



PRELIMINARY¹

EFBWW

position paper

on
the proposal to set up a
European Labour Authority

Brussels,
Contact:

12 January 2018
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¹ The EFBWW might adapt its position paper depending on the concrete legislative proposal

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The European Federation of Building and Woodworkers (EFBWW) takes note of the European Commission's proposal to set up a European Labour Authority – something the EFBWW was already calling for back in 2010.

It is painfully evident that cross-border social fraud/abuse of social security constitutes a major multilateral issue affecting all EU Member States. For that reason alone, a coordinated European approach is vital. The EFBWW welcomes this initiative by the European Commission under the condition that the new authority will offer **actual political and operational benefits**. The European Labour Authority should support the efforts of national authorities on European level and the European Labour Authority should have a mandate that is complimentary to the role of national authorities without interfering with their competences.

I. Scope

Cross-border social fraud and/or abuse of social protection is a broad notion relating to the failure to enforce social protection standards in the case of cross-border workers. Social protection should be interpreted in a broad sense but mainly relates to respect for fundamental workers' rights, i.e. enforcement of primary and secondary working conditions, primary and supplementary social security/protection, OSH protection, workers' fundamental right to organise, and trade unions' right to negotiate and, where appropriate, stage industrial action.

There must be a clear definition of the European Labour Authority's mandate. The scope must include better prevention, detection and monitoring of cross-border social fraud and abuse of social security. At the same time, this new authority must **not compromise the diversity of the labour market systems** in the various Member States, unless a labour market system in one or more Member States is aimed at facilitating or committing cross-border social fraud and/or abuse of social security.

While the European Labour Authority could play a role in helping posted and temporary migrant workers including fake self-employed to get the necessary support and contact for claiming remuneration and working conditions they are entitled to in the host countries as well as the social security contributions to be paid by the employer and/or social security benefits the European Labour Authority should abstain from interfering with the wage setting procedures as there is no jurisdiction of the EU whatsoever. **Under all circumstance, the European Labour Authority must not in any way interfere in the collective agreement systems including every element (like rules regarding the social partners, negotiation and arbitration procedures, scope and coverage, legal nature, responsibilities, contents of demands for collective agreements as well as contents of the collective agreements, systems for declaring collective agreements generally binding etc.) as well as in the rules for industrial action of the member states.**

The EFBWW recommends that the European Labour Authority that is due to be established should have a clear mandate to take the appropriate action and measures required to effectively combat cross-border social fraud and/or abuse of social protection.

II. Discretionary freedom

A European Labour Authority will only be able to operate efficiently if it has the discretionary freedom to act freely with a view to performing its mandate (see 'Scope'). This means that it can and may act **proactively and on its own initiative**.

Tackling cross-border social fraud and/or abuse of social protection will inevitably involve facing up to the political interests of the EU, the Member States, companies and interest groups. The sensitivity of these dealings may turn out to be a major burden and obstacle when it comes to the proper, effective operation of the European Labour Authority. In this light, its mandate must **be free of any political influences**.

The European Labour Authority's discretionary powers also imply that the European Commission will also have to provide it with all the means required to carry out its work properly, i.e. **the relevant infrastructure and financial resources and appropriately qualified personnel**.

III. Organisation

Independence and effectiveness must be top priorities. In principle, EFBWW supports a legal framework that provides the European Labour Authority with a clear mandate. Unfortunately, there are major differences between EU Member States when it comes to the need to combat cross-border social fraud and/or abuse of social protection. This casts some doubt on the likelihood of a legislative process producing an appropriate solution in the short term. EFBWW proposes that the newly-created European Labour Authority should initially act as **a robust and efficient European body within the European Commission, responsible for application, enforcement and implementation of EU social protection policy**.

A key prerequisite for the success of the new authority is the creation of a **dynamic organisation** operating flexibly and innovatively and drawing on **up-to-date methods and resources**. The European platform tackling undeclared work already provides a forum for exchange of good practice. The European Labour Authority (as an independent body) should have a seat as a member of the platform.

In order to tackle cross-border social fraud and/or abuse, it is indispensable that all national authorities closely work together, exchange information, help and assist each other. The European labour Authority should have a mandate to **ensure a horizontal cooperation between all national authorities**.

Efficiency also requires that the European labour authority **must closely work together with the national trade unions**. In particular national concerned trade unions should be informed and involved in those cases which affect their country or the workers they represent. The national trade unions have a specific role (often an explicit competence) in European and national works councils, national and regional labour market regulation, enforcement ... Trade unions also have a specific task and obligation to inform workers of specific social fraud and/or abuse practices in a specific region, company, country. Finally, national trade unions have excellent information and contacts with

workers, which is a strong asset in the prevention, control and enforcement of cross-border social fraud and/or dumping.

IV. Tasks and competences

A. Promoting and facilitating cooperation between Member States and relevant parties

Responsibility for the full and correct transposition, application and implementation of EU legislation lies primarily with the Member States. To perform its task of acting as a coordination centre, the European Labour Authority must have a very wide-ranging mandate to combat cross-border social fraud and/or abuse of social security and will need **liaison officers** who will serve as a direct line of contact between the European Labour Authority and the relevant authorities in Member States.

