

E U R O P E A N E C O N O M I C A R E A
C O N S U L T A T I V E C O M M I T T E E

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RESOLUTION AND REPORT

on

The European Labour Authority (ELA)

Rapporteurs:

Mr Robert René Hansen (EFTA Consultative Committee, Workers – Norway)

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RESOLUTION

on

the European Labour Authority (ELA)

The Consultative Committee of the European Economic Area (EEA CC):

- Having regard to the EEA Agreement, and in particular Article 96 thereof,
- Having regard to the Regulation of the European Parliament and of the Council establishing a European Labour Authority;
- Having regard to the European Pillar of Social Rights proclaimed by the European Commission, the European Parliament and the Council on 17 November 2017,
- Having regard to the opinion of the European Economic and Social Committee of 20 September 2018 on the proposal for a Regulation of the European Parliament and of the Council establishing a European Labour Authority,
- Having regard to EU social partners' position papers, in particular those of the European Trade Union Confederation (30 April 2018) and BusinessEurope (7 May 2018),
- Having regard to earlier resolutions of the EEA CC, in particular the resolutions "Work-Life Balance in the EEA" of 2018, "A socially fair road transport sector in the EEA with effectively enforced common rules" of 2018, the "Social Dimension of the EEA and the European Pillar of Social Rights" of 2017 and "Labour mobility in the EEA" of 2016,
- Acting in accordance with its Rules of Procedure, and in particular Article 2(2) thereof,

While:

- A. Acting in accordance with its mandate to enhance the awareness of the economic and social aspects of the growing interdependence of the economies of the EEA States and of their interests, as laid out by Article 96(1) of the EEA Agreement;
- B. Emphasising the importance of the role of social partners for the good implementation of the EEA Agreement;
- C. Recognising that labour mobility fosters an efficient allocation of resources in the internal market and increases overall prosperity while offering workers greater job opportunities across Europe, and is therefore both economically and socially desirable;

- D. Stressing the need of well-implemented and enforced labour rules to maximise the benefits of labour mobility;
- E. Keeping in mind the European Commission's priorities for the 2014-2020 term with a strong emphasis on the social dimension of Europe, as well as the European Pillar of Social Rights and its commitment to upward convergence;
- F. Noting that the EEA Consultative Committee has repeatedly supported a stronger focus on the social dimension of Europe, as highlighted in the above-mentioned four resolutions in the three previous years,

Has adopted the following Resolution, by which it:

Legislative process

1. Welcomes the adoption of the Regulation by the co-legislators;
2. Stresses that the work of the Labour Authority must respect the principles of subsidiarity and proportionality;
3. Calls on the EEA EFTA States to consider the Regulation EEA relevant and to incorporate it as soon as possible;
4. Notes that the incorporation of the Authority's legal basis into the EEA Agreement should fully respect the constitutional obligations of the EEA EFTA States, in particular with respect to the two-pillar nature of the EEA, while keeping all its effectiveness;
5. Calls on the EEA EFTA States to seek full participation rights and on the EU to grant such rights to the EEA EFTA States, except for the right to vote, at all relevant levels within the Authority;
6. Calls for adequate funding and staffing of the future Authority, such that it can effectively fulfil its mandate and calls for the Authority to be operational as soon as possible;

Labour mobility

7. Calls for full implementation of EEA labour law and reaffirms the importance of a proper and effective implementation of labour rules for a well-functioning EEA internal market;
8. Emphasises that working towards full implementation of EEA labour law is a shared responsibility between European, national, regional and local authorities and institutions, the private sector, social partners, and civil society.
9. Notes the increase of labour mobility in Europe in the past ten years;

Role of social partners

10. Affirms that the autonomy of social partners must be respected, including their rights to enter into collective bargaining agreements and to conclude their own agreements with other European social partners or labour authorities;
11. Emphasises that the success of the Authority will depend on the participation of social partners;
12. Notes that the Authority, in accordance with the mandate agreed by the European Parliament and the Council, does not have competence in the field of collective bargaining agreements, and stresses that any future change to the Authority's mandate should have the social partners' assent;
13. Calls for a stronger involvement of EEA social partners in the work of the Authority, with regular and meaningful participation at all relevant levels and in all relevant bodies;
14. Stresses the crucial role of social dialogue, including at European level where EEA EFTA social partners participate fully, and stresses that social partners must be closely involved in the design, implementation and monitoring of policies and reforms at EU, national, regional and local level;
15. Emphasises the important role social partners play in the implementation of labour policies, for instance in transparent and predictable working conditions, gender equality, work-life balance, mobility and education, ensuring a right balance between flexibility and security for both workers and companies.

