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**COMMISSION STAFF WORKING DOCUMENT**

**IMPACT ASSESSMENT**

*Accompanying the document*

**Proposal for a Regulation of the European Parliament and of the Council  
establishing a European Labour Authority**

{COM(2018) 131 final} - {SWD(2018) 69 final}

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## Glossary

<i>Term or acronym</i>	<i>Meaning or definition</i>
AC	Administrative Commission for the Coordination of Social Security Systems
BusinessEurope	European Employers Organisation
Cedefop	European Centre for the Development of Vocational Training
EaSI	European Programme for Employment and Social Innovation
ECJ	European Court of Justice
ECPW	Expert Committee on the Posting of Workers
ECR	Euro Control Route
EESSI	Electronic Exchange of Social Security Information
EFBWW	European Federation of Building and Woodworkers
EGF	European Globalisation adjustment Fund
ELA	European Labour Authority
ERRU	European Register of Road transport Undertakings
EMCO	Employment Committee
EMU	European Monetary Union
EPSCO	Employment and Social Affairs Council
ESDE	Employment and Social Developments in Europe
ESSN	European Social Security Number
ETF	European Training Foundation
ETUC	European Trade Union Confederation
EU-OSHA	European Agency for Safety and Health at Work
EURES	European network of employment services
Eurofound	European Foundation for the Improvement of Living and Working Conditions
FMW	Free Movement of Workers
FTE	Full time equivalent
ILO	International Labour Organisation
IMI	Internal Market Information system
INASTI	L'Institut national d'assurances sociales pour travailleurs indépendants

JIT	Joint Investigation Teams
MISSOC	Mutual Information System on Social Protection
ONSS	Office National de Sécurité Sociale
OPC	Open public consultation
PES	Public employment services
QFR	Quality Framework for Restructuring
SDG	Single digital gateway
SME	Small and medium enterprise
UDW Platform	European Platform tackling undeclared work
UEAPME	European Association of Craft, Small and Medium-sized Enterprises
YEA	Your Europe Advice

## 1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

Strengthening fairness of the Internal Market has been one of the priorities of the mandate of the Juncker Commission<sup>1</sup>. On 17 November 2017, the European Parliament, the Council and the Commission jointly proclaimed at the Social Summit in Gothenburg the European Pillar of Social Rights<sup>2</sup>. The Pillar sets out a number of key principles and rights to support fair and well-functioning labour markets and welfare systems. It is designed as a compass for a renewed process of convergence towards better working and living conditions across the Union, ensuring the citizens equal opportunities and access to the labour market, fair working conditions and social protection and inclusion. Ensuring fair labour mobility in Europe is central to this objective.

Intra-EU labour mobility benefits individuals, economies and societies as a whole. However, concerns have recently increased over the adequacy of existing rules to uphold fair competition and social standards in the context of stark economic and social differentials. The objective of deepening the Internal Market with a strong accent on social fairness has thus driven forward new EU legislative proposals to support cross-border mobility. These are the revisions of the Posting of Workers Directive<sup>3</sup> and of the Regulations on the Coordination of Social Security systems<sup>4</sup>. These proposals come on top of previous EU legislation to facilitate the free movement of workers and job-seekers<sup>5</sup> and initiatives such as the set-up of a European Platform to tackle undeclared work<sup>6</sup>.

Labour mobility has implications for all economic sectors. Yet, enforcing EU labour rules across borders proves particularly difficult in the road transport sector due to the highly mobile nature of operations<sup>7</sup>. This can affect negatively the protection of drivers, while also represent a source of unfair competition between companies. Therefore, the Commission adopted the package "Europe on the Move", including the *lex specialis* on the posting of workers in international road transport operations<sup>8</sup> which will strengthen social rules in this sector.

While the EU legal framework pertaining to EU-level labour mobility keeps evolving to ensure the effectiveness and completeness of the existing *acquis*, rule enforcement and information challenges remain. On several occasions, the European Parliament has underlined the need to ensure proper implementation of EU legislation on cross-border labour mobility,

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<sup>1</sup> A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change, 10 Commission priorities for 2015-19, ([https://ec.europa.eu/commission/priorities\\_en](https://ec.europa.eu/commission/priorities_en)).

<sup>2</sup> An overview of the European Pillar of Social Rights is available here: [https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights\\_en](https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en).

<sup>3</sup> COM(2016) 128 final

<sup>4</sup> COM(2016) 815 final.

<sup>5</sup> Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers; Regulation (EU) 2016/589 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets.

<sup>6</sup> Decision (EU) 2016/344 on establishing a European Platform to enhance cooperation in tackling undeclared work.

<sup>7</sup> European Parliament Policy Department., *Social and working conditions of road transport hauliers* (April 2013)

<sup>8</sup> COM/2017/0278 final

asking to reinforce controls and coordination between and by Member States so as to promote standardisation and cooperation<sup>9</sup>, including through strengthening information exchanges between labour inspectorates<sup>10</sup>. Moreover, the European Parliament has made a concrete call to coordinate and reinforce cooperation on road transport legislation, including through a possible agency setting<sup>11</sup>. The Council has also stressed the need to improve administrative cooperation and develop assistance and information exchanges in the context of fighting fraud related to the posting of workers, while emphasising the importance of clear and transparent information for service providers and workers<sup>12</sup>.

Against this backdrop, in his State of the Union address 2017<sup>13</sup>, President Juncker proposed the establishment of a European Labour Authority (ELA) to ensure that EU rules on labour mobility are enforced in a fair, simple and effective way. This initiative is adopted by the Commission as part of the Social Fairness Package, together with a proposal on Access to Social Protection. It was informed by the results of an open public consultation (OPC) held between November 2017 and January 2018, as well as by various targeted consultations with stakeholders (see Annex 2). The Social Fairness Package will help to deliver on the principles and rights defined in the European Pillar of Social Rights, notably by ensuring that workers' and citizens' rights to equal treatment and opportunities regarding employment and social protection are guaranteed in cross-border situations.

As announced, the Authority will be competent to facilitate the implementation of the (i) EU labour mobility rules, which cover the areas of free movement of workers, posting and undeclared work, and this for all economic sectors including road transport. But as mobile workers enjoy both labour and social security rights, the Authority will also be competent for the implementation of (ii) EU social security coordination rules, the two issues being intrinsically connected. Therefore, the initiative will target all categories of persons who are subject to the two aforementioned sets of EU rules - workers, self-employed or simply individuals who are Union citizens or third country nationals legally resident in the Union, as long as they are subject to EU labour mobility and social security coordination rules.

This initiative has a self-standing character due to its thematic specialisation and focus on cross-border labour mobility. The proposal has been developed in parallel to an ongoing evaluation of existing decentralised Agencies in the employment field. This Impact Assessment discusses the potential interaction between the present initiative and existing Agencies.

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<sup>9</sup> European Parliament resolution of 14 September 2016 on social dumping in the European Union (2015/2255(INI)).

<sup>10</sup> European Parliament resolution of 14 January 2014 on effective labour inspections as a strategy to improve working conditions in Europe (2013/2112(INI))

<sup>11</sup> European Parliament resolution of 14 September 2016 on social dumping in the European Union (2015/2255(INI)).

<sup>12</sup> European Council, General approach on the proposal for a Directive amending Directive 96/71/EC concerning the posting of workers, 13612/17, 24 October 2017.

<sup>13</sup> [https://ec.europa.eu/commission/state-union-2017\\_en](https://ec.europa.eu/commission/state-union-2017_en).



## 2. PROBLEM DEFINITION

Free movement of workers and services is a pillar of the European Union. Mobility enjoys wide support amongst EU citizens<sup>14</sup> and provides the opportunity for workers and companies to seek work and to provide services across the whole of the EU.

Around 17 million EU citizens live and/or work in another Member State, of which 11.8 million are *mobile workers* of working age (i.e. EU-28 citizens who reside in a Member State other than their country of citizenship). Moreover, 1.4 million live in a Member State but work in another (so-called 'cross-border workers') and a further 2.3 million are posted workers, carrying out services in another Member States on a temporary basis (see Annex 12, Table 1). Finally, over 2 million workers in the road transport sector cross intra-EU borders on a daily basis transporting goods or passengers.

However, labour mobility remains an untapped resource in Europe<sup>15</sup>. While the number of mobile workers has almost doubled compared to a decade ago<sup>16</sup>, they make up around 4% of the total EU workforce, a lower share than in the United States.<sup>17</sup> Similarly, the potential for cross-border operations of companies is not yet fully exploited, most notably in some sectors such as construction and business services.<sup>18</sup> This untapped potential has strong socio-economic impacts on the job-search or career opportunities of citizens, on the efficient allocation of resources (skills and capital) in the EU labour and Internal Market, as well as on the shock-adjustment capacities within the Eurozone.

### 2.1 What are the problems?

The EU has developed an extensive body of legislation regulating the free movement of workers and setting rules on the coordination of social security regimes. Annex 6 provides an overview of legislation in this field. In addition, a number of committees and networks have been set up to support the implementation and enforcement of those rules (see Annex 7). Against the backdrop of this formal legislative and institutional framework, however, two major challenges undermine effective cross-border labour mobility and compliance with EU rules.

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<sup>14</sup> A large majority of Europeans in all 28 EU Member States continue to support “the free movement of EU citizens who can live, work, study and do business anywhere in the EU” (81% in 2017), Standard Eurobarometer 88, Autumn 2017.

<sup>15</sup> Barslund, M., Busse, M. and Schwarzwälder, J. (2015), Labour Mobility in Europe: An untapped resource? CEPS Policy Briefs, No. 327, March 2015; Bertelsmann Stiftung (2015), *Harnessing Labour Mobility. Scenario analysis and policy recommendations*.

<sup>16</sup> According to Eurostat data, in 2006 there were about 9 million EU citizens residing in a Member State other than their country of citizenship, whereas in 2017 these are 17 million.

<sup>17</sup> European Commission, 2016 Annual Report on intra-EU Labour Mobility, p. 43-5; OECD (2016), OECD Economic Surveys: European Union 2016, OECD Publishing, Paris; Bruegel (2018), *People on the Move: Migration and Mobility in the European Union*, Blueprint Series 28.

<sup>18</sup> See: Impact Assessment Accompanying the document *Proposal for a Regulation of the European Parliament and of the Council introducing a European services e-card and related administrative facilities* SWD(2016) 439 final.

## **1) Inadequate information, support and guidance function for individuals and employers in cross-border situations**

Awareness of rights, obligations and procedures deriving from EU mobility legislation is a crucial element in informing the decisions of citizens and companies to seek a job, work or operate in another Member State. Having access to relevant information – for instance, about applicable wage levels or administrative requirements when posting workers, the eligibility conditions of social security benefits in another country, national contact points able to provide assistance – is ultimately about the effective exercise of EU rights to free movement. In order to provide such information, the EU has produced a number of web-based portals and tools, which are summarised in Annex 9.

While the European Commission has taken steps to improve guidance<sup>19</sup> and recently proposed initiatives to streamline access to these existing online tools and portals<sup>20</sup>, challenges remain in the provision of tailored information and services to citizens and businesses to support their mobility choices. For example, in the road transport sector specifically, comprehensive information sources to assist road transport workers and operators are virtually inexistent at the EU or national level.

As a consequence of inadequate information, citizens may not be aware of their rights, for example, to access unemployment benefits in another EU Member State or of the wage level they are entitled to when being posted to another Member State.<sup>21</sup> Likewise, companies, especially SMEs without dedicated staff, may not be aware of the administrative requirements or the exact wage level that they need to comply with when posting workers to another Member State. In addition, gathering information about and carrying out administrative procedures to establish a cross-border subsidiary or hiring employees in another Member State is estimated to produce 80% extra costs with respect to a domestic business<sup>22</sup>.

## **2) Inadequate cooperation between national authorities on rule enforcement**

The capacity of national authorities to enforce EU and national rules in the field of labour mobility is in certain cases highly dependent on their ability to cooperate with one another.

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<sup>19</sup> COM(2014)6 final, Proposal for a European network of Employment Services, workers' access to mobility services and the further integration of labour markets, 17.1.2014.

<sup>20</sup> COM(2017)256, Proposal for a regulation on establishing a single digital gateway to provide information, procedures, assistance and problem solving services and amending Regulation (EU) No 1024/2012. The SDG aims to improve the 'findability' of online information and to offer easy access to information, assistance, and problem-solving services needed by individuals and businesses when exercising their rights in the internal market. The Gateway will give access to information on and links to seven assistance and problem-solving services for citizens and businesses, including EURES, Points of Single Contact, Product Contact Points, Construction Product Contact Points, National Assistance Centres for Professional Qualifications, Health Contact Points, and Online Dispute Resolution. See also Action plan on the Reinforcement of SOLVIT (COM (2017) 255 final).

<sup>21</sup> Some Member States report that unemployed persons may leave the Member State where they have worked without requesting the necessary document for the export of the unemployment benefits, because of lack of awareness of their rights (European Commission, *Coordination of social security systems at a glance. 2017 Statistical Report*, p. 43)

<sup>22</sup> IA on establishing a single digital gateway to provide information, procedures, assistance and problem solving services and amending Regulation (EU) No 1024/2012; SWD/2017/0213 final).

For example, a national authority may need to contact a competent social security institution of another Member State in order to verify whether a posted worker is socially insured in that country. Administrative cooperation includes many different aspects, including common administrative and operational procedures, tools for data exchange, and a shared framework for carrying out controls and inspections involving individuals or entities operating in more than one Member State. The framework and tools for administrative cooperation in the EU are however inadequate to effectively address the challenges at hand. Section 2.2 presents a more detailed analysis of the drivers of this problem.

Inadequate cooperation has adverse consequences on rule enforcement, mutual trust between administrations, as well as practical effects on EU citizens. Fraudulent practices such as letterbox companies are not effectively contrasted with tangible fiscal costs, including unpaid social security contributions, ranging between an estimated EUR 64-86 million EU-wide solely in the road transport sector.<sup>23</sup> The fight against social fraud also has significant impact on businesses and workers affected by unfair competition. Timely communication of changes in personal information of citizens living in different Member States is conducive to more efficient administration of cross-border cases with benefits for citizens, in terms of receipt of legitimate social security benefits, and for authorities, in terms of savings from avoiding cases of unduly paid benefits.<sup>24</sup> Smooth experiences with portability of social security rights may boost the propensity to move abroad for professional reasons, while ‘negative’ experiences are likely to have opposite effects.

## **2.2 What are the problem drivers?**

The two major problems described above find their concrete origins in a set of underlying problem drivers summarised in Annex 5 and detailed below.

### **2.2.1. Inadequate support and guidance for individuals and businesses in cross-border situations, including incomplete or sparse information available to the public concerning their rights and obligations.**

The information provided on EU and national portals with a focus on mobility is incomplete with regard to a number of aspects. Your Europe Advice (YEA) and SME feedback database show numerous cases of request for practical information on requirements or rights in cases of posting or cross-border work, particularly in the context of the road transport sector (see Annex 12). While the problem may sometimes be a lack of citizens' awareness of an existing

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<sup>23</sup> SWD (2017) 194 final.

<sup>24</sup> Effective systems of administrative communication between Member States have helped the Polish Social Insurance Institution to recover EUR 560,000 in 2016 of unduly paid pension benefits of citizens living in Germany. Similarly, effective anti-dumping investigations have allowed Belgium to recover about EUR 1.5 million of unpaid social security contributions from employers circumventing the rules on posting (see Jorens, Y., Gillis, D. and De Potter, T. (2017), *Fraud and error in the field of EU social security coordination*, Network Statistics FMSSFE, European Commission, . Anna Cristina d'Addio Maria Chiara Cavalleri, "Labour mobility and portability of social rights", CESifo Economic Studies, Volume 61, Issue 2, 1 June 2015, Pages 346–376.

source of information, in other cases the quality or the extent of information provided by EU or national sources may be missing, inadequate or outdated. In the case of EURES, making available EU-wide information about national vacancies has still wide margins of improvement<sup>25</sup>. The new EURES regulation aims at addressing some shortcomings on the transparency of information on vacancies and on minimum-standard services<sup>26</sup>, national implementation being a necessary yet not sufficient factor.

There is thus a need for continuous work on information provision by the national and EU levels. For example, in the area of the posting of workers, practical information on applicable working conditions or administrative requirements should be offered by Member States in a single national website, the Commission having a support role.<sup>27</sup> Continuous monitoring and content adaptations also in line with users' feedback are essential elements in order to ensure an uniform level of information standard, as well as a continuous update of information (e.g. applicable wage agreements) is delivered across the Member States. On EURES, an untapped potential remains with a) exploiting labour market information to underpin matching and recruitment activities (involving the analysis of labour shortages and surpluses and including perhaps the use of big data, data crawling as regards job opportunities available) b) the strengthening of the capacities of client services to operating across borders, and c) the provision of holistic and personalised information on working and living conditions in other countries.

While the Commission's proposal on a Single Digital Gateway (SDG) will address issues related to the on-line 'findability' of information and easiness of access to existing EU portals, including EURES, content-feeding and strategic planning of websites will remain to be effectively managed.

#### *Stakeholders' views*

Respondents to the public consultation on a European Labour Authority echoed the points outlined above. A majority of respondents were of the view that insufficient access to information and transparency on cross-border mobility rules is a problem both for individuals and businesses (see Annex 2 for a more detailed analysis). Similarly, in the context of road transport, 53% of the respondents to an OPC carried out in 2017 considered that EU guidance on explaining relevant EU legislation in this field was not, or only partially, useful. This is especially problematic in view of the different interpretation of EU road transport legislation.

Within the context of the targeted consultations, certain stakeholders underlined the challenge of incomplete or scarce information concerning labour mobility conditions and opportunities. The social partners considered improvement of information necessary, with employers

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<sup>25</sup> See European Court of Auditors, "Free Movement of Workers – the fundamental freedom ensured but better targeting of EU funds would aid worker mobility", Special Report 6/2018.

<sup>26</sup> Regulation 2016/589.

<sup>27</sup> Directive 2014/67/EU, Article 5.

focusing notably on the posting of workers and trade unions including information on industrial relation systems, wages and wage-setting systems<sup>28</sup>.

#### **2.2.2. Insufficient access to and sharing of information between national authorities responsible for different domains of labour mobility and social security coordination**

Exchange of documents (notably in electronic form) and sharing of relevant data is essential to the enforcement of rules in the area of cross-border mobility, including with a view to fighting frauds and abuses. Examples illustrating the importance of information sharing are numerous. Public authorities in one country need to exchange data with another Member State concerning the social security rights and current residence of a worker in order to assess his or her eligibility to local social benefits (e.g. a worker work for a period in country A and apply for social security benefits in country B<sup>29</sup>). Similarly, the sharing of registration details of a company may serve the purpose of verifying the genuine establishment of a company in a Member State and of detecting possibly irregular situations.

In practice, however, the lack of appropriate and timely data sharing is widely seen as a barrier to fighting abuse of EU rules. This is notably the case in the fight against letterbox companies<sup>30</sup>, of infringements of social and market rules in the road transport sector, but also in the exchange of relevant data on social security coordination, including for example to detect fraudulent use of the European Health Insurance Card (EHIC). Currently, EU and national authorities dispose of a range of tools for the sharing of administrative documents and information (listed in Annex 8), such as the Internal Market Information (IMI) system and European Register of Road Transport Undertakings (ERRU). These information-sharing tools have different scope, operational functions and maintenance management, due to the specificity of their respective policy areas and legislative basis. As they were not originally conceived to interact with each other, the degree of inter-operability is very low.

Yet, this separation of cooperation instruments between interdependent policy areas hampers the effectiveness of rule enforcement, particularly in the event of problematic situations. Addressing real-life situations of fraud requires the simultaneous assessment of multiple elements (e.g. the employment contract, the social security position of a worker, the legal and economic status of a company, etc) whose information may be spread across different tools. Moreover, problems in the lack of horizontally used formalised procedures for administrative data exchange, such as in the case of social security coordination where an electronic data

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<sup>28</sup> See Section 6.4 Stakeholders views on the possible tasks of a European Labour Authority for more detail.

<sup>29</sup> The establishment of one's pensions rights after working in different countries, for example, implies a number of reported difficulties in the collection of additional documents or in the timely receipt of the 'Certificate concerning insurance history', amongst other necessary documents. *Cross-border old-age, survivors' and invalidity pensions*, Report on Portable Documents P1, Reference year 2016.

<sup>30</sup> European Platform Undeclared Work, Letterbox Companies. Survey Report, October 2017.

exchange system is currently in the process of implementation by Member States<sup>31</sup>, can prevent efficient controls on cross-border cases. Finally, lack of horizontal coordination between different national authorities competent for separate, however inter-related policy areas amplifies the limits to cooperation at EU level, for instance, between labour and road transport inspectorates and social security institutions. In some cases, the first-step difficulty of cooperation is the identification of the relevant counterpart in another Member State, facing cross-country institutional variation<sup>32</sup>.

EU-level gaps in coordination on the exchange of information have been partially filled by bilateral or multilateral cooperation agreements, in the areas of the posting of workers or undeclared work or international road transport operations. This aspect is discussed in section 2.2.3 (see also Annex 12).

#### *Stakeholders' views*

A majority (64%) of respondents to the public consultation were of the view that the difficulty that national authorities faced in accessing relevant documentation from other Member States constituted a challenge to effective cross-border cooperation. Similarly, within the context of the targeted consultations, the challenge most frequently mentioned by the various stakeholders in relation to cross-border cooperation related to the effectiveness of information exchanges. The majority of Employment Committee (EMCO) members and certain members within the Committee of Experts on Posting of Workers (ECPW) and within the Mutual Information System on Social Protection (MISSOC), saw inefficiencies in terms of information exchange and access to information by competent authorities as a major cause of social security fraud and abuse and a major challenges to overcome at EU level.

### **2.2.3 Insufficient capacity of competent national authorities to organise cooperation with authorities across borders**

The staffing and organisation of national enforcement authorities, such as labour inspectorates, social security institutions or public employment services, are clearly a national competence and different national traditions account for the diversity in the organisation and competences of national authorities. However, effective and efficient handling of cross-border issues requires a good operational capacity to cooperate between competent authorities in different Member States. Faced with an increasing demand to respond quickly to challenges and requests from other countries, Member States' national administrative capacities are not always adequate. This is notably demonstrated in cases of cross-border administrative exchanges, possibly including requests for further controls and inspections. Yet, it can also be the case in situations of labour market disruptions, such as restructuring of companies,

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<sup>31</sup> Jorens, Y., Gillis, D. and De Potter, T. (2017), *Fraud and error in the field of EU social security coordination*, Network Statistics FMSSFE, European Commission, p. 53.

<sup>32</sup> Ibidem, p. 68.

affecting several Member States. While national authorities and stakeholders may have partial awareness of available EU guidance, legal and financial instruments when dealing with restructuring<sup>33</sup>, cooperation with relevant stakeholders in other affected Member States or at EU level may be unsystematic.

First, there are marked cross-country differences in staff and resources on competent authorities. In the case of labour inspectorates, human resources can range from over 2,300 labour inspectors in France to 56 in Ireland, with a ratio of 'inspector per employed persons' being 1/11,290 and 1/36,000, respectively.<sup>34</sup> Resource limitation is particularly acute in the road transport field, where the capacity of national enforcement authorities – responsible for carrying out controls of compliance with driving and resting time rules – has been decreasing continuously since 2010. A drastic drop of 75% in the number of road transport control officers (from 383.500 to 96.700) was noted between 2010 and 2012<sup>35</sup>, followed by a further decrease of 16% between 2012 and 2014<sup>36</sup>.

Second, many national competent authorities lack the specialised knowledge to deal effectively with cross-border cases. A number of challenges can be pointed out. There is an issue with specialisation on cross-border cooperation and EU rules, as some Member States have dedicated staff working on cross-border issues, whereas others do not (see Annex 12, table 3). In this regard, training is crucial. Investigative staff sometimes lacks a common understanding of procedures, in the case of social security coordination<sup>37</sup>, or the capacity to analyse data in digital tachographs, in the case of international road transport legislation<sup>38</sup>. Against the background of budgetary restrictions, funds for training dedicated authorities may not always match the real needs<sup>39</sup>. Similarly, linguistic difficulties are reported to be a significant hurdle to efficiently and effectively operate in a cross-country context, making it difficult for untrained staff to communicate with a counterpart in another Member State and/or to understand a relevant document in another language<sup>40</sup>. Finally, IT development capacities also differ across countries, due to different levels of digitalization of administrative acts or procedures, for example in case of registration systems on posting or

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<sup>33</sup> See for instance the European Quality Framework for anticipation of change and restructuring (COM (2013) 882 final) and the European Globalisation Adjustment Fund. See also Annex 6 for further relevant legislation.

<sup>34</sup> It should be noted that the target set by the International Labour Organisation (ILO) at one inspector for every 10,000 workers Williams, C. (2017), Platform Survey Report, European Platform Undeclared Work, August 2017. See also European Parliament, Effective labour inspections as a strategy to improve working conditions, European Parliament resolution of 14 January 2014 (2013/2112(INI)).

<sup>35</sup> SWD(2014) 342 accompanying the Commission report COM(2014) 709.

<sup>36</sup> SWD(2017)100 accompanying the Commission report COM(2017) 117.

<sup>37</sup> EU Platform to combat cross-border social security fraud and error, "Survey on mutual assistance in cross-border investigations. Report to the Administrative Commission".

<sup>38</sup> The number of trained enforcement officers in this sector in Europe decreased by around 35% (from 38.595 to 25.148) between the reporting periods 2009-2010 and 2013-2014, SWD (2017)186.

<sup>39</sup> OECD (2017), Skills for a High Performing Civil Service, OECD Publishing, Paris.

<sup>40</sup> FreSsco (2017), Ad-hoc request on the Capacities of labour inspectorates to deal with cross-border cases in the Member States; see also Jorens, Y., Gillis, D. and De Potter, T. (2017), *Fraud and error in the field of EU social security coordination*, Network Statistics FMSSFE, European Commission, p. 55.

the digitalization of sickness insurance registers. This can also have an impact on the effectiveness of possible checks and controls<sup>41</sup>.

