOUR AUTHORITY?

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Summary

The idea of creating a European Labour Authority (ELA) is most often associated with the need to better enforce European rules on worker mobility, given the difficulties encountered at national level in detecting, preventing and tackling abuse and fraud that occur today, notably in the posting of workers. However, the initiative for setting up an ELA is also based on a second argument, less often put forward but equally important: the authority should facilitate European mobility, in particular by guaranteeing better access to information for citizens as well as for businesses.

The future authority should not be reduced to a cooperation and information exchange platform. Although this option may seem the most convenient politically and the least expensive economically, it would not be sufficient to address the tensions provoked by mobility and to strengthen the European labour market. At the same time, the new agency should not become a European super-inspectorate. There is no legal basis for granting the ELA binding powers vis-à-vis Member States.

Between these two scenarios, there is ample room to entrust the European Authority with four tasks: (i) to facilitate administrative cooperation between national authorities, including for solving disputes; (ii) to provide a centre of expertise and training to the competent national authorities; (iii) to combat abuses of social and employment legislation and facilitate joint cross-border labour inspections; (iv) to provide a one-stop shop for citizens and business for accessing information on the free movement of workers and services.

The establishment of ELA must follow an incremental approach, without ruling out the possibility that it will be granted, in the medium or long term and in specific situations, a mandatory role. Its human and financial resources should grow accordingly. Its organisational structure could take its cues from that of other European agencies. Like Europol or Eurojust, it should bring together liaison officers from each country and have a single point of contact in each country. As is the case with other European employment agencies, the social partners should be involved in ELA's governance.

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INTRODUCTION

In his 2017 State of the Union speech, European Commission President Jean-Claude Juncker announced his intention to create a "**European Labour Authority**" which will ensure that "**all EU rules on labour mobility are enforced in a fair, simple and effective way**".[1] The proposal, welcomed by the French President Emmanuel Macron,[2] seems more than justified in light of the strong increase in intra-European labour mobility, which has doubled over the last ten years, and given the difficulties encountered by national authorities in **preventing, detecting and tackling mobility-related abuse and fraud**.

These difficulties are particularly visible in the posting of workers, since the authorities of the host country, if they are to carry out effective controls, depend on access to information held by the authorities of the country of origin. Due to the weak cooperation between national authorities, the posted worker statute has been exploited by unscrupulous employers' intent on reducing their labour costs by all means available. As the matter stands, such behaviour produces multiple negative effects: workers are exploited; companies face unfair competition; countries lose revenues (such as social contributions and taxes). This breeds mistrust towards the European project among European citizens.

To tackle these challenges, the European Commission has put in place tools and platforms to facilitate the exchange of information and cooperation between national authorities. It also proposed a revision of European rules, especially those on posted workers and the coordination of social security systems.[3] Today, the Commission seems ready to go further. While implementing and enforcing respect for European rules is a competence of the States, the European executive wants to give the EU a stronger role to support their action. As early as 2013, Michel Barnier, then the Commissioner in charge of the internal market, stressed the need to move in this direction: "It will be necessary, one day or another, to create a (European) control agency to coordinate and strengthen the mandate of labour inspectors".[4]

If the idea of a European Labour Authority is welcome, it remains to be seen **how far-reaching the Commission proposal** will be.[5] Will ELA be an authority only endowed with a supporting role vis-à-vis national authorities, or will it play an operational role? Will it be an exclusively supervisory authority or will it have a broader mission to strengthen the single labour market? Will the debate on the proposal be limited to the tasks and structure of the future authority or will it be part of a more comprehensive approach for the definition of a medium/long-term strategy for upward wage and social convergence in Europe?

The coming months will be crucial to guarantee that the future authority will bring a real added value to ensure fair mobility within the EU. Faced with populist movements who frequently invoke the problem of intra-European mobility to buttress their inward-looking attitudes against the European project, it is essential to bring this issue into the public realm. It is necessary to

1. Jean-Claude Juncker, State of the Union speech, 13 September 2017.
2. Emmanuel Macron, Sorbonne speech: Initiative for Europe, 26 September 2017, press conference at the Gothenburg Social Summit for Fair Growth and Jobs, 17 November 2017.
3. Directive 2014/67/EU of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers; proposal for a directive amending Directive 96/71/EC concerning the posting of workers; proposal for a regulation 2016/0397 (COD) of 13 December 2016 amending the regulation on the coordination of social security systems and the corresponding implementing regulation.
4. "Barnier propose une agence européenne d'inspection du travail", Reuters, 3 December 2013. In recent years the Jacques Delors Institute supported this idea; see for instance: David Rinaldi, "A new start for Social Europe", Jacques Delors Institute, February 2016.
5. On 13 March 2018, the European Commission is expected to present its "Social Equity" package which includes its proposals for a European Labour Authority and for a European Social Security Number.

lay out in detail to citizens the "reasons", "objectives" and "modalities" of the proposal. The aim of this **policy paper** is thus twofold: **to help unpack what is at stake in setting up this agency and to contribute to the debate on the scope of action of the future European Labour Authority**. To this end, we recall the arguments for the establishment of the authority (Part 1); we then discuss the role it should play (part 2), before analysing its missions and tasks (part 3); finally, we present some ideas for its governance structure (part 4).

1 . WHY IS A EUROPEAN LABOUR AUTHORITY NECESSARY?

