
Answer to ad-hoc social partner consultation

Creation of a new European Labour Authority

INTRODUCTORY REMARKS

In a consultation period of 6 weeks, including a Christmas/New Year break, it is difficult to draw up a comprehensive and detailed consultation response to a set of targeted questions. As a European umbrella organisation, CESI needs to give sufficient time to its member organisations to consider the subject matter and provide input before proceeding to a consultation synthesis contribution for the European Commission. CESI kindly asks the European Commission to give, in future initiatives, social partners more time to submit consultations responses.

1. Do you share the above analysis of the most significant challenges linked to improving cooperation at EU level on cross-border employment and social security matters?

Section 1: CESI generally agrees with the listed challenges which could be addressed by a new European Labour Inspectorate to achieve fairer voluntary labour mobility within the EU, namely:

- (1) fragmented cooperation between Member States – due to the stratification of existing networks especially in the areas of posting of workers, undeclared work, and social security coordination;
- (2) insufficient capacity of national authorities to cooperate and implement existing legislation – especially due to lacking linguistic capacities and access to relevant information;
- (3) a lacking forum for dispute settlement beyond social security coordination and procedures and support for the organisation of joint and cross-border labour inspections – due to an incomplete regulatory framework;
- (4) knowledge and information gaps within national authorities regarding cases of human trafficking, undeclared mobile work and fraud in social security and taxation in mobile work, as well as of blurred boundaries between, for instance, posting of workers and freedom of movement of workers – since it is difficult national-level authorities to identify this on their own;
- (5) insufficient access to (transparent) information for mobile workers and employers about rights and obligations in the field of employment and social security systems in cross-border situations.

Section 2: Overall, CESI agrees with the considerations of the European Commission on a potential added value of a new European Labour Authority to address the described challenges especially with a view to improving, namely:

- (1) the cooperation between national administrations and authorities at the EU level for employment conditions and social security for voluntary mobile workers according to applicable European law and legislation, and
- (2) the access to information and transparency of rights and obligations of such mobile workers and of the companies employment them.

Already in its contribution to a social partner consultation on an EU labour mobility package in June 2015, CESI advocated an initiative against social dumping and exploitation of mobile workers which should go beyond the revisions of the posting of workers directive and the social security coordination regulations. CESI reiterates its call for an overarching framework for voluntary, fair mobility for all, based on a full implementation, respect and enforcement of applicable and existing EU legislation.

2. Drawing on existing structures, tools and legislation, how could the Authority effectively support cooperation at an operational level among Member States for the smooth handling of procedures and to become more effective in fighting cross-border fraud and abuse? Do you see the need to review any existing structures or tools to better achieve these goals?

Overall, the mission of the European Labour Authority should be clear and precise and avoid duplications with existing structures at the European and national levels. The guiding principle should be that less and clear tasks are better than too many and vague ambitions. This means that a new European Labour Authority should focus strictly on fair and rule-based mobile and cross-border work in the EU, which could be translated into a structure around two distinct missions:

- *First mission:* A new European Labour Authority could be a coordinative institution to promote and manage possible European-level synergies among national labour inspectorates, without becoming involved in national-level competences. This means that it should neither replace nor become an administrative duplication of national labour inspectorates, but that it could facilitate and manage more effective joint labour inspections across borders and in different Member States.
- *Second mission:* It could be a supervisory authority to manage and oversee fair and rule-based mobile and cross-border work in the EU, endowed with certain controlling powers in this regard. Discrimination as well as abusive and unfair employment conditions and practices of mobile workers in host countries are a frequently occurring phenomenon, and this often goes hand in hand with an improper application or lacking enforcement of the applicable national or European employment and social legislations. A new European Labour Authority should thus reflect the spirit of and implement directive 2014/54 which notes the importance of “*a better and more uniform application of the substantive rules governing the freedom of movement of workers under Article 45 TFEU and under Regulation (EU) No 492/2011.*”

This means that a new European Labour Authority should neither substitute nor replicate each Member State’s “*national body for the promotion, analysis, monitoring and support of equal treatment of Union workers and members of their family*” which is required according to article 4 of

directive 2014/54 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers. However, it could become the hub to coordinate and oversee the implementation of necessary cross-border work aspects of these national body contact points. Such cross-border work aspects could include, for instance, a possible mediation or dispute settlement framework for mobile and cross-border employment matters under the European Labour Authority. In the frame of its overseeing function, the European Labour Authority should draw on the work and insights of existing networks and structures such as the European Platform tackling undeclared work or the Internal Market Information System (IMI).