Different administrative capacities may impact in the efficiency of administrative processes, for example the time necessary to reply to a request by another Member State, which often requires more complex checks on national data<sup>42</sup>. In addition, the training of administrative staff on cross-border issues may also directly impact on citizens, if local authorities are not prepared to handle correctly and clearly information on social security coordination rights or establishment requirements<sup>43</sup>. Almost 60% of enquires to SOLVIT concern social security issues and their number doubled up to 1,100 per year between years 2012 and 2015.<sup>44</sup>

EU coordination on supporting administrative capacity-building on handling cross-border situations so far is limited. At a more general policy level, recommendations on undeclared work were issued in the context of the European Semester<sup>45</sup>. Also, the EU supports different projects, which remain of small-scale. This includes the mutual learning activities in the context of the UDW Platform, training programmes of PES under the provision of the common training programme for EURES (procurement under the European Programme for Employment and Social Innovation (EaSI)), and individual projects, such as *Eurodetachment*<sup>46</sup> on the posting of workers. In road transport, Euro Contrôle Route (ECR) - a voluntary network of European Transport Inspection Services – regularly organises the training of controllers, albeit with limited geographical scope, as only some Member States participate in such activities, and no harmonised training curriculum is in use.

### *Stakeholders' views*

A majority (60%) of respondents to the public consultation on a European Labour Authority were of the view that Member States' insufficient resources constituted a challenge to cross-border cooperation. Similarly, within the context of targeted consultations, stakeholders highlighted that differences in administrative capacities among the Member States act as a barrier to effective cross-border cooperation; this was especially the case among members of the Mutual Information System on Social Protection (MISSOC).

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<sup>41</sup> Specific training on cross-border cases is also important in the context of employment services. EURES holds a common training programme to ensure that staff acquire specific knowledge on cross border matters and rules, and learn about the different tools that facilitate cooperate in its network.

<sup>42</sup> As shown in Annex 12 (Figure 2), average answering speed to IMI requests vary across the Member States. Answering speed may depend on the complexity of the cases at hand but also on the relationship between the amount of cases to be treated and the available staff (and internal procedures) on the receiving end.

<sup>43</sup> See Annex 12, feedback from Your Europe Advice and SME feedback database.

<sup>44</sup> Assessment of the performance of SOLVIT, Commission Staff Working Document, SWD(2017) 210 final. SOLVIT provides swift solutions to issues encountered by citizens and businesses caused by the misapplication of EU law by public authorities in cross-border situations. The service is provided by the national administrations.

<sup>45</sup> From 2013, eight recommendations were issued as regards to fighting undeclared work in the framework of the European Semester to Latvia (2013), Bulgaria (2013, 2015, 2016, 2017), Italy (2014) and Romania (2014, 2015, 2017).

<sup>46</sup> VS/2016/0063 (<http://www.eurodetachment-travail.eu/default.asp>).



## 2.2.4 Weak or absent mechanisms for joint cross-border enforcement activities

Effective rule enforcement requires credible deterrence measures and capacities to detect and sanction frauds and abuses, such as non-genuine postings, bogus self-employment, and letter-box companies. While labour inspections are a national competence, the EU does not provide a comprehensive institutional framework or operational support to inspection activities in cross-border cases, with the exception of pilot activities in the context of the UDW Platform. At present, coordination in cross-border inspections rests on voluntary cooperation between Member States, which implies uneven geographical and thematic coverage, resources, and patterns of cooperation. In the social security coordination domain, for example, international inspections and monitoring actions are reported to be insufficient, beyond a few Member States<sup>47</sup>.

An established tradition of bilateral agreements (or informal arrangements) has developed as a result of the lack of EU-level cooperation on inspections in the field of the posting of workers, undeclared work and health and safety regulation. While there is no comprehensive and up-to-date record of such agreements, some examples have been collected and analysed via the UDW Platform<sup>48</sup> and by the *Eurodetachment* project (see Annex 10.2). The Benelux Workgroup has a particularly ambitious cooperation on cross-border fraud in the field of posting and social security coordination,<sup>49</sup> and similar arrangements are developed within the Nordic Council<sup>50</sup>. In the road transport sector, Euro Control Route (ECR) - a voluntary group of European Transport Inspection Services – puts together 14 Member States to improve road safety, fair competition and labour conditions in road transport, including through concerted enforcement initiative<sup>51</sup>.

While bi-/ or multilateral cooperation agreements have the advantage of being tailored to the specific needs of the involved Member States, they also bear the risks of non-institutionalisation and non-systematic approaches. An assessment of existing agreements in the field of undeclared work pointed to key barriers, such as the lack of cooperation and enforcement mechanisms, the volatility of political investment in cooperation, and technical barriers to the exchange of information (e.g. differing legal competences between the contracting authorities, languages, and data collection methods)<sup>52</sup>. In the social security coordination field, moreover, bilateral agreements on data exchange resulted in a variety of

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<sup>47</sup> Jorens, Y., Gillis, D. and De Potter, T. (2017), *Fraud and error in the field of EU social security coordination*, Network Statistics FMSSFE, European Commission.,

<sup>48</sup> Stefanov, R. and Mineva, D. (2017), *National and Bilateral Agreements and Memoranda of Understanding to Tackle Undeclared Work*. UDW Platform Learning Resource Paper, April 2017.

<sup>49</sup> Benelux joint declaration on cooperation in the fight against social dumping, Benelux Social Summit, 14 February 2014, Brussels.

<sup>50</sup> Members of the Nordic Council are Denmark, Finland, Norway, Sweden, the Faroe Islands, Åland and Greenland.

<sup>51</sup> Members of ECR are: BE, LU, NL, FR, DE, IE, UK, PL, AT, RO, BG, HU, IT, HR.

<sup>52</sup> Stefanov and Mineva (2017), *ibidem*. FreSsco, "On the capacities of labour inspectorates to deal with cross-border cases in the Member States" ad-hoc study, November 2017

rules and procedures, with the resulting administrative complication<sup>53</sup>, to be overcome with the introduction of the Electronic Exchange of Social Security Information (EESSI) IT system<sup>54</sup>. Moreover, national administrations bear the entire operational and administrative brunt of the organisation of concerted actions, including the coverage of unexpected limits to an investigation as, for example, the need for a translator with workers of different nationalities involved in a case.<sup>55</sup> Similarly, the scope, content and functioning of these bilateral agreements can vary substantially, with exchange of information and operational aspects being subject to the will of the parties to comply with engagements.

The lack of common analytical and intelligence capacities can be seen as a related problem. Some Member States dispose of advanced IT tools to collect, share, match and mine data with a specific focus on fighting tax and social security fraud and undeclared work – complete with early warning systems which may trigger inspections on the ground.<sup>56</sup> However, these tools rarely reach out beyond national borders, despite of the potential for fighting cross-border fraud showed by some best practices, such as that of the Benelux Union<sup>57</sup>. While in the road transport sector the lack of data sharing seems to be particularly important, also in the field of social security there have been calls to set up a European level database registering migration outflows and inflows for the purpose of monitoring the place of residence of workers and recipients of cross-border social security benefits.<sup>58</sup>

#### *Stakeholders' views*

Respondents to the OPC favoured an EU-level role in the coordination of joint inspections by national administrations by 64%. Within the context of targeted consultations, a number of institutional stakeholders underlined the value of national competence to carry out labour inspections and the functioning of cooperation through bilateral agreements.

### **2.2.5 Lack of a cross-border mediation mechanism between Member States across all domains of labour mobility and social security coordination**

The management of cross-border cases involving national authorities in two or more Member States may give rise to administrative disputes, for example in case of contested information

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<sup>53</sup> Jorens, Y., Gillis, D. and De Potter, T. (2017), *Fraud and error in the field of EU social security coordination*, Network Statistics FMSSFE, European Commission, p. 92..

<sup>54</sup> EESSI is currently being implemented by Member States: <http://ec.europa.eu/social/main.jsp?catId=869>

<sup>55</sup> Mineva, D. (2018), Belgium-Netherlands cooperation: the case of the Port of Antwerp, UDW Platform.

<sup>56</sup> European Platform to Tackle Undeclared Work, Thematic Review Workshop on Data Mining for More Efficient Enforcement 1 & 2 June 2017, Helsinki, Finland.

<sup>57</sup> In the case of the Benelux Union, the Steering Committee on Social Fraud/Social Dumping has promoted the automatic data sharing, matching and mining on the issue of sham constructions. Political will and trust between the parties, as well as effective national systems are deemed as key factors to build upon in order to develop such capacities (European Platform to Tackle Undeclared Work, Summary report from the Follow-up Visit on 'Data Mining for More Efficient Enforcement', 27-28 September 2017, Brussels, Belgium).

<sup>58</sup> Jorens, Y., Gillis, D. and De Potter, T. (2017), *Fraud and error in the field of EU social security coordination*, Network Statistics FMSSFE, European Commission, p. 92.

in PD A1 documents for posted workers. Recourse may be made to national courts and ultimately to the European Court of Justice (ECJ). However, judicial recourse and infringement proceedings are costly in terms of time and resources. Conciliation may represent a more efficient and rapid resource.

At EU level, a conciliation mechanism exists only in the social security coordination area. Annex 12 describes how the Conciliation Board (CB) acts within the Administrative Commission (AC) to resolve disagreements. The dialogue and conciliation procedure has certain in-built shortcomings.<sup>59</sup> Both parties need to agree to bring the case in front of the CB, the scope of conciliation is limited to the social security aspects of posting, while such interpretation discussions and disagreements are also very relevant in other areas of social security coordination such as family benefits or the determination of applicable legislation for situations other than posting. Decisions are not binding and there is a lack of monitoring and follow-up mechanisms.

Because of these challenges and the length of the process, the vast majority of cases are resolved in a bilateral manner between Member States during the two phases of dialogue procedure. Between 2010 and 2017 only nine cases were submitted to the Conciliation Board of the AC. The full "life-cycle" of a case can be as long as over 3 years.

There is therefore potential for two-fold improvements. First, the existing conciliation procedure in the context of the AC can be made more effective and a review is on-going to address existing challenges. Second, a more comprehensive approach and more systematic follow up to dispute settlement could be beneficial, extending to other areas of social security coordination, to the posting of workers and to social legislation in the road transport sector, where currently there is no dispute settlement mechanism among national authorities.<sup>60</sup>

#### *Stakeholders' views*

A majority (51%) of respondents to the public consultation on a European Labour Authority were of the view that the lack of fora for dispute settlement constituted a challenge to cross-border cooperation. Within the context of targeted consultations<sup>61</sup>, social partners disagreed on this point. While employers organisations, such as BusinessEurope, were more sceptical of the idea of giving the ELA a dispute resolution function due to potential interference with the work national courts and the ECJ, trade unions, including the ETUC, were more in favour of the idea so long as the ELA provided out-of-court solutions. For the Nordic-Baltic-Polish EU

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<sup>59</sup> See e.g. EP Question E-009697-16 on Application of the dialogue and conciliation procedure established by Decision of the Administrative Commission for the Coordination of Social Security Systems No A1.

<sup>60</sup> Enforcement Directive 2014/67/UE has provided procedural rules for the exchange of information and administrative cooperation between national authorities. No specific provision addresses the possible insurgence of disputes between national administrations, for example in cases of non-compliance with requests for information or to execute sanctions.

<sup>61</sup> Specifically at the dedicated hearing with social partners which took place 11 December 2017.

Information Group that absence of a forum for dispute settlement beyond the area of social security coordination was a challenge.

### **2.2.6. Insufficient cooperation set-up at EU level**

Several EU committees and networks operate in the area of labour mobility and social security coordination (henceforth referred to as "bodies"). They are based on separate legal acts and refer to specific thematic domains. While all were designed to support the implementation of relevant EU rules, because they were developed independently, these EU bodies are characterised by an asymmetric institutional design. For instance, only the AC has quasi-legislative powers – being able to adopt interpretative Decisions – and meets on a regular basis. Other committees (ECPW, FMW) act as discussion fora with little to no decision-making or operational powers. The UDW Platform constitutes a forum based on voluntary participation, with an analytical and operational focus, the latter having however limited resources<sup>62</sup>. Annex 7 provides a detailed presentation of each body and an overview of its tasks. A further comitology Committee on Road Transport plays an advisory role to the Commission and facilitates dialogue and mutual assistance between Member States in the field of implementation of the social legislation in road transport<sup>63</sup>.

#### **Box 1. EU bodies in the areas of labour mobility and social security coordination**

The EU bodies that make up the EU's institutional landscape in the areas of labour mobility and social security coordination are: the Administrative Commission for the Coordination of Social Security Systems (AC) (including its Advisory Committee for the Coordination of Social Security Systems, the Conciliation and the Audit Boards, and its Technical Commission) the Technical Committee (FMW) and the Advisory Committee (AFMW) on the Free Movement of Workers, the Committee of Experts on Posting of Workers (ECPW), the European Platform tackling Undeclared Work (UDW Platform) and the EURES coordination group. They play a valuable role in supporting cooperation between national authorities. However, an analysis of their work reveals a number of shortcomings.

First, these EU bodies are limited in their ability to provide operational and technical support to national authorities. Because of their asymmetric institutional design, only two of them provide limited operational and technical support to national authorities. Specifically, the AC has a conciliation mechanism, where a dedicated Conciliation Board addresses disagreements between national authorities in matters of social security coordination. Similarly, the UDW Platform is mandated to facilitate common activities between Member States. Otherwise, EU bodies are primarily designed as fora for the exchange of information, good practices and ideas between relevant national authorities and stakeholders. Accordingly, they are either not mandated or lack the capacity to provide operational support to national authorities to strengthen cross-border cooperation. In practice, this involves a limited number of activities to support staff exchanges, joint campaigns, trainings, and joint

<sup>62</sup> The Senior labour Inspectors' Committee (SLIC) represents another relevant committee to discuss enforcement problems related to EU legislation on health and safety at work. Although SLIC has recently adopted some initiatives addressing the posting of workers, notably the application of health and safety rules in the case of cross-border temporary agency workers, its focus is not strictly related to the scope of this initiative. Therefore, for the sake of brevity, its role is not thoroughly analysed in the remainder of this report.

<sup>63</sup> Its tasks include exchange of information on infringements against the social road transport rules, and penalties for such infringements, discussing the cases of different national interpretations and application of the rules, promoting common approach to implementation and enforcement. It meets irregularly and has no operational competencies.

inspections. Yet operational support on cross-border issues is something that Member States would benefit from and which the EU is best placed to provide. The lack of operational capacity translates into a joint action gap to address problems of cross-border nature.

Second, artificial separations exist between these bodies. In-depth specialisation of each committee on its target legislation is not matched by the development of interlinkages with other bodies competent on neighbouring policy areas. For instance, in the case of posting expertise is divided between labour law specialists in the ECPW (on working conditions issues) and social security experts in the AC (on security aspects, including the issuing of PD A1 forms), and likewise between the TFMW and the AC as regards to mobile workers, while problematic issues may cut across the two policy areas. Certain activities thus overlap leading to duplications in their work, for instance this is the case of UDW Platform and the ECPW.<sup>64</sup>

Third, these bodies have no permanent structure. The frequency of the meetings varies greatly between the over 90 meetings per year of the Administrative Commission (and of its attached committees, under various formations and sub-groups) and the two meetings per year of the ECPW and technical committee of FMW.

In addition, the EU has four decentralised Agencies in the employment and social domain (see Annex 13). However, none of them has a cross-border focus in their mandate and, despite valuable expertise in related fields such as labour market research (Eurofound), health and safety at work (EU-OSHA) and vocational education and training (Cedefop), they do not provide any operational support to Member States either. Similarly, there is no EU agency in the road transport sector, unlike in the other modes of transport (railways, aviation, and maritime transport).

#### **Box 2. Decentralised Agencies in the area of Employment**

Four decentralised agencies operate in the employment policy area: European Foundation for the Improvement of Living and Working Conditions (Eurofound), European Centre for the Development of Vocational Training (Cedefop), EU-OSHA (European Agency for Safety and Health at Work) and European Training Foundation (ETF) and they are currently object of a comprehensive evaluation. Annex 13 provides an overview of their work.

An on-going meta-evaluation has been mandated to examine synergies among them. This evaluation is done in line with the Commission's Better Regulation Guidelines and the Financial Regulation requirements. It encompasses both an individual assessment of each agency as well as a cross-cutting and comparative perspective for the period 2011-2016, and a prospective assessment with regard to the future functioning of the agencies. The evaluation is not linked to the landscape of committees and policy bodies in the area of cross-border labour mobility and social security coordination.

From a preliminary assessment, the material scope and functioning of each Agency presents few elements of commonality with the present initiative. None of these agencies has a cross-border focus, while the ETF operates in the EU neighbourhood area. Conversely, the specific expertise of each agency contributes to relevant employment policy objectives in their respective fields, while the cross-

<sup>64</sup> Cross-cutting issues in the implementation rules are dealt by the two structures separately. At the same time, the Platform to Tackle Undeclared Work may discuss several cross-border fraudulent phenomena involving the posting of workers, both under the labour law and the social security perspectives, yet in a different framework from that of the two competent committees.

border labour mobility has a strong horizontal dimension. The predominant research-centred approach of most agencies (except the ETF) only limitedly fits with the operational needs in the labour mobility area. While there may be potential synergies as regards the research area, the analytical needs to enhance operational cooperation on mobility exceed existing availabilities in the agencies and require further and integrated expertise. A more thorough assessment of the possible interaction between this initiative and the existing decentralised agencies is provided in section 8.

### *Stakeholders' views*

As mentioned above, both respondents to the public consultation and targeted consultation highlighted that differences in the administrative capacities among the Member States act as a barrier to effective cross-border cooperation, thus supporting the view that insufficient operational support at EU level was a challenge. On the issues of fragmentation, a majority (70%) of respondents to the public consultation noted that the fragmentation of EU cooperation networks in different areas of cross-border mobility was a challenge to effective cooperation between national authorities.

### **2.3 How will the problem evolve?**

EU labour mobility has shown an upward trend throughout the crisis (the number of people living or working abroad almost doubled over the past decade, to 17 million by 2017), mainly due to flows from the EU-13 and increasingly from Southern European Member States towards Northern Europe.<sup>65</sup> Besides, patterns of mobility have also evolved to cross-border mobility and temporary mobility for the purpose of care treatment or service provision. The posting of workers has surged by 68% compared to 2010 (from 1.23 to 2.3 million in 2016). While remaining relatively low as a proportion of the total working population, EU mobility still involves some 17 million EU citizens and particularly affects some countries (both from a sending and from a receiving perspective) and economic sectors (see Annex 12.1). Also due to the stabilising role played by labour mobility in the Eurozone in case of asymmetric shock, there are few elements to assume that the relevance of EU mobility – in its various forms - may scale down in the future.

In addition, the recent years have witnessed increasing concerns as regards to social fraud related to cross-border mobility, e.g. in connection to social security coordination or posting rules. Experimental estimates on a plurality of sources indicate a lower bound of about 2.6% of EU-mobile workers (about 400,000 individuals) possibly involved in undeclared work activities with variations across-countries. Similarly, fraud in social security coordination does not currently affect but a minority of the total (See Annex 12.4). The phenomenon may be underestimated, as it is based on figures from a few countries, although there is little evidence that cross-border fraud is higher than domestic fraud.<sup>66</sup> It could also be argued that,

<sup>65</sup> See European Commission (2018), Annual Report on Intra-EU labour Mobility 2017.

<sup>66</sup> Indeed, estimates in Annex 12.4 show that undeclared work may affect 2.8% of cross-border workers and 3.6% of domestic workers.

absent adequate cross-border controls, social fraud is not realistically detected. In any case, with possibly increasing mobility flows, social fraud will continue to represent an associated, persistent element.

Recent legislative developments have addressed the problems of better information and services to mobile citizens and companies, although more support will still be needed. As mentioned in section 2.2.1, the Single Digital Gateway proposal, if adopted, may improve the 'findability' and quality-check of information provided through various EU sources, including EURES. Nevertheless, content-feeding and constant updates of EU portals will remain challenging and resource-consuming tasks to be carried out. As regards posting, the full implementation of the 2014 Enforcement Directive has consolidated a set of single national websites<sup>67</sup>, while the free movement bodies established to support equal treatment and provide legal assistance will also stabilise.<sup>68</sup> However, ensuring even quality standards and constant updates across the Member States will require constant monitoring at EU level. Some sector-specific information, most notably on the working conditions and requirements in international road transport operations, will have to be produced also in light of new legislative initiatives in that area. Through the implementation of the 2016 EURES Regulation, the number of job vacancies and CVs available on the Portal is expected to substantially increase. Limits to national capacities and human, financial and IT resources may however affect the expansion of the EURES network, with consequent needs for a stronger involvement of partner organizations for a holistic approach and reinforcement of activities in relation to information and services provision.

Recent legislative initiatives have also aimed at strengthening enforcement tools. Following the 2014 Enforcement Directive, the use of the IMI system to exchange administrative information and notifications between the Member States on postings will continue to take hold. For social security coordination, EESSI will replace the current paper based exchanges and it will allow national competent institutions to contact their counterparties in other Member States electronically. It should create a faster, more efficient, and secure data exchange. However, at the same time, the reasons for difficulties in cooperation encountered today, beyond those of the inherently time consuming nature of postal exchanges, remain to be tackled. There is a need to improve clarity on national case handling deadlines, put in place operational procedures for addressing situations of delayed replies, and provide support to Member States with capacity building to optimise the handling of cross-border cases, as well as to provide ongoing support and training for the introduction and use of EESSI across all institutions. Limitations (for instance in the case of undeclared work) and further developments will be managed at EU level, although it is unlikely that synergies between the instruments will be exploited.

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<sup>67</sup> [https://europa.eu/youreurope/citizens/work/work-abroad/posted-workers/index\\_en.htm](https://europa.eu/youreurope/citizens/work/work-abroad/posted-workers/index_en.htm)

<sup>68</sup> <http://ec.europa.eu/social/main.jsp?catId=1277&langId=en>

Current cooperation tools will come under increasing pressure to ensure consistent and fair enforcement of new rules currently under negotiations on posting, posting in the road transport sector and social security coordination. While IMI statistics currently show that information requests on the establishment and registration of companies rank as most frequent (see Annex 12.4), control tools on letterbox companies would remain inadequate, for example on the inspection angle. The UDW Platform provides for limited resources to support joint inspections and capacity building, but the organisational effort in providing effective coordination would continue falling on the Member States. Bilateral agreements would continue providing the basis for cooperation with uneven functioning across the EU and few extra EU resources to cover for limited resource capacities in some Member States, especially where staff availabilities do not yield specialisation in cross-border issues. The problem would notably be intense in the road transport area, where poor EU-wide coordination of control activities would leave voluntary networks shouldering the impact of high pressure, possibly new rules, and decreasing national enforcement capacities. While the UDW Platform would continue to providing a forum of exchange of best practices, the cross-border dimension represents but one aspect in the agenda and operational resources remain essential, beside the limitation of the voluntary participation. In addition, mobility being constant, ineffectiveness or absence of conciliation mechanisms between administrations would continue discouraging dispute settlement fora and rather encourage court settlement. Finally, in the occurrence of labour disruptions affecting multiple Member States, the relevant authorities and stakeholders would dispose of the Globalisation Adjustment Fund and would benefit from the guidance of the Quality Framework for Restructuring, yet with little further assistance or coordination from the EU level.

## **2.4 Scope of a European Labour Authority**

The **thematic scope** of the initiative will focus on the core areas of cross-border labour mobility and social security coordination rules through the efficient and effective enforcement of Union law on labour mobility and social security coordination, as well as of collective agreements implementing such Union law. EU law on labour mobility pertains to the (1) free movement of workers and the (2) posting of workers, which lay down workers' rights in different mobility situations. Cooperation on (3) undeclared work is included, as it addresses a phenomenon with particular relevance also in a cross-border context. Social security coordination rules are tightly inter-connected, as they establish the rights to social security of mobile workers, as well as of job-seekers and inactive persons when moving to another Member State.

In line with the above legislation, the present initiative encompasses **all economic sectors**. However, an additional focus is cast on the international road transport sector. The highly-mobile nature of the sector creates specific problems for the enforcement of EU work-related legislation in a cross-border context, in particular posting. Inconsistent and ineffective cross-border enforcement, lacking cooperation and coordination of controls have severe consequences on the fairness of competition for both drivers and companies.



The **personal scope** of the initiative would be in line with that of the EU legislation covered in the initiative's thematic scope. This means that ELA would support Member States in the implementation of EU rules in relation to the persons who are covered by these rules, for instance by providing advice to workers on exercising the right to free movement of workers or supporting the implementation of social security coordination rules in relation to all insured persons to whom these rules apply (whether worker, family member, pensioner, tourist, etc.). It also includes mobile third-country nationals, including EU Blue-Card holders, as regards to posting of workers, road transport and social security coordination<sup>69</sup>.

### **3. WHY SHOULD THE EU ACT?**

#### **3.1 Legal basis**

The legal basis for ELA pertains to the free movement of persons and services and the right to establishment, established in Articles 46, 48, 53(1), 62, and 91(1) TFEU.

Article 46 assigns to the European Parliament and Council the duty to issue rules on the free movement of workers, including the cooperation between national employment services, the abolition of obstacles to the search, matching and take-up of employment in another member State. Article 48 provides a similar task with respect to the adoption of measures in the field of social security as a necessary accompanying measure to the freedom of movement for workers. As regards to the freedom to provide services across-border, Article 53(1) TFEU foresees measures to facilitate taking up and pursuing activities as self-employed persons, facilitating posting, while Article 62 TFEU foresees measures to facilitate the freedom to provide services, relevant in the framework of posting. Article 91(1) TFEU posits common rules applicable to international transport, in the framework of a common transport policy.

#### **3.2 Subsidiarity**

The subsidiarity principle applies since the proposal does not fall under the exclusive competence of the EU. The objectives of the proposal cannot be sufficiently achieved by the Member States at national, regional or local level and can be better achieved at Union level for the following reasons:

- Providing high quality and up-to-date information and services to the public about their rights and obligations in cross-border situations needs to be coordinated at Union level in order to ensure a consistent, clear, and efficient approach.

