

Opinion of the European Economic and Social Committee on ‘Proposal for a Regulation of the European Parliament and of the Council establishing a European Labour Authority’

(COM(2018) 131 final — 2018/0064 (COD))

(2018/C 440/21)

Rapporteur: **Carlos Manuel TRINDADE**

Referral	Council, 06.04.2018 European Parliament, 16.04.2018
Legal basis	Article 46, 91(1) and 304 of the TFEU
Section responsible	Section for Employment, Social Affairs and Citizenship
Adopted in section	19.07.2018
Adopted at plenary	20.09.2018
Plenary session No	537
Outcome of vote (for/against/abstentions)	189/16/29

1. Conclusions and recommendations

1.1. The situation of the cross-border labour market presents significant problems for businesses, workers and Member States, in particular with regard to unfair competition, social dumping, illegal activities and various types of fraud relating to tax and social security. In addition, the lack of information for businesses and workers, poor cooperation between the Member States and the general low capacity of the labour inspectorates have aggravated existing problems and disputes. Despite some steps having been taken, the EU institutions, the President of the Commission, the EESC, the social partners and civil society organisations have spoken of the need to increase and improve efforts to overcome this situation.

1.2. The Commission’s proposal for a regulation setting up a European Labour Authority (ELA) is, if adequately implemented, an important step in the right direction towards improving cross-border mobility, enforcing European and national legislation, fostering cooperation between national labour market authorities and improving access to adequate and up-to-date information, tackling illegal activities and strengthening the internal market, provided that the ELA respects national and European competences and the Member States demonstrate their support and cooperation.

1.3. The EESC supports the Commission’s initiative to help solve the problems relating to cross-border mobility. It notes that the Commission is proposing a regulation to set up a European Labour Authority and stresses that a balanced form of structured cooperation between Member States has been established with the aim of seeking innovative solutions and added value for businesses, workers and national labour authorities and inspectorates, whilst preserving the principle of subsidiarity.

1.4. In general, the EESC agrees with the Commission’s effort to improve cross-border cooperation and to avoid illegal practices. In particular, the EESC highlights points of agreement (see 4.1), puts forward comments (see 4.2) and makes a number of proposals (see 4.3) that it hopes will be considered in order to improve the efficiency of the ELA’s activities.

1.5. The EESC recommends that the Commission take great care when incorporating the various bodies into the ELA, so that accumulated experience and know-how are turned to good use and so as to ensure that there is no overlap with other instruments and structures, ultimately with a view to making sure that the ELA’s action is more effective. The independence of the ELA must be guaranteed by granting it its own resources, enabling it to carry out its tasks. However, the EESC warns that the ELA may experience a shortage of resources, which could compromise its effectiveness. Therefore, while noting these concerns and some which have been expressed about its cost-effectiveness, it is important to ensure that its resources are properly managed.

1.6. The EESC singles out the proposal referring to the involvement of the social partners (see 4.3.3) for special attention. It will be easier to find solutions to the problem of cross-border mobility if the social partners are more actively involved at European, national and sectoral level, which is the objective of this EESC proposal. The EESC proposes that the ELA's stakeholder group become an ELA advisory board and that the involvement of the social partners in this body be strengthened.

2. Background

2.1. There has been a very significant increase in labour mobility in recent years: between 2010 and 2017 the number of people living or working in a Member State other than that in which they were born rose from 8 to 17 million and the number of posted workers rose by 68 % from 2010, reaching 2,3 million in 2016. There are also over 2 million workers in the road transport sector who cross intra-EU borders on a daily basis to transport goods or passengers⁽¹⁾.

2.2. One important aspect of the social situation in Europe is that the poverty rate has not significantly decreased and that it affects 23,5 % of the population of the European Union⁽²⁾. Some of these are people who are inactive and demotivated, people with disabilities, immigrants from third countries, Roma and homeless people, with a number of them living in a different Member State than the one from which they originate. Solutions could be more readily found for these people if cross-border labour markets functioned more efficiently, as this would open up more employment opportunities.