Social Europe

16. Notes with satisfaction the progress made in the implementation of the European Pillar of Social Rights beyond the European Labour Authority, in particular the revision of the Directive on the Posting of Workers;
17. Calls for a stronger focus on labour mobility issues in the Multiannual Financial Framework 2021-2027 and calls on the EU co-legislators to reach an agreement on the proposals for a European Social Fund Plus (ESF+) and the European Globalisation Adjustment Fund (EGF).

REPORT

on

the European Labour Authority (ELA)

1. Introduction

- 1.1. Free movement of workers is one of the fundamental four freedoms of the European Union (EU) and the European Economic Area (EEA). It is one of the founding values of the European project following the stark restrictions to the free movement of persons during and between the two World Wars. Labour mobility is also considered essential to the well-functioning of the internal market and an optimal functioning of the economic and monetary union.
- 1.2. The Juncker Commission has made an increased fairness of the EU internal market one of its 10 key priorities for the legislature 2014-2019. In the aftermath of the Eurozone crisis, which was marked by rising levels of unemployment and stagnating economic performances, the EU has increasingly stressed the importance of social issues for a well-functioning internal market. The policy agenda for a Social Europe has since then gained momentum.
- 1.3. In November 2017, the European Parliament, the Council of the EU and the European Commission jointly proclaimed an EU policy agenda known as the ‘European Pillar of Social Rights’ (EPSR). The EPSR is a non-binding stand-alone initiative setting out twenty key principles and rights for citizens to support fair and well-functioning labour markets. The implementation of the EPSR consists of a number of legislative and non-legislative measures at all relevant levels, including at EU level.
- 1.4. The Regulation to establish a Labour Authority is one of the EU legislative follow-ups of the European Pillar of Social Rights. The purpose of this agency would be to support member states in implementing EU law in the areas of cross-border labour mobility and social security coordination. It will also provide information to employees and employers on complex aspects of cross-border labour mobility and ensure that the EU rules on labour mobility are enforced in a fair, simple and effective way.
- 1.5. The EEA EFTA States are fully integrated in the EU’s internal labour market as the EEA Agreement covers the free movement of workers, the free movement of services (including the posting of workers and the right of establishment) as well as the coordination of social security systems. The establishment of the European Labour Authority is important for the EEA EFTA States, which are currently assessing its EEA relevance.

2. Labour mobility – Facts and current issues

- 2.1. According to the Commission, labour mobility has almost doubled in the past ten years. Today, 17 million EU citizens live or work in a member state other than that of their nationality. 1.4 million citizens commute on a daily basis to another member state to go to work. The number of cross-border postings has increased by almost 70% since 2010 up to 2.3 million. In addition, over 2 million workers in the road transport sector cross intra-EU borders on a daily basis to transport goods or persons. All these situations are regulated by diverse EU legal instruments.
- 2.2. According to Eurostat, 26 641 Icelandic citizens, 2 836 Liechtenstein citizens and 86 510 Norwegian citizens were living in another EEA country in 2018. That same year, 32 335 EEA citizens were living in Iceland, 10 500 in Liechtenstein and 363 244 in Norway.
- 2.3. According to a consultation conducted by the Commission in November 2017, 70% of respondents were of the opinion that cooperation between national authorities is insufficient when it comes to the implementation of EU rules on cross-border mobility and that there is a lack of transparency and access to information.
- 2.4. In line with the EU's Better Regulation policy, the Commission submitted an impact assessment of the proposal for a European Labour Authority to the Regulatory Scrutiny Board. The impact assessment was discussed and further clarified with the Board to make the legislative initiative fit to the existing governance structure of labour mobility and social security coordination, while fostering synergies and simplifications and avoiding overlaps. The impact assessment identifies several problems that need to be tackled. Firstly, labour mobility-related information at the disposal of individuals and employers is either inadequate or insufficient. Secondly, there is a lack of adequate cooperation between national authorities on rule enforcement. Thirdly, the potential for labour mobility remains underexploited, leading to inefficiencies in the allocation of resources in the internal market. Beyond the Commission's assessment, other factors can also be pointed out, such as further concerns regarding compliance with EU labour rules, as well as the current political environment, with the issues of immigration and cross-border mobility being increasingly contested across Europe.
- 2.5. The value added of a European Labour Authority is therefore to make the implementation of labour mobility rules simpler and more effective. The Authority will not supersede or replace competent authorities at the national level or require any change in existing arrangements between governmental bodies and social partners in the field of labour law. Its purpose is to improve

overall enforcement of EU labour law and better support and coordinate Member States' implementation efforts in that respect.