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<sup>69</sup> Regulation (EU) No 1231/2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third-countries who are not already covered by these Regulations solely on the grounds of their nationality.

- The application of Union law in the fields of cross border labour mobility and social security coordination relies on cooperation between Member States, meaning that no Member State can act alone.
- In order to increase synergies and support cooperation between Member States in the application of Union law across the fields of labour mobility and social security coordination, to ensure legal certainty for administrations and individuals alike and to arrive at a shared understanding of enforcement needs, it is also necessary to develop a coordinated and joint approach at Union level instead of relying on what can be a complex network of bilateral or multilateral agreements.

### **3.3 Proportionality**

The initiative is a proportional response to the need for operational support and does not go beyond what is necessary to achieve this goal. It does not impose new obligations on Member States, individuals or employers; rather it focuses on supporting cross-border mobility and creating new opportunities. The proposal does not impinge on national decision-making, legislation, or enforcement activities, which remain the competence of Member States. Moreover, it leaves to a large extent to the discretion of Member States how they make use of the possibilities put in place by the initiative.

## **4. OBJECTIVES: WHAT IS TO BE ACHIEVED?**

### **4.1 General objective**

The establishment of ELA will help strengthen fairness and trust in the Single Market by ensuring that EU rules on cross-border labour mobility and social security coordination are enforced in a fair, simple and effective way and by supporting the mobility of individuals and businesses through practical information and assistance.

### **4.2 Specific objectives**

ELA will function as a permanent structure and will pursue three objectives in this context:

- Improving access to information by individuals and employers about their rights and obligations in the areas of labour mobility and social security coordination, as well as access to relevant services;
- Strengthening operational cooperation between authorities in the cross-border enforcement of relevant Union law, including facilitating joint inspections;
- Providing mediation and facilitating solutions in cases of disputes between national authorities and cross-border labour market disruptions, such as restructuring of companies affecting several Member States.

## 5. WHAT ARE THE AVAILABLE POLICY OPTIONS?

Options to meet the aforementioned three specific objectives are of two kinds: first, *what* should be done (tasks) and second, *how* should this be done (delivery aspects). In analysing the different policy and delivery options, no environmental impacts have been identified. Therefore this document does not consider environmental impacts as a criterion to differentiate between the options.

Prior to examining possible policy options, this section outlines options that were discarded at an early stage.

### *1) Transferring new competences from the national to the European level*

Rule enforcement, information collection and treatment and inspection responsibilities are the competence of national authorities, in line with subsidiarity and proportionality requirements. These competences cannot thus be transferred to the Union level, either in the form - for example - of a European labour inspectorate or through more competences and powers granted to the European Commission. This option is rejected by the unanimity of institutional stakeholders and social partners.

### *2) Extending the scope of the proposal to cover EU legislation dealing with industrial relations*

EU legislation in the area of cross-border industrial relations covers negotiations and agreements in EU transnational companies (that have a workforce in more than one Member State) and workers' representation in multinational companies (European Work Councils) in companies with over 1000 workforce, and at least 150 in each of two or more Member States. The implementation of industrial relations in cross-border labour situations is the domain of the social partners, not Member State authorities, and is hence left out of the present initiative. This is also in line with the ETUC's position that there should be no interference with collective bargaining or the right to take collective action. While ETUC supports the set-up of tools such as mediation mechanisms to resolve disputes, on a voluntary basis, on the implementation of transnational agreements in the case of multi-national companies, this was not echoed by other stakeholders throughout the OPC.

## 6. POLICY OPTIONS AND THEIR IMPACTS

In order to address the identified challenges that undermine compliance with EU rules and effective cross-border labour mobility (see section 2), seven general tasks are envisaged for the EU level:

- *Labour mobility services and information for individuals and businesses* tackles the problem of inadequate support and guidance for individuals and businesses in cross-border situations (section 2.2.1);

- *Cooperation and exchange of information between national authorities* addresses the problem of insufficient access to and sharing of information between national authorities (section 2.2.2);
- *Support to joint inspections*: tackles weak EU-level mechanisms for joint cross-border enforcement activities (section 2.2.4)
- *Cross-border labour mobility analyses and risk assessment*; targets both insufficient capacities to organise cooperation (section 2.2.3) and the weak mechanisms for cross-border enforcement (section 2.2.4);
- *Capacity building*: enhances the capacities of competent authorities (section 2.2.4);
- *Mediation between national authorities* fills the gaps in the existing conciliation mechanism (section 2.2.5);
- *Facilitating cooperation in cases of labour market disruptions* affecting more than one Member State addresses the issue of insufficient capacities to cooperate (section 2.2.3).

As regards to the specific problem of insufficient cooperation set-up at EU level (section 2.2.6), this is addressed by all of the above tasks, which together would provide comprehensive operational and technical support to national authorities.

Below, following the presentation of a baseline scenario, three policy options ('support', 'operational', 'supervisory') are presented, each addressing the seven tasks outlined above. The options are cumulative, that is, each option broadly incorporates the features of the previous one. They each provide a set of coherent and interdependent tasks, making them almost indivisible. Table 1 below provides a synoptic overview of how the seven tasks will be addressed in each of the three policy options. A more detailed explanation and comparison of the tasks as envisaged under the three policy options is provided in Annex 10.

- For instance, under Policy Option 2, it is envisioned that the EU level has an important role in pooling of analyses, collecting data, and organising peer reviews (*task 'Cross-border labour mobility analyses and risk assessment'*). This task is intimately linked with the creation of a comprehensive mutual-learning programme and training/technical assistance programme (*task 'capacity building'*), since the data analyses will feed into the design of these programmes. The two complementary tasks have the same level of ambition.
- Similarly, for instance, under Policy Option 3, the EU's task to undertake in-depth assessments of Member States to identify problems (*task 'Cross-border labour mobility analyses and risk assessment'*) is intimately linked with the task of establishing standards for the provision of services at national level based on EU rules (*task 'Labour mobility services for individuals and businesses'*), and establishing mandatory requirements on information exchange (*task Cooperation and exchange of information between national authorities*), also only envisioned under Option 3. The two complementary tasks have the same level of ambition and are interdependent

since the standards and mandatory requirements it establishes would form a basis for recommendations.

**Table 1. Synoptic overview of policy options, in relation to tasks**

<b>Tasks</b>	<b>Policy Option 1 (Support Option)</b>	<b>Policy Option 2 (Operational Option)</b>	<b>Policy Option 3 (Supervisory Option)</b>
<b>1. Labour mobility information and services for individuals and businesses</b>	Definition of user needs and business requirements of the EURES Portal. Cooperation with relevant initiatives, tools and bodies at EU and national level (e.g. Your Europe, Border Focal Point, national services).	Coordination and enhancement of EURES network. Technical support to MS for the provision of services at national level, including compliance with relevant obligations (e.g. SDG and enforcement directive on posting).	Establishing standards for the provision of services at national level based on EU rules. Establishment of a single physical national contact point on labour mobility.
<b>2. Cooperation and exchange of information between national authorities</b>	Coordinating role and liaison point between existing bodies.	Active support and expertise to competent authorities ensuring cooperation and promoting the exchange of information through the use of relevant IT tools (ESSI, IMI).	Establishing mandatory requirements on information exchange, where not provided for by current EU legislation  Development and inventory of user-friendly templates in aid of comparability of national procedures.
<b>3. Support to joint inspections</b>	Support to Member States in coordinating joint inspections, i.e. organisation of coordination meetings and development of model agreements	Pro-active proposals for joint inspections, logistical support, monitoring and follow-up	Possibility to launch (joint)-inspections on its own initiative Management of European Inspection Corps (drawing on Member States' inspectorates)
<b>4. Cross-border labour mobility analyses and risk assessment</b>	Sharing of studies and analyses by relevant EU bodies	Analyses, risk assessment, data collection, peer reviews and follow-up recommendations.	In-depth assessments of Member States
<b>5. Capacity Building</b>	Coordination of mutual learning activities across all mobility areas	Set-up of comprehensive mutual-learning, training and technical assistance programmes, exchange of best practices.	Development of pilot code for labour inspections.
<b>6. Mediation between national authorities</b>	Provision of expert opinion upon request on all mobility areas	Facilitation of dispute settlement across all areas by mediation, including possibility to adopt recommendations.	Development of pilot on out-of-court dispute settlement
<b>7. Facilitating cooperation in cross-border labour disruptions</b>	Awareness raising among stakeholders about the <i>EU Quality Framework for Anticipation of Change and Restructuring (QFR)</i> and of relevant EU legislation and financial instruments.	Upon request, set-up of ad hoc support to national authorities and stakeholders to facilitate administrative cooperation, information sharing and coordination in the event of cross-border events of company restructuring.	Issuing of recommendations as regards to the management of cross-border restructuring, and to the implementation of relevant EU legislation, including business insolvency and information and consultation of workers.

## 6.1. Baseline scenario

Without any action, the existing legislative framework continues to apply to mobility information and rule enforcement support, with possible integrations deriving from proposals currently under negotiation or implementation.

Content creation, update and expansion of the Your Europe and the EURES Job Mobility portals remains mainly up to the Commission and the Member States, with limited EU coordination and support on other mobility issues such as posting or road transport. Exchange of administrative information takes place through the IMI and, from 2019, EESSI, beside other channels possibly established on an ad-hoc basis through bilateral agreement. The Commission carries out labour mobility analyses, while more sophisticated risk assessments are developed at national level with little to no pooling at EU level. Coordination of cross-border inspections remains limited to voluntary action within the current scope and means of the UDW Platform and, for what concerns the road transport sector, the ECR. Existing conciliation mechanisms continue to apply in the social security coordination domain, but not in other mobility areas. Capacity building is limited to the mutual learning programme of the UDW Platform and to voluntary action within the scope of the ECR in the road transport area. The Commission raises awareness on the good practice collected in the 2013 Quality Framework for Restructuring and runs the European Globalisation Adjustment fund, while Eurofound monitors company restructuring events and provides information on national frameworks for restructuring through the European Restructuring Monitor.

## 6.2 Policy Option 1 (Support option)

The ‘support’ Option 1 constitutes a ‘light-touch’ approach adding up a few changes to the baseline scenario whereby the EU level expands or coordinates existing activities or programmes, or extends these from one specific area to all other mobility areas. The EU-level expands and coordinates existing *information services* by ensuring further development of the EURES portal and, in cooperation with Your Europe, by monitoring information provided on posting and road transport sector legislation. It also builds on existing *cooperation tools* in different mobility areas by promoting coordination between them and suggesting improvements on issues of cross-cutting concern (e.g. letterbox companies). It extends current support to *joint inspections* in the context of the UDW Platform by facilitating coordination meetings between labour inspectorate authorities and developing model agreements, upon the request of Member States. It compounds *analytical reports* dealing with different mobility aspects produced by EU and national institutions and ensures follow-up to problems signalled by citizens and companies on SOLVIT. Mutual learning activities under the UDW Platform are extended to all mobility areas in order to support administrative *capacity building* in accordance with strategic priorities. The EU level extends the *conciliation mechanism* of the social security coordination area to all mobility areas through the provision of expert opinions and monitors the follow up to those opinions. Drawing on the Quality Framework for Restructuring, the EU level raises awareness of its legislation, financial instruments and

guidance also based collection of experiences through Eurofound's Monitoring instrument in order to support stakeholders affected by *restructuring cases* with cross-border implications.

### 6.3 Policy Option 2 (Operational option)

The ‘operational’ Option 2 expands activities laid down in the previous Option 1 by adding further operational activities in each task. Through the management of the EURES network, the EU level extends the scope of its activities to technical support to the Member States for the provision of *information to citizens and business* all across the mobility spectrum, thus including posting and social legislation in the road transport sector. The *information exchange* is actively supported through the promotion of the use of electronic tools and procedures (e.g. EESSI, EURES and IMI) also with a view to their further evolution, as well as on facilitating cooperation through National Liaison Officers. In agreement with the involved Member States, it assumes the role of launching and providing coordination and logistical support to *joint cross-border inspections* including action to ensure their follow up. The EU level compounds *analyses and data collection on different labour mobility aspects* from different sources, and becomes a permanent observatory on mobility, also through the collection of more specific data to inform joint inspections or capacity building programmes; it organises peer reviews among Member States and outlines possible measures to address identified challenges. The EU level runs comprehensive *mutual learning and technical assistance* programmes, also in accordance with the priorities identified in the other tasks. The existing conciliation mechanism, which is extended to all mobility areas, is formalised by a *mediation mechanism* aimed to provide the possibility of recommendations to the involved Member States to solve issues identified. In the event of *restructuring cases* with cross-border implications, the EU level activates – upon national authorities' request - *ad hoc* support charged facilitating administrative cooperation, providing guidance on EU legislation and financial instruments and coordinating interventions, including through involving EURES.

### 6.4 Policy Option 3 (Supervisory option)

The ‘supervisory’ Option 3 expands activities laid down in the previous Option 2 to achieve a more thorough EU-level integration of certain functions which are not foreseen in the current framework, yet within the limits of EU competences. Through the management of EURES, the EU level adds up standards for the provision of *mobility-related services to citizens and companies* at national level with a view on the establishment of single physical contact points. Where necessary, the EU level can set additional mandatory *information exchange* requirements to be implemented through the existing tools. On *joint inspections*, the EU level retains the right of initiative and sets up a specialised 'European Inspection Corps' composed of national detached experts. Drawing on peer reviews and *labour mobility analyses*, the EU level can launch in-depth assessments of Member States capacities for a thorough analysis of potential weaknesses and shortcomings, and on these basis issues recommendations to Member States. In addition to the mutual learning and technical assistance programmes for *capacity building* envisaged in Option 2, the EU level lays down a common rule-book (code)

laying down standard procedures for labour inspections. The *mediation mechanism* extends to include a pilot out-of-court arbitration systems for certain cases. The EU level intervenes both to provide guidance on available EU resources to *address cross-border labour disruptions*, but also to provide recommendations to national authorities and stakeholders on the effective application of relevant EU legislation, including on insolvency and information and consultation of workers.

### ***Stakeholders views on the possible tasks of a European Labour Authority***

Regarding the possible tasks for a European Labour Authority, the open public consultation showed that a majority of respondents envisioned that a new Authority could usefully provide a wide range of operational support to Member States. These include: coordinating systematic cooperation and information exchanges between national authorities (75%), providing technical assistance and capacity building to enforcement authorities (67%), providing analytical support and intelligence (67%), coordinating joint inspections (64%), providing a dispute resolution mechanism (64%), supporting the provision of information to individuals and businesses (73%), support the rationalisation and streamlining of administrative practices at EU level (73%).

Results of the targeted consultations echoed the same support for a broad range of tasks; in particular members of the Administrative Committee were generally supportive of ELA having an operational focus. Consulted stakeholders, most notably within the EMCO and the UDW Platform, also underlined that an Authority could support the better integration and coordination of existing EU bodies in order to ensure greater synergies between them.

There was clear support among stakeholders – including within the AC, the ECPW, the PES network, social partners (UEAPME, ETUC, EFBWW, etc.), and a number of civil society organisations - for a new European Labour Authority to play a role in providing a single point of access to standardised information available in all European languages to individuals and organisations alike. A number of stakeholders underlined that the Authority could also be charged collecting and regularly updating listings of EU and national relevant legislation and competent authorities.

Similarly, there was strong support among stakeholders for a new European Labour Authority to act as a platform for information exchange between national authorities. It was also underlined by certain stakeholders that ELA could manage IT solutions (such as EESSI, the future ESSN) and ensure statistical data collection. Closely related to this, some stakeholders (including members of the AC) underlined that ELA could support research and analysis in the area of cross-border mobility.

A number of targeted stakeholders shared the view that ELA could usefully provide technical assistance and capacity building to enforcement authorities. In particular, BusinessEurope was of the opinion that technical assistance and capacity building for national enforcement bodies



should be the central aim of the initiative. A common opinion by the PES network suggested that ELA could help to strengthen collaboration among different labour market actors at EU level and support a systematic approach for evidence-based learning between Member States, building on the Benchlearning exercise of the PES network.

Institutional stakeholders broadly underlined the importance of respecting national competencies, particularly in the area of labour inspections which should remain in the hands of Member States. However, a great number of stakeholders (including those who underlined the importance of respecting national competencies) were also of the opinion that a European Labour Authority could valuably support national authorities in conducting joint cross-border investigations. In particular, this point was made by members of EMCO. A report adopted by the UDW on the creation of ELA noted that while any joint investigations should be entrusted to national authorities, ELA could address outstanding issues, such as cross-border participation in controls in another Member States, facilitating the understanding of other national laws and procedures, and of the effective use of evidence during inspections. At the dedicated hearing with social partners, trade unions noted that while a European Labour Authority should not interfere in functioning of national labour inspections, it could have complementary role in cross-border cases, providing technical and logistical support. The European Parliament's Employment and Social Affairs Committee argued that ELA could conduct investigation in cases of fraud and abuse.

Similarly, a number of targeted stakeholders were of the view that a new Authority could carry out dispute resolution mechanisms in cross-border and social security matters, but were split on whether the decisions should be binding or whether the process should be voluntary and decisions non-binding. For instance the UDW platform noted that ELA could act as a discussion board to facilitate exchanges and as mediator to solve problems between Member States on a voluntary basis. Similarly, in a strategic dialogue with civil society, certain organisations noted that ELA could support a dispute settlement mechanism similar to the one currently in place within the Administrative Commission. It was suggested that such a dispute settlement mechanisms could be extended beyond social security coordination to other areas of cross-border mobility and could be binding.

## **6.5. Impacts of the different policy options in relation to tasks**

This section summarises the main expected social and economic impacts of each the three policy options outlined in the previous section. The assessment has a strong qualitative approach. While better cooperation has an impact on improving enforcement, the causal link between the set-up of a new body and socio-economic impacts, including mobility flows, is rather remote, owing to the influence of national legislation and to actual rule implementation. Therefore, the quantification of social or economic impacts was not deemed realistic.

### 6.5.1 Social impacts

Overall, the social impacts of the three policy options would be direct only in the cases of the task relating to citizens' information and services and to the facilitation of solutions during company restructuring processes. The remaining benefits would rather be indirect, as a consequence of better cooperation and information-sharing between national administrations.

Under the **baseline scenario** mobile workers and citizens would continue experiencing *information gaps* and to be exposed to the risk of abuse or of administrative inefficiencies. Posting conditions (e.g. applicable wages) may become more transparent thanks to single national websites, but still work would need to be done to improve the sector-specific targeting of information, notably - but not exclusively - on road transport posting and social rules. Channelled through the SDG, EURES would gain more findability but still incur limitations in the extent of information provided, as well as in the capacity to extend job vacancy supply.<sup>70</sup> Exposure to fraud or administrative inefficiencies would witness some improvements, but still present some gaps, with particular effect on the road transport sector. *Information exchange* through IMI contributes to strengthening controls, and so will the implementation of EESSI, also with a view on administrative efficiency. Nevertheless, varying degrees of administrative capacities and extent of bilateral cooperation with other Member States would continue negatively affecting the effectiveness of protection against abuses, for instance in fraudulent posting situations, with generally few opportunities for coordinated cross-border controls and inspections. Information gaps – also cause by the lack of preparation of administration staff may continue leading to low take-up of social security benefits across border simply because of citizens' low awareness. In turn, ineffective communication channels between social security institutions may result in the missing out on acquired rights or could lead to double payments (see Annex 12, section 4)<sup>71</sup>. In the event of *company restructuring* cases with cross-border implications, the EU level would continue to offer soft policy guidance on the basis of the Quality Framework for Restructuring and financial assistance through the European Globalisation Adjustment Fund, within the limits of eligibility conditions to that fund. Tailored support may continue to be provided ad hoc such as in the case of the closure of the Caterpillar plant in Gosselies (Belgium)<sup>72</sup>.

**Policy Option 1 (support option)** would marginally improve the *provision of information* through more integration of EURES with other information areas, including on terms and conditions for posting. A citizen may thus find on the EURES portal more comprehensive

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<sup>70</sup> EU Court of Auditors, *Free Movement of Workers – the fundamental freedom ensured but better targeting of EU funds would aid worker mobility*, Special Report 6/2018.

<sup>71</sup> Your Europe Advice documents real cases where documents and information requests are made by individuals even though national authorities should communicate directly with one another. For example, a Romanian citizen living in France experienced long delays in obtaining details of his pension rights for the years he had worked in Romania. In another instance, a Lithuanian citizen working in Italy could not receive confirmation that she was paying social insurance contributions in Italy and was therefore requested to still contribute to the Lithuanian health insurance.

<sup>72</sup> Following the 2016 closure of the Caterpillar plant in Gosselies, Belgium, the Commission set up a joint taskforce with the national and regional authorities, upon their request, to support the Charleroi region in dealing with the employment and social impacts.

information regarding its citizenship, labour, social and fiscal rights when moving to another Member State, under different forms of mobility (permanent or temporary mobility). However, information as well as some underlying services would be provided at a fairly general level which may not reflect his/her particular needs in a given sector, e.g. road transport, or administrative area. EU support to activities in the areas of *cross-border labour inspections*, intelligence and dispute settlement would remain limited, therefore tangible benefits for workers would be unlikely to materialise. Under largely voluntary cooperation arrangements between Member States, workers in or from non-cooperating countries would notably be at a disadvantage in relation to workers in or from cooperating countries choosing to engage in exchange of information and cooperation. Therefore, the benefits would be uneven for the workforce and citizens across the EU and not be available or easily accessible to all those that need them. In case of relevant company restructuring processes, EU intervention would be limited to awareness raising on the available EU instruments but would not translate into more concrete support to the involved stakeholders, thus with a limited impact on the involved workers.

**Policy Option 2 (operational option)** would lead to a wider access to targeted *information* and a wider inter-connection between all EU provided services, basing on the EURES network. With further technical monitoring and support provided to check the comprehensiveness of information, EU-level assistance would integrate sector-specific guidance for example on posting and help aligning with SDG-mandated quality standards. Therefore, a citizen moving to another Member State to work in a particular sector, e.g. construction, would find targeted information on working conditions in that sector, including for example the relevant collective agreement or specific health and safety requirements, in this case thanks to collaboration with the competent agency EU-OSHA. With EU-provided coordination of *investigations*, notably focusing on problematic cross-country flows and sectors identified thorough risk assessment, workers would rely on stronger deterrence potential, as well as on a contact point to which they could turn to in case of need. For example, in the road transport case, more uniform controls would ensure legal clarity and predictability for drivers and guarantee equal treatment in case of non-compliant behaviour, due to more uniform assessment standards. Citizens would also benefit from better administrative efficiency resulting in faster and more certain procedures for the assignment of cross-border social security benefits, and less uncertainty in case of problematic situations as a result of more structured information exchange between authorities in all areas. The intensification of *EU-provided training* for national administration staff would also ensure better information being conveyed to citizens, for example on their cross-border social security rights, and workers, notably including international transport drivers. While citizens would continue solving possible disputes with administrations through existing means (e.g. SOLVIT or courts), new mediation functions may shorten the period for a decision on disagreements between national administrations and increase the impact of such decision. In the event of *company restructuring* with cross-border implications, the facilitating role which the EU level would play would especially benefit the affected workers. National stakeholders,

notably including the social partners, would receive advice and guidance on applicable EU legislation and possible financial instruments to assist the affected workers, as well as administrative support to coordinate interventions between countries for example on collaboration with EURES for job-search beyond national borders.

**Policy Option 3 (supervisory option)** would entail more mandatory requirements on the services provided through the EURES network of experts, which would advise – as in the option above – on all policy areas. The set-up of physical contact points for labour mobility at national level would enable citizens to access a face-to-face service to collect practical advice in view of their moving to another Member State. More stringent EU requirements would empower information exchange and cooperation on inspections, and strengthen institutional capacities. Citizens would thus benefit from more integration between national administrations in carrying out controls against abuses as well as in exerting more ordinary administrative procedures, for instance in posting situations. EU level recommendations on the management of cross-border company crises may have an appealing character insofar as they may put pressure on authorities and stakeholders to mobilise all possible EU and national resources to help workers retrain or re-employ.

## **6.5.2 Economic Impacts**

Examining the economic impacts of different policy options covers both the impacts on national authorities and on companies.

### **6.5.2.1. Impacts on national authorities**

This section discusses the impact of the three options on the work of national authorities to improve their cooperation, to better enforce rules, to facilitate labour mobility and to provide information to workers and business.

In the **baseline scenario**, competent enforcement authorities would continue operating with only partially adequate and resource-intensive tools, thus with partial effectiveness in terms of contrasting social fraud and ensuring administrative efficiency. The fight against social frauds would continue to be pursued through the existing (and forthcoming) information exchange tools and several structures working in parallel with a focus on specific areas (such as undeclared work, or social security). While the full implementation of IT tools is expected to continue providing added value<sup>73</sup>, enforcement authorities would continue to work with a focus on questions related to specific policy areas (such as posting, social security information, or transport company information), with little incentive to exploiting the possible synergies between them to investigate potentially fraudulent cases requiring a multiplicity of

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<sup>73</sup> Annex 12 shows that information exchanges on the posting of workers through the IMI system have increased from 806 in 2012 to 1689 in 2016 and over 3,600 in 2017. However, the use of IMI varies substantially between Member States, with Austria, Belgium and France being the most frequent users. Moreover, the IMI modules may not always be fit for the specific request needed for an investigation (Horodnic, I.A., *Belgium-Romania cooperation. An overview of IMI cases*, 2018, UDW Platform).

policy details. Authorities would continue lacking a common source of intelligence and risk analysis. Most notably, however, the effort to organise joint actions (e.g. in-depth information exchange and coordinated inspections) would continue falling upon national authorities with no external support. Investigative cooperation would be efficient to the extent that authorities share similar or common investigative methods and procedures, basing on a common understanding of the respective laws and on a common action framework, such as a bilateral agreement<sup>74</sup>. One or more of these factors being absent or weak, for instance the lack of mutual language understanding or the difficulty in identifying one authority's exact counterpart in the other Member State, would continue making joint action very resource-intensive and ineffective, notably against the background of staff resource scarcity across the Member States. All in all, the inadequacy of tools and cooperation would continue producing considerable losses in fiscal and social security revenue, while feeding in mistrust between administrations.<sup>75</sup> In the absence of changes to the conciliation mechanism addressing its unpredictable length, national authorities would remain encouraged to settle possible disputes on an ad hoc basis and relying on bilateral exchanges in the social security coordination area. Finally, in *cross-border labour disruptions events*, national authorities would continue to turn to the EU level to apply for and seek technical assistance on the available funds, including the European Globalisation Adjustment Fund. Policy support would continue to take place in the soft form of the Quality Restructuring Framework.