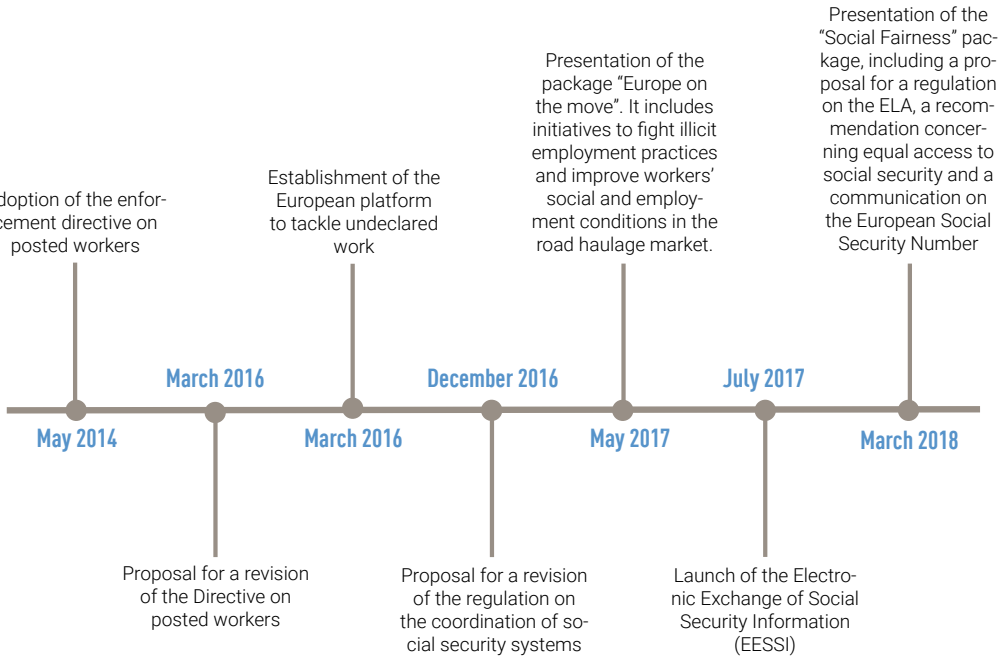
The idea of creating a European Labour Authority is part of EU's agenda **to ensure fair labour mobility within the EU** (see Figure 1). The free movement of workers and the freedom to provide services are two fundamental pillars of the single market and should not be called into question. However, it is of critical importance to make sure that the mobility of workers unfolds within a framework that respects European as well as national rules, so that the rights of mobile workers are protected and mobility does not become the source of unfair social competition.

Today, however, **the action of the national authorities is insufficient to enforce compliance with European mobility rules. This is partly due to the authorities' lack of resources in many countries, but also to the difficulties they have in cooperating with one another**. The EU has a necessary role to play in overcoming these difficulties: it can help prevent, detect and tackle cases of abuse and fraud that currently mar transnational mobility.

The Commission also deploys a second argument to justify the creation of ELA. The authority is **to provide better access to information for workers and enterprises so as to create greater awareness of their respective rights and obligations when they work/develop their activity in another EU country**. The Commission's decision to mount a broad case for the establishment of ELA that goes beyond the sole issue of compliance is wise. Providing ELA with a positive mission – to facilitate the activities of workers and businesses exercising their right of free movement – is important for both functional and political reasons. It will strengthen the role ELA can play to improve the functioning of the single labour market and to reinforce its dynamism. Also, this positive mission addresses the risk that the creation of ELA could be perceived by some countries as an instrument aimed at limiting intra-EU mobility – a perception that would undermine their support for this Commission initiative.

The following sections will analyse in greater detail the dual argument in favour of the creation of ELA: to facilitate intra-European mobility (1.1.) and to ensure compliance with European mobility rules (1.2.).

FIGURE 1 ■ Overview of recent European Commission initiatives to ensure fair labour mobility in the EU



1.1 Facilitating intra-EU mobility: providing better access to information for workers and business

Today there are around 16 million European citizens living and working in another Member State, which is twice as much as ten years ago. Despite this strong increase, intra-European mobility remains limited: mobile workers represent only 3.7% of the EU labour force. Admittedly, the free movement of workers today poses a number of difficulties that must be addressed. However, it should not be overlooked that **intra-European labour mobility**, as long as it complies with European and national rules on employment and social security, **contributes to the proper functioning of the single market**, notably by tackling the job and skills gaps in several countries. It is also a **stabilisation tool for the common monetary area** in the event of an asymmetric shock.

Many obstacles to the free movement of workers and the freedom of companies to provide services remain. **In recent years, the Commission has presented several initiatives aimed at removing these obstacles**. A Directive was adopted in 2014 to facilitate the exercise of the rights conferred on workers in the context of freedom of movement, in particular by establishing national contact points providing assistance, information and advice in this area.[6] That same year, the Enforcement Directive on the posting of workers stipulated that each Member State should create a single national website, available in several languages, presenting useful information to companies wishing to provide services on their territory. The Commission has also reformed EURES (the European network of Public Employment Services) to facilitate access to job vacancies across the EU and proposed (notably in the context of the revision of the regulation on the coordination of social security systems) new measures on the portability of social rights for mobile workers.

6. Directive 2014/54/EU of the European Parliament and of the Council of 16 April on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers.

