

# UEAPME<sup>1</sup> Position

## On the proposal establishing a European Labour Authority - COM (2018) 131

### Introduction

UEAPME takes note of the European Commission's proposal for a regulation establishing a European Labour Authority.

### Key messages

UEAPME considers positively the European efforts to further promote cross-border mobility and a better functioning of the Single Market through the full enforcement of European legislation and fight against frauds and abuses.

The main challenge for the European Labour Authority will be to provide a concrete added value in comparison with what already exists as European structures and bodies, both for European citizens and businesses, while **fully respecting the competences of national authorities**.

The European Labour Authority should become **a one stop shop for information** towards European citizens and businesses, in particular SMEs, on cross border mobility.

The European Labour Authority should support better cooperation among Member States for exchanging information, experiences and practices.

The European Labour Authority **should have no regulatory power**, interpretation capacity or EU legislation competence.

Joint labour inspections should remain the strict competence of national authorities and should only take place at the request of the Member States concerned.

### General comments

Free movement of people is one of the major achievements of the Internal Market. In order for the European citizens and businesses to fairly benefit from the free movement, all related European rules should be enforced in an equal manner in all Member States, without creating additional administrative burdens and red tape for employers, in particular for small businesses.

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<sup>1</sup> UEAPME subscribes to the EC's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is 55820581197-35

## Chapter I: principles

UEAPME agrees with the scope of the European Labour Authority when it is to assist Member States in matters relating to cross-border labour mobility and the coordination of social security systems with the Union.

UEAPME supports the broad objective to facilitate access for individuals and employers to information on their rights and obligations and to relevant services.

This is a major task for the majority of SMEs, which very often do not have all the necessary means to easily access to the relevant, reliable and updated information.

Support to cooperation between Member States in the cross-border enforcement of Union law, is an important task of the Authority. However, some clear limits have to be defined in the way of doing it and in particular on facilitating joint labour inspections and mediation,

UEAPME insists, in particular, on the fact that the Authority should **not take-up the role of national authorities**. It should give support where national administrative capacities are lacking and provide for exchange of experiences while fully respecting the **subsidiarity principle**.

The European Labour Authority **should have no regulatory power**, interpretation capacity or EU legislation competence.

## Chapter II: Tasks of the Authority

*1 – Facilitate access to information by individuals and employers on rights and obligations in cross-border situation as well as access to cross-border labour mobility services, in accordance with Articles 6 and 7”*

It is essential to improve the cooperation on cross-border employment and social security matters by first promoting access and transparency of information available in all languages.

The second aspect should be to improve information sharing among national authorities to provide information, guidance and assistance to individuals and employers on labour mobility in particular in the case of posting of workers. **The European Labour Authority should become a one stop shop for information and information sharing**, which would streamline the information already available under other portals such as EURES and in this way, give comprehensive overview on issues of social security, healthcare and labour mobility.

Bureaucracy and multiplication of EU bodies with an additional administrative layer **should be avoided** Therefore UEAPME can agree that EURES European Coordination Office will be managed by the Authority.

*2 – Facilitate cooperation and the exchange of information between national authorities with a view to the effective enforcement of relevant union law, in accordance with Article 8*

In the context of the posting of workers directive, there has been a permanent request for a certain right of verifying the validity of social security registration. In order to be able to do so, an important step would be **to support a better functioning of the network of national social security bodies**, the Electronic Exchange of social security Information (EESSI) system and the IMI system for the posting of workers.

Under this task, UEAPME particularly welcomes the aim to facilitate cross-border enforcement procedures of penalties and fines.

3 – *Coordinate and support concerted and joint inspections, in accordance with Article 9 and 10*

The European labour Authority **should not provide cross-border inspections. Only if national authorities jointly request** technical assistance and necessary information or analysis, this could be provided by ELA. **It is essential to respect the national competences in this domain.** The Authority should only act, including on coordination of possible joint inspections, at the request of Member States.

National Liaison Officers should play a determinant role in the way concerted and joint inspections are decided and organised.

Joint inspections already take place between some Member States. The role of ELA in such well-functioning joint inspections should be carefully addressed.