**Policy Option 1 (support option)** would partially improve the tools available to enforcement authorities. National authorities would also benefit from an EU-level support and tentative coordination of joint inspections, coupled with tailored mutual learning activities embracing all mobility areas to reinforce administrative capacities on priority areas to be identified depending on need. Yet, EU-level oversight on information exchange tools would not significantly contribute to advancing the capacities of enforcement authorities, with a particularly negative effect in the road transport area, due to very limited cooperation and lack of support platforms. Authorities may also benefit from expert opinions in all mobility areas in case of disputes, but this would limitedly increase the incentives to use this route to settle disputes. This option would partially improve the visibility and mobilisation of EU tools available to competent authorities and stakeholders, who would increase their awareness of

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<sup>74</sup> Belgian and Dutch authorities, for example, share an established tradition of cross-border cooperation leading to a common understanding of each other's services' competences, working methods and needs. A common language is also reported to be an important success factor of cooperation (Mineva, D., *Belgium-Netherlands cooperation: Port of Antwerp case*, 2018, UDW Platform).

<sup>75</sup> In the road transport sector, it is estimated that the fiscal loss per vehicle per year for the Member State where the company should be established (where the haulier actually operates) is around €6,000. Labour-related losses per driver per year for the Member State where the drivers should be paying social contributions are in the range of €30,000-€40,000 and could yield an EU-wide annual loss of income for the Member States where the drivers should be paying social contributions in the range of €64.5-€86 million (IA to support proposal on Better access to the EU road haulage market (SWD(2017) 194 final). As an example, In March 2017, there was an investigation by the Belgian authorities into Belgian hauliers having established letterbox companies in Portugal and Slovakia. The Belgian authorities found 25 letterbox companies registered in the same address in Slovakia. The estimated unpaid social contributions in Belgium amounted to €6-€7 million (<http://www.dhnet.be/actu/belgique/perquisitions-transport-des-dizaines-d-entreprises-belges-a-la-meme-adresse-en-slovaquie-58c98319cd705cd98df5f04c>).

existing instruments and measures applied in different national frameworks and restructuring cases as inspiration for developing national policies, although no further operational support than is currently provided would be offered.

**Policy Option 2 (operational option)** would significantly reinforce the cooperation and coordination tools available to public authorities, with possibly more tangible effects on the capacity to address social fraud and manage cross-border situations. National authorities would benefit from a more centralised support for IT tools for information exchange and from more comprehensive oversight and recommendations on possible synergies and follow-up actions to address problems. A more coordinated hands-on approach may also incentivise the further digitalisation of procedures. A more structured, integrated and operational intelligence capacity would bring an added value to national enforcement authorities to the extent that it would enable to compound different data sources, identify recurrent patterns of mobility or possible fraud, and draw general lessons for the follow up, thus helping national authorities to target their cooperation and investigative action. EU-level support to joint investigations and inspections would both facilitate operations thanks to a progressive streamlining of procedures and practically complement national resources on more resource-intensive tasks, including for example translation of relevant documents. The virtue of EU-support to cross-border investigative activities has already been proven in the existing example of Eurojust, which would provide a useful model.<sup>76</sup> On the basis of common activities, mutual learning and technical assistance programmes would have a more concrete reference. In case of dispute, a revamped conciliation mechanism, which can relate to all cross-border labour mobility areas but also lead to recommendation on how to follow-up would contribute to resolve cases more timely. Finally, national authorities would benefit from technical support in complying with relevant obligations in the provision of services and information to citizens and businesses, which would contribute to reducing cases of duplication of requests and addressing gaps in specific policy domains, for instance in the road transport sector. In the event of labour disruptions with cross-border implications, authorities – but also the social partners - may have the option of requiring assistance to the EU level to help facilitating a solution in order to mitigate the social consequences of restructuring processes, most notably through the coordination of the involved stakeholders across borders and support to application for EU funding opportunities.

**Policy Option 3 (supervisory option)** would provide for more stringent cooperation rules for national authorities with possible negative impact on national capacities, especially in Member States with administrative staff shortages. The creation of physical contact points for information to citizens and companies would require, for example, dedicated infrastructures and resources, which may also duplicate existing obligations in other fields. Mandatory

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<sup>76</sup> In the context of Eurojust, joint inspection teams (JIT) jumped from 5 in 2003 to 69 in 2016. The number of coordination meeting increased from 20 in 2002 to 197 in 2014. The number of coordination centres has increased steady since their creation in 2011, with seven set up in 2012 and 2013 and ten set up in 2014. Eurojust, *Evaluation of the Eurojust Council Decision and the activities carried out by Eurojust*, Final report, 2015.

information exchange requirements, in addition to those agreed, for example, in the IMI system, may place an excessive burden on Member States, also in relation to the administrative capacities of a Member State. Likewise, the possibility for the EU level to request joint inspections and send a dedicated EU team on the ground for support may create excessive burden on Member States, and staff resources may not be sufficient to comply with multiple requests. Strengthening capacity building through a binding code for inspections may have the advantage of harmonising information exchange and inspection procedures. However, it may set an excessive constraint on national competent authorities in respecting different procedures than their own national ones, thus also reducing their degree of freedom in line with national legislation and practices. EU-level recommendations, albeit non-binding, on the management of cross-border labour disruption cases would risk going beyond the EU's role in such instances, interfering with the prerogatives of national authorities and of the social partners.

#### **6.5.2.2 Impacts on employers**

This section analyses the impact of the considered options on employers. As in section 6.5.1 impacts are direct as regards to the information and the restructuring tasks, whereas on the remaining tasks impacts can be assumed to be mostly indirect, as a consequence of more effective rule enforcement and transparency.

In the **baseline scenario**, employers would continue to rely on existing tools – however more accessible thanks to the SDG – to retrieve information on working conditions, fiscal and social security when establishing or posting workers in another Member States. To the extent that this information is not transparently provided, also as a consequence of varying quality of national sources, or is sparse across different portals, companies – especially SME's – will continue having difficulties in accessing crucial information and guidance. Tools such as IMI and EESSI will lead to improvements in administrative efficiency as regards to the verification, for example, of contested information on the social security position of a posted worker or of a company. However, improvements are not foreseen in terms of fastening delayed replies in the social security coordination area, with consequences on the possible persistence of inefficiencies. The limited scope of cross-country cooperation on intelligence and cross-border inspections will have an effect on the persistence of fraudulent forms of competition, negatively affecting the playing field, especially for cost-sensitive SME's. The weakness of conciliation procedures in case of disputes between Member States would continue to discourage this settlement mode, in favour of non-action or unilateral action, with consequence on the uncertainty for the involved company. In restructuring cases, employers will continue to rely on dedicated EU resources to buffer the social costs of retraining and job-search of redundant workers, while soft guidance is provided on a fair management and anticipation of restructuring processes.

**Policy Option 1 (support role)** would limitedly improve the information basis for business to the extent that the Your Europe Portal – in coordination with other EU networks - would

promote the tailoring of information provided by national and EU sources to companies' needs. As today, a SME seeking to understand, for example, the administrative requirements for posting in another Member State would turn to the Your Europe Portal, which would collect links to national posting websites while monitoring the accuracy of information from a business standpoint, also through feedbacks from SOLVIT or the SME feedback device. Companies would benefit from partial improvements on rule enforcement deriving from a relatively stronger EU role in the coordination of cross-border inspections and wider mutual learning programmes to strengthen national administrative capacities, including those in the road transport sector. While the EU-level's role would still be limited, some improvements may be observable for companies in terms of better efficiency of administrations to deal with problematic cross-border cases and to exert a deterrence effect on fraudulent companies. Companies will need to turn to national courts for possible disputes with national administrations. However, the possibility for one Member State to request a third-party expert opinion in case of administrative dispute may incentivise the use of a EU-level conciliation mechanism, with benefits for companies involved in such disputes in terms of certainty of results. Companies would get increased guidance on how to deal with major labour disruptions drawing on the Quality Framework for Restructuring and on available EU financial tools, without additional EU level operational intervention.

**Policy Option 2 (operational role)** would improve the quality and targeting of information for companies through wider EU-level technical support to national administrations in order to promote more uniform information standards across the Member States. Companies would gain the advantage of accessing to similar information standards for example when posting workers to different countries in Europe. For SME's, the development potential of the EURES Portal services would also provide better recruitment opportunities<sup>77</sup>. Wider information exchange between administrations, as well as more thorough mutual learning and technical assistance programmes would increase national administrative capacities and make them more effective to deal with cross-border cases involving companies. Particularly in the road transport sector, the training of enforcement authorities, coupled with a stronger EU framework for coordinated cross-border inspections would allow smoother control processes and more guarantees of fight against unfair competition practices.<sup>78</sup> A more efficient toolkit for national administrations to detect and offset fraudulent competitors would be a particular gain for companies, especially SME's, with the development of a coordinated and logistical support structure to joint inspections. In addition, EU-level support may cater for translation of documents or assist host state administrations in processing documents, thus yielding possible reductions in the administrative burden for companies undergoing checks and controls. Faster solutions of inter-state disputes would reduce the uncertainty period of involved companies, including in restructuring cases. While companies would still need to

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<sup>77</sup> Almost 90% of registered companies with EURES are SMEs according to employers' registration profile in the EURES Job Portal in the beginning of January 2018. The highest individual share have micro companies (38 %), followed by small (31%) and medium ones (19%). [EURES Portal information].

<sup>78</sup> Eurofound, Fraudulent contracting of Work: Road Haulage Sector, 2017.



turn to national courts for possible disputes with administrations, the conciliation route may become more effective and quicker in case of disputes between administrations. Companies with contested PD A1 documents, for example, may benefit from possibly shorter periods of uncertainty while two administrations verify the necessary documents. EU support in the facilitation of cross-border labour disruption events would have a direct impact on larger companies, i.e. those having a cross-border business organisation. However, SME's may also indirectly benefit from EU facilitation insofar as smaller sub-contractors of affected territories may receive information about possible EU assistance and participate in multi-stakeholder collaboration facilitated at EU level.

**Policy Option 3 (supervisory role)** would entail that information and service standards be mandatory for Member States to respect, thus ensuring that companies receive the same actual quality of information for their cross-border activities; physical national contact points would also provide an additional point of reference for employers in need for concrete assistance in mobility situations. Companies would also benefit from stricter rule enforcement through deeper administrative integration in data exchange, EU-led cross-border inspections mandated by evidence-based indications on suspicious flows and a based on common procedures. However, the specific arrangements would need to be tailored in order to avoid excessive information requests and to pursue the objective of quick decisions. The consequent increase in the deterrence effect vis-à-vis fraudulent companies would contribute to lower levels of social fraud and a more level playing field. Finally, out-of-court settlement possibilities may increase the possibilities for administrations to settle disputes between each other, although individual employers would continue, as in the previous options to rely on instruments such SOLVIT or adhere to courts in order to settle disputes with national administrations. Finally, EU-level recommendations on the management of cross-border restructuring events may risk excessively interfering on the decisions of companies, although affected companies, for example SME's in the subcontracting chain of larger companies, may benefit from the mitigating effect of wider EU intervention also supporting their recovery.

### 6.5.3 Legal impacts

Annex 11 provides a detailed presentation of the legal changes which the different options would provide. Current on-going initiatives before the co-legislators related to the final adoption of the revision of the Posting of Workers Directive and of the Regulation on Social Security Coordination, the Regulation on the Single Digital Gateway and legal acts in road transport sector would cater for changes already in the baseline scenario.

Overall, **Policy Option 1** would entail limited and targeted changes to the legal acts establishing and regulating different bodies and tools in order to redefine EU's role in relation to these. **Policy Option 2** would imply more extensive revisions for example, to the Social

Security Coordination and EURES Regulations. **Policy Option 3** would bring the most far-reaching changes including with a view to ensuring that there is sufficient legal basis for the code for labour inspections enshrined in the founding act of the new Authority, which implies a certain level of harmonisation of national rules and procedures.

#### **6.5.4 Budgetary impacts**

The impacts on EU budget have been made starting from existing activities currently managed by the Commission and whose precise cost is known. The sources for redeployment would be prerogatives (2.6 MEUR) and EaSI (16.5 MEUR). In order to calculate the additional costs from one option to another, two methodologies have been pursued, depending on the availability of data. First, some benchmarking exercise has been undertaken with other similar activities currently existing and implemented by other agencies. As an example, the cost of the joint inspections has been compared to both EUROJUST and FRONTEX joint inspections, taking into consideration common features and adjusting to respective specificities. Second, when no data were available for comparison with existing activity, the credits have been adjusted comparing the relative scope from one option to another.

The table below shows the results of this analysis at cruising speed. The experience drawn from the creation of other agencies shows that a five-year phasing in period is necessary for a body to become fully autonomous and operational. Inspiration was taken from brand new agencies (EASO (2010-2014 or five years), eu-LISA (2011-2015 or five years), EBA (2011-2014 or five years)) or major amendments in agencies' mandates (FRONTEX, EASO (2017-2020 or 4 years)). Hence, cruising speed is expected to be reached in 2023, after a phasing in pattern 10% - 20% - 60% - 80% 100% from 2019 on. More details are provided in Annex 4.

**Table 2: Operational expenditures related to tasks assessed to be borne by the EU budget**

Tasks envisaged (excluding IT & staff costs)	Baseline	Option 1 - Support role	Option 2 - Operational role	Option 3 - Supervisory role
1 - Labour mobility services for individuals and businesses	2,550,000	5,150,000	5,500,000	13,500,000
2 - Cooperation and exchange of information between national Authorities	2,700,000	2,800,000	2,900,000	3,400,000
3 - Support to joint inspections	-	2,300,000	2,300,000	5,600,000
4 - Labour market analyses and risk assessment	5,900,000	6,600,000	6,700,000	8,200,000
5 - Support to capacity building	5,600,000	9,500,000	9,500,000	10,500,000
6 - Mediation between national Authorities	-	500,000	700,000	700,000
7- Facilitation of cooperation between relevant stakeholders in the event of cross-border labour market disruptions	-	400,000	400,000	400,000
<b>Total</b>	<b>16,750,000</b>	<b>27,250,000</b>	<b>28,000,000</b>	<b>42,300,000</b>

Delivering the identified tasks would entail some budgetary impacts, the most significant of which being under **Policy Option 3** both for the EU and for national budgets. This would mostly be due to additional requirements imposed on national authorities and for new tasks and services to be provided by the new body.

**Policy Option 2** will mainly influence the EU budget with minimum requirements for national authorities. For example, as regards joint inspections it is assumed that Member States would be able to cover the related costs by retrieving unpaid taxes or contributions. Efforts to be made by national authorities to comply with the existing obligations (e.g. for the timely exchange of information or data collection) are not considered as an additional burden.

**The difference between Option 2 and Option 3** is explained by the more ambitious scope of Option 3 in general and in particular by two new elements which generate significant additional costs:

1. the creation of a European Inspection Corps assessed at ca. 3,3 MEUR having FRONTEX as a benchmark under Task No. 3
2. the establishment of a network of single physical national contact points on labour mobility, for which financial support to IT costs was assessed at ca. 300.000 EUR per Member State, or ca. 8 MEUR under Task No. 1

**Policy Option 1** will mainly influence the EU budget, while the impacts on national authorities would be limited to carrying out joint inspections. It has to be noted that the additional budget needed on Option 2 compared to Option 1 (750.000 EUR) is marginal in comparison with the effectiveness, efficiency and coherence gained under Option 2.

### **6.5.5 Impacts on fundamental rights**

The processing of personal data is implied in the tasks relating to information exchange, cooperation between inspectorates, and risk assessment functions. An adequate protection standard of personal data is guaranteed across all options through the setting of safeguards, such as limits to data exchange across borders on social security holder and/or by companies carrying out activities across borders.

The General Data Protection Regulation and Regulation (EC) 45/2001<sup>79</sup> would apply to all tasks provided for by the legislation setting up the Authority during which personal data would be processed by Member States and by EU institutions; bodies and agencies involved. In compliance with the General Data Protection Regulation, any processing of personal data would be limited to what is necessary and proportionate. Data would be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes.

All three options would build on EU and national data protection legislation without going beyond the limits set thereby<sup>80</sup>, Under Policy Option 1 the Authority's systemising of data and sharing with Member States and the Commission (Tasks 1 and 3) as well as data originating from Member States' joint inspections the Authority supports (Task 4) shall be processed in compliance with EU and national protection laws of natural persons and of commercial interests. Under Options 2 and 3, the collection of micro-data at the individual level of companies and/or workers necessary for performing a detailed risk assessment (Task 3) in the domain of posting of workers shall be carried out in compliance with EU and national protection laws of natural persons and of commercial interests. The same shall apply to data originating from Member States' joint inspections the Authority coordinates (Task 4). The operational measures to that effect shall be established after consultation of the European Data Protection Supervisor.

## **6.6. Comparison of the different Policy Options**

The comparison of three policy options is done against the core criteria of:

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<sup>79</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

<sup>80</sup> To include compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data for which the transposition period ends 25 May 2018 - two Member States have currently adopted the national legislation. A new EU Regulation for the EU Institutions and bodies to comply is in legislative procedure.

- effectiveness, i.e. meeting three specific objectives of the initiative (section 4.2),
- efficiency, the extent to which objectives can be achieved for a given cost (cost-effectiveness),<sup>81</sup>
- coherence: the coherence and contribution in meeting Union's objectives and implementing relevant policy initiatives notably in the area of single market, justice and fundamental rights, transport; migration and home affairs and in the area of employment and social policy.

The key results are presented in table 3, which includes also summary of benefits and costs (economic/social impacts) presented in the impact sections.

**Table 3: Comparison of Policy Options**

	<i>Policy Option 1 (Support)</i>	<i>Policy Option 2 (Operational)</i>	<i>Policy Option 3 (Supervisory)</i>
<b>Effectiveness (meeting objectives)</b>	0/+	++	+++
Improved transparency and access to information	0/+	++	+++
Improved operational cooperation	0/+	++	++/+++
Mediation in cross-border disputes	0/+	++	+++
<b>Efficiency</b>	0/+	++	--
<b>Coherence</b> [including fundamental rights]	+	++	++

*Notes: For the purpose of comparing the impacts of options with the baseline scenario, all criteria have equal weight and a seven-stage qualitative grading scale is used: significant positive impact/gains (+++), medium (++) , small (+), No impact (0), small negative impact/cost (-), medium (--), significant (---).*

For reasons of internal coherence and effectiveness, options are assessed in blocks. Elements of single tasks are related to one another depending on the different degrees of ambition. Singling out different elements of each task would unbalance and therefore reduce the overall coherence of the option and the effectiveness of the overall impact.

**Policy Option 2 is the preferred one.** It achieves the best balance in meeting objectives, ensuring benefits (positive impacts) for national authorities, workers and businesses without significantly increasing costs and has strong support of stakeholders. With respect to the baseline scenario, delivering the envisaged tasks obviously entails additional costs. However, these tasks appropriately balance the increased costs with material benefits in terms of cooperation, information and mediation, thus remaining proportionate to achieve the objectives. The coordination of the EURES network and the technical support provided to Member States to fulfil their legal obligation on information provisions remain in line with existing legislation while providing added value to improve the completeness and quality of

<sup>81</sup> The underlying assumption is that the budgetary impacts of governance aspects have same impact across policy options.

information to citizens and business. Cooperation is achieved through an integrated approach across different mobility areas in the direct management of EU tools for administrative information exchange, logistical support and coordination on joint cross-border inspections, and strategic design of mutual learning programmes for capacity building. The EU role in mediation is provided in a more extensive way across all mobility areas yet without going past current practices. In the event of company restructuring with cross-border implications, the EU can assume an active facilitating role, if national authorities so request, yet without interfering with national and companies' decisions. As opposed to Option 3, Option 2 combines expected effectiveness (which is lower in Option 1 but in principle greater under Option 3) with a proportionate approach, especially in terms of costs (which would double in Option 3), while also respecting subsidiarity concerns with respect to national competences, especially in the inspection and conciliation tasks.

Indeed, **Option 3** goes in several aspects beyond what is needed in the current context, especially in activities related to joint inspections and labour mobility services for individuals and businesses. Also, the possibility to launch inspections on the Authority's own initiative would limit the scope for national decision. While the idea of European Inspection Corps could be an useful enhancement of national inspection capacity, it seems disproportionate to establish such system compared to the size problem identified in the framework of this report. Similarly, the establishment of single physical national contact points or mandatory standards and requirements regarding provision of service would give less scope for national decisions and would be more disruptive to existing well-established arrangements. Conversely, Option 2 leaves sufficient scope for national decision and respects well-established national arrangements. This is ensured by providing operational support and framework for joint-activities, but leaving to the discretion of Member States of how and when act.

**Policy Option 1** does not contribute sufficiently to overcome the identified problems. Its constituent elements cater only for limited improvements across the different tasks with respect to existing actions and programmes, on which it heavily builds. While this option may be quicker to implement because of the fundamental continuity with the baseline scenario, its tasks add little value to support cooperation on enforcement and information to citizens/employers. Operational cooperation remains limited to the scope of the UDW Platform for capacity building and joint inspections, while completeness of information and services across all mobility areas cannot be fully ensured by the EURES network. Finally, the dispute-mediation role is not adequately fulfilled by experts' opinions, with a low impact on administrative effectiveness and rule enforcement for citizens and companies.

## **7. DELIVERY OPTIONS AND THEIR IMPACTS**

This section examines different delivery options for the tasks identified in the preferred option of section 6. They are fully compliant with EU competences and take into account the current role of EU bodies in the labour mobility and social security domains (see box 1 under 2.2.6),

while presenting possible changes. The considered options also comply with the non-delegation doctrine<sup>82</sup> and the EU Common Approach to decentralised agencies<sup>83</sup>.

These options respond to the problem identified in section 2.2.6, namely that operational support at EU level is insufficient to ensure effective cooperation between Member States and provide information on labour mobility in cross-border situations.

## **7.1 Delivery options**

### **7.1.1 Baseline scenario**

Under the baseline scenario, no new action is taken at EU level to address the shortcomings in the EU operational capacity in supporting Member States to enforce mobility rules. The UDW Platform represents the only body entrusted with some potential to facilitate joint inspections across borders and to offer some capacity building to national administrations. However, its legal mandate does not provide for a specific coordination role, and its scope remains limited to undeclared work issues (thus excluding, for instance, operations on most areas of social security fraud). Labour mobility analysis is coordinated by the Commission, with statistical and administrative data being treated separately across different labour mobility bodies depending on their mandate. For example, the AC manages the analysis of data concerning social security coordination including in connection to posting, as well as data on social security fraud and error, while cross-border challenges related to undeclared work are examined in the framework of the UDW Platform. Labour shortages and surpluses information, with a potential for cross-border matching, are entrusted to the EURES coordination group, on the basis of PES administrative data collected separately from the other labour mobility data. The conciliation function is exclusively carried out by the Conciliation Board within the AC and limited to some aspects of social security coordination. No comparable forum exists in the other mobility areas.

### **7.1.2 Delivery Option 1: a European Network is established coordinating existing EU labour mobility bodies and the Commission takes on new operational tasks**

Under Delivery Option 1, the Commission ensures policy coordination across different labour mobility domains by establishing an EU Network, composed of representatives from the existing EU bodies in the area of labour mobility and social security coordination. This EU Network is managed by the Commission. No new dedicated body is created and the existing EU bodies remain unchanged.

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<sup>82</sup> Case C-9/56, *Meroni & Co v High Authority* (13.06.1958).

<sup>83</sup> Joint Statement of the European Parliament, the Council of the EU and the Commission on decentralised agencies, 19 July 2012 (*Common Approach is of a political character, not a legally binding character*).

The Network meets periodically so that representatives of the existing EU bodies can share information on each other's work agenda, discuss mobility aspects of common interest, coordinate policy strategies and work plan and, possibly, undertake common initiatives across two or more committees. In this scenario, the Commission assumes a stronger coordinating and supporting role than is the case today by providing the Network's secretariat. The Commission puts forward proposals of common work between the bodies, sets the agenda of the Network's meetings and ensures follow-up of the Network's decisions downstream in the committees which it chairs. The existing bodies pursue existing activities and meetings and seek to operationalise decisions taken by the EU network under their own scope of action.

In addition to supporting this newly created Network, the Commission takes on new operational tasks as described in the preferred policy option 2 (section 6.3) to complement the work of existing EU bodies.

### **7.1.3 Delivery Option 2: a new European Labour Authority is established performing operational tasks, building on existing labour mobility bodies**

Under delivery option 2, a European Labour Authority (ELA) is established as a new EU agency, following the Common Approach on EU decentralised agencies<sup>84</sup>. It enjoys independent legal status and is managed by an Executive Director appointed and a Management Board comprising representatives from each Member State and two from the Commission, all with voting rights.

The Authority is not tripartite. This is justified by material and legal considerations. Its focus will be to support applying the Union law based on Internal Market legal basis (free movement of workers, posting, and social security coordination). The tasks are operational and relate to support cooperation between competent authorities in cross-border matters and to improve access to information and services to the public. It thus will not directly address aspects such as improvement of working environment or working conditions. The structure is aligned with the suggested Common approach on agencies too.

Compared to the previous option, in this case ELA performs technical/operational tasks that are currently not in the mandate of existing labour mobility bodies or poorly delivered and further develops them within a permanent structure for cooperation. Concretely, ELA becomes the organisation mandated to execute the tasks listed in the preferred option 2. In line with the non-delegation doctrine<sup>85</sup>, only technical/operational tasks are attributed to the Authority. All binding decisions remain with the Commission and the Member States, and are addressed in the context of existing committees and networks, as is the case today.