Despite these numerous initiatives, the Commission emphasises in its inception impact assessment of the ELA that there is still **insufficient access to information and a lack of transparency regarding the rights and obligations of citizens and businesses in transnational mobility situations**. In particular, this is due to a dispersion of current sources of information and their lack of visibility. This adds to the burden on companies providing services in other EU countries and puts mobile workers at risk of abuse. To illustrate the inadequacy of the current framework, the Commission points out that the majority of cases relating to access to employment submitted to "Your Europe Advice" (the EU's advisory service for citizens and companies) concerned general requests for information on the rights, conditions and formalities for working in another EU country.[7]

1.2 Guaranteeing a fair mobility: reinforcing the cooperation between national authorities and better prevent, detect and combat abuse and fraud

Good cooperation between the competent national authorities is necessary to ensure fair labour mobility within the single market. This cooperation should be of help in combating undeclared work. To this end, the Commission launched the European Platform tackling undeclared work in 2016 (see Table 1). Nevertheless, given the transnational nature of their activity, it is with regard to posted workers that cooperation between national authorities is particularly necessary. A posted worker's employment contract is governed by the law of his or her country of origin—and is therefore affiliated to the social protection system of that country, where social security contributions are due –, but he or she exercises the activity temporarily in another country. **Without rapid and effective cooperation between the national authorities of the host country and the country of origin, detection of abuse and fraud is difficult**. Today, the status of posted workers is too often misused. Numerous irregularities occur, including the existence of "letterbox" companies (which set up their headquarters in a country without any real or substantial economic activity there), the non-payment—in whole or in part—of social contributions in the country of origin or the non-respect of the labour law of the host country.[8]

The currently existing difficulties of cooperation between national authorities preventing an effective fight against these excesses are numerous. Above all, **the authorities of the host country often find it difficult to access documents and information held by the authorities of the country of origin**, which would enable them, for example, to verify the validity of the certificates documenting the worker's affiliation to the social security system of the country of origin (A1 certificate) or to confirm that the company has a real and effective activity in its country of origin. Overlong response times and a lack of response from the authorities in the country of origin hinder the detection of irregularities. This is despite the introduction, in the 2014 Enforcement Directive on the posting of workers, of a provision stipulating that response times be limited to 25 working days (compliance with this provision is nevertheless based on the principle of sincere cooperation, non-respect is not sanctioned). However, cases related to the posting of workers, which by its very nature is temporary (it lasts in average about four months in the EU, less than two months in France), need to be processed quickly.

To facilitate the task of national authorities, **the Commission has created tools and networks for information sharing and cooperation** (see Table 1). Nevertheless, it acknowledges that these networks are fragmented and should be better coordinated. There is a stratification of separate networks in the areas of posting, undeclared work and social security coordination: each addresses one or more specific areas under its responsibility, although the issues would often benefit from a more integrated approach.

7. European Commission, Inception impact assessment of the establishment of a European Labour Authority, 28 November 2017.
8. Sofia Fernandes, "Posted workers: how to ensure a fair mobility", Jacques Delors Institute, October 2017.

TABLE 1 ▪ Overview of the main European tools and structures for administrative cooperation in the field of employment and social security

	Senior Labour Inspectors' Committee (SLIC) (Decision 95/319)	Administrative Commission for the Coordination of Social Security Systems (CACSSS) (Regulation 883/2004)	European Platform tackling undeclared work (Decision 2016/244)	Internal Market Information (IMI) (Regulation 1024/2012)	Electronic Exchange of Social Security Information (EESSI) (Implementing regulation 987/2009)
What is it?	This committee first met in 1982 and has formally been existing since 1995. It is composed of two representatives of the labour inspection services of each Member State. It aims to assist the Commission in monitoring the enforcement of EU law in the field of health and safety at the workplace. It is not endowed with operational missions or executive powers.	This commission, composed of one government representative from each Member State, adopts decisions, by qualified majority, on administrative or interpretative questions relating to the European rules on the coordination of social security systems. Its secretarial services are provided by the European Commission.	The platform is composed of one representative from each Member State in liaison with the competent national authorities, a representative of the Commission and representatives of the social partners. It is a forum for exchange and the identification of good practices against undeclared work.	Since 2008, this software application has underpinned administrative cooperation between the competent authorities of the Member States in three main areas: professional qualifications, services and the posting of workers.	Fully implemented by mid-2019, EESSI is a computer system that will connect national social security institutions. They will be able to exchange information rapidly in order to improve the coordination of European social security systems.
What purpose does it serve?	Through regular exchanges of experience and an analysis of the practical monitoring issues, the committee contributes to greater mutual understanding and better cooperation of labour inspectorates. Over time, its activities have been extended to other issues such as posted workers' social conditions.	National authorities can refer to the CACSSS in case of a dispute. It also seeks, through exchanges of good practices, to improve collaboration between Member States in this area, in particular with a view to simplifying administrative procedures.	It aims to develop a common understanding of legislation, strengthen cooperation and create synergies between national authorities. For this purpose, it examines national and EU tools aiming at tackling undeclared work; it helps members to learn from each other by the exchange of good practices in particular between labor inspections; it encourages joint activities, for example staff exchanges and training sessions.	This tool enables national authorities to identify their counterparts in order to exchange information, notify legislative changes or to flag a dangerous service activity, using harmonised and automatically translated procedures.	EESSI will speed up and improve the handling of individual files as well as the reliability of the data exchanged by introducing standard online documents integrated in commonly agreed procedures.

