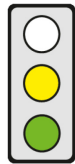


KEY ISSUES

Objective of the Regulation: With the aim of promoting labour mobility for citizens and companies, a European Labour Authority will be established to improve access to information and to support cooperation between national authorities.

Parties affected: Citizens, companies and national authorities.



Pro: The planned authority may facilitate cooperation between all Member States and thereby improve the uniform application of EU law.

Contra: (1) It should be made clear that the authority has no power to issue directives to national authorities.

(2) The seat of the authority must be established by mutual agreement of the governments of the Member States.

The most important passages in the text are indicated by a line in the margin.

CONTENT

Title

Proposal COM(2018) 131 of 13 March 2018 for a **Regulation** of the European Parliament and of the Council **on establishing a European Labour Authority**

Brief Summary

Note: Article and page references refer - unless otherwise indicated - to the Proposal for a Directive COM(2018) 131.

► Context and objectives

- In 2017, 11.8 million EU citizens of working age were living in a Member State other than that of their nationality, almost double that of 10 years ago. 9.1 million of them were working or looking for work. Between 2010 and 2016, the number of postings rose by 68% to 2.3 million. In 2017, about 1.4 million citizens commuted to work in another Member State. 2 million employees in the road transport sector were regularly working across borders. [P. 1; SWD(2018) 68, p. 7 and 117 et seq.]
- The European Labour Authority (hereinafter “Authority”) will improve the following, in particular [p. 2]:
 - access to information and services relating to labour mobility for individuals and companies,
 - cooperation between national authorities in the application of EU law.
- Relevant EU provisions on labour mobility are [SWD(2018) 68, p. 96 et seq.] inter alia the
 - Posting of Workers Directive [96/71/EC] and the Enforcement Directive [2014/67/EU] to the Posting of Workers Directive which regulate the posting of workers and cooperation between Member States in this area,
 - Freedom of Movement Regulation [(EU) 492/2011] and the Freedom of Movement Directive [2014/54/EU],
 - Regulation on the coordination of social security systems [(EC) No. 883/2004].

► Institutional consolidation

- In order to improve the application of EU law, various EU bodies have already been created in which Member States work together [SWD(2018) 68, p. 102 et seq.], including the Administrative Commission for the Coordination of Social Security Systems [Art. 71 et seq. (EC) 2004/883], with sub-committees, and committees on the Free Movement and Posting of Workers [p. 9 et seq.].
- The Authority supports the Administrative Commission for the Coordination of Social Security Systems [Art. 8 (2)], thereby replacing several sub-committees of the Administrative Commission and other EU bodies, and assumes their technical and operational tasks [p. 9].

► Provision of information and services regarding labour mobility

- The Authority – building on the existing Your Europe Portal and in supplement to the proposal to develop this portal into a “Single Digital Gateway” [COM(2017) 256; see [cepPolicyBrief 29/2017](#)] – will improve the availability, quality and accessibility of relevant information about labour mobility [Art. 6, p. 4].
- The Authority will develop new initiatives to promote labour mobility and improve existing services, such as the European Network of Employment Services [“EURES”; see [cepPolicyBrief 19/2014](#)] [Art. 7].

► **Supporting cooperation between Member States**

- EU law contains rules on cooperation between Member States in the area of labour mobility [cf. Art. 6 et seq. Enforcement Directive [2014/67/EU] to the Posting of Workers Directive].
- Beyond the rules on cooperation under EU law, a “complex network” of bilateral and multilateral agreements regulates cooperation between Member States [p. 5; SWD(2018) 68, p. 15 et seq.].
- At the request of national authorities, the Authority supports Member States with their cooperation under EU law such as regarding the exchange of information or the cross-border enforcement of administrative sanctions [Art. 8 (1)].
- In order to facilitate cooperation between Member States, the Authority promotes the use of electronic information systems, particularly the Internal Market Information system (“IMI”) and the Electronic Exchange of Social Security Information system (“EESSI”) [Art. 8 (3); p. 9 et seq.].

► **Coordination of joint inspections by Member States**

- At the request of one or more Member States, the Authority coordinates joint inspections, such as inspections pursuant to the Enforcement Directive [2014/67/EU] to the Posting of Workers Directive [Recital 14]. The Authority may itself suggest the implementation of joint inspections. [Art. 9 (1)]
- If a Member State does not want to participate in inspections, it informs the Authority in advance, in writing, and stating the reasons [Art. 9 (2)].
- The inspection procedure is regulated by way of agreements between the authorities and the participating Member States. The Authority will establish a model agreement. [Art. 10 (1)]
- The Authority provides the Member States with logistical and technical support regarding inspections, such as translation services. Staff of the Authority may participate in an inspection with the agreement of the relevant Member State. [Art. 10 (3) and (4)]
- If, in the course of its activities, the Authority becomes aware of “suspected irregularities” in the application of EU law, including that which is outside its competences, it shall report them to the Member State concerned and the Commission [Art. 10 (7)].