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<sup>84</sup> Council general approach, December 2016 (new founding regulation Eurofound confirms a tripartite management structure deviating from the EU Common Approach.



ELA introduces relevant changes to the current landscape of EU bodies in the area of labour mobility and social security coordination (see box 1 under 2.2.6) by taking over seven existing functions/bodies, namely: (i) the EURES European Coordination Office, in order to deliver the task of coordinating information, guidance and assistance services to individuals and businesses facilitating the exercise of the right to work in another EU country; (ii) the Conciliation Board from the AC, with a view on extending its scope beyond social security coordination matters to all labour mobility areas, as well as the (iii) Audit Board and the (iv) Technical Commission of the AC, due to their operational nature; (v) the European Platform to tackle Undeclared Work with a view to streamlining operational activities, notably on capacity-building, analysis and joint inspections; (vi) the Expert committee on the Posting of Workers; and (vii) the Technical Committee on the Free Movement of Workers, on the grounds of their technical nature (exchange of information between public authorities). The tasks currently performed by these bodies would be carried out by the Authority.

In addition, a Stakeholder Group with advisory functions is created within the Authority which convenes representatives of the social partners with the objective to submit opinions and advices on all the issues of competence of the Authority.

In addition, ELA would develop cooperation with the three remaining committees in the labour mobility and social security coordination field, which have a more policy steering role, namely the Administrative Commission and its Advisory Committee, and the Advisory Committee on the Free Movement of Workers. These remain and will not change with the creation of ELA. ELA liaises with them as with other decentralised agencies (in the employment field, as well as with others such as Europol) as necessary to ensure complementary of work. Likewise, the comitology Committee on Road Transport would not be affected, as it has no operational or technical competences that could be taken over, shared or duplicated by ELA.

#### **7.1.4 Delivery Option 3: a new European Labour Authority is established building on an existing EU Agency in the area of employment**

Under delivery option 3, a European Labour Authority is established through a merger with one of the existing EU agencies in the field of employment. Agencies to be considered for such a merger are Eurofound, Cedefop and EU-OSHA. The ETF, because of its third-country focus, is not deemed as a suitable basis for ELA's tasks and objectives.

The "host" agency changes its mandate to incorporate the new operational tasks of the European Labour Authority (as outlined in the preferred policy option 2, section 6.3), while continuing to deliver on its existing tasks.

The mandate of the European Labour Authority remains as presented in delivery option 2 (section 7.1.3).

### *Stakeholders' views on the possible organization of a European Labour Authority*

The input to the stakeholders' consultation did not present any concrete option on the organization of ELA. Therefore, the replies do not directly address the above-mentioned options. However, they provide important indications (see Annex 2 for more details).

Overall, stakeholders tend to agree on the fact that no organisational structure can be determined if the scope and objectives of the Authority are not clearly defined as this would risk resulting in increased administrative complexity. Moreover, there is a general consensus on the fact that the new Authority should have a role in stimulating exchange of information and operational cross-border action through coordinating the work of Member State bodies and existing EU-level bodies or mechanisms dealing with cross-border mobility. Some stakeholders proposed a strong governance structure for the ELA to the extent that is possible in respect of the principle of subsidiarity (ECPW: ES, FR, IT, RO members; ETUC; civil society organisations). For instance, the ECPW and ETUC argued that representatives from the competent Member State authorities as well as social partners should hold key positions in the governance of the ELA.

Many stakeholders suggested the need to improve the coordination of existing EU labour mobility bodies and of national authorities at the same time. It was stressed that overlaps and duplication of effort should be avoided. The overall EMCO position was that the ELA should build on existing bodies and tools so that no additional reporting requirements or costs are passed on to the Member States, with the Finnish member adding that the ELA could exist as a supporting network and not a physical agency. EPSCO and the PES Network shared the view that, absent clarification of ELA's concrete tasks, ELA could be envisaged as a network focused on solving concrete problems. Other stakeholders argued that the ELA should have a supportive rather than an authoritative role so as to safeguard the competencies of Member State authorities (UDW; SLIC; ECPW: LV, PL, PT, SE members; MISSOC CZ and LV members; FMW SE member; PEARLE; REIF, Nordic-Baltic-Polish EU Information Group).

Finally, a number of stakeholders supported stronger cooperation between existing EU bodies to address cross-border challenges without increasing their capacity or changing the way they are governed. Respect of subsidiarity is key to this position, with a considerable number of EMCO members (CZ, HU, IT, LU, NL, SE) emphasising the need not to transfer regulatory or legal competencies away from Member State authorities and to first assess the performance and objectives of current EU instruments. Similarly, many members within the AC (BE, CZ, DE, HU, LT, LV, NL, PL) and the PES Network (BE, CZ, DE, FI, HR, IE, SE, UK) argued against the risks of complexity and duplication. Synergies between existing organisations and national labour inspectorates could be enhanced, in their opinion, without establishing a dedicated body. The same view was shared by Business Europe, the Estonian ECPW member and the Czech MISSOC member.

## 7.2 Impacts of different delivery options

This section analyses the impacts of the delivery options from the point of view of the effectiveness in delivering the six tasks as defined in the preferred policy option 2 (section 6.3). It also assesses their legal and budgetary impacts.

### 7.2.1. Effectiveness

An assessment on effectiveness examines the extent to which the different options address the problem of the insufficient EU operational capacity (section 2.4.6), support the delivery of the tasks envisaged for a European Labour Authority as set out in policy option 2 (section 6.3), and ultimately contribute to meeting the stated objectives of such an authority (section 4).

In the **baseline scenario**, where no new action is taken to strengthen EU operational capacity in the field of labour mobility, the current mandates and resources of the EU bodies and the Commission do not create the conditions to appropriately deliver on the envisaged tasks. Improvements on exploiting synergies between different labour mobility and social security areas can only be delivered through the competent EU bodies, albeit limited to their area of specific competence. Existing Commission's human and material resources are in themselves not sufficient to support the new operational tasks defined under the preferred option 2, for example on *joint inspections* and *capacity-building* on a wide scale. Today the Commission coordinates or directly delivers regular reports and provides data *analysis* on various aspects of labour mobility, also in cooperation with Eurofound, the AC and the UDW Platform in their respective domains of competence. However, it would require additional resources and a clear research re-orientation to provide more integrated and in-depth assessments of specific enforcement measures or reports feeding into possible joint inspections or capacity-building programmes all across the mobility spectrum. Finally, it is not possible to deliver wider and more effective conciliation mechanisms under the current framework, which would remain limited to the social security coordination area and its AC.

**Delivery Option 1 (a European Network coordinating existing EU labour mobility bodies is established and the Commission takes on new operational tasks)** would yield some improvements in delivering the tasks in a coordinated way. On one side, the set-up of a Network to coordinate across different bodies would improve policy cooperation on cross-cutting issues, for example between the UDW Platform and the AC on letterbox companies, thus promoting an integrated approach to rule enforcement and a strategic steer to operational tasks. However, this option would bear two considerable disadvantages. First, it would create an additional layer of EU-level governance without significantly augmenting the operational capacity at national level. The EU Network would promote a common agenda, but the various bodies would still have different competences to concretely deliver. The most significant example is that of conciliation, whereby administrative disputes would remain solvable exclusively in the social security coordination area. Second, the Commission would assume a wider range of tasks, including feeding in the coordination of the EU Network and carrying

out operational tasks on its own, such as supporting inspections. Additional staff would need to be recruited. While the Commission's role would be suitably deployed in providing policy steer to the EU Network, the Commission would not be best placed to carry out operational tasks as those require specialised staff, proximity on the ground, and national powers. To sum up, while this option would help addressing policy coordination issues with an integrated policy steer, both the different competences of EU bodies and the ill placement of the Commission to carry out operational actions on the ground would reduce the effectiveness of delivering on the envisaged tasks.

**Delivery Option 2 (creation of new European Labour Authority building on EU labour mobility bodies)** would clearly assign a new operational role to the Authority in order to complement and, in many instances replace existing EU-level bodies, which are currently ill-equipped for the tasks required. By incorporating those bodies with technical and/or operational functions<sup>86</sup>, the Authority would promote a strong streamlining of the existing institutional landscape and taking up their functions to carry them out in a more integrated way. The Authority would improve the current provision of labour mobility analysis, by pooling relevant sources, with the advantages to eliminate possible duplications, to develop further the EU-level intelligence capacities and to creating synergies with other more operational tasks. The Authority would have a more solid starting position for supporting joint inspections thanks to specialised and dedicated staff, building on and reinforcing the current mandate and operational resources of the UDW Platform, which would be absorbed into the Authority. Finally, the presence of National Liaison Officers would constitute an important coordination mechanism in facilitating bilateral or multilateral information exchanges requiring the involvement of a plurality of competent authorities – e.g. labour inspectors, social security institutions - in the Member States concerned.

By way of example, the phenomenon of letterbox companies would be addressed in one forum in an integrated manner, rather than by the UDW Platform, the ECPW and possibly by the AC under different angles. Upon prior decision by the Management Board to undertake work on letterbox companies as a priority, for example, the Authority may deploy its analytical capacity to examine various policy challenges and possible responses in the fields of labour law and social security; examine the information exchange tools in order to assess their adequacy to provide relevant information; provide targeted training to national competent authorities on how to detect and to address fraudulent cases, and, upon request by Member States, coordinate concerted or joint inspections on concrete cases also on the basis of the collected expertise.

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<sup>86</sup> See section 7.1.3 - Namely, the EURES European Coordination Office, the UDW Platform, the Conciliation and Audit Boards as well as the Technical Commission of the AC, the Technical Committee on the Free Movement of Workers and the Expert Committee on the Posting of Workers.

In the case of the AC, the absorption of the Conciliation Board would allow to extend the conciliation function to other mobility areas on a permanent basis, thus also extending the range of expertise needed for opinions and fastening the procedures. The AC Audit Board and Technical Commission would be absorbed on the grounds of the technical nature of their tasks, respectively in overseeing and facilitating cross-border payments settlement of reimbursement claims between social security institutions, for example related to the use of the European Health Insurance Card, and in providing a forum to discuss technical aspects of the IT tools used in social security coordination, notably for the exchange of information (i.e. EESSI).

Effectiveness would also improve in reaching out to individuals and employers by tapping on clear economies of scale. Through the coordination of EURES, there could be more synergies between its common training programme, analyses and communication activities with similar activities carried out by other bodies. This would in particular benefit the preparation of activities for bodies which are tasked to provide other forms of information and advice to individuals and businesses, such as bodies responsible for the enforcement of posting of workers and the free movement of workers. Joint capacity building and training measures could be initiated and outreach activities to workers and employers could be expanded to cover a broader range of topics and/or a wider audience.

The Authority would interact with the remaining bodies, namely the AC and its Advisory Committee, the Advisory Committee on the Free Movement of Workers, and the comitology Committee on Road Transport providing preparatory input for their policy steering and decision making roles as necessary. These committees, together with the Stakeholder Group would also constitute the key fora for exchange with the social partners on labour mobility policy issues. The Stakeholder Group would provide a permanent EU-level forum for discussion and advice on operational matters between the Authority and the social partners embracing all labour mobility areas in an integrated way, thus also compensating for the integrated role of the social partners in the UDW Platform.

Concretely, by absorbing the Audit Board and the Technical Commission, the Authority will support the Administrative Commission decisions linked to financial and technical matters related to the application of social security coordination rules.

For example, on the financial side, the Authority would support the AC as follows:

- gather information from Member States regarding the statements of their annual accounts and prepare yearly reports on it;
- verify the method of calculating average costs by Member States to be used as a basis for reimbursements of healthcare costs of persons receiving such benefits in cross-border situations,
- facilitate the final closing of accounts in cases of disputes between Member States about reimbursement claims.

On the technical side, the Authority would support the AC on questions on electronic data exchange and data processing as follows:

- organise a forum to bring together national IT experts for matters related to the EESSI system and play a key role in the governance of this IT solution,
- provide a source of expertise and prepare reports and studies to support decisions on the future evolution of the IT tools in place, or ensuring preparatory work for new initiatives,
- supporting and promoting the use of IT tools by Member States, and explore ways in which a further digitalisation of procedures can be achieved.

The Authority would also support and feed into the work of the Administrative Commission in other areas (beyond financial and technical aspects), by providing analytical work and reporting, including support and streamlining of the statistical data collection and analysis under the framework of the Administrative Commission, for example by the further development of questionnaires in use and by preparing analytical reports based on data collected. Wherever needed for reporting purposes, a representative of the Authority would be invited to the meetings of the Administrative Commission.

The Advisory Committee for the Coordination of Social Security Systems and the Advisory Committee on the Free Movement of Workers would continue their work as they do today. Likewise, the Committee on Road Transport would continue its ordinary work as part of the EU comitology structure. However, the future Authority may feed into discussions within these fora for example, by presenting the findings of reports prepared by the Authority which are relevant to the scope of those committees.

**Delivery Option 3 (a Labour Authority building on an existing agency)** would build on the previous option 2 and at the same time proceed with the integration of the new Authority with an existing agency. This two-step-at-once approach would add up on the advantages of option 2 while seeking synergies with the expertise and management of an existing agency. However, building on an existing decentralised agency would pose a number of challenges (see also Box 1 in section 2.2.6 and Annex 13). First, none of the existing EU agencies has a cross-border specialisation, except for the ETF which, however, has a focus on the third countries of the EU neighbourhood. Moreover, labour mobility issues fall outside the scope of expertise of most agencies, with the partial exception of Eurofound. In the short-term, at least, the effectiveness of the new Authority would be low due to a necessary integration and leaning process. Second, while the tasks envisaged for this initiative have a strong operational nature, the existing agencies are more research-centred. While the ETF has an operational character, its focus on third-country ill fits with an Authority set to work on the EU. There could be some scope for integrating the risk assessment function, for instance with Eurofound or EU-OSHA. Nevertheless, this task has a broader ambition under the present initiative than it is currently carried out in the decentralised agencies, as risk assessment also entails the analysis of administrative data. Finally, from a governance viewpoint, existing agencies have

a tripartite structure which is not deemed the ideal arrangement for the new Authority, which has a strong operational mandate. The reform of the governance structure may reveal itself problematic.

This notwithstanding, the finalisation of the evaluation process of the existing Agencies may provide some input to further explore the potential of synergies and streamlining between each of the existing Agencies and the new labour Authority, with a view to possible political decisions in the longer term. By way of example, there may be scope for streamlining a number of logistical and managerial arrangements across the agencies, including the support services (e.g. by locating the ICT and the Brussels Liaison Offices in one place), the joint procurement of ICT and audio-visual equipment and services, cloud services, and putting in place common systems in the area of performance management, monitoring and evaluation. At the same time, as the new Authority will tap on existing research resources developed by the existing agencies in their respective competence area, this could lead to pooling of resources or production of joint reports on issues of common concern, for example restructuring or the respect of occupational health and safety rules in mobility situations, including posting, in the context of the risk assessment task.

### 7.2.2. Legal impacts

While the **baseline scenario** would not require any legislative change, the other delivery options, most notably **Delivery Option 2** and **Option 3** with the establishment of the European Labour Authority would require revisiting a number of EU legal acts in the areas of labour mobility and coordination of social security (a detailed inventory is included in Annex 11). **Delivery Option 3** would require additional legislative revision in order to amend the Regulation establishing the Agency on which ELA would be built.

**Delivery Option 1** would entail formalising the European Network, which could be achieved by a legal act such as a Decision of the Commission. This approach would not impact on legislation establishing the currently active committees and structures at EU level.

**Delivery Option 2** would bring about streamlining of a number of existing committees and structures by incorporating the operational tasks of these in a new European Labour Authority. The establishment of the Authority would be done by a Regulation, and several Union acts would need to be amended or repealed in the process (as set out in Annex 11) in order to achieve that it delivers on the tasks identified in the preferred Policy Option in section 6:

- taking over the management of the EURES European Coordination Office, currently ensured by the Commission (amendment of Regulation (EU) No 589/2016 establishing it);
- replacing the Technical Committee on the Free Movement of Workers (amendment of Regulation (EU) No 492/2011);

- replacing the Committee of Experts on Posting of Workers (repeal of Decision 2009/17/EC);
- replacing the Technical Commission, the Audit Board, and take over the conciliation function of the Administrative Commission for the Coordination of Social Security Systems (AC) (amendment of Regulations (EC) No 883/2004 and 987/2009);
- replacing the European Platform on tackling undeclared work (repeal of Decision (EU) 2016/344.).

**Delivery Option 3** would have similar legal impacts as Delivery Option 2, with the key difference that instead of a new Regulation needed to set up the Authority, one of the existing Agency's founding Regulations would need to be amended.

### 7.2.3. Budgetary impacts

This section presents the budgetary impact of the different delivery options proposed. It does so by assuming that the new entity carries out the tasks as defined in preferred Option 2 on tasks (see section 6).

The **baseline scenario** is presented as regards the costs of existing running EU bodies in the field of labour mobility. Logistic and reimbursements for expert meetings absorb the lion's part of budgetary costs of existing EU bodies. These costs are particularly high for the Administrative Commission, although they are motivated by the large number of participants with respect to other bodies and by the frequent number of meetings, in different formations, on a yearly basis. Bodies such as the ECPW and the technical and advisory committees on FMW meet on a more sporadic basis, and this justifies lower running costs and less Commission staff assisting them.

**Delivery Option 1** would not change the related running costs for the existing EU bodies that would be the same as in baseline. However, additional costs would ensue for the meetings of the new EU Network, including reimbursements for meetings, logistics etc. At least two meetings a year should be envisaged, thereby increasing the costs and the administrative burden accordingly. It is likely that the number of participants in meetings would increase, as each group would send a representative in other groups' meetings. In turn, this option would entail that a dedicated group of Commission officials is employed full time in the new Network's secretariat. The costs of such a secretariat are assessed as being similar to those of PES or EURES support network or ca. EUR 2 million per year.

In addition, the additional operational costs that would be incurred to carry out the new tasks would be incurred in that case by the Commission. Also, it would need to recruit additional staff and acquire related space and equipment, to run those additional tasks, just like the agency would do. These costs would range around EUR 13 million.



**Delivery Option 2** would entail budgetary costs related to ELA administration (recruitment of new staff, rental of premises - unless the host country would provide for it -, furniture and IT costs), on top of the operational costs mentioned in section 6.1.4 under the preferred option, i.e. the operational one. The extra costs for title 1 and title 2 would range around 22-24 MEUR (see table below), but would serve all other parameters taken into consideration for comparison: effectiveness, efficiency, coherence and long-term impact.

**Delivery Option 3** would likely result in a few savings due to some unique functions being not repeated (Executive Director, accountant, Head of HR department). The immediate benefit is clearly that the agency would become operational more quickly. But as the agency will grow gradually, the administrative services will have to grow proportionally to face the inevitably increasing workload. In terms of governance, it would completely destabilise our existing agencies, considering their budget is about half the size of the future one and their current staffing at best equivalent. Their field of competence is also quite different, being rather research-oriented, which means that there would be very little synergies in terms of staffing profile as well. Owing to the tripartite nature of our existing agencies, dedicated governance would need to be set up within the agency, which would increase the administrative burden and thus decrease the efficiency. Also, in the medium term, the cost of enlarging the premises to accommodate the necessary extra staff would not necessarily result in savings as compared to renting new premises.

As a result it is expected that the running costs of the agency under this governance option would be marginally reduced compared to option 2, yet still within the range of 22-24 MEUR, on top of the operational costs mentioned in section 6.1.4 under the preferred option, i.e. the operational one. These marginal gains would need to be weighed against all other criteria of effectiveness, efficiency, coherence and long-term impact.

**Table 4. Comparison of costs by delivery option**

	<b>Option 1 - Network of networks</b>	<b>Option 2 - ELA on labour bodies</b>	<b>Option 3 - ELA on existing agency</b>
1 - Labour mobility services for individuals and businesses	5,500,000	5,500,000	5,500,000
2 - Cooperation and exchange of information between national Authorities	2,900,000	2,900,000	2,900,000
3 - Support to joint inspections	2,300,000	2,300,000	2,300,000
4 - Labour market analyses and risk assessment	6,700,000	6,700,000	6,700,000
5 - Support to capacity building	9,500,000	9,500,000	9,500,000
6 - Mediation between national Authorities	700,000	700,000	700,000
7- Facilitation of cooperation between relevant stakeholders in the event of cross-border labour market disruptions	400,000	400,000	400,000
<b>Total operational costs</b>	<b>28,000,000</b>	<b>28,000,000</b>	<b>28,000,000</b>
Title 1	-	17,349,000	16,920,000
Title 2	-	5,650,000	5,650,000
DG EMPL - Staff	15,587,000	2,860,000	2,860,000
DG EMPL - Credits	800,000	400,000	400,000
<b>Total administrative costs</b>	<b>16,387,000</b>	<b>26,259,000</b>	<b>25,830,000</b>
<b>Total costs of the delivery options</b>	<b>44,387,000</b>	<b>54,259,000</b>	<b>53,830,000</b>

#### 7.4. Comparison of Delivery Options

The delivery options are assessed against the core criteria of effectiveness (section 4.2), efficiency (cost-effectiveness) and coherence (the coherence and contribution in meeting Union's objectives in the area of employment and social policy and in relation to general policy Union's budgetary and organisational objectives ). The key results of the comparison are presented in table 5.

**Table 5: Comparison of Delivery Options**

	<i><b>Delivery Option 1 (European Network)</b></i>	<i><b>Delivery Option 2 (New Agency building on existing bodies)</b></i>	<i><b>Delivery Option 3 (ELA builds on Agency)</b></i>
<b>Effectiveness (meeting objectives)</b>	+	+++	+++
Transparency and access to information	+	+++	+++
Improved operational cooperation	+	+++	+++
Mediation between Member States	0	+++	+++
<b>Efficiency</b>	0	++	+
<b>Coherence</b>	+	+++	+

*Notes: For the purpose of comparing a seven-stage qualitative grading scale is used: significant positive impact/gains (+++), medium (++), small (+), No impact (0), small negative impact/cost (-), medium (--), significant (---).*

The comparison of options shows clearly that **Delivery Option 1** cannot be considered as preferred one. Although there is some merit in considering the advantages of stronger policy coordination between EU-level bodies and of entrusting the Commission to carry out operational tasks, the positive impact would be relatively small. An additional governance layer would be created. The Commission would need additional staff and specific skills which its new role would require. In addition, carrying out operational tasks may imply the risk of driving the Commission astray from its key policy-making role. On top of it, further resources would need to be dedicated to providing an appropriate secretariat to the EU network, preparing its meetings and ensuring adequate follow up. Finally, the staff involved could not deliver on operational tasks requiring constant work on the ground in an effective way, especially on support to joint inspections between the Member States.

**Delivery Option 2** has the same degree of effectiveness in delivering the task as Option 3, since the latter builds on the former. However, Option 2 scores higher in terms of efficiency and coherence than Option 3. Both criteria have to do with the long-term impact of a possible integration between the Authority and an existing agency. Both options would require additional resources with respect to the baseline scenario and to Option 1. Therefore, they may appear less coherent with the Union's budgetary and organisational objectives, including that of progressive staff reductions in all EU bodies. However, new resources would be matched by the delivery of new tasks that are poorly done or that are not carried out at all under the current set-up.

In the short term, there might be a small advantage for the **Delivery Option 3** compared to Option 2 in terms of costs, as the new Authority would use existing infrastructures and administrative capacities. However, the new Authority would be considerably larger than existing small or medium-sized agencies<sup>87</sup>. This would imply an overhaul of human resources, with the further risks of greater management complexity and of downplaying the policy objective of the selected existing agency vis-à-vis the operational needs of the new Authority. Given the size of the bigger Agency, additional administrative and infrastructure sources would be needed, as well as additional staff to carry out operational tasks requiring specific expertise. The challenges in bringing together two structures with rather different *modus operandi* (e.g. research vs operational support, management of different stakeholders, role of the ELA in supporting co-operation in road transport) and governance structures would make the ELA be operational (in terms of delivering its tasks) faster in Option 2 rather than in Option 3. Another specific problem with Option 3 would be represented by the tripartite governance structure of all existing employment agencies which may be ill-suited to the faster responsiveness and operational flexibility required for the new Authority. As a result, it could be concluded that while there could be a potential for building the new Authority on top of an existing agency, the complementarities would not be immediate.

Taking this all into account, the **preferred Option is Delivery Option 2**. Option 2 scores best also in terms of proportionality. The problems that the initiative aims to address are related to poor cooperation, information and fragmentation in the area of labour mobility bodies. While Option 1 doesn't go far enough, the Option 3 goes beyond what is necessary. Option 3 involves an entirely different reform agenda – the one on the restructuring of agencies – into the mobility agenda. It seems disproportionate to restructure the Agencies only with a view on solving problems regarding labour mobility. In addition, although the initiative creates a financial cost for the Union and national governments, they are minimised and commensurate with the objective to be achieved. Overall, Option 2 would combine effectiveness in carrying out the tasks with the provision of an adequate operational structure at EU level to perform the needed tasks in an integrated way, while achieving efficiency gains across neighbouring mobility domains by rationalising existing bodies. Implementing this option would require more far-reaching institutional changes, which would be accompanied by some degree of resource optimisation.

## **8. PREFERRED POLICY AND DELIVERY OPTION**

### **8.1 Policy Option 2 (Operational Option), and Delivery Option 2 (New European Labour Authority building on existing EU bodies)**

The preferred option is the establishment of a European Labour Authority with operational role (Policy Option 2) building on EU bodies in the area of labour mobility (Delivery Option

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<sup>87</sup> The staff of existing agencies ranges between 40 and 90 establishment posts and budgets up to EUR 20 million. The new Authority would require a staff 113 posts and a budget of around EUR 50 million (see section 7.2).

2).<sup>88</sup> This new Authority will also develop enhanced cooperation with existing agencies in the employment area ensuring complementarities and adapting to their future evolution.

The ‘operational’ Option 2 envisages pro-active support to information and services to citizens and employers, cooperation, joint inspections, analysis and risk assessment, information exchange, and capacity building, while facilitating the adoption of decisions as regards conciliation mechanisms and cooperation in case of cross-border labour disruptions. Such mechanisms are extended to all core labour mobility areas including the road transport sector in line with the institutional framework in these fields.