In the event of a dispute between national authorities (particularly regarding the validity of an A1 certificate), **the lack of dispute resolution tools leads to uncertainty and needlessly increases the time and financial resources spent in the fight against abuse and fraud**. The only existing tool is the Administrative Commission for the Coordination of Social Security Systems (CACSSS, see Table 1) to which matters can be referred in the event of a dispute concerning administrative or interpretative issues relating to the European legislation on coordination of social security systems. Its intervention capacity and its powers are nevertheless quite weak. Firstly, it does not have permanent members, so that it can only deal with a limited number of cases each year (in the last three years it took only one decision regarding the exchange of information between national authorities). Secondly, its decisions are legally non-binding: the Member States can therefore refuse to acknowledge the work of this Commission.

The recent case law of the Court of Justice of the EU (CJEU) concerning the possibility for a country to challenge the validity of an A1 certificate issued by another state underlines the inadequacy of the current framework. As long as the A1 certificate has not been withdrawn or declared invalid by the authority of origin, it continues to produce legal effects and the authority of the host country cannot in any way withdraw it or declare it invalid unilaterally (for it must follow the procedure of dialogue and conciliation with the authority of the country of origin provided for in the European legislation), even in the event of non-compliance with the rules on the posting of workers (see Case A-Rosa, Box 1). In a February 2018 judgment, the CJEU allows for an exception to this rule. A judge of the host country may declare an A1 certificate inapplicable if it can be established that it has been obtained fraudulently, but only provided

that the authority of the host country has approached the authority that has emitted the A1 certificate and that the latter has failed to deal with the problem (see Altun case, Box 1).
Another challenge to cooperation between national authorities is **the lack of standard procedures and the insufficient support for the organisation of joint labour inspections**, which are needed to deal with **complex cases of fraud or abuse that have a transnational dimension**.

To remedy these difficulties, the Member States sign bilateral agreements, designed to improve cooperation between their national authorities and thus enhance the effectiveness of controls. Emmanuel Macron, for instance, pointed out in his speech at the Gothenburg summit that France has signed agreements with eight countries and will continue negotiating and signing bilateral agreements in 2018.[9] According to actors on the ground, these agreements already substantially improve relations between the competent national authorities. Yet it seems clear that EU action would deliver significant added value if a reinforced common European framework could replace the 350 or so bilateral agreements that would be needed if each country were to sign an agreement with each of its European partners. Time and resources that would have gone into the preparation of these agreements could be saved. In addition, these agreements differ from each other and therefore exacerbate the complexity of managing cross-border situations.

BOX 1 ■ Judgments of the CJEU concerning the possibility of invalidating an A1 certificate issued by another EU country

Case A-Rosa Flussschiff GmbH against URSSAF
In its judgment C-620/15 of 27 April 2017 (and in line with its usual case-law), the CJEU considered that the A1 certificate is binding on the competent institution of the host Member State. In this case, the seasonal workers posted through a Swiss subsidiary by the German cruise company A-Rosa operated their hotel business on boats which sailed exclusively on French territorial waters. The URSSAF therefore considered they must be subject to French social security regulations. The French authority accordingly called into question the validity of the A1 certificates and demanded compensation from A-Rosa. In response to a request for a preliminary ruling from the French Court of Cassation, the CJEU considered that the jurisdiction of the host country is not entitled to challenge the validity of an A1 certificate, even if the conditions for the issuance of the certificate have not been respected. The Court found that the French authorities did not follow the procedure that applies when the validity of a certificate is questionable. They should have sought a dialogue with the authority issuing the A1 certificate and, in case of dispute, involved the CACSSS.

Case Ömer Altun e.a.
With its judgment C-359/16 of 6 February 2018, the CJEU has opted for a more flexible interpretation of the case-law by making an exception. In the case in question, a Belgian construction company that employed almost no staff and used, for some of its tasks, Bulgarian firms which had practically no activity in Bulgaria and posted their workers to Belgium. The CJEU has accepted that the judge of the host Member State may reject an A1 certificate if it can be established that the certificate has been obtained or invoked fraudulently, but only if the issuing authority has received a request for reconsideration and withdrawal in the light of evidence suggesting that the A1 was obtained fraudulently and that the issuing authority failed to take these elements into account. The CJEU states that evidence of fraud involves two elements: the requirements for obtaining and invoking an A1 certificate are not met (objective element) and the person concerned intentionally bypassed or evaded the conditions attached to the issuance of the certificate (subjective element).

9. Emmanuel Macron, press conference at the Gothenburg Social Summit for Fair Growth and Jobs, 17 November 2017.

2 . EUROPEAN LABOUR AUTHORITY: TOWARDS AN AGENCY WITH ITS OWN PREROGATIVES?

Until now, the role of the EU in monitoring compliance with European employment and social security rules is confined to **facilitating administrative cooperation between national authorities**. This role is rather modest, especially compared to what the EU does in other areas, such as monitoring compliance with competition rules, banking standards and consumer protection. In these areas, the EU can intervene directly and even impose sanctions.

Creating the ELA will give the EU a new role in enforcing compliance with EU mobility rules. However, **this is not about supplanting the competent national authorities** (notably the labour and social security inspectorate) by creating a European body of labour inspectors. If there is agreement between the Commission and the Member States on what the new authority should not be, the role it can play to complete the current framework remains to be defined. Three options can be envisaged: to limit its action to a **supporting role** vis-à-vis the competent national authorities; to endow it with an **operational role**, which would enable it to undertake new activities and emerge as an actor in its own right, instead of being a mere coordinator; finally, to grant it a **mandatory role**, which would imply that, in certain situations, national authorities would be required to comply with ELA's decisions (see Table 2).

