



Republic of Bulgaria
ECONOMIC
AND SOCIAL COUNCIL

OPINION
OF
THE ECONOMIC AND SOCIAL COUNCIL
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)]

(own-initiative resolution)

Sofia, 2018

The Economic and Social Council of the Republic of Bulgaria included in its Action Plan for 2018 an opinion on the Proposal for a Regulation of the European Parliament and of the Council establishing a European Labour Authority - [COM (2018) 131 final - 2018/0064 (COD)].

The elaboration of the opinion was assigned to the Labour, Income, Living Standards and Industrial Relations Commission (LILSIRC). Dr. Ivan Kokalov, member of ESC Group 2 - trade unions and Lachezar Iskrov - member of ESC Group 1 - employers were appointed rapporteur and co-rapporteur. The draft opinion was discussed and adopted by the LILSIRC on 30 November 2018.

At the Plenary Session held on 10 December 2018, ESC adopted this opinion.

Key findings and recommendations

1. The Economic and Social Council (ESC) supports the European Commission's (EC) initiative to set up a European Labour Authority¹ (ELA), whose main purpose would be to contribute to addressing labour mobility issues within the internal market.
2. ESC considers that increased cross-border mobility in recent years undoubtedly requires new rules for interaction and increased efforts of Member States to manage the cross-border labour market processes.
 - 2.1 Insufficient access to information, as well as insufficient transparency regarding the rights and obligations of citizens and businesses, pose serious problems related to various types of fraud, undeclared work and unfair competition.
 - 2.2 The ineffective cooperation between the Member States' administrative authorities and the lack of sufficiently up-to-date information are a serious obstacle to resolving the existing problems as well as arising disputes.
 - 2.3 Cross-border enforcement mechanisms or out-of-court dispute resolution mechanisms are weak or lacking altogether.
3. According to ESC, East European countries are most affected by fraud linked to the cross-border labour market, due both to the lack of information and insufficient capacity of national authorities to combat illegal activities.
4. ESC considers that the main objective of ELA is to ensure cooperation between Member States to ensure the effective application of EU law in the field of cross-border labour market.
5. ESC supports EC's proposal as it believes that the creation of a European Labour Authority will make it possible to improve labour mobility across the European Union. ELA will also contribute to improving access to up-to-date and adequate information in support of workers and businesses engaged in cross-border activities and will promote administrative cooperation between national labour market authorities.
6. ESC supports the proposal to coordinate and endorse joint inspections, while maintaining the principle of subsidiarity.
7. ESC considers that particular attention should be paid to the procedures and means of obtaining information about affected companies and workers in fraudulent cross-border situations such as the use of mailboxes, dummy self-employment, etc.
8. ESC supports the creation of a new Art. 12a on cooperation between Member States to tackle undeclared work. In order to give a clear vision of how to deal with undeclared work, which often has a cross-border dimension and can have serious consequences for the workers concerned, the

¹ Proposal for Regulation of the European Parliament and of the Council establishing a European Labour Authority [COM (2018) 131 final - 2018/0064 (COD)]

ELA should further maintain and further develop the European platform to strengthen cooperation in the fight with undeclared work and to further strengthen cooperation at Union level in this field.

9. ESC considers that further clarification is needed on the possibilities for ELA to mediate and cooperate. It is necessary to outline the scope of the mediation role, ensuring that ELA does not undermine the autonomy of the social partners.

10. ESC draws attention to the insufficient appreciation of the role of the European and national social partners and their capacity to solve the tasks to be carried out by ELA. Social partners at all levels must have a real impact on the operation, agenda, priorities, and control of the tasks of ELA.

11. ESC recommends that the Bulgarian government should propose that ELA be located in Bulgaria on the grounds that it will have a strong positive effect in the countries of Central and Eastern Europe most affected by frauds related to the cross-border labour market, and that there is no European body with headquarters in Bulgaria.

Introduction

12. ESC underlines that the Single European Market aims to ensure the free movement of goods, services, capital and citizens. At the same time, the principle of free movement of workers is enshrined in Art. 45 of the Treaty on the Functioning of the European Union (TFEU).

13. Over the last decade, the number of mobile citizens - people living and/or working in another Member State - doubled to 17 million in 2017. Every day 1.7 million Europeans commute to jobs in another EU country. There are over 2 million workers in the road transport sector who travel daily across EU borders for the carriage of goods or passengers. The number of seconded workers has reached 2.3 million in 2016.