The combined preferred option achieves the best balance in meeting objectives, ensuring benefits (positive impacts) for national authorities, workers and businesses while the costs are commensurate with the objectives. It is respecting well the proportionality and subsidiarity principle as it leaves sufficient scope for national decision, and respects well-established national arrangements. This is ensured by the new body providing operational support and framework for joint-activities, but leaving to the discretion of Member States of how and when they use it, and with its focus on cross-border labour mobility issues where Member States alone cannot achieve objectives satisfactorily as it was demonstrated in the problem section.<sup>89</sup> The preferred option combines effectiveness in delivering operational tasks by complementing but also rationalising the current set-up of bodies on labour mobility and social security coordination, thus addressing two important concerns raised by relevant stakeholders.

The preference for Option 2 does not rule out future decisions to build the new Authority on an existing decentralised Agency (as presented in Option 3). However, such decision needs to be informed by the completion of the evaluation process of these agencies which will provide some input to the possible synergies and risks of building the Labour Authority on one of the existing Agencies.

**The benefits for individuals**, especially the mobile workers, will be better protection and reduced exposure to the risk of fraud and abuse, especially in the road transport sector. improved legal clarity and predictability of procedures. Further benefits arrive from improved possibilities to exercise their rights to the freedom of movement.

**Business, especially SMEs**, will benefit from more fair competition and equal playing field and from reduced uncertainty about their situation, especially relevant in relation to posting of workers. That together with better information can facilitate their decisions to engage in cross-border activities, including recruitment.

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<sup>88</sup> Explanation on the selection of preferred option was provided earlier and is not repeated here. Please, see the relevant section (section 7.2.for Policy Option) and section 8.3 (for Governance).

<sup>89</sup> See also section 2, and 7.2. .

**Benefits for national authorities** are their reinforced cooperation and control capacities for better rule enforcement. Benefits of structured cooperation are expected to increase over the time as more national authorities decide to use the new operational capacity.

The wider macro-economic benefits of the initiative is improved labour market functioning and improved prospects for individuals and companies to expand their cross-border activities with positive impacts for productivity, employment and GDP.

At cruising speed, the sum of the costs relating to Title 1 (Staff) and Title 2 (Infrastructure and operating costs) would range from EUR 22 to 24 million per year, depending on the category of staff hired (temporary agents, contract agents, external providers) and the premises chosen (number of meeting rooms, security features, potential share of costs with other tenants for the reception, etc.). In terms of staff costs and other administrative expenses (building, movable property, telecommunications, etc.),<sup>90</sup> the seat of the agency will be a determining factor. As the seat is not known at this stage, the costs have been calculated on the assumption that the agency would be Brussels-based (no correction coefficient applied to salaries and real estate market based on Commission's buildings).

The assessed salary costs under Title 1 comprise the Establishment Posts as presented below (69 posts at cruising speed) as well as 60 Seconded National Experts and 15 contract agents. Other administrative expenses under Title 2 were assessed based on the benchmarking with decentralised agencies that have similarly operational nature of tasks (e.g. Frontex, EFCA) and are of a similar size (ca. 100 staff (see Annex 10 for more details). As building costs are a significant part of Title 2, comparison has been made with agencies whose staff numbers are similar, i.e. GSA, ERA, EBA, ESMA and eu-LISA and an average price has been calculated on the basis of their annual (rental) costs. Detailed explanations per item for Title 1 and Title 2 are available in Annex 4. The number of staff has been made with a view to ensure a proportionate balance between operational activities and administrative support.

**Table 6: Staff needed for ELA (Policy Option 2 "Operational Option")**

	Start-up phase				cruising speed
	2019	2020	2021	2022	2023
Cumulative EP posts	16	33	50	69	69

**The cooperation of ELA with other agencies** is expected to have minor financial and staff impacts to ensure coordination based on the available practice from existing agencies, such as the network of DG HOME agencies (EUROPOL, CEPOL, FRONTEX, eu-LISA, EASO and EMCDDA). The costs are rather linked to mission costs. All these agencies are well equipped

<sup>90</sup> Typically foreseen under the Title 2 of a decentralised agency.

with videoconference material which allows for having efficient communication within the network.

## **8.2 REFIT (simplification and improved efficiency)**

The proposal to establish ELA will transform EU institutional landscape in the area of cross-border mobility. By reorganising the existing activities and processes the foreseen changes in term of simplification and streamlining will allow to deliver more and better quality results compared to today, when committees work in parallel and in silos. The impacts are not quantified because it was not possible to gather the needed data within the time constraints under which the initiative was prepared. Key direct impacts will be felt by national competent authorities, but the revised system will be beneficial also for individuals and companies.

**The expected key simplifications and improvements for national authorities** are savings in terms of time and resources in exchanging information, coordinating activities and in providing information. The Authority will not only facilitate the identification of relevant counterparts in other Member States, but would also ensure that information is exchanged in time and is complete. This would reduce the need to conclude bilateral and multilateral agreements that are currently needed in the area of posting. Model agreements and coordination meetings for joint inspections - which are currently not available, notably in carrying out concerted checks in road transport - would reduce organisation and coordination efforts of Member States. Revamped conciliation mechanism (shorter decision making cycle deadlines; enhanced support, including translations) would improve the possibilities for national authorities to solve their disputes in the area of social security coordination faster than before, and provide an opportunity to solve disputes also in other areas.

**Reorganisation of the existing committees will lead to simplification.** Seven existing EU bodies will be replaced by ELA that will streamline and integrate the technical and operational tasks of the existing EU bodies into a permanent framework (see section 7.1.3), while the EU bodies with policy-shaping and legal tasks powers will stay in place. This change would simplify the institutional set-up as there would be a clear division of tasks (technical/operational vs policy shaping), thereby making communication and interaction easier, but also allowing the bodies to focus on their key tasks. E.g. integrating the conciliation function of the AC in the Authority would allow this committee to focus on its key role of discussing legal matters of implementation and further development of the social security coordination rules.

**The establishment of the Authority would create potential for streamlining and improving efficiency due to the pooling of resources and of operational tasks.** There is a streamlining potential from coordinating tasks in relation to training and capacity building activities currently undertaken by different EU bodies. Training curriculum can be enriched to take into account broader range of cross-cutting aspects and it can be more easily offered to a broader and more diversified group of participants. This helps to bring economies of scale in

relation to developing training curriculum and encourage creation of new ones. As an example, the Authority could ensure that the mutual learning activities on undeclared work in the context of the UDW Platform would become more accessible to others or could more easily move away from the current focus on undeclared work only to other areas.

In addition, the Authority will create synergies and thereby improve the quality of discussions and policy outcomes. For instance, even if the fight against letterbox companies was on the agenda of the UDW Platform, it couldn't act actively against it due to the lack of operational instruments<sup>91</sup> and because of the separation of tools for exchanging information. This would be now possible with the Authority bringing tasks together under one operational body.

The Authority as an agency would be able to benefit from sharing services with other decentralised Agencies joined in the inter-agency network. The network provides a catalogue of almost 900 shared services available to members of the network (e.g. in the IT, HR, procurement).<sup>92</sup> Authority will be organising quite a number of various events (e.g. trainings, mutual learning events, operational meetings to support joint inspection or dispute settlements). This would allow it to achieve economies of scale in logistic or support services (e.g. lower prices for renting meeting rooms, reducing reimbursement costs by providing all-inclusive packages<sup>93</sup>). In anticipating the number of events, the Agencies' infrastructural resources could be selected to cater for this (i.e. availability of own meeting rooms to avoid renting).

The Authority activities will ensure complementarities and avoid overlaps with the information tools/policies and problems-solving services for individuals and employers (e.g. Single Digital Gateway; SOLVIT, Your Europe, Your Europe Advice, Enterprise Europe Network). ELA will complement them, contribute to their improved use, but also benefit from them. This will be done by Authority managing the EURES, which is included in SDG. The Authority assistance would help integrate sector-specific guidance, for example on posting or road transport. Further to that, the Authority will provide technical support to Member State to facilitate their compliance with relevant obligations laid down in the proposal on Single Digital Gateway, notably on the quality of the information provided. This support will streamline national efforts and help national authorities to work in more focused way. Finally, the Authority will use information gathered via Your Europe Advice, Solvit or Enterprise Europe Network to inform its capacity building activities and training for national administration staff to ensure, that they convey relevant and up-to date information to individuals and employers.

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<sup>92</sup> The evaluation of four agencies shows in general positive experience of agencies in using those services, e.g. in IT.

<sup>93</sup> The evaluation of four EMPL agencies showed that Eurofound was able to cut the overall event costs by €72,000 by opting-in for "all-inclusive" policy meaning that each delegate was entitled to an economy flight, hotel accommodation and catering (the latter two items in line with the ceiling in place for Ireland).



The Authority will improve situation for individuals and companies, including SMEs, to undertake cross-border action. The initiative improves the transparency, information and services provided to the public about rights, obligations and opportunities related to cross-border labour mobility, thus simplifying access to such information and services for individuals and companies. The Authority support in catering for translations of documents and assisting host state administrations in processing documents could reduce the employers burden related to that.

The Authority will coordinate closely with the four existing agencies in the employment area, notwithstanding possible decisions on future streamlining of agencies. On analytical tasks of common concern, as well as on complementary aspects to labour mobility rules, such as skills or occupational health and safety, the Authority is set to exchange information and possibly program joint work with the other competent agencies.

## **9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?**

### **9.1. Monitoring**

With the new body changing the institutional set-up of the Union, its functions will have to be closely assessed and possibly adapted to the situation on the ground. Providing for a robust monitoring and evaluation mechanism is therefore crucial to ensure that the envisaged beneficial effects of the Regulation materialise in practice.

The following monitoring framework would inform on progress towards achieving the objectives of the Regulation and will be subject to further adjustment according to the final legal and implementation requirements and timeline. To avoid putting additional administrative burden due to the collection of data or information for the purpose of monitoring, the proposed monitoring framework rely as far as possible on established data sources, especially the Annual Activity Report of the new body. The below table provides an overview of the operational objectives of the Regulation and their corresponding monitoring indicators. Being a horizontal objective, progress in meeting the objective of streamlining and rationalisation will be assessed in the context of the evaluation, in particular when assessing efficiency.

**Table 7. Indicators on progress towards objectives**

Specific objectives	Operational objectives	Indicators	Source of data
<b>Improving access to information and services for individuals and employers</b>	To enhance comprehensiveness and quality of labour mobility service	Stakeholders' satisfaction with the clarity and completeness of the information on rights and obligations in the area of cross-border labour mobility  Share of vacancies posted on EURES as a proportion of national vacancies  Number of persons who found a job in another country with the help of a EURES	Annual Activity Report (new available with the establishment of the Authority)  Single market scoreboard (existing)  Eures statistics (existing)  Single Digital Gateway (user feedback and statistics) (in development)
<b>Strengthening operational cooperation between authorities</b>	To enhance effectiveness and efficiency of information exchange between national authorities	Share of information exchanged within deadlines  Stakeholders' opinion on administrative burden related to information exchange	Annual Activity Report (new available with the establishment of the Authority)  Single Market Scoreboard (existing)  Stakeholders feedback (new)
	To provide relevant analytical and technical support to national authorities for cross-border co-operation	(Level of) Stakeholders' satisfaction with the timeliness and completeness of monitoring and statistical data  Stakeholders' satisfaction with the mutual learning assistance  Stakeholders' satisfaction with the analysis provided  Stakeholders' satisfaction with the technical support	Annual Activity Report (new available with the establishment of the Authority)  Single Market Scoreboard (existing)  Stakeholders feedback (new)
	To enhance up-take of joint inspections	Number of joint inspections (per area under ELA remit).  Number of trainings per joint inspection.  Number of countries participating in joint inspections  Benefits generated by joint inspections (e.g. improved workers situation, collection of social security contributions).  Cases on cross-border fines, notification of fines, recovered tax and social security contributions  Costs of joint inspections	Annual activity report (new available with the establishment of the Authority)  Labour inspection reports, including figures and cases on cross-border fines, notification of fines, recovered tax and social security contributions  UDW platform annual report (existing)  Stakeholders feedback (new)  Evaluation report of joint inspections (new available with the establishment of the Authority)
<b>Mediating and facilitating a solution in cases of disputes</b>	To enhance effectiveness of administrative dispute settlements	Time needed to settle disputes  Increase in number of areas under ELA remit for which dispute settlement is used  Share of implemented/respected	Annual activity report (new available with the establishment of the Authority)  Stakeholders feedback (new)

		decision	
	To facilitating cooperation in cases of labour market disruptions affecting several Member States	Number of cases where the Authority is required to intervene Number of application for the use of the European Globalisation Adjustment Fund.	Annual activity report (new available with the establishment of the Authority)

While the preceding analysis (section 2) suggests that the problems are likely to remain without an EU action, it is difficult to foresee how situation would evolve in relation to all above indicators and to establish the benchmarks for success. Having said that some elements of success could be outlined for some of the indicators, subject to further development in line with the guidelines on “Performance indicators in EU agencies”<sup>94</sup> once the Authority and its mandate is confirmed. Stakeholders consultation demonstrated dissatisfaction with the way information is exchanged today. Thus high share of information exchanged within deadlines (i.e. timeliness of action) and high share of stakeholders considering that the burden related to exchange was reduced could be considered as a success. In the area of joint inspections success could be differentiated between road transport and other areas. A target could be set for the concerted checks in the road transport in terms of how many should be carried out and in terms of costs. Member States are obliged to carry out at least 6 checks per year, leading to minimum 90 checks per year, while currently only half of Member States are actually doing them. Thus, success could be defined as carrying out the minimum required number of checks and reducing the costs of the inspections, taking costs of current inspections that are assisted by EuroControle Route-voluntary network of inspection authorities as a benchmark. In other areas, success would be uptake of the instrument given the early stage of implementation of a new function, i.e. increase in the number of inspection and Member State using it, especially those that have previously established bilateral agreements. Similar considerations apply to the enhancement of dispute settlement. In the area of risk analysis and capacity building one dimension is that users find outputs and services relevant and of good quality. Thus, the success would be high level of their satisfaction. This could be compared to the satisfaction levels in areas where training and mutual learning programmes were already provided (e.g. Eures, EESI or UDW Platform). Other dimension, particularly for risk assessment could be to what extent the analysis helped to increase the number of joint-inspection proposed by the Authority and accepted by the Member States. In the area of information, performance indicators should build on the performance measurement system for EURES<sup>95</sup> and proposed performance system for the SDG.<sup>96</sup>

<sup>94</sup> Developed by the Working Group on Performance measurement of the Performance Development Network of the EU Agencies.

<sup>95</sup> Commission Implementing Decision (EU) 2018/170 of 2 February 2018 on uniform detailed specifications for data collection and analysis to monitor and evaluate the functioning of the EURES network (Text with EEA relevance.)

<sup>96</sup> Presented in section on monitoring and evaluation of the IA accompanying the proposal for regulation, SWD (2017) 231 final, PART 1/3.

For measuring the performance of the Director/Head of Agency in achieving operational objectives (as reflected in the Agency's Programming document<sup>97</sup>) and in managing the financial and human resources allocated for this purpose, key performance indicators should follow the respective Commission Guidelines.<sup>98</sup>

Progress will be assessed by using the regular reports by the new body (Annual Activity Report<sup>99</sup>, Multiannual and annual work programme), reports on EURES activity (art 33), Single Market Scoreboard<sup>100</sup>, Single Digital Gateway, PES network and UDW Platform.

The Annual mobility reports under EURES regulation<sup>101</sup>, will serve to track general mobility flows and the policy background of the European Social Pillar and the Social scoreboard established to monitor progress on the ground will serve to track general employment/labour market conditions and societal trends and performances across countries. With further evidence provided through the annual review on Employment and Social Developments in Europe (ESDE), the Commission will be able to produce reporting on improved compliance and enforcement.

Eurostat (EU Labour Force Survey) and National labour market data could also be used to monitor the impact of a Regulation.

The Commission might also run Eurobarometer surveys and/or promote independent studies to survey specific aspects of the Regulation along the policy or contextual needs and where those aspects are requesting dedicated research.

## **9.2. Evaluation**

The Commission will evaluate the Regulation 5 years after the Regulation enters into force in line with the requirements of Financial Regulation<sup>102</sup> and Better regulation Guidelines.<sup>103</sup>

The evaluation will include an assessment of whether the objectives of the Regulation have been reached. The assessment will build on the information described in this Impact Assessment and will take into account available monitoring data. Additional information and views will be collected by a public consultation and/or specific stakeholder consultation

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<sup>97</sup> Article 32 of the Framework Financial Regulation.

<sup>98</sup> Guidelines on key performance indicators (KPI) for directors of EU decentralised agencies, SWD (2015) 62 final.

<sup>99</sup> Regulation (EU) No. 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No. 966/2012 of the European Parliament and of the Council, Financial Regulation 1605/2002.

<sup>100</sup> [http://ec.europa.eu/internal\\_market/scoreboard/index\\_en.htm](http://ec.europa.eu/internal_market/scoreboard/index_en.htm)

<sup>101</sup> Regulation (EU) 2016/589 of the European Parliament and of the Council of 13 April 2016 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets, and amending Regulations (EU) No 492/2011 and (EU) No 1296/2013.

<sup>102</sup> Regulation (EU) No. 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No. 966/2012 of the European Parliament and of the Council, Financial Regulation 1605/2002.

<sup>103</sup> Better Regulation Guidelines, SWD (2017) 350.

and/or a survey of stakeholders to review the impact of the Regulation on the different categories of stakeholders, especially on national authorities.

A particular focus will be cast on the evaluation criteria required by the Better Regulation guidelines, i.e. effectiveness, efficiency, coherence, EU value added and relevance. The periodic evaluation of the Authority will also allow exploring further synergies and streamlining opportunities with the four Agencies active in the area of employment and social policy.

Evaluation of the Regulation will be also informed by other relevant studies and future evaluations of legislation in line with legal requirements in the area of cross-border mobility (e.g. Enforcement Directive, Posting of Workers, Eures) and in related areas (e.g. Single Digital Gateway, Solvit action plan, IMI).

The scope of the Authority could be extended to additional areas following evaluation results.

## ANNEX 1: PROCEDURAL INFORMATION

- **Lead DG, Decide Planning/CWP references**

The lead DG for this initiative is DG EMPL. This impact assessment report concerns initiative with Decide planning reference 2017/EMPL/1746 - "European Labour Authority."

Foreseen adoption date: 13 March 2018.

- **Organisation and timing**

A Commission inter-service steering group (ISG), jointly chaired by the Secretariat-General was established in November 2017 for preparing this initiative.

The following DGs and services were invited to the inter-service group included: SG, ECFIN, TAXUD, SANTE, HOME, CAB-JUNCKER, HR, OLAF, ESTAT, EAC, BUDG, GROW, JUST, SJ, DIGIT, CNECT, FISMA, COMM, MOVE,

The ISG met 2 times in the period from November 2017 to January 2018. Additional bilateral meetings as well more intensive cooperation was organised with the DGs most concerned by the initiative (notably GROW, MOVE, DIGIT, COMM) as well as with DGs that manage Agencies of similar operational nature (notably HOME, JUST, FISMA).

- **Consultation of the RSB**

The Regulatory Scrutiny Board ("RSB") was consulted on 7 February 2018. The RSB issued a negative opinion. A second version of the document was submitted on 15 February 2018. The tables below shows how this report takes into account the RSB comments.

<b>1<sup>st</sup> RSB Opinion</b> (copy of the RSB comments from the opinion)	<b>How and where comments have been addressed</b>
1. The report does not clearly define or explain the scope of the initiative, nor does it develop the rationale for it.	The thematic and personal scope has been frontloaded in the introduction (p.7) and explained more extensively in section 2.4 (pages 23), including the rationale for it.
2. The analysis does not sufficiently explain how it arrived at the preferred option and why it discarded some measures of other options.	The introduction to Section 6 (p. 27-28) explains the rationale for the presentation of the policy options in blocks of inter-linked elements and their cumulative nature.  A more thorough explanation of the comparison and of the preferred option has been added in Section 6.6 (pp. 42-43).
(3) The report does not differentiate between	Sections 6.1 to 6.4 (pp. 29-31) clarify

responsibilities transferred to the ELA and new competence for enforcement. It does not adequately show how creating an ELA would result in synergies without losing the specificities of existing procedures and bodies.	<p>which of the proposed new tasks build on tasks currently performed by committees/networks and which would be entirely new.</p> <p>As regards the Delivery Options (Section 7, p. 43 and ff), the procedures and bodies continue to operate and ELA ensures complementarities.</p>
(4) The report does not sufficiently explain what governance provisions would apply to the ELA or the High Level Labour Council (HLLC). The report does not explain the relationship between the ELA and the HLLC.	This option is not presented in this version as a consequence of a different approach (based on delivery and not on governance).
(5) The report does not sufficiently present the views of stakeholders.	<p>More complete presentations of the stakeholders' views have been presented under each policy driver (section 2.2.1, p. 11-12; section 2.2.2, p. 13; section 2.2.3, p.15; section 2.2.4, page 17; section 2.2.5, p. 18; section 2.2.6, p. 21) and more thoroughly in a dedicated section at p. 30-31.</p> <p>Stakeholders' views on the possible set-up of an Authority are presented in a dedicated paragraph in section 7.1.4., p. 45-46.</p> <p>Annex 2 provides an overview of the stakeholders' consultation.</p>
(6) The report does not provide robust cost estimates of the ELA.	<p>More budget and technical details have been added in the Section 6.5.4 (pp. 39-40) as regards to the costs of the tasks; Section 7.2.3 (pp 48 ff) with details on the costs of delivery options; and Section 8.1 (p. 56) with details on the preferred options.</p> <p>Further technical details are laid down in Annex 4.</p>

<b>2nd RSB Opinion (copy of the RSB comments from the opinion)</b>	<b>How and where comments have been addressed</b>
1. The report does not clearly address the risks of complexity and potential duplication associated with the creation of an ELA while maintaining the 6 bodies in the area of labour mobility and social security coordination.	Insofar as still relevant to the proposal, an explanation has been added to sections 7.2.1 ("Effectiveness", p. 49-50) and 7.2.2 ("Legal impact", pp. 51-52).
2. While an evaluation of existing decentralised Agencies in the employment field is ongoing, the report does not take into account the potential streamlining and increased synergies between the existing Agencies and the ELA.	The Report explains in depth the possible risks associated to streamlining the existing Agencies and the ELA (sections 2.2.6, Box 1, p. 20, and 7.2.1, p. 50-51) and includes a preliminary analysis of possible synergies in section 7.2.1, p. 50-51.
(3) The report does not provide for robust budget estimates. It does not clearly explain the aggregated total costs associated with the preferred combination of tasks and structure for the ELA.	The report presents the necessary estimates in part 7.2.3 (p. 52-54), including breakdowns by task and by delivery option with updates. Annex 4 provides a complete explanation of the estimation methods adopted.

#### • Evidence, sources and quality

The Commission used various existing or forthcoming sources as quoted in the impact assessment, its internal analytical capacities including for the assessment of budgetary impacts and drew on its existing contracts to gather evidence that was used to support this impact assessment. This included:

- Ad hoc request to the FreSsco experts from all Member States on the capacities of labour inspectorates to deal with cross-border cases
- Ad-hoc request under the ICF contract for UDW Platform support services to develop 3 case studies on the basis of qualitative interviews on resources for cross-border cooperation in the enforcement area.

The Commission awarded a contract to the ICF for the analysis of replies to targeted consultation and to open public consultation (Tender for VT/2017/056 "Analysis and Summary of the replies received in the framework of the public consultation for the establishment of a European Labour Authority and the introduction of a European Social Security Number").



## **ANNEX 2: STAKEHOLDER CONSULTATION**

In his 2017 State of the European Union address, the European Commission's President Jean-Claude Juncker proposed that a European Labour Authority (ELA) be established to strengthen cooperation between labour market authorities at all levels and better manage cross-border situations. In line with the Commission's Work Programme, the Commission is scheduled to present a proposal in the first semester of 2018.

This report analyses and summarises the replies to the open public consultation (OPC) and the targeted consultation of stakeholders on the establishment of an ELA.

Description of consultation activities carried out:

A 6-week internet-based OPC was launched by the European Commission on 27 November 2017 in order to explore the views of the citizens and stakeholders on the establishment of a European Labour Authority (ELA). Alongside, the Commission had launched a targeted consultation to stakeholders that had begun on 6 November 2017 with a view to collect views and positions from practitioners, including Member States, public authorities and social partners. The consultation process was concluded on 7 January 2018.

An additional targeted stakeholder consultation in the transport sector was launched on 12 January 2018 and closed on 2 February 2018.

### **1. Overview of the consultation process**

#### *Open public consultation*

A total of 8,809 replies to the web-based OPC were received. While there were only 389 unique replies, a campaign led by the European Trade Union Confederation (ETUC) resulted in 8,420 identical replies in favour of the establishment of ELA. These responses were excluded from the OPC analysis as they would have otherwise skewed the results towards the answers predefined by the campaign. The opinion brought forward by the campaign is taken into account in the analysis of the open-ended questions.

The majority of respondents overall (77%) were located in Austria and Germany. Among the 389 respondents who submitted a non-campaign reply, the highest number of unique replies came from the United Kingdom (61), followed by Belgium and Germany (both 24).

Most respondents indicated being in employment. Among non-campaign respondents, 49% had either current or past mobility experience compared to 26% of campaign respondents.

Few responses were received on behalf of organisations, based on what could be established from the data. Social partners more frequently took part in the OPC than other types of organisation.

## *Targeted Consultation*

Position papers submitted by organisations taking part in the consultation, including in the transport sector, as well as the minutes of stakeholder hearings on the ELA were reviewed and analysed.

## **2. Analysis of the consultation responses**

### **2.1. Challenges as regards EU labour mobility**

The European Commission bases its proposals for a ELA on two challenges as regards EU labour mobility:

- Inadequate cooperation between national enforcement authorities
- Incomplete or sparse information on labour mobility rights and obligations

### *Results from the open public consultation*

About two thirds of respondents agree or strongly agree that the existing cooperation between national authorities is not enough for an effective employment and social security policy implementation in the EU involving cross-border situations (0).