Providing ELA with a support role for administrative cooperation between national authorities would hardly be sufficient to ensure compliance with European rules given the challenges posed by existing abuse or fraud. In a research paper, Jan Cremers, senior researcher at the University of Tilburg, elaborates on the inadequacy of this option for the European Labour Authority: "Practical experiences with compliance activities indicate that this [enhanced cooperation] is no guarantee of fair labour mobility. Different opinions and interpretations between Member States or involved stakeholders, fragmented competences and too strong demarcations of mandates, as well as a lack of social considerations in parts of the internal market regulations (leading to no mandate at all in relevant policy areas, such as company law) hinder the effective tackling of breaches and abuses."[10]

The creation of ELA would deliver less added value if the option chosen was to hew to a sole support role vis-à-vis the national authorities. In that case, comparable results could probably be achieved without establishing the ELA, simply by honing the existing tools and structures, as proposed by **BusinessEurope, the lobby group of European employers and industries, which remains skeptical about the usefulness of the new authority**.[11] Conversely, **the European trade unions are in favour of creating the ELA and insist to endow it with an operational or, in some cases, even a mandatory role**.[12] Other European agencies with a mission to strengthen cooperation between national authorities—in other areas - are granted just such a role. The ELA can draw on these precedents. For instance, when it comes to fighting serious cross-border crime, the Eurojust agency has not only a supporting function (notably by responding to requests for assistance from the competent national authorities) but also plays an operational and mandatory role. Eurojust can ask Member States to initiate certain inves-

10. Jan Cremers, "Towards a European Labour Authority. Mandate, main tasks and open questions", Friedrich-Ebert-Stiftung, January 2018, p. 13.
11. "European Labour Authority and EU Social Security Number", BusinessEurope views, note of 12 January 2018.
12. European Trade Union Confederation, "ETUC position on a ELA—ensuring fairness for workers in the single market", 12 December 2017; European Federation of Building and Woodworkers (FETBB), "Position de la FETBB relatif à la proposition de création d'une Autorité européenne du travail", 27 January 2018; European Road Haulers Association (UETR), "UETR position on a European labour authority", 5 February 2018.

tigations or prosecutions; the agency also intervenes to solve conflicts of jurisdiction when several national authorities are in a position to undertake an investigation or prosecution; or it finances the setting up of joint investigation teams.

Although it would be useful for ELA to be able to require national authorities to act under certain circumstances – to settle disputes or to trigger joint cross-border inspections –, due to the absence of a legal basis, it is not conceivable to confer on this new authority a binding role from its inception. Cooperation between national authorities in the field of employment and social security is based on the principle of sincere cooperation provided for in the Treaties. Granting a European authority a mandatory role vis-à-vis the national authorities would probably require an amendment of specific stipulations of the Treaties. In addition to such legal concerns, the budgetary impact of this option should be taken into consideration. It is likely that there would be a lack of support for such a course of action from Member States anxious to preserve their national prerogatives.

In conclusion, **the creation of the ELA must follow an incremental approach**: in the immediate future, it should have an operational role (its tasks are presented in section 3), which, in the medium term, could be complemented by a capacity for binding action.

TABLE 2 ▪ What role for the European Labour Authority?

	OPTION 1: SUPPORTING ROLE	OPTION 2: OPERATIONAL ROLE	OPTION 3: MANDATORY ROLE
	• Rationalise and manage existing instruments and structures in the field of labour mobility (e.g. with regards to the coordination of social security systems, posting of workers, labour inspection, undeclared work). • Provide citizens and business with information about their rights and obligations in mobility situations.	• Missions outlined under option 1. • Boost cooperation between national authorities by taking over and developing the technical tasks of existing structures in order to tackle previously identified shortcomings and create synergies. • Provide common (non-binding) technical standards for national inspectorates, aiming to reach a harmonised application of EU rules. • Offer expertise and training to national authorities. • Support the fight against abuse and fraud concerning social and employment legislation. • Play a mediating role in the event of disputes between Member States.	• Missions outlined under options 1 and 2. • Adopt common binding technical standards for labour and social security inspectorates. • Arbitration role so that binding decisions can be adopted in the event of a dispute between national authorities. • Train and fund joint transnational inspections.
ADVANTAGES	• Improved cooperation between competent national authorities. • It would facilitate workers' mobility and the freedom to provide services for companies. • Most easily acceptable option for all EU countries. • Limited costs.	• Significant improvement in the cooperation between national authorities; authorities of the host country can more easily access documents/information held by the authorities of the country of origin. • Efficiency gains and time/resource savings for the competent national authorities. • Stronger capacity to tackle abuse and fraud. • No treaty changes required.	• Cost and time savings; fewer human resources need to be mobilised for the resolution of disputes. • Important contribution to the fight against abuse and fraud.
DISADVANTAGES	• Limited impact on better prevention, detection and combatting cases of abuse and fraud. • Modest efficiency gains and low time/resource savings for national inspections. • Establishing an authority without prerogatives can fuel citizens' frustration at the EU's weak capacity for action.	• No substantial improvement in dispute resolution. • Lack of capacity for ELA to instruct joint labour inspections. • Additional financial and human resources needed: expensive.	• Certain provisions of the Treaties would have to be amended so that the EU can be endowed with a mandatory role in this field. • Lack of support from Member States intent on willing to preserve their national prerogatives. • Additional financial and human resources needed: very expensive

3 . WHAT MISSIONS AND TASKS FOR THE EUROPEAN LABOUR AUTHORITY?