► **Analysis, evaluation and data collection**

- The authority issues analyses, such as regarding European labour market imbalances and sector-specific threats or recurring problems regarding labour mobility [Art. 11 (1)].
- The Authority organises procedures for the reciprocal evaluation of the work of the national authorities such as in order to deal with issues arising in connection with the application of EU law or to improve the “consistency of services” provided by the national authorities [Art. 11 (2)].
- The Authority reports to the Commission and to the Member States concerned “outlining possible measures to address identified weaknesses” [Art. 11 (3)].
- The Authority collects statistical data, within the scope of its competences, which is provided by the Member States, and in this regard works together with the EU statistics office [Art. 11 (4)].

► **Support with capacity building in the national authorities**

- The Authority will support Member States with “capacity building” in the national authorities in order to improve their capacity for applying Union law [Art. 12].
- For this purpose, they will inter alia “develop” common “guidelines” and “concepts” for Member States including “guidance” for inspections with a cross-border dimension [Art. 12 (a)].
- In addition, it will promote staff exchanges between national authorities [Art. 12 (b)].

► **Cooperation with stakeholders in case of cross-border “labour market disruptions”**

- At the request of national authorities, the Authority may facilitate cooperation between relevant stakeholders in order to address “labour market disruptions” affecting more than one Member State, such as the restructuring of companies or major projects impacting employment in border regions [Art. 14].
- This will improve the application of relevant EU provisions such as the Information and Consultation Directive [2002/14/EC], and promote the implementation of the “Quality Framework for anticipating Change and Restructuring” [COM(2013) 882] [SWD(2018) 68, p. 12 et seq. and 97 et seq.].

► **Organisation of the Authority**

- The management and administrative structure of the Authority includes [Art. 17 et seq.; Recital 20 et seq.]
 - a Management Board made up of representatives of the Commission and Member States,
 - an Executive Director and
 - a “Stakeholder Group” consisting of EU-level social partners.
- The Authority will be established by 2023, provide 144 jobs and have an annual budget of € 50.9 million from the EU budget [p. 12 et seq.].
- The seat of the Authority should be determined during the legislative proceedings [Art. 4].

Statement on Subsidiarity by the Commission

According to the Commission, the large number of agreements on cooperation between Member States indicates that no individual Member State can ensure the application of EU law in the field of cross-border labour mobility and the coordination of social security systems. Establishing a European Labour Authority may facilitate cooperation between Member States, promote the uniform application of EU law and thereby contribute to greater legal certainty. In addition, the authority may help to ensure that citizens and companies receive better access to information and services relating to labour mobility. [P. 6]

Policy Context

Commission President Jean-Claude Juncker announced the establishment of a European Labour Authority in his speech on 13 September 2017. According to the Commission, the Authority will supplement other initiatives for improving labour mobility and facilitate their implementation. These initiatives include e.g. the revision of the Posting of Workers Directive [COM(2016) 128; see [cepPolicyBrief 35/2016](#)], the adoption of special rules on the posting of drivers [COM(2017) 278; see [cepPolicyBrief 14/2018](#)] and the revision of the Regulation on Coordination of Social Security Systems [COM(2016) 815; see [cepPolicyBrief 10/2017](#)].

Legislative Procedure

| | |
|---------------|--|
| 13 March 2018 | Adoption by the Commission |
| [final] | Debate by the Council |
| Open | 1st Reading in European Parliament |
| Open | Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force |

Options for Influencing the Political Process

| | |
|--|---|
| Directorates General: | DG Employment and Social Affairs (leading) |
| Committees of the European Parliament: | Employment (leading), Rapporteur Jeroen Lenaers (EVP Group) |
| Federal Ministries: | Employment and Social Affairs (leading) |
| Committees of the German Bundestag: | Employment and Social Affairs (leading); Legal Affairs and Consumer Protection; Economic Affairs and Energy |
| Decision-making mode in the Council: | Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population) |

Formalities

| | |
|---------------------------------|--|
| Competence: | Art. 46, 48, 53 (1), Art. 62 and Art. 91 (1) TFEU (free movement of labour, freedom of establishment and freedom to provide a service and transport) |
| Type of legislative competence: | Shared competence (Art. 4 (2) TFEU) |
| Legislative procedure: | Art. 294 TFEU (ordinary legislative procedure) |

