



## European Labour Authority

### KEY MESSAGES

- 1 European business strongly supports initiatives supporting a better functioning of the single market, including free movement of workers. Geographic mobility in the EU provides employment opportunities to job seekers, and reduces the pressure deriving from growing skills shortages across Europe.
- 2 BusinessEurope supports policy makers' efforts to combat fraud in cross-border situations. However, we have doubts that the setting up of a European Labour Authority is an efficient and cost effective way of achieving this. Streamlining existing structures was possible without creating a new agency.
- 3 The use of European resources should focus on providing information and advice to help European companies and workers understand what rules apply to them in cross-border situations. BusinessEurope asks for the setting up of an EU 'help desk' to assist moving companies and workers.

### WHAT DOES BUSINESSEUROPE AIM FOR?

- The provision of reliable, easily accessible, up to date information by the Commission in all languages for companies, especially SMEs, wishing to post employees cross border avoiding duplication and reducing bureaucracy and administrative burdens for companies.
- A competitive and productive Europe in which the conditions for mobility are improved as part of a well-functioning Single Market.
- Improved transparency of labour mobility opportunities, rights and obligations through enhancing information provision to workers and employers, and strengthening cooperation between Member States.
- The effective application of existing rights and obligations in the area of cross-border mobility, taking into account the role played by social partners in the different national industrial relations systems.

## EUROPEAN LABOUR AUTHORITY

### Introduction

1. On 13 March 2018 the European Commission published a proposal for a Regulation establishing a European Labour Authority;
2. On 11 December 2017 BusinessEurope participated in a European social partners dedicated hearing on the idea of establishing a European Labour Authority;
3. This position paper sets out BusinessEurope's views on the proposed Regulation establishing a European Labour Authority. This position may be adapted in view of upcoming developments as part of the legislative procedure.

### General comments

#### On the state-of-play of intra-EU mobility

4. The free movement of persons constitutes one of the four fundamental freedoms of the internal market, and is enshrined in the EU treaty (article 45). This applies to the 31 countries that are part of the European Economic Area, i.e. 28 EU Member States, Lichtenstein, Iceland and Norway; and also to Switzerland via bilateral agreement with the EU. A number of EU regulations regulate the conditions under which workers can move across Europe (regulation 492/2011 and related legislation), and those under which Member States ensure access to social protection benefits for persons who are in mobility situations (regulation 883/04/EU and related secondary legislation).
5. Recent statistics show that a small but growing proportion of Europeans relocate to other EU Member States on a (semi-) permanent basis. In 2015, almost 11.3 million EU citizens of working age were residing in a Member State other than their country of citizenship across the EU-28, making up 3.7% of the total population of working-age across the EU-28. A total of 8.5 million of them were employed or looking for work, making up 3.6% of the total active population across the EU-28.
6. Intra-EU mobility contributes to alleviate unmet skills needs across Europe and has a role in filling vacancies. Growing skills shortages in Europe combined with persisting high levels of unemployment in a number of countries show that the potential of geographic mobility in the EU is not fully tapped.
7. Therefore, BusinessEurope considers that it is important to remove barriers for labour mobility in Europe. It is key to ensure good cooperation between national authorities involved in mobility issues, easy access to information on mobility and that enforcement measures do not place excessive administrative burdens on mobile enterprises or workers or end up discouraging labour mobility.

#### On the need to create a new European Labour Authority

8. Our doubts on the need to create a new EU authority remain. We regret that the alternative to streamline the relevant existing bodies without creating a new agency was not given sufficient consideration. In particular, the proposed Authority is set to have a significant budget of 50.9 million euros per year once fully operational in 2023. BusinessEurope questions whether this is good use of the limited EU financial resources. A more focused budget is needed, focusing on the scope and tasks that enjoy broad support.