Following from the arguments in favour of the establishment of ELA (outlined in section 1), this authority should have four missions: (i) to facilitate administrative cooperation between national authorities, including dispute settlement (section 3.1.); ii) to provide a centre of expertise and training for the competent national authorities (section 3.2.); (iii) to tackle abuses of social and employment legislation and support joint cross border labour inspections (section 3.3.); (iv) to offer a one-stop shop for citizens and businesses for accessing information on the free movement of workers and services (section 3.4.). In its factsheet on the European Labour Authority, **the Commission proposes that ELA also carry out analytical work, in particular with regard to skills forecasting, emerging trends and challenges to cross-border employment and issues of social security**.[13] This mission does not seem to be a priority, given the work already done today by other existing agencies, notably the European Foundation for the Improvement of Living and Working Conditions (Eurofound) and the European Centre for the Development of Vocational Training (Cedefop). If it will be necessary to ensure the coherence and complementarity between the work of these agencies and the activities of ELA, it is nonetheless preferable to focus on the four missions mentioned above. For each of them, an overview of the tasks that should be associated with them will be presented in what follows.

3.1 Facilitating administrative cooperation between national authorities, namely with regard to the resolution of disputes

The future European Labour Authority will first and foremost be responsible for **managing the various existing tools** (e.g. the Electronic Exchange of Social Security Information (EESSI), see Table 1) **as well as the structures already in place**, ensuring their coherence, creating synergies between them and developing them further.

In order to make it easier for the competent authorities of the host country to access the documents and information held by the authorities of the country of origin, which are essential for controlling the companies that post workers, it would be expedient for ELA to **centralise on a common platform some information to which labour and social security inspectors would have access** (directly or via the ELA). In this respect, the MEP Guillaume Balas, the European Parliament's rapporteur on the revision of the regulation on the coordination of social security systems,[14] proposes to scale up to a European level what is already done in Belgium with the "Banque carrefour de sécurité sociale". Overseen by the Belgian National Social Security Office, this digital platform gathers all the relevant social security data of Belgian and foreign citizens working in Belgium. Through this instrument, public institutions such as the labour inspectorate have access to a certain amount of data they rely on to carry out their tasks. If needed, they can apply for further information.[15]

This common platform should centralise the A1 certificates, which—as part of the establishment of EESSI—will be processed digitally in all Member States by June 2019. This measure will reduce the risk of forged documents. It would also be useful if, as proposed by the European Trade Union Confederation (ETUC), the ELA **set up a central register of companies providing services in several countries**, so that it can monitor their activity in each country

13. European Commission, A European Labour Authority—fact sheet, 13 September 2017.
14. Draft report 2016/0397 (COD) of 10 November 2017 on the coordination of social security systems, 10 November 2017. Rapporteur: Guillaume Balas.
15. Website of the Banque Carrefour de la Sécurité sociale.

and identify and tackle "letterbox" companies. Once the European Social Security Number will be introduced, ELA should be entrusted with managing it.

Simplified access to a set of information will facilitate the work of the national authorities. To go further, the ELA should establish **common technical guidelines on the interpretation of EU rules to ensure their harmonised application across the EU**. Such action could take its cues from what the European Banking Authority (EBA) was able to do for prudential rules, with its "European Supervisory Rulebook" of financial institutions aiming to promote the convergence of supervisory practices by developing shared methodologies.[16] However, unlike the EBA standards, those developed by ELA will not be binding, at least until the ELA will be able to play a mandatory role. Compliance with ELA standards will be based on respect for the principle of sincere cooperation between Member States. The standardisation and simplification of procedures will not only allow for easier and faster detection of abuse and fraud, but will also enable national authorities to make efficiency gains in their work and thus save time and resources. This is particularly important in a context where national authorities in many countries struggle with declining staff numbers and resources.

Finally, it will be necessary to provide ELA with a mediation role **in the resolution of disputes between national authorities** in collaboration with the work of the Administrative Commission for the Coordination of Social Security Systems (CACSSS, see Table 1). In the medium term, consideration should be given to extending this mediation role towards an arbitration role, perhaps even with the possibility for ELA to adopt binding decisions. Indeed, the researcher Jan Cremers argues that the resolution of disputes in cases of breaches and violations relating to the mobility of workers—through arbitration and, if necessary, the adoption of binding decisions—must be the main task of ELA.[17]

This desirable strengthening of cooperation between national authorities is particularly important for the posting of workers but should not be confined to this issue. Facilitating cooperation on other issues is just as crucial, especially when it comes to tackling undeclared work. It is only logical ELA should welcome the "European Platform for tackling undeclared work" (see Table 1). The management of transnational restructuring is another important issue where ELA can contribute to improved cooperation between national authorities. The ETUC proposes, for example, that ELA could "provide trade unions and employers with information, support, access to resources and technical assistance for management of restructuring in cross-border situations".[18]

3.2 Provide a centre of expertise and training to the competent national authorities

In order to ensure compliance with all European laws on employment and social protection, **ELA should be a centre of expertise** reaching out to national authorities and companies, as demanded by, among others, the European Federation of Building and Woodworkers (EFBWW).[19] This will become even more useful over the coming years, as several European rules in this area are currently being amended.