14. ESC recognizes that, in the context of an increasingly shared European labour market, despite a number of initiatives and proposals to promote fair labour mobility, their implementation and control is still insufficient. At the same time, EU institutions have detected a number of abuses and illegal practices in some Member States on complaints and information provided by the European social partners, trade unions, businesses and various national authorities over the years.

15. In this regard, ESC stresses that these issues form one of the arguments for the adoption of the European Social Rights Pillar, which "guarantees citizens equal opportunities and access to the labour market, fair working conditions and social protection and inclusion"².

16. On 13 September 2017 EC President Jean-Claude Juncker, in his State of the Union statement, clearly pointed out the position of the European institutions: "We need to make sure that all EU labour mobility rules are applied in a fair, easy and effective way by a new European authority for inspection and enforcement. It is absurd to have a bank authority to monitor compliance with

² COM (2017) 250

banking standards and not have a common labour authority to guarantee fairness in our single market"³.

17 Following this address, the Commission, together with the national authorities of Member States, national authorities, relevant EU bodies, the social partners, civil society and citizens, actively engaged to find solutions to address the challenges and ways in which the European Labor Authority could help. In addition to targeted consultations, EC has organized an online public consultation between November 2017 and January 2018⁴.

18 On the basis of the data received, the Commission presented a proposal for a regulation establishing a European Labor Authority presented as part of the Social Justice Package on 13 March 2018.

19. ESC supports EC's view that "cross-border labour mobility in the EU is beneficial to citizens, economies and societies in general" and that these benefits" depend on clear, fair and effective rules on cross-border job mobility and coordination social security issues"⁵.

20. This proposal is also part of the introduction of the European Pillar of Social Rights, which aims to achieve greater convergence towards better working and living conditions.

Pan-European context of the proposal for ELA

21. ESC notes that the implementation of the proposal for the creation of ELA by a specific Regulation has a legal reasons. The achievement of the objectives will be greatly facilitated by a common legal framework for unifying approaches and information and assistance mechanisms, both between Member States and with stakeholders.

22. The European Labour Authority should be set up as a new EU decentralized agency in 2019 and reach its full operational capacity by 2023.

23. ESC considers that ELA as a decentralized EU agency will address the following major challenges facing the European labour market, namely:

- **insufficient support and guidance for citizens and businesses** in cross-border situations, including incomplete or insufficient information to the public about their rights and obligations;
- **insufficient access and exchange of information between national authorities** responsible for particular areas of labour mobility and coordination on social security issues;

³ Speech on the state of the Union, 2017.

⁴ COM(2018) 131 final

⁵ COM(2018) 131 final

- **insufficient capacity of national authorities** to organize cross-border cooperation with the authorities of other countries;
- weak or lacking mechanisms for joint cross-border enforcement activities;
- **lack of a specific mechanism** for cross-border mediation between Member States in all areas of labour mobility and coordination on social security issues;
- **inadequate** cooperation at the EU level in this area⁶.

24. ESC welcomes the main objective set out in the EC proposal⁷, which is to contribute to ensuring fair labour mobility within the internal market:

- improve access to information for citizens and employers on their rights and obligations in the field of labour mobility and coordination on social security issues and access to relevant services;
- strengthen operational cooperation between the authorities involved in the cross-border enforcement of relevant EU law, including the facilitation of relevant inspections;
- provide mediation and support solutions in cases of disputes between national authorities and cross-border labour market distortions, such as the restructuring of enterprises that affect several Member States.

25. In this regard, ESC considers that ELA "will benefit all citizens who are covered by the EU rules on cross-border labour mobility and social security coordination"⁸, and will also benefit businesses that have cross-border activities, including for recruitment purposes.

26. According to ESC, the powers and activities of the Member States should not be substantially altered or restricted. The use and development of projects based on local, regional and national knowledge and experience, successful methods and tools seems to be advisable.

27. ESC supports the idea through ELA to ensure that workers' and citizens' rights of equal treatment and equal access to employment and social protection opportunities in cross-border situations are guaranteed. Because labour mobility is a means of more efficient resource allocation, the initiative will create a favourable environment to support entrepreneurship and job creation.

28. ESC draws attention to the importance of new forms of employment that arise as a result of technological and digital innovation in enterprises and the labour market, which will inevitably arise in situations of cross-border mobility. Therefore, ESC believes that ELA will have to take into account this new reality brought about by the Fourth Industrial Revolution.