2.3. The European institutions have expressed their views on the issue of labour mobility. The Commission states that 'concerns remain regarding compliance with and effective and efficient enforcement of EU rules, which risks jeopardising trust and fairness in the Internal Market. In particular, concerns have been voiced in relation to mobile workers being vulnerable to abuse or being denied their rights, as well as businesses operating in an uncertain or unclear business environment and unequal playing field'⁽³⁾. The European Parliament underlines the 'need both to reinforce controls and coordination between and by Member States', including through strengthening of information exchanges between labour inspectorates, and to actively support the exercise of free movement rights'⁽⁴⁾. The Council has stressed 'the need to improve administrative cooperation and develop assistance and information exchanges in the context of fighting fraud related to the posting of workers, while emphasising the importance of clear and transparent information for service providers and workers'⁽⁵⁾.

2.4. In his State of the Union address on 13 September 2017, Jean Claude Juncker, the president of the Commission, clearly sums up the European institutions' position: 'We should make sure that all EU rules on labour mobility are enforced in a fair, simple and effective way by a new European inspection and enforcement body. It is absurd to have a Banking Authority to police banking standards, but no common Labour Authority for ensuring fairness in our single market'⁽⁶⁾.

2.5. The EESC has already issued a number of opinions⁽⁷⁾ on this topic.

2.6. Despite the adoption in recent years of a number of initiatives and proposals to promote fair labour mobility, they are still inadequately implemented and enforced.

2.7. The current situation, which is characterised by abuses and illegal practices in some Member States, is linked to populism and has fostered the anti-European sentiment and growing protectionism that have emerged in recent years in many Member States.

2.8. The findings show that the rights laid down in the Charter of Fundamental Rights of the European Union are not being upheld, particularly Articles 15, 16, 21, 29, 31, 34, 35 and 45.

⁽¹⁾ SWD(2018) 68 final, p. 7.

⁽²⁾ Population at risk of poverty or social exclusion, 2016 (EUROSTAT, 2018).

⁽³⁾ COM(2018) 131 final, p. 1.

⁽⁴⁾ COM(2018) 131 final, p. 1 and 2, 2015/2255(INI), 2013/2112(INI), 2016/2095(INI).

⁽⁵⁾ COM(2018) 131 final, p. 2.

⁽⁶⁾ The 2017 State of the Union address is available at: https://ec.europa.eu/commission/state-union-2017_en.

⁽⁷⁾ OJ C 75, 10.3.2017, p. 81; OJ C 264, 20.7.2016, p. 11; OJ C 345, 13.10.2017, p. 85; OJ C 197, 8.6.2018, p. 45.

2.9. In addition, recognition of this situation was one of the main arguments for the Proclamation on the European Pillar of Social Rights, which aims at ensuring the citizens 'equal opportunities and access to the labour market, fair working conditions and social protection and inclusion' ⁽⁸⁾.

2.10. The comments from the EU institutions are in line with warnings and reports that the European social partners, trade unions, businesses and a number of national authorities have issued over the years, calling for policies to resolve this issue.

2.11. It is recognised that there are significant differences between Member States in terms of labour inspectorates' tasks and resources; in many cases the number of inspectors is lower than that recommended by the ILO ⁽⁹⁾. Moreover, the decrease in resources allocated to labour inspection, language barriers and variations in the degree of digitalisation have highlighted the poor knowledge of how cross-border labour mobility operates, leading to the need for activities at EU level and assistance to Member States to overcome these shortcomings and be more efficient and proactive in cooperating and voluntarily subscribing to joint initiatives.

2.12. The results of internet-based open public consultations ⁽¹⁰⁾ and internal consultations show that there is a gap, particularly in terms of inadequate support and guidance for workers and businesses in cross-border situations, including incomplete and fragmented information available to the public concerning their rights and obligations, insufficient cooperation and coordination among the national state authorities and inefficient implementation and enforcement of the rules. Targeted consultations yielded varied results. The majority of respondents support the creation of a new Authority that focuses on improving cooperation between Member States by facilitating the exchange of information and good practices. At the same time respondents underline that the new authority should fully respect Treaty based national competencies and should not impose additional reporting requirements. There were also critical voices concerning potential duplication with existing administrative structures.

3. General comments

3.1. The EESC supports the Commission's efforts to combat illegal activities and fraud relating to cross-border mobility. To this end, setting up a European Labour Authority follows on from the political guidelines of July 2014 on building a more social Europe.