## **Specific comments**

### On improving information and administrative cooperation

9. BusinessEurope supports the objectives of the Authority as concerns facilitating access to information for employers and workers and supporting cooperation between Member States. More specifically, as concerns access to cross-border mobility services, BusinessEurope welcomes the intention to promote initiatives that will facilitate cross-border mobility, including the national websites with information about the posting of workers. It could also be helpful if the Authority could set up a "Help Desk" for companies to receive concrete information and replies on questions regarding the application of the posting of workers directive.
10. A substantial amount of information about being mobile in the EU is already provided on the EURES Portal, including on social security, taxation, working conditions, workers' rights etc. Therefore, it is important to avoid duplications between what already exists and what is provided by the European Labour Authority. As part of this, it would be important to clarify that the Authority does not need to develop its own targeted mobility schemes as suggested in the proposal, but rather to promote those that already exist, such as "Your First EURES Job", which aims to fill vacancies in a certain sector, occupation, country or group of countries, or to support particular groups of workers with a propensity to be mobile, such as young people.
11. We support the objectives of digitalising existing procedures, making information more accessible for companies, especially SMEs, and workers, and facilitating information sharing / improving coordination between national authorities, including by clarifying data protection issues.
12. With regard to cooperation between national authorities, it is important to take into account the improvements (including binding deadlines for information provision) foreseen by the Posting of Workers Enforcement Directive, the currently discussed revision of the Social Security Coordination Regulation as well as a high number of bilateral agreements promoting cooperation between Member States.

### On the Authority's proposed scope

13. The proposed regulation states that the Authority should perform its activities in the areas of cross-border labour mobility and social security coordination, including free movement of workers, posting of workers and highly mobile services.
14. BusinessEurope does not agree that the Authority should be able to act outside of this scope to intervene in suspected violations related to working conditions, health and safety or the employment of illegally staying third country nationals. These are matters of national competence and have a limited cross-border dimension.
15. Considering that the cross-border dimension of the European Platform on tackling undeclared work is only one area of the Platform's activity, BusinessEurope's view is that this should remain independent of the Authority and not merged into it. In fact, the main purpose of the platform is to exchange good and bad experiences on fighting undeclared work within Member States which is not connected to free movement of people. The platform performs well and should therefore not be changed.
16. As regards third country nationals, such as an intra-corporate transferee, Blue Card holders, or migrants who arrived in Europe through other legal migration routes, the Authority's role should be limited to the people concerned who are mobile within the

EU and only linked to the application of EU rules regulating the matter and not what is in the directive left to the discretion of MS. If they arrive but remain in the member state to which they initially settled, there should be no role foreseen for the Authority.

17. BusinessEurope does not agree with the proposed role of the Authority on matters of restructuring, i.e. to address labour market disruptions affecting more than one Member State. Related issues should be outside the scope of the Authority. It is and should remain a matter for internal company decision-making to adapt corporate strategy to current and anticipated market developments, consumer preferences, technological innovations and the like, while respecting the applicable EU and national rules. For example, the directive on European Works Councils leaves it to companies and their employees to discuss transnational issues so it is not a matter for authorities. Social partners at national and European level have also, including in most affected sectors, taken initiatives concerning restructuring again without involving authorities and this should be respected. Including restructuring within the scope of ELA is also not logical given that many restructurings do not have a cross-border dimension.

#### On the Authority's proposed tasks

18. The Authority's proposed tasks are (i) labour mobility services for individuals and businesses; (ii) cooperation and exchange of information between national authorities, (iii) support to joint inspections; (iv) labour market analyses and risk assessment; (v) support to capacity building; (vi) mediation between national authorities; (vii) facilitation of cooperation between relevant stakeholders in the event of cross-border labour market disruptions.

#### *Leaving out dispute resolution*

19. Dispute resolution must be removed from the scope of the proposed Authority. The Commission and Member States need to avoid a duplication of administrative structures, creating unnecessary additional red tape, without being able to improve implementation and enforcement on the ground in all 28 Member States.
20. Current mechanisms in existing bodies, e.g. the administrative commission on coordination of social security, should be looked at to see whether they could be improved and whether they could be transferable to other policy domains.
21. In any case, it is essential that, if such a structure would still be created, its use should remain voluntary for the Member States involved and that it should not replace the formal infringement procedures.