3. The European Labour Authority – State of play

- 3.1. The European Commission published its proposal for the establishment of a European Labour Authority in March 2018 as part of a “Social Fairness package”. The European Parliament and the Council reached a common position after 8 interinstitutional meetings (“trilogues”) on 14 February 2019. The file has now been formally adopted. The seat of the Authority remains to be decided by the Member States.
- 3.2. The negotiation process itself was not easy. Despite general support to endorse a fair mobility in Europe, there were different views about the purpose, name, scope and mandate of this new EU decentralised agency. Member States were particularly concerned about the role of the Authority in the social security systems coordination. The employers' representatives were not convinced about the name, value added and budget of a new EU body, while the European trade unions called for a stronger mandate of the agency. The social partners jointly defended their autonomy.
- 3.3. Once the act will be published in the EU Official Journal, the EEA incorporation process can formally begin.
- 3.4. The Authority is expected to have a supportive role and help the Member States implement EU labour law. It will be entrusted with the following tasks: (i) facilitate access for individuals and employers to information on their rights and obligations, (ii) support cooperation between Member States in the cross-border enforcement of relevant EU law, including facilitating joint inspections, (iii) mediate between national authorities in cases of cross-border disputes, and (iv) supporting cooperation between Member States in tackling undeclared work.
- 3.5. The Authority will pool technical and operational tasks of existing EU bodies into a permanent structure to achieve more efficient output. Concretely, the Authority will take over the management of the EURES European Coordination Office, take over the management of the Platform on tackling undeclared work, replace the Technical Committee on the Free Movement of Workers and replace the Committee of Experts on Posting of Workers. The Authority must also cooperate with other bodies and stakeholders, in particular with the Administrative Commission for the Coordination of Social Security Systems (especially with its Conciliation Board), the Advisory Committee for the Coordination of Social Security Systems and the Advisory Committee on the Free Movement of Workers. The competences of the Administrative Commission will not be altered by the establishment of the Authority. In order to ensure good cooperation and avoid work duplication, the Authority will be

required to conclude a cooperation agreement with the Administrative Commission. The Authority will also cooperate with the four existing EU agencies in the field of labour law (Cedefop, ETF, EU-OSHA & EUROFOUND) in order to ensure consistency with their activities.

- 3.6. The Authority will be enabled to coordinate and support inspections in order to fight fraud and abuse. These cross-border inspections will only take place when the Member States concerned agree. Member States which choose not to carry out an inspection need to explain the reasons for their decision. The right to launch and to carry out an inspection, whether national or cross-border, will remain at the national level. The Authority can, however, suggest an inspection to Member States if it suspects a case of fraud or abuse. Inspections will in any event be carried out in accordance with the national laws of the Member States concerned.
- 3.7. The Authority will be enabled to mediate disputes between Member States regarding the application or interpretation of EU labour law. The Authority can launch a mediation procedure either at the request of one of the Member States or on its own initiative subject to the agreement of all Member States concerned. Mediation procedures cannot be triggered by individuals or private entities. Furthermore, the procedure is without prejudice to the powers of the Court of Justice of the European Union or of any national court. Participation by a Member State in a mediation is voluntary. However, Member States deciding not to participate must inform the Authority and the other concerned Member States about the reasons of their decision. The outcome of the procedure is a non-binding opinion.
- 3.8. The Authority is also expected to cooperate with social partners in order to maximise the effectiveness of its action. The Authority would establish a Stakeholder Group, which will be composed of two representatives of the Commission and ten representatives of EU social partners equally representing trade unions and employer's organisations, including recognised social partners representing EU sectors particularly concerned by labour mobility issues. The Management Board of the Authority will also include four representatives of cross-industry social partners at Union level, equally representing trade unions and employers' organisations, without voting rights.
- 3.9. The Authority will follow EU rules on EU agencies, in particular with respect to internal rules of procedure, structure and processes. The Authority is expected to have a staff of approximately 140 persons and an annual budget of approximately EUR 50 million once it reaches its full operational capacity (by 2023). Each Member State is expected to designate one National Liaison Officer to be seconded to the Authority. Its role is to support Member States' compliance with cooperation obligations and ensure links with other national liaison offices. National Liaison Officers shall have competence under their

Member States' national law to request information from the authorities concerned.