3.2. The EESC agrees with the Commission on the need for effective cooperation between national authorities and for a concerted administrative effort to manage a labour market that is increasingly European and to respond, via the ELA, should it be set up, with a clear mandate respecting subsidiarity and proportionality in a fair, simple and effective manner to major challenges that arise in relation to cross-border mobility ⁽¹¹⁾.

3.3. The EESC supports the view of the Commission that 'cross-border labour mobility in the EU benefits individuals, economies and societies as a whole' and that such benefits 'depend on clear, fair and effectively enforced rules on cross-border labour mobility and social security coordination' ⁽¹²⁾.

3.4. Having examined the Commission's proposal, the EESC considers it to be in line with the following requirements: the principles of subsidiarity and proportionality, the common Parliament and Council agreement on the rationalisation of decentralised European agencies, the better regulation principle and the relationship between the proposed initiative and the Platform on undeclared work.

⁽⁸⁾ COM(2017) 250, p. 4.

⁽⁹⁾ According to ILO Convention No. 81, the recommended allocation is one inspector per 10 000 workers in industrialised market economies (ILO 297th Session, November 2006).

⁽¹⁰⁾ COM(2018) 131 final.

⁽¹¹⁾ The European Commission lists these challenges as follows: — cases of social dumping, non-enforcement of existing legislation and fraudulent practices in cross-border situations; — inadequate information, support and guidance for workers and employers in cross-border situations concerning their rights and obligations; — insufficient access to and sharing of information between national authorities responsible for different aspects of labour mobility and social security coordination; — insufficient capacity on the part of national authorities to organise cooperation with authorities in other Member States; — weak or absent mechanisms for cross-border enforcement and compliance activities; — the lack of a cross-border mediation mechanism between Member States covering all aspects of labour mobility and social security coordination.

⁽¹²⁾ COM(2018) 131 final.

3.5. The EESC believes that the Commission's decision to opt for an operational solution — namely setting up a new agency based on cooperation between the Member States and building on the existing structures — is, out of the various possibilities considered ⁽¹³⁾, the right one and responds to actual needs at the current time. It shares the Commission's view that this way of implementing the ELA — i.e. through regulation, if approved — would provide greater legal security and it is therefore the most appropriate option.

3.6. The EESC considers that, with cooperation and support from all Member States, setting up the ELA can address the significant shortcomings identified above. The EESC underlines that the ELA should focus on improving labour mobility, enforcing the rules, tackling illegal activities and strengthening the internal market by boosting cross-border cooperation between Member States. The more focused the work of the ELA, and the clearer its objectives, the better it will be able to fend off misrepresentations or negative interpretations of its significance.

3.7. Broadly speaking, the EESC supports the Commission's proposal for a regulation, particularly the objectives (Article 2), tasks (Article 5), the information on cross-border labour mobility (Article 6), access to cross-border labour mobility services (Article 7), cooperation and exchange of information between the Member States (Article 8) and cooperation in the event of cross-border labour market disruptions (Article 14) as these define the ELA's tasks, which could contribute to ensuring equal labour and social rights in the host country, tackling social dumping, promoting healthy competition between companies and combating fraud relating to cross-border mobility, problems that the Member States cannot resolve alone.

3.8. The EESC believes that the objectives and tasks explain the legitimate doubts raised about the effective functions of the ELA and the nature of its role.

3.9. The EESC believes that the ELA's activities meet all the conditions needed to make a positive impact, insofar as it will contribute to providing the Member States and social partners with effective operational and technical support to combat illegal activities, abuse or fraud relating to labour mobility. Enforcement of workers' and citizens' rights to equal treatment, access to employment opportunities and to social security will be ensured through the provision of relevant information and services to workers and employers, cooperation and exchange of information between national authorities, the carrying out of joint and concerted inspections, and collaboration in the event of disputes and disruption of the labour market with cross-border implications, such as the restructuring of companies affecting several Member States.

3.10. The EESC would like the ELA to be a source of inspiration and encourage growth in the capacity of national authorities, in particular labour inspectorates and their staff, as well as providing information and advice to help European businesses and workers to understand which rules apply in cross-border situations.