With labour and social security inspectors in many countries lacking training on transnational issues, **ELA is well placed to fill this training gap**. Such courses should focus on European legislation (and any technical standards that ELA may adopt, see 3.1) as well as existing instruments and tools at European level that facilitate cooperation between national authorities. These courses would nonetheless do well to include a national component—specifically on

16. For more information, consult the website of the European Banking Authority.
17. Jan Cremers, "Towards a European Labour Authority", p.13.
18. European Trade Union Confederation, "ETUC position on a ELA—ensuring fairness for workers in the single market", 12 December 2017.
19. European Federation of Building and Woodworkers (FETBB), "Position de la FETBB relatif à la proposition de création d'une Autorité européenne du travail", 27 January 2018.

the transposition into national legislation of the European rules—which could be organised in collabouration with national authorities. The courses could follow various formats. On-site training will be useful to promote encounters between labour and social security inspectors from different countries and allow them to strengthen their links. But to reach a wider audience, these courses should also revolve around online educational resources, similar to what the European Police College (CEPOL) already does. Its tasks include the training of the senior police officers of the Member States so as to enable them to deepen their knowledge of the national systems and structures of the other Member States and to enhance cross-border cooperation in the EU.

Since 2010, the Commission has been funding the "Eurodetachement" project[20] which offers joint training for labour inspectors as well as transnational employment workshops (though this project only concerns a limited number of Member States). In 2016, the European Parliament proposed in its resolution on social dumping in the EU to turn Eurodetachement "into a permanent platform for exchange, joint training and collabouration for labour inspectors (and public officials in liaison offices for posted workers) involved in control and monitoring".[21]

3.3 Tackling the abuse of social and employment legislation and support joint labour inspections

The tasks outlined above, which aim to improve cooperation between national authorities, will deliver considerable added value to enable easier as well as early detection of abuse and fraud with regard to European social and employment legislation. ELA could complement these actions by creating **a blacklist of companies convicted for abuse or fraud linked to the posting of workers (which could only be accessed by the competent national authorities)**, because countries still lack sufficient documentation about companies convicted in this field in other Member States.

Today, some states are organising joint inspections under bilateral cooperation agreements they have signed. This is the case of France and Belgium, with both countries carrying out joint actions in the border regions. These include controls conducted by mixed teams composed of inspectors from both countries. The personnel involved in these actions underline their added value for they nourish a relationship of trust between administrations and create awareness among the inspectors of the countries of origin of the poor working and/or housing conditions which their fellow nationals may be exposed to when exploited by unscrupulous employers.

Thanks to the establishment of ELA, **these joint inspections can be facilitated and supervised at European level and according to common procedures**. ELA could even provide co-financing for these joint initiatives when it comes to fighting against networks operating in more than one country (whether it concerns irregular postings or undeclared workers). The added value that would result from empowering ELA to instruct joint inspections—and not just to facilitate them—should be examined.

Some European social partners would like to see **ELA play a more pro-active role in the fight against abuse and fraud**. For example, the European Federation of Building and Woodworkers (EFBWW) advocates the creation of a multilingual website and help-line which could be used to report social fraud and/or cross-border abuse and would trigger follow-up action by ELA. For its part, the European Union of Road Haulers (UETR) highlights the difficulties arising from the varying severity of sanctions for the same offense, which often differ greatly from one country to the next. The UETR therefore calls for a standardisation of penalties.

As suggested by the Commission, **ELA may also serve as a liaison with Europol and Eurojust**

20. See the websiste of the "Eurodetachement" project.
21. European Parliament resolution of 14 September 2016 on social dumping in the European Union (2015/2255(INI)).

for the investigation and prosecution of relevant cases, with a particular focus on incidents of human trafficking.[22]

3.4 Provide a one-stop shop for citizens and business for accessing information on the free movement of workers and services

In recent years, the Commission has adopted a number of initiatives to facilitate cross-border mobility for both workers and companies (see point 1.1.). One of ELA's tasks will be to provide an information portal for citizens and businesses, which furnishes under the same umbrella information from different sources, both national and European. The ELA would thus be **a one-stop shop where both mobile citizens and companies go for advice and information**. It will be the first port of call, indicating what further steps need to be taken or where, if necessary, more detailed or specialised information can be found in the relevant country.

Creating this one-stop shop will by itself deliver an added value. Nevertheless, ELA should take on a more proactive role, notably by organising awareness-raising campaigns to inform citizens of their rights and obligations when they decide to work in another EU Member State. ELA could also publicise the EURES network, which will fall under its aegis.

In addition, ELA could bring together the numerous existing initiatives that facilitate the mobility of citizens and workers, such as the European Health Insurance Card. In the medium and long term, **ELA can play a decisive role in pursuing new advances**, such as the creation of a European personal account of professional activity, which would register workers' professional training, unemployment and pension rights. Such an account would enable citizens to keep track of these rights, while also facilitating their portability.

4 . WHAT GOVERNANCE, STRUCTURE AND BUDGET SHOULD IT HAVE?

The European Labour Authority will be created as **a decentralized agency of the European Commission**. As provided for in the Joint Statement on decentralised agencies, its governance structure should include a management board consisting of one representative from each Member State, two representatives of the Commission and a Director.