- 3.10. In order to speed up the establishment of the European Labour Authority, the Commission set up an Advisory Group composed of representatives of the Member States and the EU social partners in March 2018. EEA EFTA States also participate in the Advisory Group as observers. Observers may take part in the discussions and provide expertise but do not participate in the formulation of recommendations or advice of the Group. The work of the Group will facilitate the establishment of the Authority in the second part of 2019, with a 2023 target for full operational capacity.
- 3.11. In accordance with EU Treaties, the European Economic and Social Committee (EESC) adopted its Opinion on the Commission proposal for the establishment of European Labour Authority in September 2018. The Opinion globally supported the proposal and laid down several recommendations. In particular, the EESC advocated for a stronger role of social partners within the Authority, adequate resources and staffing to ensure the Authority can fulfil its mandate, as well as a carefully planned merger of currently existing labour mobility bodies, in order to maximise the Authority's effectiveness.

4. Pending issues

- 4.1. While the Regulation on the establishment of the European Labour Authority has been adopted, there are still issues to be addressed.
- 4.2. One key aspect is the resources that will be dedicated to the Authority. The founding Regulation does not specify the budget and the staffing of the Authority. They will be determined in the frame of the ordinary budgetary procedure of the European Union. The ability of the Authority to effectively fulfil its mandate, as well as its overall performance, will depend in part on the resources it will have at its disposal.
- 4.3. Another crucial issue is the autonomy of social partners. The language of the provisional agreement explicitly states that "the Authority should respect the diversity of national industrial relations systems as well as the autonomy of social partners as explicitly recognised by the TFEU". In particular, it should be made clear that the right of governments and social partners to conclude cross-border arrangements, such as in the field of posting of workers, must be respected.
- 4.4. As the founding Regulation has been adopted, the process of its EEA relevance by the EEA EFTA States can formally begin. Since the Authority deals with free movement of workers, posting of workers, road transport and the coordination of social security systems, all of which are covered by the EEA Agreement, the founding Regulation is likely to be considered EEA relevant.

- 4.5. An important recurring issue concerns the participation of EEA EFTA States in EU agencies. EU agencies were indeed not part of the EU's institutional landscape when the EEA Agreement was signed in 1992. That is why the EEA Agreement does not contain any provisions on EEA EFTA States' relations with these agencies. Such participation gives EEA EFTA States an opportunity to influence the decision-making of the agencies, monitor any EEA relevant work they carry out and benefit from actions they undertake when implementing and enforcing EU law with EEA relevance. The issue of EEA participation may arise again in the case of the European Labour Authority. This is all the more likely considering that EEA EFTA representatives are active participants in all working groups and networks expected to be transferred to the Authority (EURES European Coordination Office, Technical Committee on the Free Movement of Workers, Committee of Experts on Posting of Workers and European Platform on tackling undeclared work). That being said, the EEA EFTA States and the EU could draw on previous solutions successfully negotiated for other agencies. So far, EEA EFTA States and the EU have already agreed on EEA EFTA participation rights in more than ten EU agencies.
- 4.6. Similarly, the exact conditions and rules on the participation of social partners in the Authority are still unclear at this stage. The role of EEA EFTA social partners, and whether they would be treated on a equal footing with their EU counterparts, remains to be determined.
- 4.7. Some EEA issues may derive from the nature of the EEA Agreement. The EEA EFTA States are constitutionally unable to accept direct decisions by the EU. As a result, the EEA EFTA States established their own supranational institutions that run parallel to those of the EU (e.g. the EFTA Court mirrors the Court of Justice of the EU). The term "two-pillar" refers to the co-existence of two sets of institutions. Due to the two-pillar structure, EU agencies and authorities cannot take binding decisions over EEA EFTA States and/or their citizens. This could be in breach of the constitutions of some of the EEA EFTA States. In the case of the European Labour Authority, however, there are no binding decisions foreseen, but simply non-binding opinions, which means two-pillar issues are unlikely to occur in the current state of affairs.
- 4.8. Two-pillar issues may however be raised in the event of the strengthening of the Authority's mandate in the future. Cross-border joint inspections and mediation procedures that would involve one or several EEA EFTA States must remain voluntary for the two-pillar system to be safeguarded.
- 4.9. There may also be a two-pillar issue linked to reporting procedures. The founding Regulation foresees reporting to the European Commission in particular when breaches of EU law are detected. Since the Commission cannot launch an infringement procedure against EEA EFTA States, an adaptation might be necessary to give full effect to the reporting provisions of the

Regulation. Reporting could potentially instead be addressed to the EFTA Surveillance Authority in case breaches of EEA law linked to an EEA EFTA State are detected.