29. ESC believes that ELA is in line with the objectives of a Digital Single Market for modernizing public administration, achieving cross-border interoperability and facilitating interaction with citizens. Such a solution will support cross-border cooperation and the realization of the economic potential of the border regions of the EU.

⁶ COM(2018) 131 final

⁷ Ibid.

⁸ COM(2018) 131 final

30. A number of existing bodies such as the European Job Mobility Network (EURES), the Technical Committee on Freedom of Movement of Workers, the Committee of Experts on Posting of Workers, the Technical Commission, the Audit Board and the Conciliation Committee of the Administrative Commission for the Coordination of Social Security Systems security and the European Platform for undeclared work will be included in ELA.

31. ELA will simplify the current institutional framework in the field of labour mobility and social security coordination by bringing together the operational tasks currently being scattered across the various EU bodies in a permanent structure providing an enhanced forum for cooperation and joint investigative activities.

32. Within the framework of its respective competences, ELA should cooperate with other EU agencies, in particular with those created in the area of employment and social policy, building on their expertise: the European Foundation for the Improvement of Living and Working Conditions, The European Centre for the Development of Vocational Training (Cedefop), the European Agency for Safety and Health at Work (EU-OSHA) and the European Training Foundation (ETF), as well as organized crime and trafficking in human beings, the European Agency for Safety and Health at Work January EU cooperation in law enforcement (Europol) and the European Union Agency for cooperation in the field of criminal justice (Eurojust).

33. Building on the EURES portal and in cooperation with the Single Digital Portal recently proposed by the European Commission, the ELA will ensure that the public has access to the information it needs to make choices and to exercise its rights related to cross-border work mobility, including in the area of posting of workers and social security.

34. ESC believes that small and medium-sized enterprises (SMEs) will benefit most from the improved access to information, as 90% of the businesses registered on this EURES Job Mobility Portal are SMEs.

35. ELA will facilitate cooperation and exchange of information through national liaison officers seconded by Member States. However, operational links with the Member States should not only be with the national authorities but also with the national social partners.

36. ESC considers that ELA should be responsible for tackling undeclared work not only in the road transport sector, but it is also necessary to take into account the proposals of other economic sectors with a large share of undeclared work, water and air transport, etc.

Concrete challenges and problems facing Bulgaria

37. According to ESC, ELA will make a significant contribution to protecting the labour rights of Bulgarian mobile workers, who rank fifth in number in the EU.

38. For 2017 over 3.76 million Bulgarians have travelled to EU countries. More than half a million Bulgarians aged 20-64 live and work in other EU Member States, according to Eurostat's analysis

of working Europeans in this age bracket. In addition, about 70% of Bulgarians living in another EU country were employed, or 7 out of 10 of our compatriots living abroad worked in some other EU country⁹.

39. ESC considers that ELA will have a positive impact on the administration in Bulgaria by allowing better access to information and facilitated procedures for interaction with authorities in other Member States.

40. It is expected that ELA will become a platform for rationalizing information and services on the rights, obligations and opportunities of cross-border job mobility, which will ensure access to such information and services for individuals and employers in our country.

41. The new body will stimulate the process of enhancing the digitization of procedures, which will provide new opportunities to increase efficiency in serving stakeholders at the national level. At the same time, the shared exchange of information will provide opportunities to stimulate integration between border regions in the workplace, which will contribute to increasing efficiency in the use of labour resources and improve the business environment.

42. ESC believes that the creation of ELA will have a strong positive effect for the countries of Eastern Europe (Romania, Bulgaria, Poland, the Baltic States and Hungary).

43. ELA does not impose new obligations on Member States, citizens and employers. The proposal does not affect national decision-making, national legislation or national law enforcement activities which remain within the competence of the Member States.

44. The creation of ELA will have a minimal impact on the national budget through its impact on the EU budget.

45. National authorities will have the opportunity to respond early to violations of labour law and to avoid paying social security contributions. They will receive operational support from ELA to strengthen their capacity.

Conclusion

46. The proposal for a Regulation establishing ELA is an ambitious project and is supported by the EU Member States. The overall objective is to establish an institution that will help to strengthen justice and confidence in the single market. This new autonomous body will optimize the existing institutional framework in the field of labour mobility and social security coordination by pooling the operational tasks currently being scattered across the different EU bodies into a permanent structure providing an enhanced forum for cooperation and joint investigative activities. For Bulgaria, the utility will be in two strands: strengthening the capacity of public institutions

⁹ EU citizens living in another Member State – statistical overview.

responsible for labour mobility as well as raising the awareness of stakeholders and protecting their rights.

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