

ELA: A compass in the information jungle of EU labour mobility

Position paper on the assessment and review of the performance and mandate of the European Labour Authority (ELA)

January 2024

Summary

The European Labour Authority (ELA) has completed its administrative and staff build-up. The upcoming mandate review (in accordance with Art. 40 of Regulation (EU) 2019/1149; "ELA Regulation") should be used to sharpen ELA's task focus, not to expand its competences.

The authority must see itself as a central point of contact for employees and employers regarding information on EU labour mobility. Where possible, it should serve as an information platform to navigate through complex legislation. Where this exceeds its capacities and competences, it must support the Member States in a coordinating role to provide the necessary information in a comprehensible and easily accessible manner. In the fight against undeclared work, particularly with regard to inspections, ELA may continue to play a coordinating and supporting role if required by the Member States. Extending the responsibilities of the authority, on the other hand, curtails the sovereign competences of the Member States.

Overall, ELA should focus in the future on creating added value for all economic sectors in EU labour mobility and not limit itself to individual sectors.

In detail

It was not necessary to establish ELA. The tasks could have been taken over by the Member States and existing EU organisations and structures in the field of employment and social policy, such as EURES or Eurofound. It remains crucial to avoid costly duplication and parallel structures as well as overlaps with other organisations and to create synergies. The core task of ELA should be to provide reliable and comprehensible information on EU labour mobility for employees and employers, particularly in the area of posting regulations, and to support the Member States in doing so.



Article 5: Provide easily accessible and understandable information on labour mobility

Numerous rights and obligations apply throughout the EU that employers and employees must observe in case of cross-border labour mobility. These rules originate from different national labour laws and social systems in 27 EU countries. This makes it difficult for companies and employees. They often have to turn to foreign legal experts. As a result, this leads to an enormous administrative burden when posting workers:

For example, the Member States have introduced extensive and varying reporting and documentation obligations when implementing the Enforcement Directive 2014/67/EU on the Posting of Workers Directive 96/71/EC at national level. The revision of the Posting of Workers Directive in 2018 has led to further tightening of restrictions and more complexity. Instead of considering only the nationally applicable minimum wage rates as before, the specific remuneration that applies to a comparable employee in generally binding collective agreements or by law in the destination country must now be determined. In addition, the entire labour law of the destination country applies to every posting lasting longer than twelve or 18 months. This requires a favourability comparison between German and the respective foreign labour law.

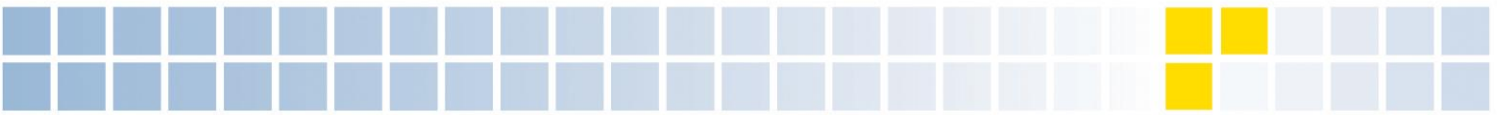
In the area of social security law, some Member States make it mandatory to apply for a PD A1 before the start of a posting. Failure to do so can result in severe fines. Other Member States, on the other hand, allow the relevant documents to be submitted later.

EU labour mobility is further complicated by the fact that the national websites and internet portals containing the information sought are structured differently. Important information is only partially available at least in English, let alone in other official EU languages. In addition, the information available is often not sufficient for companies to be able to determine the national legislation applicable to posted workers with legal certainty.

Various projects are currently underway at EU level to reduce bureaucratic barriers to labour mobility through digitalisation. For example, the so-called eDeclaration is intended to simplify and, in the best-case scenario, even standardise the posting of workers under labour law. In social security law, the European Social Security Passport (ESSPASS) aims, among other things, to fully digitalise the application, issuance and control procedure for a PD A1..