On possible joint inspections as proposed in article 9, UEAPME sees the need to set up from the outset clear conditions for having them supported and undertaken:

- the coordination of concerted and joint inspections, shall only take place at the strict request of Member States. It should not be the role of the Authority to suggest a concerted or joint inspection.
- in case the authorities of a Member State decide not to participate in or carry out the concerted or joint inspection, particularly when only two Member States are involved, this inspection should not take place. In fact, such a situation would create a lot of pressure on one single Member State, in most cases, the one which complies with the European obligations, without solving the possible irregularities in the country not accepting the joint inspection. Maintaining the principle of a joint inspection under these conditions does not make sense.

Concerning a model agreement for joint inspection to be provided in the future by the Authority, UEAPME would like to have more details about such a document.

If staff of the Authority is to participate in the joint inspection, it can only be after full agreement of all Member States concerned.

4 – *Carry out analyses and risk assessment on issues of cross-border labour mobility, in accordance with Art.11*

Analyses are always useful tools for monitoring labour mobility, prevent any major difficulties and provide accurate date. Important is to avoid duplication of work with other European Union Agencies or services.

5 – *Support Member States with capacity-building regarding the effective enforcement of relevant Union law, in accordance with Article 12*

Technical assistance and support to capacity building of national administrations should be one of the main tasks of the Agency, in view to foster the already existing obligations to cooperate in the field of social security and posting of workers.

Mutual assistance and exchange of experiences and good practices are valuable ways of learning from each other. Information campaigns on rights, obligations and opportunities for SMEs could be useful, but they should be organised with the involvement of the most representative SME organisations at EU and national level.

6 – *Mediate in disputes between Member States' authorities on the application of relevant Union law, in accordance with Article 13*

On the possible role of the European Labour Authority for arbitration through a dispute resolution mechanism, UEAPME stresses that this is the primary competence of the European Court of Justice.

The Authority could act as a discussion board to facilitate exchanges and solve problems between Member States **on a voluntary basis and at the sole request of Member States.**

*7 – Facilitate cooperation between relevant stakeholders in the event of cross-border labour market disruptions, in accordance with Article 14*

It is always better to anticipate such disruptions but unexpected phenomena can always happen. Therefore it is useful to have the possibility to address such issues but certainly not to interfere in restructuring which remains the competence of businesses.

### **Chapter III: Organisation of the Authority**

UEAPME would have preferred to have a **Tripartite Agency** where social partners at EU and national level have a full role, in line with the common approach on EU decentralised agencies, and taking better into account their expertise and specific role in labour mobility such as in posting and in labour inspections.

The Stakeholder Group, which will have advisory functions, remains an important body but, unfortunately, does not really involve social partners in the governance.

Therefore, National Liaison Officers should closely coordinate with national social partners on the various activities and in particular in the case of concerted or joint labour inspections.

On the number of Social partners, the six representatives at Union-level is a minimum for the cross-industry social partners. **UEAPME stresses the importance of having SME fully represented in the six foreseen members.** However, it would be equally relevant to have some additional sectoral social partners' representatives in the sectors where mobility is already well developed.

Furthermore, in the future work of the Authority, the sectoral dimension might become even more prominent, when cross-border mobility is an important part of activity as it is in the case for transport. This would deserve some specific attention when fulfilling the tasks of the Authority.

In the short term, an Advisory Group, with the full involvement of EU social partners will be set-up for the establishment phase, which we consider as an important step for the final setting of the Authority.

Finally, we fully understand the need to simplify the current institutional set-up in the field of labour mobility and social security coordination and to pool operational tasks into the new permanent structure.

On the European Platform tackling Undeclared Work, even if the platform does not only deal with cross-border dimension, we can agree that its activities will become fully part of the Authority. However since it has proven its usefulness for further developing awareness raising, information and cooperation among national authorities and social partners to tackle frauds and abuses, it is important to guarantee that the useful work done by the platform will be preserved and further pursued as part of the ELA.

In the future it will also be essential to ensure complementarity of work and synergies with existing structures in the field such as the Administrative Commission for the Coordination of Social Security Systems or the Advisory Committee on the free Movement of Workers.

On the costs of the Authority, when it will become fully operational, the budget appears to be quite high in comparison with the other four European Agencies. The first reaction is to question if such a high budget is fully in line with the activities the ELA will effectively perform.