#### *On mediation*

22. A mediation function at the request of the Member States concerned could be considered as long as this respects national authorities' competences and does not lean towards any form of dispute resolution power.
23. The Commission gave no indication in its proposal on the need for and the functioning of the proposed Mediation Board. The mediation procedure and how it will be developed and applied is something that cannot be left for the Authority to decide by itself. This should be clarified from the outset in the draft regulation.
24. It should also not be within the remit of the Authority to refer unresolved requests between Member States to the mediation procedure. In instances where mediation is

considered necessary this should be initiated by the Member States(s) concerned and taking into account that this participation should be on a voluntary basis.

*On joint inspections*

25. It is essential that labour inspections remain the competence of national authorities, in accordance with enforcement and industrial relations practices. Therefore, it is not appropriate that one Member State can request a joint inspection on its own. We also do not support the proposed Authority's role in suggesting a concerted or joint inspection of its own initiative to the authorities of the Member States concerned.
26. It is important that the proposed regulation foresees the possibility that Member States can decide not to take part in either a concerted or joint inspection upon detailing the reasons for this to the Authority. Equally, it would be important to make clear in the proposed Regulation that in such cases the other national authorities may only carry out the suggested inspection in the Member State(s) that has agreed to take part.
27. Further clarification is also needed on the suggested contents of the joint inspection agreement, which it is proposed will be established by the Authority, and how this is to be done.
28. Recalling the primacy of national industrial relations systems and their labour authorities or other labour institutions, BusinessEurope is concerned by the suggestion that the Authority could act beyond the scope of its intended purpose by reporting other suspected irregularities beyond those related to cross-border mobility that may be identified during the course of concerted or joint inspections. This provision needs to be removed from the proposed regulation.

*On capacity-building of national authorities*

29. Some member states have stronger needs than others in terms of building up their administrative capacity to enforce rules that apply in cross-border situations. We welcome the focus on supporting the regulatory and supervisory authorities in those countries where there are deficits when it comes to the enforcement of EU legislation for mobile workers. Such support could take the form of capacity building, as is foreseen in the draft Regulation.
30. However, we are concerned about the proposal that capacity building activities may include *"the development of 'common guidelines for use by Member States, including guidance for inspections in cases with a cross-border dimension, as well as shared definitions and common concepts, building on relevant work at the Union level"*, as suggested in article 12(a). Should it be established, all activities in the scope of the agency should be fully consistent with the fact that it does not hold regulatory powers.

*On the proposed governance of the authority*

31. BusinessEurope finds it appropriate that the Authority's Management Board should be composed of representatives from each of the Member States, plus the European Commission.
32. Complementing the work of the Management Board it is appropriate to have a forum through which social partners can provide expertise and analysis and the proposed Stakeholder Group can fulfil this role.

33. In order to provide sufficient depth of input, BusinessEurope believes that it would be appropriate to increase the size of the social partner delegations in the Stakeholder Group. This should take into account the relevance of including a broader representation of national social partners that are members of the EU cross-industry social partners as well as representatives of the EU sectoral social partners.
34. As concerns the possibility for the Authority to establish working groups or expert panels with representatives from the Member States, Commission and external experts, BusinessEurope questions the relevance of this in relation to financial matters related to Regulation 883/04 on the coordination of social security systems. This should continue to be addressed in the advisory committee.

### **Conclusion**

35. BusinessEurope continues to have doubts about the added value of the proposed authority. In any case, it needs to have a more restricted scope that focuses on the core issues of cross-border mobility and social security coordination and which fully respects the diversity of national industrial relations practices. This particularly concerns providing reliable, easily accessible, up to date information in all languages for companies, especially SMEs.
36. The Authority should not overreach into other areas that are the competence of Member States and their national authorities or social partners and companies, such as working conditions, health and safety, third country nationals that are not mobile and restructuring.

\*\*\*\*