3.11. The EESC stresses the importance of new forms of work that result from technological and digital innovation in businesses and the labour market. They will inevitably emerge in situations of cross-border mobility and the ELA will therefore have to take account of this new reality.

3.12. The EESC hopes that the potential synergies resulting from pooling experience, skills, capacity and tasks, and from cooperation planned under the ELA, will be effective, avoiding duplication and lack of clarity, given that:

3.12.1. It will include a number of existing bodies, such as the European Employment Service Network (EURES), the Technical Committee on the Free Movement of Workers, the Committee of Experts on the Posting of Workers, the Technical Commission, Audit Board and Conciliation Committee of the Administrative Commission for the Coordination of Social Security Systems and the European Platform on Undeclared Work.

3.12.2. It will cooperate with existing European Agencies in the area of labour, Cedefop ⁽¹⁴⁾, the ETF ⁽¹⁵⁾, EU-OSHA ⁽¹⁶⁾, Eurofound ⁽¹⁷⁾, the Administrative Commission for the Coordination of Social Security Systems, the Advisory Committee for the Coordination of Social Security Systems and the Advisory Committee on Freedom of Movement for Workers.

⁽¹³⁾ SWD(2018) 68 final and SWD (2018) 69 final, Chapter B.

⁽¹⁴⁾ European Centre for the Development of Vocational Training.

⁽¹⁵⁾ European Training Foundation.

⁽¹⁶⁾ European Agency for Safety and Health at Work.

⁽¹⁷⁾ European Foundation for the Improvement of Living and Working Conditions.

3.12.3. However, the EESC hopes and anticipates that this integration and reinforced cooperation will result in effective progress being made in terms of efficiency, and that the good practices and the existing work in the various areas will not be undermined. The EESC notes the good examples in the Benelux countries, the Platform on undeclared work, and the introduction of European identity cards in the construction industry. These initiatives should be safeguarded and replicated as far as possible and, building on these capacities, other innovative initiatives of the same kind can be launched. An example of such innovative initiatives is the creation of a European social security number, to be implemented following the ongoing updating of Regulation (EC) No 883/2004 on the coordination of social security systems⁽¹⁸⁾ and the completion of work for the Electronic Exchange of Social Security Information (EESSI).

3.13. The EESC stresses the importance of providing for the involvement of the social partners in the running and governance of the ELA (Article 24). However, the EESC underlines that the way in which this involvement has been provided for is clearly inadequate. It hopes that this involvement will meet the conditions needed to be effective in providing genuine added value in solving real labour mobility problems.

3.14. The EESC believes that the ELA should respect the principle of subsidiarity and should not be allowed to interfere with the functioning of Member States' labour markets, particularly regarding their industrial relations and collective bargaining systems, at all levels, with the autonomy of the social partners and with the running of labour inspectorates.

4. Specific comments

4.1. The EESC draws attention to and supports:

4.1.1. The promotion of joint and concerted inspections with national authorities whenever instances of non-compliance, fraud or abuse arise, though these should be in accordance with the legislation of the Member States concerned. These inspections should be voluntary so as to respect the competencies of the Member States. Nevertheless, attention is drawn to the fact that the possible failure to participate on the part of a Member State — which should always be substantiated — could undermine the effectiveness of the ELA's activities.

4.1.2. The fact that ELA does not have the power to initiate joint and concerted inspections, as this falls within the remit of the national authorities. However, it can suggest that Member States carry out joint inspections when it detects instances of non-compliance with legislation, abuse or cross-border fraud.

4.1.3. The ELA's assumption of responsibility for the European Job Mobility Portal in collaboration with the Single Digital Gateway, under the framework of the Internal Market Information System (IMI) and the Electronic Exchange of Social Security Information (EESSI).

4.1.4. The ELA's recognition and encouragement of the autonomy of the social partners and of collective bargaining, and in particular the importance of involving them in order to achieve its own objectives.

4.1.5. The importance of the ELA's support, particularly in the field of information and technical support to trade unions and businesses, as well as in cases of cross-border labour disputes, thus recognising the key role they play in enforcing legislation.

4.1.6. The ELA's role in mediating in disputes between national authorities, particularly those relating to social security issues, a process that needs to be clarified.

4.1.7. The fact that the national liaison officers, as a link with the Member States, will certainly make the ELA more effective. However, its operational links with the Member States of origin should be clarified, not only with the authorities but also with the national social partners.