ASSESSMENT

Economic Impact Assessment

Free movement of labour and the freedom to provide a service are of great importance for the completion of the internal market. In order for citizens to be able to exercise their economic freedoms across borders, they depend on information about other Member States, particularly regarding the local legal system and administrative processes. Obtaining the information necessary for running a business in another Member State is about 80% more expensive than acquiring information about running a business in the home country [SWD(2018) 68, p. 8]. It therefore makes sense to set up an EU authority which can build on the existing Your Europe Portal and, in addition to the proposal to develop this portal into a “Single Digital Gateway”, will improve free movement of labour and the freedom to provide a service.

The proper application of EU law requires frictionless cooperation between the Member States. Although Member States are already obliged to cooperate, and they have concluded numerous bilateral and multilateral agreements to facilitate cooperation, the EU legal requirements on cooperation only apply selectively and the additional agreements do not exist between all Member States, only relate to some of the EU legislation relevant to labour mobility and are also designed in different ways which means that the level of cooperation varies [SWD(2018) 68, p. 15 et seq.]. In contrast, **the proposed Authority may make cooperation between all Member States easier**, such as when exchanging information or coordinating joint inspections, **and thereby improve the uniform application of all EU law that is relevant to the free movement of labour and freedom to provide a service.** In this regard, it makes sense for the

Authority to promote the use of electronic information systems such as the IMI. In addition, it can centrally provide specific resources, necessary for cooperation, such as translating services, and thus relieve the burden on Member States. It is also appropriate to replace the existing EU bodies in the area of labour mobility thereby consolidating the cooperation between Member States.

Legal Assessment

Legislative Competency

The EU's competence to adopt substantive provisions e.g. in the area of free movement of labour, freedom of establishment and freedom to provide a service as well as transport [Art. 48, 53, 62 and 91 TFEU] also includes the competence to establish appropriate EU agencies [cf. CJEU, Judgement of 2 May 2006, ENISA, C-217/04, EU:C:2006/279, para. 44]. Thus the EU has created agencies and other bodies in other policy areas, such as the EU Banking Authority, the EU Medicines Agency or the EU Railway Agency.

Subsidiarity.

Supporting cooperation between the national authorities, particularly the coordination of joint inspections, may have real added value by comparison with the current cooperation between Member States based on a network of bilateral and multilateral agreements.

Proportionality with respect to Member States

The tasks of the Authority and its powers with respect to Member States must be more precisely regulated: The EU can adopt provisions for the harmonisation of national administrative procedures and on cooperation between the national authorities. Where no EU provisions apply, however, the principle of procedural autonomy of the Member States applies [cf. CJEU, Judgement of 7 March 2018, Santoro, C-494/16, EU:C:2018: 166, para. 30]. The application of EU law then takes place in accordance with national administrative law [cf. Art. 291 (1) TFEU]. In this regard, although EU authorities can support national authorities in the application of EU law [cf. Art. 197 (2) TFEU], they cannot give them any binding instructions on the application of Union law [cf. Streinz, in: Streinz (ed.) EUV/AEUV, 2nd Edn. 2012, Art. 4 EUV, para. 59]. According to the Commission's proposal, the Authority can give Member States information "outlining possible measures to address identified weaknesses" on inter alia improving the uniformity of services, and can develop "guidance" and "concepts" in support of "capacity building". **It should be made clear that the authority has no power to issue directives to national authorities and that therefore its "outlines", "guidance" and "concepts" are non-binding.**

Compatibility with EU Law in other respects

In the interests of legal clarity and to protect the freedom to conduct a business [Art. 16 EU Charter of Fundamental Rights] it should be made clear that, in case of labour market disruption, e.g. due to the restructuring of a major international company, the Authority is only permitted to "support" cooperation between "all relevant stakeholders" by way of non-binding recommendations.

The seat of the Authority cannot be decided in ordinary legislative procedure but **must be established by mutual agreement of the governments of the Member States** [analogous to Art. 341 TFEU].

Conclusion

The proposed authority may facilitate cooperation between all Member States and thereby improve the uniform application of EU law that is relevant to the free movement of labour and freedom to provide a service. The tasks of the Authority and its powers with respect to Member States must be more precisely regulated: It should be made clear that the authority has no power to issue directives to national authorities and that therefore its "outlines", "guidance" and "concepts" are non-binding. The seat of the authority must be established by mutual agreement of the governments of the Member States.