Against this background, the specific requirements in accordance with Art. 5 of the ELA Regulation should be further refined:

- Explicitly identify problem areas: Both ELA and the Member States should explicitly provide information on posting notifications, salary comparisons, favourability comparisons and PDs A1.
- Digitalisation as a central field of activity: In its role as a hub in the area of EU labour mobility, ELA must support the Commission and the Member States in their efforts to simplify administrative processes through digitalisation and reduce bureaucracy.
- Create commitment through concrete deadlines: The objective of setting up a central Union-wide website as a single gateway to information sources in accordance with Regulation (EU) 2018/1724 ("Single Digital Gateway Regulation") (Art. 5 (a)) should be given a specific target date.
- Specify concrete activities: The plan to support the Member States in the provision of information (Art. 5 (c), (d) and (e)) should be supplemented by specific activities. These include the development of templates for the national information websites and the requirement to translate the available information into other official EU languages.
- Explicitly include a "helpdesk" function: The mandate should be supplemented by the function of a "helpdesk" for those seeking information. The "helpdesk" is certainly limited by



the complexity of the regulations in the area of EU labour mobility. However, it should at least offer a reliable service to identify specific legal sources as well as competent contact points and information services in the Member States.

Article 7: Promote cooperation and exchange of information between Member States, in particular on digitalisation projects

The introduction of the “Electronic Exchange of Social Security Information” (EESSI) is an important step towards the digitalisation of cooperation between the authorities of the Member State. Nevertheless, even beyond the area of social security law, the following applies: Differently implemented regulations, combined with many contact persons, lead to an unmanageable administrative burden and bureaucracy that can hardly be complied with.

Connecting the authorities more closely is an important goal for a fully functioning internal market, to which ELA can contribute. Specifically, the ELA mandate should be sharpened with regard to Art. 7 (3):

- Prioritise the ESSPASS: Promoting the use of electronic tools should primarily relate to the European Social Security Pass project and the full digitalisation of the application, issuance and control process of the PD A1.

Article 8: No extension of competences in the coordination and support of concerted and joint inspections

The current rights of ELA in the area of coordination and support of inspections are already on the verge of encroaching on the competences of the Member States. There is no room for manoeuvre to extend the mandate in this area. Article 8 of the Regulation must not be modified or extended.

Article 10: ELA for everybody: analyses related to labour mobility not limited to high-risk sectors

Even before ELA was founded, there were numerous established institutions and processes across the EU that provided expertise on cross-border labour mobility and corresponding risk areas. These include, for example, the European Foundation for the Improvement of Living and Working Conditions (Eurofound), the European Agency for Safety and Health at Work (EU-OSHA), the European Centre for the Development of Vocational Training (Cedefop) and the European Training Foundation (ETF). ELA can play a coordinating role here, but expanding the mandate at this stage would only duplicate structures.

In the first few years of its operational activities, ELA has focussed its work on sectors that it considers to be particularly susceptible to the risk of undeclared work. In the medium term, however, ELA must set itself the goal of creating added value for all sectors. However, an expansion of the mandate is not necessary for this.



Article 11: Preventing bureaucratic bottlenecks: supporting national authorities in capacity building

The EU regulations in the area of labour mobility are not lacking regulation, but control and enforcement. Despite a fully implemented EESSI system, there is a particular need to strengthen the capacity of national social security authorities. Each institution in a Member State must be able to apply and check its own social security rules. The risk of a bureaucratic "bottleneck" must be countered as the number of cases continues to grow. To this end, it is important to continuously support the Member State authorities in increasing efficiency and further capacity building. The current prioritisation within the ELA Regulation is sufficient for this.

Article 13: Mediation between Member States on an informal and consultative basis only

The role of ELA as a mediator between the Member States and the respective competent authorities can be helpful on an informal, advisory and – if explicitly requested by the Member States – coordinating basis. The authority thus makes an important contribution to the functioning of the internal market.

- Create clarity with regard to SOLVIT: Specifically, the mandate should include a reference to the SOLVIT centres of the Member States, particularly with regard to problem-solving in cases of posting.

However, the mandate in this area must not be extended. For example, ELA must under no circumstances be authorised to impose the initiation of a mediation procedure on the Member States. A conflict of interest is inevitable here, as the authority itself is assigned the role of mediator.

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