The European Labour Authority will need **to support the Member States' efforts** in various domains (advice, support, projects, etc.). Exchanges of good and bad experiences, allowing lessons to be learnt, will be crucial in this regard.

The new authority will need to promote mutual cooperation between the relevant parties such as **trade unions, worker support bodies** and the Member States.

Given that cross-border social fraud/abuse of social protection is often linked to trafficking in human beings, cross-border tax fraud and abuse, as well as other crimes, the European Labour Authority must work closely with **Europol**.

B. Creation of a European information portal

Most of the EU temporary migrant workers are, during the professional life span, employed in several EU Member states. Often they accumulate social security and supplementary benefits in several Member States. For most of the EU temporary migrant workers it is very difficult to benefit their acquired rights. Often they do not remember exactly where or when they were employed abroad, they are hindered by administrative (right institution, deadlines, documents ...) or practical (language, evidence ...) barriers, which hinders them to exercise their acquired rights.

This problem is prominent when a temporary migrant worker has acquired pension rights in different Member States over a longer period.

The European Labour Authority should **create an easy accessible and practical European information portal for all temporary migrant workers**. The portal should assist the temporary migrant workers **to exercise their accumulated social security and supplementary pension rights in different Member States**.

C. Ensuring protection of exploited migrant workers

Temporary migrant workers in a cross-border social fraud/abuse situation are vulnerable, when the fraud and/or abuse has been exposed. Often these workers are immediately sent to their home country, threatened to make false statements, hindered to contact trade unions or national authorities ...

The European Labour Authority should create a tools, which **ensures that temporary migrant workers in a cross-border social fraud/abuse situation are properly protected and not further victimized**.

D. Create a European whistle-blowing portal for cross-border social fraud/and abuse

The European parliament in its recent report “on the role of whistle-blowers in the protection of EU’s financial interests” (2016/2055(INI)), stressed the added value of whistle-blowing mechanisms. It is well known that in case of cross-border social fraud/and abuse, real cases are only discovered when somebody starts “talking” or when a serious event takes place. The reality today is that only a tip of the social abuse and/or fraud iceberg is revealed and that most fraudulent or abuses cases continue to take place, without consequences. This also leads to a structural problem of impunity.

A European whistle-blowing portal for cross-border social fraud/and abuse, easily accessible and available in all languages is a powerful tool to reveal cases cross-border social fraud/and abuse.

E. Access to information

Social partners who are in an arbitration or labour court case disputes over the legislation and/or collective agreement should have **access to the European labour Authority in order to obtain information on foreign companies and foreign workers**. Today social partners often cannot get information from authorities in other countries when they ask to the status of foreign companies and their social contributions payments for their employees. The European Labour Authority should have the authority to collect this type of information, when social partners cannot get it. This will strengthen cases against foreign companies for violations of our legislation and/or collective agreements even stronger.

F. Issuing high-level political and policy recommendations

When shortcomings are found in Member States' application of EU legislation or when the EU itself fails to prevent, detect or combat cross-border social fraud and/or abuse of social protection, the European Labour Authority must have the power to **issue the relevant policy recommendations independently (so on its own initiative)**. These recommendations must not be ignored and will actually have to be taken on board as part of a transparent decision-making process.

Each year, the European Labour Authority must draw up recommendations for the EU and the Member States on how to combat cross-border social fraud and/or abuse of social protection these recommendations can also feature in the country specific recommendations published on an annual basis in the context of the European Semester.

G. Specific operational tasks and competences

The European Labour Authority's operational tasks and competences are probably the most crucial factors in determining the success and benefits of a European Labour Authority.

The EFBWW proposes, among others, the following specific tasks and competences:

- Developing a multilingual website and helpline where all forms of cross-border fraud and abuse of social protection can be reported immediately – and anonymously. The European Labour Authority must be committed to following up on these reports immediately
- Setting up a centre of expertise for the legal enforcement of all EU social legislation
- Creating a tool that gives every labour inspectorate the chance to immediately follow up specifically on any enquiries regarding cross-border social fraud and/or abuse of social protection

- Mapping (so collecting and analysing) various types of operational intelligence on cross-border social fraud and abuse of social security and keeping them up to date in a system which, in a spirit of transparency, is available to all Member States; the European Labour Authority will need to be proactive in retrieving and strategically processing these data
- Launching an early-warning system when there is reason to suspect cross-border social fraud and/or abuse of social protection (based on the information obtained) – threat assessment
- Establishing an operational coordinating centre which provides support to inspections relating to the main types of cross-border social fraud and/or abuse of social protection
- A European company register
- Maintaining transparent registers of known legal entities and individuals who have played an active part in cross-border social fraud and/or abuse of social protection
Provide training and lifelong learning opportunities for the staff of national authorities dealing directly with cross-border issues of cross-border social fraud and abuse of social security
- Fostering and supporting networks of national enforcement authorities