

Regulating for Globalization

Trade, Labor and EU Law Perspectives

An Overview of the European Labour Authority

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The [Regulation](#) establishing the [European Labour Authority](#) ('ELA') was recently adopted by the European Parliament and the Council and will shortly come into force. It is expected that the ELA will be up and running by the autumn. The ELA is one of many measures which are being introduced as a result of the [European Pillar of Social Rights](#), the landmark development in the Single Market's social dimension in recent years and a paradigm of the ongoing attempt to regulate the consequences of contemporary globalisation.

The functions of the ELA are essentially threefold.

Information

First, the ELA shall contribute to ensuring 'fair mobility' across the Union; indeed, the [Commission's Proposal for a Regulation](#) made it clear that '[c]ross-border mobility in the EU benefits individuals, economies and societies as a whole'. The recitals to the Regulation are helpful in this respect and the Parliament and Council emphasise three things. First, the free movement of workers, services and establishment are fundamental principles of the Single Market (recital 1). This much is well-known by all EU lawyers. Second, the Parliament and Council reaffirm that one ultimate goal of the Union is to establish a social market economy (recital 2). The success or failure of the ELA should therefore be judged in the light of its contribution to establishing such an economy. Interestingly, at least part of the [European Parliament's amendments](#) to the recitals were successful, noting that the Union is 'to promote social justice and protection (...) and combat discrimination (ibid). Finally, at the [Social Summit for Fair Jobs and Growth](#), the Parliament and the Council recognised the need to 'put people first' (recital 3). In the light of the functions of the ELA, it is difficult to know what that means. On the one hand, it could be that the work of the ELA should contribute to people's well-being; but on the other hand, putting 'people first' may be a recognition of increasing the mobility of people within the Union and thereby increasing efficiency in the Single Market. In this vein, of relevance is the observation of the Parliament and Council that the ELA must strengthen and protect labour mobility rights within the Union (recital 5).

How, then, is the ELA to discharge this function? The primary way is through ensuring people are properly *informed* about their rights of free movement. Accordingly, art 5 of the ELA Regulation provides that the ELA shall 'improve the availability, quality and accessibility of information' offered to individuals, employers and the social partners to move freely within the Union. If Europeans are made aware of the attractive free movement rights which they have and the opportunities for work which may be available to them elsewhere, then they may be enticed to

exercise their rights and thereby better contribute to the project of EU integration. Information on such factor mobility should, inter alia, be provided through the establishment of a single, comprehensive and EU-wide website detailing people's rights and opportunities of free movement. The obligation to provide such information shall also extend to assisting member states in providing accurate guidance to their nationals. One wonders whether having the ability to provide not only information but also incentives would better cohere with the function of the ELA in this respect.

Cooperation

The second key function of the ELA is to provide assistance to the member states and the European Commission in various respects (art 2). One such element of assistance has already been mentioned, namely, to provide more accurate and easily accessible information. But there are other, more comprehensive obligations of assistance.

A first is coordinating and assisting action by the member states to enforce EU free movement law. The ELA has several powers in this respect. One is to undertake and coordinate concerted and joint inspections by the ELA, on the one hand, and competent member state authorities, on the other hand (arts 8-9). 'Concerted inspections' are those undertaken by two or more member states simultaneously regarding related cases, while 'joint inspections' are those carried out in a single member state with the participation of the national authorities of one or more other member states; in both cases, the ELA may provide a supportive role. Specifically, if the member states so wish, the ELA may provide 'conceptual, logistical, and technical support and, where appropriate, legal expertise' (art 9(4)). The role of the ELA here is accordingly clear: it should enhance cooperation between member states to ensure compliance with and enforcement of EU law, particularly as it relates to the free movement of persons and provide assistance and guidance with the member states' efforts to so enforce EU law. Indeed, the ELA is also empowered to report any irregularities in the application of EU law to the member state concerned and the Commission (art 9(9)).

A second area of cooperation shall be in the area of labour mobility analyses and risk assessment. According to art 10(1) of the ELA Regulation, the ELA is empowered to undertake research concerning topics such as, 'labour market imbalances, sector-specific challenges, and recurring problems'. The ELA is empowered to inform the Commission and the member states of its findings, as well as the European Parliament (art 10(3)). In other words, the ELA is given a wide remit to conduct research into problems arising from EU free movement law. The ELA is even empowered to conduct peer reviews among member states in order to improve the application and enforcement of EU free movement law (art 10(2)).

Third is the possibility of facilitating capacity building activities for the member states in order to ensure the improved enforcement of EU free movement law (art 11). Such capacity building shall occur in the following manner. First, the ELA shall develop non-binding guidelines which member states and the social partners may make use of in applying and enforcing EU free movement law. Second, the ELA shall support mutual assistance, either in the form of peer learning, as already noted, or inter member state agency secondments. Third and relatedly, the ELA shall promote the exchange and dissemination of best practices. Fourth, training programmes shall be developed by the ELA for, inter alia, labour inspectorate staff in the application and enforcement of EU free movement law. Finally, the ELA shall promote awareness-raising campaigns. Such campaigns should be viewed as complementary to those measures regarding information more generally already discussed.

A fourth source of cooperation evident from the ELA Regulation is the establishment of the European Platform to enhance cooperation in tackling undeclared work (arts 12 and 16). The Platform is to be a permanent working group of the ELA and shall support the ELA's work in tackling undeclared work by, inter alia, encouraging cooperation between the member states in respect of undeclared work and improving the capacity of member state authorities to tackle undeclared work. The sorts of cooperation and capacity building envisaged reflects the more general cooperation and capacity building envisaged by the ELA in its relations with the member states.

Mediation

A final but significant function and role of the ELA is to be a mediator between member states. Article 13 provides that the ELA 'may facilitate a solution in the case of a dispute between two or more member states' regarding the application of Union law. The mediating power of the ELA is expressly without prejudice to the powers of the CJEU but one many nonetheless speculate that this may be a significant power in itself. Of particular relevance in this respect is the power of the ELA to adopt 'non-binding opinions' governing such disputes (art 13(1)). When the ELA does issue such opinions, the member states concerned must report to the ELA with regard to the measures that they have taken for the purposes of following up on the opinion or, if they have not taken any steps, why not (art 13(12)). Member states' participation in such mediation is, of course, voluntary (art 13(7)) but it is certainly possible that mediation could become the norm, or at least a default first step, in resolving disputes between member states concerning the application and enforcement of EU free movement law.

Conclusion: Complementary or Federal?

Much of the powers of the ELA seem to be clearly complementary nature: they are designed to enhance and build upon the existing powers of the member states through cooperation and capacity building exercises. But one wonders whether there may be federal undertones. Whether the ELA develops a federal element will depend on the extent to which the non-binding norms it establishes are followed in practice. In other words, the authority of the ELA will largely depend on whether or not it can achieve what has in other areas of EU law been described as a soft-Europeanisation.

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