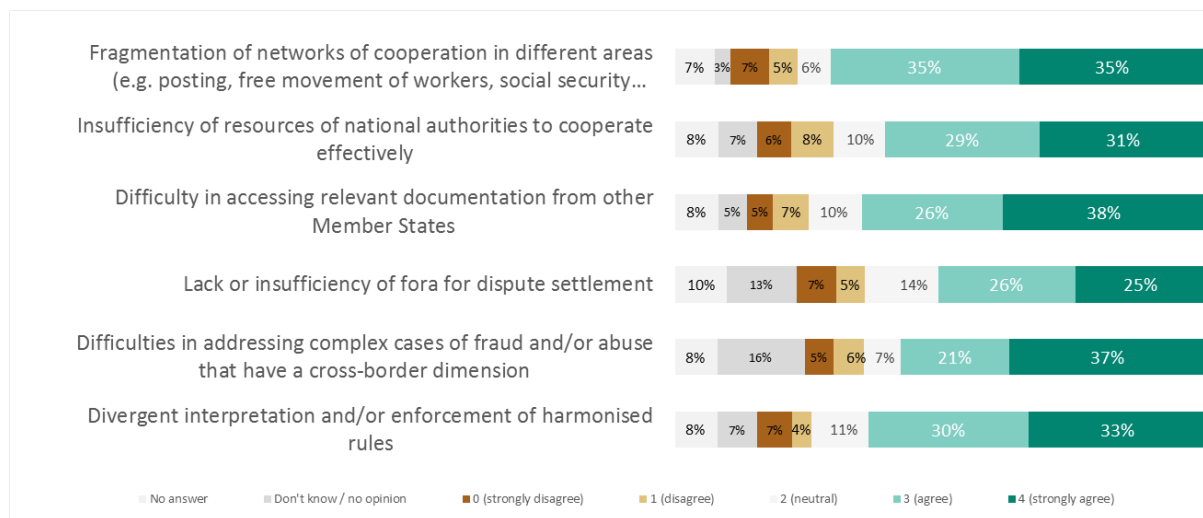
**Q1. Please indicate the extent to which you agree or disagree that existing cooperation between national authorities is insufficient to ensure the effective implementation of EU employment and social security rules in cross-border situations**

	No answer	Don't know / cannot answer	Strongly disagree	Disagree	Neutral	Agree	Strongly Agree	N
Q1								
%	7%	2%	9%	7%	7%	33%	34%	389

*Source: ICF based on responses to the OPC for the establishment of a European Labour Authority and of a European Social Security Number. Answers of respondents from the Campaign are excluded.*

A clear majority of OPC respondents agreed that the issues listed by the Commission were as many challenges to effective cooperation between national authorities on EU cross-border mobility 0.

**Q2. Please indicate the extent to which you agree or disagree that the elements presented in the figure below constitute challenges to effective cooperation between national authorities on EU cross-border mobility:**



*Source: ICF based on responses to the OPC for the establishment of a European Labour Authority. Answers of respondents from the Campaign are excluded. Percentages are calculated on the total number of responses (N=389).*

A number of respondents raised concerns about the lack of common EU standards for cross-border cooperation on employment and social security matters and the administrative costs that this brings about. This is also combined with the lack of information, unclear communication and lack of transparency as well as unclear rules.

The sample sizes were too small to detect statistically differences in responses by organisation type, country, or labour status. This was mostly due to the high number of nonresponses for these categorical variables.

#### *Results from the targeted consultation*

Most of the responding stakeholders agreed with the analysis presented in the note on ELA of the most significant challenges linked to improving cooperation at EU level on cross-border employment and social security matters<sup>104</sup>.

The challenge most frequently mentioned by the various contributors relates to the effectiveness of information exchange. Most EMCO members, EPSCO as well as certain members within the ECPW (EE, ES, FR, LV, PL) and MISSOC (AT, IT) highlighted inefficiencies in terms of information exchange and access to information by relevant

<sup>104</sup> Question 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?"

Member State authorities as a major cause of social security fraud and abuses and a major challenge to overcome.

Along with issues around information exchange, many of the abovementioned stakeholders highlighted that differences in administrative capacity between the Member States act as a barrier to effective cooperation. This was especially the case among MISSOC members overall.

A number of stakeholders (French government; AC: BE member; EFBWW; ECPW: ES FR, IT, LV, PL members; PES Network; SLIC; UDW; ETUC and affiliates) highlighted that issues around cooperation and coordination between Member State authorities are primarily caused by specific and complex national administrative landscapes and the lack of streamlined procedures, often with implications for institutional capacity. In its common position, the PES Network added that challenges on cross-border mobility and social security coordination remain as systems in the EU are not harmonised arguing that the ELA could address issues around capacity building which prevents effective cross-border cooperation. The UDW highlighted the fragmentation of efforts to address cross-border mobility issues, with many different tools for cooperation existing on EU level; in addition, there are many different bilateral agreements between Member States.

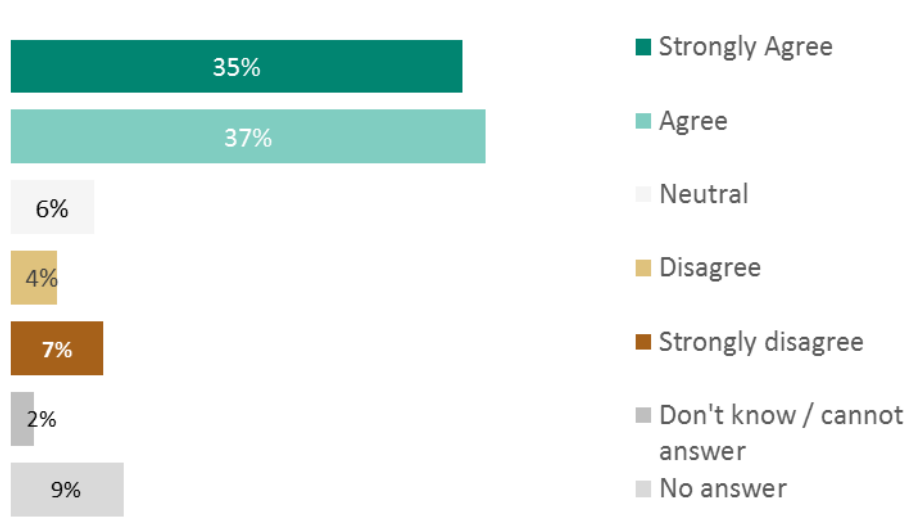
Weak or absent mechanisms for joint cross-border investigation and for dispute settlement was also a challenge mentioned by certain stakeholders, albeit less frequently. This view was shared among the European Parliament's Employment and Social Affairs Committee, the UDW, PES Network, the ILO and the Nordic-Baltic-Polish EU Information Group. Social partners overall also highlighted the absence of a dispute resolution forum as a challenge for resolving litigation on cross border cases. While employer organisations such as Business Europe were overall sceptical of the idea of giving the ELA a dispute resolution function due to potential interference with the ECJ, trade unions such as ETUC were more in favour of the idea so long as the ELA provided out-of-court solutions.

## **2.2. Incomplete or sparse information on labour mobility rights and obligations**

### *Results of the open public consultation*

A vast majority of the respondents agreed that insufficient access to information and transparency on cross-border mobility rules is a problem for individuals and businesses 0.

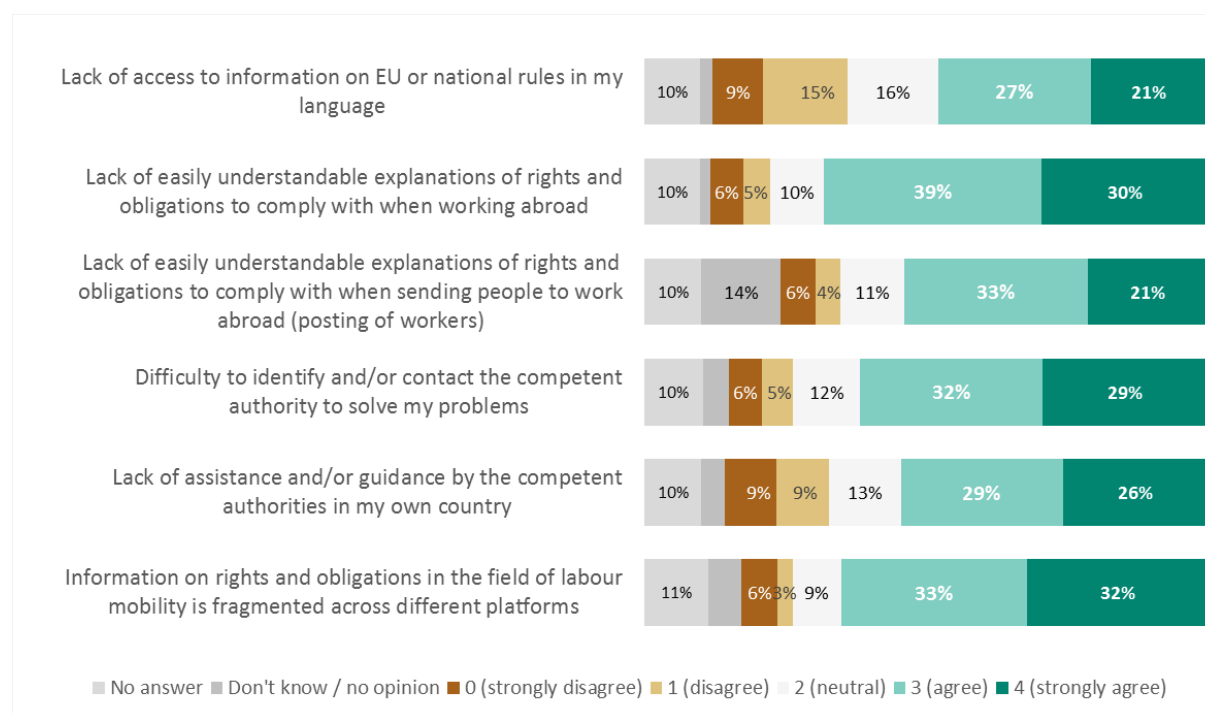
**Q3. Please indicate the extent to which you agree or disagree that insufficient access to information and transparency on cross-border mobility rules is a problem for individuals and businesses:**



*Source: ICF based on responses to the OPC for the establishment of a European Labour Authority. Answers of respondents from the Campaign are excluded. Percentages are calculated on the total number of responses (N=389).*

Again, a clear majority of OPC respondents agreed with the challenges identified by the Commission to fair and easy access to information and transparency of labour mobility rules (0)

**Q4. Please indicate the extent to which you agree or disagree that the elements presented in the table constitute challenges to fair and easy access to information and transparency of labour mobility rules:**



Source: ICF based on responses to the OPC for the establishment of a European Labour Authority. Answers of respondents from the Campaign are excluded. Percentages are calculated on the total number of responses (N=389).

Note: percentages labels below 5% have been omitted from the figure to improve readability.

Among the respondents who provided additional comments<sup>105</sup> the most frequent cause mentioned was institutions' limited administrative capacity to deal with mobility, while the most frequently cited solutions were the creation of a one-stop shop or a better communication channel where straightforward clear information is accessible to all.

The sample sizes were too small to detect statistically differences in responses by organisation type, country, or labour status. This was mostly due to the high number of nonresponses for these categorical variables.

#### *Responses of the targeted consultation*

A few contributions explicitly mentioned incomplete or sparse information concerning labour mobility rights and obligations as a challenge to cross-border mobility. A number of issues were raised, such as: circumvention of the law caused by unclear or insufficient information (French EMCO member), technicality of the legislation causing confusion in enforcement

<sup>105</sup> "Please explain" question after Question 4

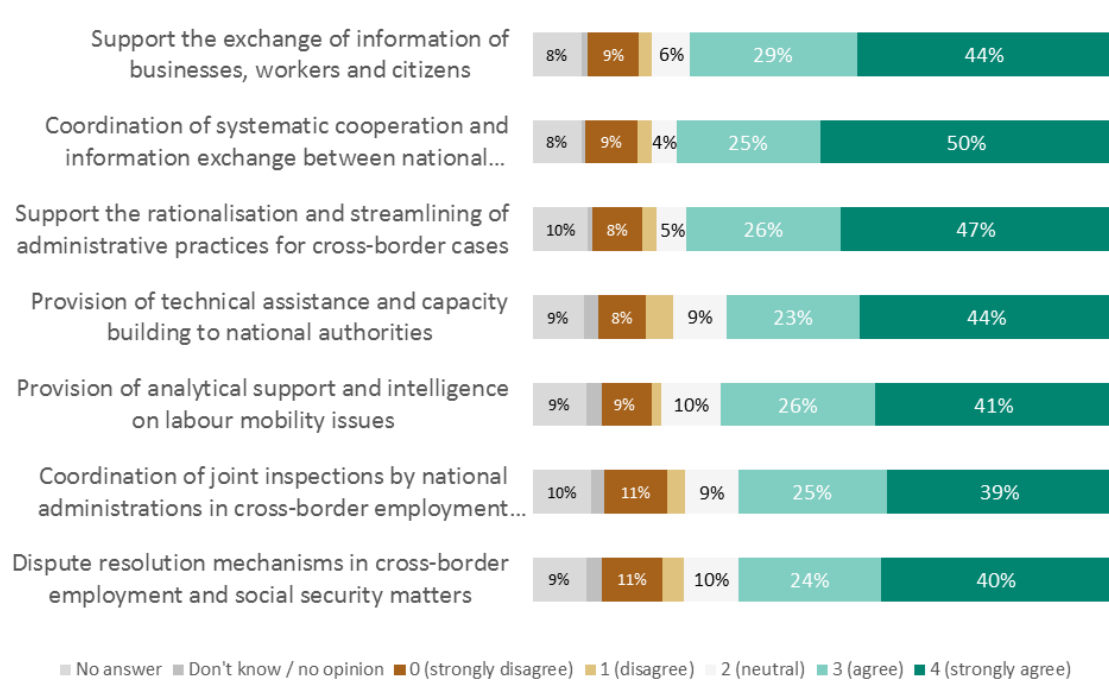
(HR and IT MISSOC members), lack of awareness to seek the right information (Swedish PES), and need for clarification on EU rules on the posting of workers (employer organisations overall).

### 3. Policy options in relation to tasks carried out by a European Labour Authority

#### *Results of the open public consultation*

All the potential functions for the ELA proposed in the OPC received strong support overall, in particular supporting information exchange for businesses, individuals and between national authorities.

**Q5. Please indicate the extent to which you agree or disagree that following functions could be usefully carried out by a permanent EU body dealing with labour mobility and social security in cross-border situations:**



*Source: ICF based on responses to the OPC for the establishment of a European Labour Authority. Answers of respondents from the Campaign are excluded. Percentages are calculated on the total number of responses (N=389).*

*Note: percentages labels below 5% have been omitted from the figure to improve readability.*

Among the OPC respondents who further commented<sup>106</sup>, a frequent observation was that an ELA would clearly improve data collection and communication with added value in terms of law enforcement, dispute resolution, social dumping prevention and support for national

<sup>106</sup> Please explain" question after Question 5

authorities to post workers. A few respondents were concerned about data privacy and expressed scepticism about the need for a central EU body.

The sample sizes were too small to detect statistically differences in responses by organisation type, country, or labour status. This was mostly due to the high number of nonresponses for these categorical variables.

### *Results of the targeted consultations*

Stakeholders were asked what exactly a newly created ELA could do to support cross-border institutional cooperation to fight fraud and abuse and to improve the availability of information to individuals and organisations concerned with labour mobility<sup>107</sup>.

The most recurrent views were that the ELA should be above all a platform for information exchange between other institutions and structures. Sharing this position, the PES Network added that the ELA could offer digital solutions to help with data collection, exchange and analysis. EMCO members argued that this could be achieved through synergies between the ELA and existing EU instruments. Among the social partners, ETUC and the UEAPME shared the view that the ELA should act as a.

In this context, a number of stakeholders held the view that the ELA would create value in acting as a "liaison" platform or a support service for national enforcement authorities providing intelligence and other resources especially to remedy capacity issues (AC; MISSOC: HR, IT members; UDW; ETUC; UAEPME; EFBWW, Austrian Chamber of Labour).

In addition to the potential intelligence gathering function that the ELA could have, several EU agencies have expressed an interest in complementing the work of the ELA based on their own specialisms. For Cedefop, the ELA could provide expertise relating to the cross-border challenges that emerge from the digital economy and work towards improving the cross-border recognition of qualifications, access to training for all EU workers and the forecasting of skills needs. The ETF argued that its expertise on third country qualification systems and skills recognition could potentially complement the work of the ELA. EU-OSHA also offered to complement the work of the ELA while Eurofound argued that the ELA could be granted powers to request critical data from national labour inspectorates for further investigation which would result in up-to-date information on frequency and types of labour mobility and incidence of abuse.

A smaller share of the respondents to the targeted consultation showed themselves in favour of an ELA with advanced functions, with greater responsibility for inspections and

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<sup>107</sup> Question 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?"



enforcement activities (AC: AT, BE, RO members; ECPW: FR member; MISSOC: PT member, Austrian Chamber of Labour). The ILO noted that while the EU has made progress in cross-border cooperation on labour inspections thanks to the SLIC and the UDW, this should be further intensified through the creation of an ELA. For civil society organisations overall, the ELA should support cross-border labour inspections beyond the scope of bilateral agreement while respecting national specificities in this area (e.g. in countries where labour inspections involve social partners).

There is clear support among stakeholders for establishing the ELA as a single EU information portal available in all European languages to individuals and organisations alike: e.g. a "one-stop-shop" dealing with all information requests on mobility and redirecting to other EU mobility online services (AC: AT and BE members; ECPW: DE, FR, IT, RO members; FMW; UDW; ETUC; UEAPME; REIF, Austrian Chamber of Labour). Cedefop highlighted the need to offer citizens easy access to information on the conditions for, and opportunities of, mobility. This includes the portability of workers' rights from one country to another, pension rights but also understanding of labour market needs and job opportunities in other countries. Eurofound argued that the ELA could aim to make EURES a real job matching portal directly accessible by employers and jobseekers and bring together a wide array of information sources on national labour market developments, industrial relations systems, wages and working conditions. The PES Network suggested that the ELA could provide an online tool allowing EU workers to check their social security status anywhere and anytime which may, in turn, decrease non-legal employment and abuse cases. Similarly, the EFBWW proposed a multilingual website and helpline where all forms of cross-border fraud and abuse of social protection can be reported immediately. For Eurodiaconia, the ELA should ensure the setting up of services offering guidance and support to those EU mobile citizens lacking information about their social rights as such services are currently often provided solely by humanitarian organisations to EU mobile citizens who struggle to receive any kind of help in registering to the local employment agency and social security system.

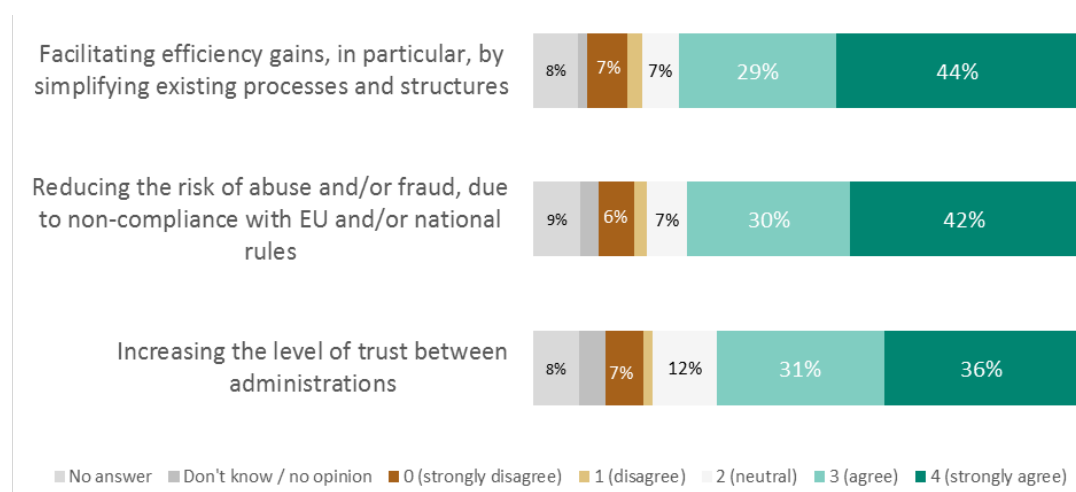
Conversely, several members within the MISSOC expressed the view that a unified EU information portal for both workers and companies could be realised without the need for an ELA – instead, this could be done through the effective cooperation of relevant DGs (CZ member) or by improving the visibility and availability of the EURES portal (IT and PT members). The UK PES highlighted that bringing together information into an ELA portal to meet the needs of citizens and businesses engaging in cross-border activities could undermine the Single Digital Gateway SDG's objective of being a one-stop-shop for digital information and procedures.

## 4. Potential impacts

### *Results of the open public consultation*

About three-quarters the respondents agreed with the envisaged impacts resulting from improved cooperation among the Member States on cross-border employment and social security matters (0).

**Q6. Please indicate the extent to which you agree or disagree that improving cooperation between Member States' authorities on EU employment and social security rules in cross-border situations would have the following impacts?**



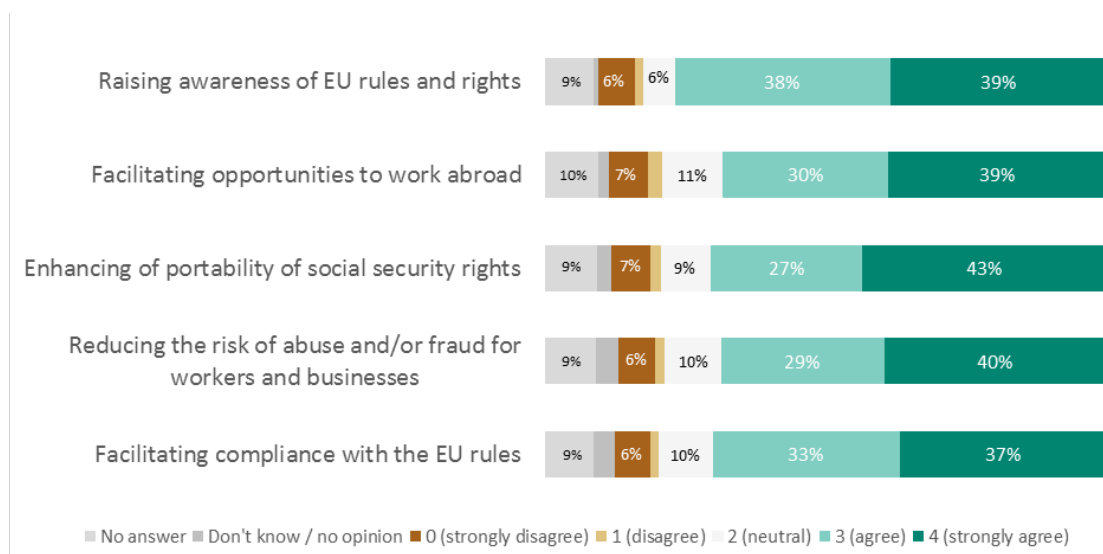
*Source: ICF based on responses to the OPC for the establishment of a European Labour Authority. Answers of respondents from the Campaign are excluded. Percentages are calculated on the total number of responses (N=389).*

*Note: percentages labels below 5% have been omitted from the figure to improve readability.*

Most of the respondents who further commented to their reply were confident that improved cooperation between Member States would improve data collection and exchange, with some respondents expecting to see positive results on employment with better work opportunities for all. Certain other respondents expressed reservations regarding the centralisation of personal information on the grounds of data privacy.

The majority of respondents also agreed that improved cooperation among the Member States would lead to a series of improvements (as those listed in the OPC) (0). The results suggest that agreement is highest with regard to raising awareness among individuals and businesses of EU rules and rights.

**Q7. Please indicate the extent to which you agree or disagree that improving access to information and transparency for individuals and businesses on EU employment and social security rules in cross-border situations would have the following impacts?**



Source: ICF based on responses to the OPC for the establishment of a European Labour Authority. Answers of respondents from the Campaign are excluded. Percentages are calculated on the total number of responses (N=389).

Note: percentages labels below 5% have been omitted from the figure to improve readability.

None of the respondents who further commented on their reply<sup>108</sup> mentioned negative impacts. Rather, they proposed ideas regarding the possible functions of the ELA (e.g. include seconded national experts providing technical support and advice, introduce a centralised complaints system etc.).

The sample sizes were too small to detect statistically differences in responses by organisation type, country, or labour status. This was mostly due to the high number of nonresponses for these categorical variables.

### Results of the targeted consultations

The responding organisations were asked to share views on how the ELA could provide added value in improving procedures to address issues around social security coordination among the Member States and labour mobility<sup>109</sup>.

Overall, many of the stakeholders thought that the primary role of the ELA should be limited to facilitating the exchange of information among the relevant Member State authorities (such as labour inspectorates, etc.) to maximise its added value. This view was shared by the

<sup>108</sup> "Please explain" question after Question 7.

<sup>109</sup> Question 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?

Finnish and Swedish governments, EPSCO and EMCO members, the latter highlighting that the establishment of the ELA should not result in additional reporting requirements on the Member States

Going beyond the added value the ELA could create by facilitating cross-border information exchange, a number of stakeholders pointed out the potential efficiency gains the ELA could generate e.g. by increasing the level of trust and cooperation between national administrations and stakeholders, or by creating synergies with other existing instruments. The proposals made in this regard include streamlining procedures for decision on cross-border cases (ECPW: ES, IT members); fostering intelligent collaboration with national authorities, social partners and SOLVIT contact points (ECPW: FR member; EFBWW); focusing interventions on fewer areas of higher relevance or where EU instruments are lacking (EMCO).