A key question concerning ELA's governance is the **implication of the social partners**. They must be involved in ELA's work; this is necessary not only to broaden the legitimacy of the initiative but also to guarantee its success. The issue is whether the social partners should be members of the ELA management board and/or to what extent they should be involved operationally. The European employers' organisation Business Europe, despite its reservations about the creation of ELA, argues that if this authority is to be created, then the social partners will have to be closely involved in its governance, as is the case today for other agencies reporting to DG Employment, namely CEDEFOP, Eurofound and the European Agency for Safety and Health at Work (EU-OSHA). Indeed, these three agencies have in common a tripartite structure, which is reflected both in their governance and in their operations: governments, unions and employers are represented in the governing bodies and their respective advisory committees.

The European Trade Confederation (ETUC) proposes that within the ELA the social partners should be represented in a supervisory body organised on a tripartite basis. Considering that

22. European Commission, Inception impact assessment of the establishment of a European Labour Authority, 28 November 2017.

many cases of abuse and fraud related to the free movement of persons and the freedom to provide services are especially prevalent in certain sectors of activity—essentially construction and transport –, it will be crucial to involve the sectoral social partners, who have a better grasp of the problems due to their knowledge of the facts on the ground.

As far as ELA's structure is concerned, it might be useful to draw inspiration from the organisation of Europol and Eurojust, two other European agencies whose mission it is to strengthen the cooperation between national authorities. Similar to these two European agencies, **ELA will gather Commission officials as well as national liaison officers** (one per country, but who could be aided by assistants and/or national experts) from the competent national authorities, who have been proposed by their respective government. **At the national level, a special unit for relations with ELA** should be created as the sole contact point between the ELA and the national authorities. At the very least, this unit would bring together representatives of the labour inspectorate and the social security bodies.

ELA will be funded by the EU budget. Over time, it will develop an increasing capacity for action, which will be reflected in the evolution of its budget and its payroll. Take the example of the European Banking Authority, created in 2011. This European agency has seen its budget and payroll increase by more than 300% in six years. Europol and Eurojust, created in 1998 and 2002 respectively, have also seen a strong expansion in their budget and staff numbers over the last six years. The development of the budget and the workforce of ELA will of course depend on the role and tasks assigned to it. Still, as a first step, this new authority can be expected to be staffed by 50 to 100 officials; its budget will be in the range of 12 to 20 million euros (comparable to the European Banking Authority during its first two years of activity).

TABLE 3 ▪ Development of human ressources and of annual total expenditure (in Euro) of three European agencies

		2011	2013	2016
Europol	human ressources	777	858	1 065
	annual total expenditure	85 162 170 €	84 771 084€	104 274 784 €
Eurojust	human ressources	269	233	347
	annual total expenditure	31 711 739 €	32 358 660 €	43 539 737 €
European Banking Authority	human ressources	52	124	169
	annual total expenditure	12 683 000€	25 967 360 €	38 064 000 €

annual total expenditure — human ressources

Source: Annual reports of the three agencies for 2011, 2013 and 2016.

CONCLUSION

Following the presentation by the Commission of its proposal for a regulation on the creation of a European Labour Authority, the ball will be in the camp of the Council of the EU and the European Parliament. The Commission hopes that the two European co-legislators will be able to reach an agreement on this text by the end of the year **so that the Authority can be launched in 2019**. But **the discussion risks bringing to the fore major divisions between the EU countries** over the free movement of workers and services and, more broadly, the EU's social competences. A lack of enthusiasm is to be expected from some governments, notably in Central and Eastern European countries, which had already opposed the revision of the Posted Workers Directive, fearing that this initiative will create new constraints for companies and impede their freedom to provide services. Others, including the Nordic countries, are likely to be reluctant to see the EU play a role in areas of national competence (labour and social security inspections).

In such a tense political context, there is no guarantee that a European Labour Authority will emerge. It could be reduced to a "minimal" agreement between Member States, which would give rise to an authority devoid of any prerogatives: a mere platform for information exchange and cooperation between national authorities. To avoid this scenario, it will be imperative to:

- **insist on the dual argument in favour of the creation of ELA**—to facilitate mobility and to make it fairer—and ensure that this argument is translated into the tasks assigned to ELA, while also respecting the different positions on intra-EU mobility espoused by the Member States.
- **recall the cost of the non-creation of ELA**. While some parts of EU mobility legislation are currently under revision (including the Posted Workers Directive and the Regulation on the coordination of social security systems), there is no guarantee that the outcome will be positive given that national authorities are struggling with implementing and enforcing European rules. As a result of current policy failures, Eastern Member States see some of their nationals being exploited by unscrupulous employers; other Member States in Western Europe observe how some companies suffer from an unfair competition based on abusive and fraudulent practices. This reality feeds the mistrust of citizens towards the European project.
- **follow an incremental approach in setting up ELA**. The authority should have its own prerogatives, but not all the tasks eventually assigned to it have to be operational from the get-go. In the short term, the ELA will not have binding powers vis-à-vis the Member States–for there is quite simply no legal basis for this–but it should not be excluded that in the medium or long term and in specific situations, the ELA may be endowed with a mandatory role.

Behind the technical and political debates that will certainly surface, including over the location of the headquarter of the future authority, this project can help fulfill the EU's objective, enshrined in its treaties, to be a "social market economy". The European Labour Authority's foremost ambition should be to embody the attachment of Europeans to their social model, which has no parallel in the rest of the world.

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