4.1.8. The independence of the ELA must be guaranteed by granting it its own resources, enabling it to carry out its tasks. However, the EESC warns that the ELA may experience a shortage of resources, which could compromise its effectiveness. There are also a number of concerns about its cost-effectiveness and it is therefore important to ensure that its resources are properly managed.

⁽¹⁸⁾ OJ L 166, 30.4.2004, p.1, corrigendum OJ L 200, 7.6.2004, p. 1.

4.2. In view of the role attributed to the ELA, the EESC notes that:

4.2.1. Disputes between national administrations in the area of labour mobility and coordination of social security may be resolved by means of mediation carried out by the ELA upon request by, and in agreement with, the national authorities of the Member States.

4.2.2. The mediation may not call into question possible appeals launched by any of the parties involved to the competent courts.

4.2.3. There is a need to clarify the ELA's interaction and cooperation with EU agencies and other bodies linked to issues relating to work and to compliance with, and enforcement of, legislation.

4.2.4. Setting up the ELA should not incur additional administrative costs for companies and workers.

4.3. In view of the need to achieve the objectives underpinning the establishment of the ELA, the EESC suggests that the Commission's proposal for a regulation include the following:

4.3.1. The obligation on Member States to cooperate with the ELA, providing information, assistance and access to national databases in the areas of legislation, social security and taxation has to be made clearer. The way that the costs will be shared out among the various Member States, including for joint inspections, should also be clarified.

4.3.2. The work of the ELA should help combat fraud by working closely, where relevant, with Europol and Eurojust.

4.3.3. Article 24 of the Regulation on the involvement of the social partners should be amended, as it is clearly inadequate, proposing instead that:

- an ELA Consultative Committee be set up, to replace the 'Stakeholder Group';
- in addition to what has already been set out in this article, this committee should be tasked with giving its opinion on the activity plan for the duration of the mandate and for the year in question, the activity report and the Management Board's proposal on the appointment of the Executive Director;
- this committee should be composed of 17 members, 12 from the European social partners (including relevant sectors such as construction, agriculture and transport), 3 from the Commission, the Chair of the Management Board, who will chair the Consultative Committee, and the Executive Director;
- this committee will meet at least three times a year.

4.3.4. The ELA should establish an up-to-date database for the information provided by the Member States, comprising those companies that commit unlawful acts in relation to cross-border mobility.

4.3.5. The ELA should be involved in introducing the European social security number, although the power of initiative resides with the Commission.

4.3.6. The ELA should draw up an annual report on cross-border mobility, with an assessment of risks and potential, particularly in the most vulnerable geographical areas and/or sectors.

Brussels, 20 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

ANNEX

The following amendments, which received at least a quarter of the votes cast, were rejected during the discussions (Rule 39 (2) of the Rules of Procedure):

Point 1.1

Amend as follows:

1.1. *The situation of the cross-border labour market presents significant problems for businesses, workers and Member States, in particular with regard to unfair competition, ~~social dumping~~, illegal activities and various types of fraud relating to tax and social security. In addition, the lack of information for businesses and workers, poor cooperation between the Member States and the general low capacity of the labour inspectorates have aggravated existing problems and disputes. Despite some steps having been taken, the EU institutions, the President of the Commission, the EESC, the social partners and civil society organisations have spoken of the need to increase and improve efforts to overcome this situation.*

Outcome of the vote:

For: 93
Against: 124
Abstentions: 13

Point 3.7

Amend as follows:

3.7. *Broadly speaking, the EESC supports the Commission's proposal for a regulation, particularly the objectives (Article 2), tasks (Article 5), the information on cross-border labour mobility (Article 6), access to cross-border labour mobility services (Article 7), cooperation and exchange of information between the Member States (Article 8) and cooperation in the event of cross-border labour market disruptions (Article 14) as these define the ELA's tasks, which could contribute to ensuring equal labour and social rights in the host country, tackling ~~illegal practices~~ ~~social dumping~~, promoting healthy competition between companies and combating fraud relating to cross-border mobility, problems that the Member States cannot resolve alone.*

Outcome of the vote:

For: 96
Against: 121
Abstentions: 11