The European Labour should adequately involve all social partners in its work, but not interfere in social dialogue or the prerogatives of social partners.

The creation of a new European Labour Authority should go hand in hand with a further encouragement of Member States, for instance via the European Semester, to invest more in often poorly funded, equipped and staffed national labour inspectorates and national bodies for the promotion, analysis, monitoring and support of equal treatment of Union workers and members of their family under directive 2014/54.

3. How could the Authority improve the availability of information to individuals and organisations concerned with labour mobility (national controlling authorities, businesses, mobile workers or job-seekers who wish to work in another country) in an efficient and effective way? Which type of information should the Authority help exchange as a priority and by which means?

As stressed in CESI's contribution to a social partner consultation on an EU labour mobility package in June 2015, trade unions must and want to take on an active role when it comes to helping ensure that mobile workers in the EU are not being denied their rights and that equal treatment is ensured in line with the applicable EU and national legislation at any moment. Trade unions can help ensuring that applicable laws, rules and collective agreements are being put into practice and enforced.

During the past years, CESI has already facilitated several bilateral agreements between a number of its member organisations with the objective to provide migrant workers with a trade union contact point in the host country which they can turn to in order to receive information and counselling about their labour and social rights.

A report by the EU Fundamental Rights Agency (FRA) of June 2015 entitled 'Severe labour exploitation: workers moving within or into the EU' emphasised that "*EU Member States should encourage trade unions and other private organisations [more] to provide information to workers before their departure, as well as when they arrive in their country of destination.*" According to CESI, the European Labour Authority should play a key role in encouraging Member States to act as outlined in the report of the FRA.

Article 3(2) of the directive 2014/54 put in place a certain (theoretic) role for social partners to support and help institutionalise and operationalise such agreements: "*Member States shall ensure that [...] the social partners [...] may engage, either on behalf of or in support of, Union workers and members of their family [...] in any judicial and/or administrative procedure provided for the enforcement of the[ir] rights.*"

A new European Labour Authority should ensure that trade unions are endowed with the framework conditions (including financial support) that are necessary to create smoothly-functioning labour migrant reception and counselling networks among themselves in line with EU legislation. It is increasingly important for trade unions to offer individualised mentorship and counselling services for workers in addition to traditional services such as social dialogue and collective bargaining.

4. How could the Authority provide added value in enhancing and extending current procedures and fora for addressing differences in the social security coordination and labour mobility areas?

As part of a possible role as supervisory authority to manage and oversee fair and rule-based mobile and cross-border work in the EU (see 'second mission' in answer to question 2 above), a new European Labour Authority could be tasked with a mediation or dispute settlement framework for cross-border work and employment matters. When setting up a European Labour Authority, this would require a clarification in advance of whether individual citizens would be able to place complaints the authority directly or whether this would be limited to supporting contact points or organisations (such as trade unions – see answer to question 3 above). Effective access of workers to a mediation system would be of key importance.

5. Which organisational structure would you consider to best enable the Authority to efficiently carry out its tasks?

The creation of a new European Labour Authority should be guided by the concrete objective to meet a challenge which requires a joint effort by all Member States: Promoting and ensuring fair voluntary labour mobility in the single market. As suggested in the answer to question 2 above, the authority structured in a way to fulfil two distinct missions: Being a *coordinative institution to promote and manage possible European-level synergies in existing oversight bodies at the national level* (without becoming involved in national-level tasks and competences) and a *supervisory authority to manage and oversee fair and rule-based mobile and cross-border work in the EU* (endowed with certain controlling powers in this regard).

The European Labour Authority should be adequately financed and staffed.

6. In which ways can social partners contribute to and support the initiative?

Cf. answer to question 3.