For certain stakeholders, improved information exchange and efficient administrative coordination through the ELA will bring added value in terms of raising awareness of EU rules and rights, with positive consequences for law enforcement. EU-OSHA suggested that the ELA could support an enlarged Senior Labour Inspectors' Committee (SLIC) which will improve enforcement by the Member States of Community law on health and safety at work while Eurofound suggested that the ELA could extend its remit to cover cross-border issues linked to the information and consultation of workers in multinational companies or arising from the digital economy and other new forms of work. The ETUC suggested that the added value of ELA could come from the establishment of an early warning system or alert mechanism to record and act upon infringement cases. Several stakeholders suggested that the ELA would generate value by acting as a forum for the exchange of good practices and lessons learned (AC BE member; ECPW EL member; EFBWW).

For a select number of stakeholders, giving the ELA sufficient scope for action will generate considerable added value in terms of reducing the risk of social security fraud and abuse in cross-border situations. This primarily means that the ELA should be responsible for the coordination of joint investigations or cross-border inspections and for acting as a dispute resolution forum on cross-border cases (views shared by the French government; the European Parliament; EPSCO: BE, FR, SE; EMCO ES, EL members; EFBWW, Austrian Chamber of Labour).

A considerable number of stakeholders were concerned about the risk of duplication or overlaps resulting from the co-existence of the ELA and other EU-level bodies involved in the area of cross-border mobility (view shared by AC: BE, NL, CZ, PL, LT, HU, DE, LV, IT members; PES Network BE, CZ, DE, IE, PL, SE; MISSOC; UDW; SLIC; ILO; Business Europe). Many of these respondents agreed that increasing administrative complexity through the creation of a new ELA would cancel out any of its added value.

### 3. Delivery options

#### *Results of the open public consultation*

Respondents to the OPC were asked what, in their view, the relationship between the ELA and other EU agencies, notably those in the employment domain should be (Question 8 of the OPC). Most of the responses were related to the role that the ELA should have, with many respondents agreeing that the ELA should have a coordinating role to improve on existing EU tools and EU networks rather than a new body with broader scope substituting already existing organisations. A small number of respondents asked for the establishment of a centralised EU body incorporating existing EU tools and networks.

The sample sizes were too small to detect statistically differences in responses by organisation type, country, or labour status. This was mostly due to the high number of nonresponses for these categorical variables.

#### *Results of the targeted consultations*

Regarding options for establishing the ELA, the views of the organisations taking part in the targeted consultation<sup>110</sup> were relatively similar to those expressed by the majority of OPC respondents in that if a new authority was to be created, its role should be limited to coordinating the work of Member State bodies and existing EU-level bodies or mechanisms dealing with cross-border mobility. Stimulating the exchange of information and operational cross-border action among competent national authorities should be the priority. As such, most of the responding stakeholders believe that creation of a new ELA should not imply a transfer of competences away from the Member States.

Another recurring view shared by the different stakeholders is that no organisational structure can be determined if the scope and objectives of the ELA are not clearly defined as this would risk resulting in increased administrative complexity.

Thus, the most preferred option for a number of stakeholders is stronger cooperation between existing relevant EU bodies to address cross-border challenges without increasing their capacity or changing the way they are governed (a so-called "status quo"). Member State governments overall favoured improving existing EU level structures and mechanisms dealing with cross-border labour mobility rather than creating a new EU body as subsidiarity needs to be respected. A considerable number of EMCO members (CZ, HU, IT, LU, NL, SE) pointed out that there should not be any transfer of regulatory or legal competencies to ELA away from Member State authorities, and that the need for an ELA would first need to be assessed against the performance and objectives of current EU instruments. Similarly, many members within the AC (BE, CZ, DE, HU, LT, LV, NL, PL) and the PES Network (BE, CZ, DE, FI, HR, IE, SE, UK) argued that a new body may increase complexity and the risk of

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<sup>110</sup> Question 5: Which organisational structure would you consider to best enable the Authority to efficiently carry out its tasks?

duplication and that synergies between existing organisations and national labour inspectorates should instead be further enhanced without having an ELA. The same view was shared by Business Europe, the Estonian ECPW member and the Czech MISSOC member.

Many other stakeholders suggested that a new EU-level network to improve the coordination of existing EU labour mobility bodies and of national authorities could be created. This option would require no change in the structure of existing bodies, but would however introduce a new governance arrangement. In such a case, overlaps and duplication of effort should be avoided. The overall EMCO position was that the ELA should build on existing networks and tools so that no additional reporting requirements or costs are passed on to the Member States, with the Finnish member adding that the ELA could exist as a supporting network and not a physical agency. EPSCO and the PES Network shared the view that having the ELA as a network focused on solving concrete problems especially given the lack of clarification of what the ELA's relationship with existing instruments such as EESSI or IMI would be. While sharing these views, many other stakeholders argued that the ELA should only have a supportive rather than an authoritative role so as to safeguard the competencies of Member State authorities (UDW; SLIC; ECPW: LV, PL, PT, SE members; MISSOC CZ and LV members; FMW SE member; PEARLE; REIF, Nordic-Baltic-Polish EU Information Group).

A select number of stakeholders showed themselves more favourable to the creation of a new agency or authority, some highlighting that the proposed mandate of the ELA would still need to be further clarified (FMW, MISSOC). Other stakeholders proposed a strong governance structure for the ELA to the extent that is possible in respect of the principle of subsidiarity (ECPW: ES, FR, IT, RO members; ETUC; civil society organisations). In this respect, the ECPW and ETUC argued that representatives from the competent Member State authorities as well as social partners should hold key positions in the governance of the ELA.

In addition, the responding EU agencies (Cedefop, Eurofound, EU-OSHA, ETF) all suggested that the governance of the ELA could partly integrate their own specific mandates or competencies in the areas of employment and mobility. The French government also argued that this could potentially increase the visibility of the activities undertaken by these various agencies.

Lastly, it should be noted that several organisations who had contributed to the targeted consultation did not express an opinion on what would be the most appropriate structure for the ELA – this relates to the general view that the objectives and scope of the ELA would first need to be clarified to discuss the proposed options for establishing it.

## **5. Conclusions**

Support for the ELA very strong among respondents to the OPC whereas views were more mixed among the stakeholders taking part in the targeted consultations.

The majority of respondents across the OPC and the targeted consultation agreed with the Commission's analysis of the challenges to cooperation and communication between Member State authorities on cross-border employment and social protection cases.

Plans for establishing an ELA were rather well received overall. The general view was that the ELA should focus on improving cooperation among national authorities by facilitating the exchange of information, intelligence and good practice.

The general opinion is that the establishment of the ELA should not result in a transfer of competencies away from the Member States, and should not create administrative complexity and duplication.

Many of the stakeholders taking part in the targeted consultation believed that the mandate and objectives of the ELA need to be further clarified before deciding on its governance arrangements. Some among them suggested that an assessment of existing structures and instruments (e.g. EESSI, EURES, IMI, SOVLIT, UDW) would be needed before deciding on whether to establish the ELA.

The general opinion with Member States' administrations is that the establishment of the ELA should not result in a transfer of competencies away from the Member States, and should not create administrative complexity or duplication.

### ANNEX 3: WHO IS AFFECTED AND HOW?

#### ○ Practical implications of the initiative

If the initiative is accepted its key obligations will apply for the Commission, Member States, and the new Authority, while individuals and businesses will mainly benefit from it.

Member States will have to propose/determine the seat of the new Authority before the adoption of the act by the co-legislators and selected “Host” country will have to implement the actions proposed. In addition, they will have to appoint Members of Management Board of the ELA, who will have to actively participate in the meetings and they will possibility to sending national experts to ELA. They will have to nominate National Liaison Officers to the Authority and cover related costs.

Commission’s obligations will be related initially to the preparatory work to set-up the Authority(establishment of project team, art-up toolkit ; handling and supporting the process of reorganisation of existing labour mobility bodies, redeployment of staff/resources, management of legislative changes of EU legislation etc.) Over the long-term the Commission will supervise the ELA’s reporting and contribute to its work.

ELA’s obligations are related to work/delivering tasks in line with its mandate, its day-to day-management of work and more strategic working organisation (e.g. reporting, joint programmes etc.)

#### ○ Summary of costs and benefits

The assessment of benefits and costs had a strong qualitative approach especially for benefits. While the better cooperation has an impact on improving enforcement, the causal link between the set-up of a new body and socio-economic impacts, including mobility flows, is rather remote, owing to the influence of national legislation and to actual rule implementation. Therefore, the quantification of social or economic impacts and particularly of benefits was not deemed as realistic.

**The benefits for individuals**, especially the mobile workers, will be better protection and reduced exposure to the risk of fraud and abuse, especially in the road transport sector, improved legal clarity and predictability of procedures.. Further benefits arrive from improved possibilities to exercise their rights to the freedom of movement.

**Business, especially SMEs**, will benefit from more fair competition and equal playing field and from reduced uncertainty about their situation, especially relevant in relation to posting of workers. That together with better information can facilitate their decisions to engage in cross-border activities.

**Benefits for national authorities** are their reinforced cooperation and control capacities for better rule enforcement as well as savings in terms of time and resources in exchanging



information, coordinating activities and in providing information. Benefits of structured cooperation are expected to increase over the time as more national authorities decide to use the new operational capacity.

**Cost** of the preferred option will mainly influence the EU budget with minimum requirements for national authorities related to the National Liaisons Officers and contributions to the EU budget. The EU budget costs refer to the situation in 2023 (cruising speed). Costs for tasks are compared to baseline, but not for the delivery option. Efforts to be made by national authorities to comply with the existing obligations (e.g. for the timely exchange of information or data collection) are not considered as an additional cost or burden compared to baseline.

<i><b>I. Overview of costs – Preferred option</b></i>							
		Citizens/Consumers		Businesses		Administrations/EU budget	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
<b>Labour mobility information and services for individuals and businesses</b>	Direct costs	No costs expected.					5,500,000
	Indirect costs						
<b>Cooperation and exchange of information between national authorities</b>	Direct costs						2,900,000
	Indirect costs						
<b>Cross-border labour mobility analyses and risk assessment</b>	Direct costs						6,700,000
	Indirect costs						
<b>Support to joint inspections</b>	Direct costs					Cost to MS to be compensated by retrieving unpaid taxes or contributions	2,300,000
	Indirect costs						
<b>Capacity building</b>	Direct costs						9,500,000
	Indirect costs						

<b>Mediation between national authorities</b>	Direct costs						700,000
	Indirect costs						
<b>Facilitation of cooperation between relevant stakeholders in the event of cross-border labour market disruptions</b>	Direct costs						400 000
	Indirect costs						
<b>Governance (administrative costs)</b>	Direct Cost						22-24 million euro in cruising speed (2023), not compared to baseline, Brussels-based  MS contribution to the EU budget

*(1) Estimates to be provided with respect to the baseline; (2) costs are provided for each identifiable action/obligation of the preferred option otherwise for all retained options when no preferred option is specified; (3) If relevant and available, please present information on costs according to the standard typology of costs (compliance costs, regulatory charges, hassle costs, administrative costs, enforcement costs, indirect costs; see section 6 of the attached guidance).*

## ANNEX 4: ANALYTICAL METHODS

Assumptions and approaches in estimating budgetary impacts, together with results, are presented below.

The budgetary impact has been made in details for Policy Option 2 and Delivery Option 2. The other options have been drawn up in comparison to this milestone.

**For Title 1 and Title 2**, comparison of most items has been made with three other agencies, namely the European Fisheries Control Agency (EFCA), the European Border and Coast Guard Agency (FRONTEX) and the European Foundation for the improvement of Living and Working conditions (EUROFOUND). EFCA has been chose because it is Brussels-based and has a mandate to coordinate inspections by Member States; FRONTEX because it has similar activities as those envisaged for ELA (inspections, training of trainers, training curriculum); EUROFOUND because it has more or less the same number of staff.

**Table 1 – Titles 1 and 2**

**For staff**, the average costs as updated on 13/12/2017 and communicated through the Réseau des Unités Financières (RUF) has been applied.

	2023	EFCA 2018	FRONTEX 2018	EUROFOUND '18
	Cruising speed	70 staff	760 staff	106 staff
<b>Title 1 - Staff expenditure</b>	<b>17,349,000.00</b>			
Salaries & allowances	15,897,000.00			
- Of which establishment plan posts	9,867,000.00		1,452,000.00	
- Of which external personnel	6,030,000.00	417,000	2,286,000	1,287,000
Expenditure relating to staff recruitment	200,000.00	165,000	286,000.0	217,000
Employer's pension contributions	0.00	-	-	
Mission expenses	350,000.00	100,000	500,000.0	320,000
Socio-medical infrastructure	100,000.00	18,000	70,000.0	170,000
Training	200,000.00	124,000	460,000.0	160,000
External Services (building security, cleaning, maintenance, etc.)	600,000.00	-	950,000.0	420,000
Receptions, events and representation	2,000.00	2,000	-	
Social welfare	0.00	8,000	20,000.0	
Other Staff related expenditure	0.00		-	
<b>Title 2 - Infrastructre &amp; operating expenditure</b>	<b>5,650,000.00</b>	<b>2,155,000.00</b>	<b>27,550,000.00</b>	<b>1,350,000.00</b>
Rental of buildings and associated costs	3,200,000.00	480,000	16,155,000.0	621,000.00
Information, communication technology and data processing	1,500,000.00	1,025,000	7,240,000.0	550,000.00
Movable property and associated costs	100,000.00	70,000	905,000.0	92,000.00
Current administrative expenditure	100,000.00	53,000	1,615,000.0	20,000.00
Postage / Telecommunications	50,000.00	-	170,000.0	67,000.00
Meeting expenses	250,000.00	72,000	640,000.0	-
Running costs in connection with operational activities	0.00	400,000	-	-
Information and publishing	400,000.00	55,000	825,000.0	-
Studies	0.00	-	-	-
Other infrastructure and operating expenditure	50,000.00		-	-

**Table 2 – Average staff costs used**

Category of personnel	Total average cost to be used for the financial statements(*)
Official	143.000 €/year
Temporary agent	143.000 €/year
Seconded National Expert	82.000 €/year
Contractual agent	74.000 €/year

These unit costs have been applied to the number of staff envisaged at cruising speed on a 12-months basis (upon full recruitment). The number of staff has been assessed taking into consideration the future workload of the authority per tasks, based on past experience for activities transferred and benchmarks for new activities such as joint inspections. For horizontal tasks good practices including internal control requirements regarding the necessary split between certain financial management and control tasks, have been duly taken into account.

As regards other entries in the table, the following reasoning has been applied.

**Table 3 – Detailed assessment for Titles 1 and 2.**

<b>Title 1 – Staff expenditure</b>	
Expenditure relating to staff recruitment	Higher than EFCA and lower than FRONTEX and EUROFOUND due to seat location uncertainties and reimbursement of travel costs uncertain too
Employer's pension contributions	Not applicable
Mission expenses	Higher than EFCA because EFCA is Brussels-based and all EU institutions are easily accessible; lower than FRONTEX and EUROFOUND because the agency is expected to host many meetings more than send its own staff on mission
Socio-medical infrastructure	Higher than EFCA and lower than EUROFOUND as the number of staff is the determining parameter taken into account
Training	Within benchmark range; training needs assessed as high due to the specificities of the national legislation in the labour legal framework
External Services (building security, cleaning, maintenance, etc.)	Building should provide for a lot of meeting facilities equipped with interpretations booths given the high number of meetings needed and the low probability that the staff of the national authorities speaks foreign language on top of their mother tongue
Receptions, events and representation	DG EMPL has 2,400 EUR
Social welfare	ZERO
Other Staff related expenditure	ZERO
<b>Title 2 - Infrastructure &amp; operating expenditure</b>	
Rental of buildings and associated costs	(See separate benchmarking for the buildings)
Information, communication technology and	Access to powerful internet is key and costs vary a

data processing	lot from one country to another
Movable property and associated costs	Within benchmarks
Current administrative expenditure	Within benchmarks
Postage / Telecommunications	Depends on the seat location
Meeting expenses	Covers meetings for governance issues (Board, etc.)
Running costs in connection with operational activities	ZERO
Information and publishing	ELA must be visible from everywhere & create its brand
Studies	ZERO
Other infrastructure and operating expenditure	Buffer to possibly adjust to correction coefficient impacting Titles 1 and 2

**For building costs**, the approach has been different, as the location and the role of the host country impacts severely the building costs. Therefore, comparison has been made with agencies having more or less 130 Establishment Plan posts. The amount foreseen in the Draft Budget 2018 has been adjusted as if they were Brussels-based, applying the corresponding correction coefficient of their seat location. The returned average amounts to a bit more than 3 MEUR per year. Details can be found below.

**Table 4 – Building benchmarks**

<b>Benchmarks buildings (ca 130 EP posts)</b>				
<b>Agency</b>	<b>MEUR</b>	<b>MS</b>	<b>Coeff. Corr</b>	<b>Bxl</b>
GSA	3.4	CZ	73%	4.64
ERA	1.35	FR	114%	1.19
EBA	3.4	UK	142%	2.40
ESMA	5.6	FR Paris	114%	4.92
eu-LISA	1.5	EE	78%	1.93
		<b>Average:</b>		<b>3.20</b>

**For Title 3**, activities of DG EMPL have been screened to draw a full list of activities that were relevant for ELA, accompanied by their costs as foreseen in the annual work programmes and the corresponding staff needed to implement them. Have been taken into consideration studies, statistical analysis, support to networks, translations, trainings, missions, web management, etc. These transferred activities represent half of the total operational budget of the future Authority under the current MFF (see table below).

Based on this first screening exercise, the various options have been built, extending the scope of the activities when needed or comparing to existing activities implemented by other services or agencies.

In the case of totally new activities, the methodology followed was based on benchmarking with similar activities carried out by other regulatory agencies in particular, e.g. for the coordination of joint inspections, and adjusting to size or specificities as envisaged for ELA.

**Table 5 – List of existing actions to be shifted to ELA**

Output Title	Indicative Amount programming 2018	Adjusted amount shifted to ELA in 2019	Adjusted amount shifted to ELA from 2020 on	Notes	Staff (FTE) 2019	Staff (FTE) 2020
Meetings of experts: platform on undeclared work meetings	150,000.00	150,000.00	150,000.00	100%	0.1	0.1
EURES network meetings: Reimbursement of experts travel costs	300,000.00	300,000.00	300,000.00	100%		
<b>Sub-total support line:</b>		<b>450,000.00</b>	<b>450,000.00</b>			
EU platform on undeclared work: supporting the implementation of the Platform	1,400,000.00	1,400,000.00	1,400,000.00	100%	0.4	0.4
Meetings in the field of posting of workers and undeclared work: Organisation of conferences, catering and logistic services	100,000.00	100,000.00	100,000.00	100%	0.1	0.1
<b>Sub-total Progress:</b>		<b>1,500,000.00</b>	<b>1,500,000.00</b>			
Provision of training for the EURES network	1,500,000.00	1,500,000.00	1,500,000.00	100%	0.2	5.0
Helpdesk for the EURES Portal	500,000.00	-	500,000.00	100% from 2020		
Translations for the EURES Portal	1,087,000.00	-	1,087,000.00	100% from 2020		
EURES Portal: development and maintenance	4,560,000.00	-	2,300,000.00	2,3 MEUR shifted for business analysts (email Kornelia 01/02) from 2020		
EURES network meetings: Organisation of conferences, catering and logistic services	500,000.00	400,000.00	400,000.00	80%	1.0	
EURES-Network support activities: governance and communication	2,450,000.00	2,450,000.00	2,450,000.00	100%	1.0	
<b>Sub-total EURES:</b>		<b>4,350,000.00</b>	<b>8,237,000.00</b>			
<b>TOTAL EaSI:</b>		<b>6,300,000.00</b>	<b>10,187,000.00</b>			
Network of experts on intra EU-mobility- social security coordination and free movement of workers (MoveS)	997,050.00	997,050.00	997,050.00	100%	0.3	0.3
Support to the work of the Administrative Commission	550,000.00	200,000.00	200,000.00	Only Conciliation and Audit Boards	0.2	0.2
Support to the Audit Board	90,000.00	90,000.00	90,000.00	100%	-	-
<b>TOTAL FMW</b>		<b>1,287,050.00</b>	<b>1,287,050.00</b>			
<b>GRAND TOTAL:</b>		<b>7,587,050.00</b>	<b>11,474,050.00</b>	<b>TOTAL FTE:</b>	<b>3.70</b>	<b>6.50</b>
NB : + 1 EFTA SNE with no impact on EU budget						

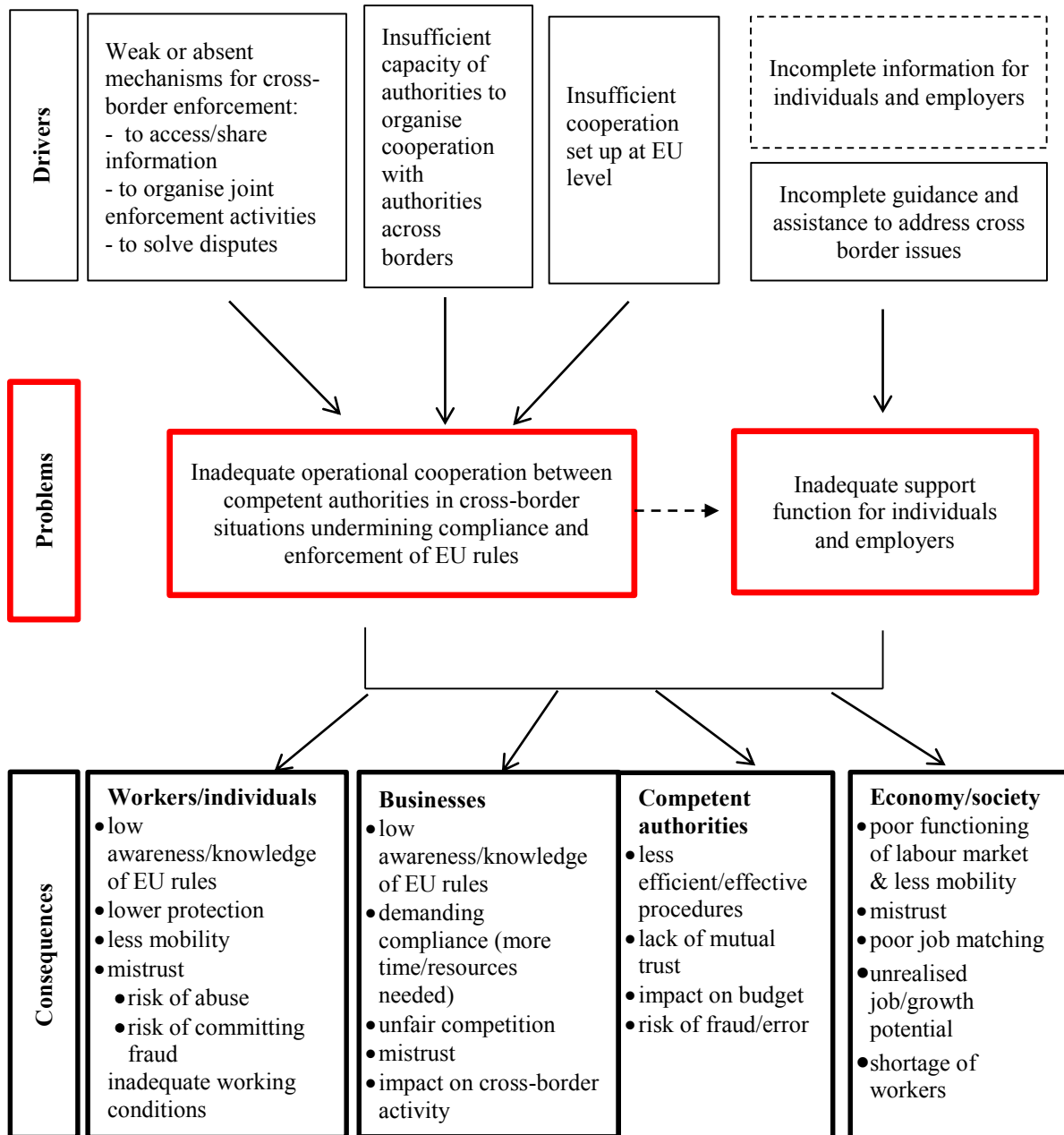
2,7 FTE in 2019 and 5,5 FTE in 2020 whose salary costs are borne by DG EMPL and 1 Seconded National Expert whose salary costs are entirely borne by the EFTA

**Table 6 - Explanations on Title 3 final amounts per task**

	EMPL existing activities		EMPL activities used as benchmarks		MOVE activities		Total estimated budget
<b>1 - Labour mobility services for individuals and businesses</b>	See detailed list in "Existing tasks" table	<b>3,887,000</b>	Top up for translation costs (300 kEUR), merger ESCO with EURES (800k€)	<b>1,113,000</b>	0.5 m€ for IT content collecting/sharing/providing information thru EURES portal	<b>500,000</b>	<b>5,500,000</b>
<b>2 - Cooperation and exchange of information between national Authorities</b>	See detailed list in "Existing tasks" table	<b>1,240,000</b>	2M€ for experts costs of the Administrative Commission paid on global envelope, part of the current TA contract to support the PES network (650k)	<b>1,160,000</b>	500 k€ for compliance & monitoring activities (missions costs, studies)	<b>500,000</b>	<b>2,900,000</b>
<b>3 - Support to joint inspections</b>	See detailed list in "Existing tasks" table	-	Coordination meetings (300kEUR), mission costs for national inspectors (0,5 MEUR), translations (1 MEUR), interpretation costs (500 kEUR), database for resources pooling (350 kEUR)	<b>1,300,000</b>	1 M€ for extended scope of activities (translations, interpretations, travel costs)	<b>1,000,000</b>	<b>2,300,000</b>
<b>4 - Labour market analyses and risk assessment</b>	See detailed list in "Existing tasks" table	<b>997,050</b>	Bench learning PES (1,5 MEUR), Eures analytical support (3,2 MEUR), studies (1,5 MEUR), subscriptions to DB (0,3MEUR)	<b>4,702,950</b>	1 M€ for additional meetings costs & translations	<b>1,000,000</b>	<b>6,700,000</b>
<b>5 - Support to capacity building</b>	See detailed list in "Existing tasks" table	<b>5,350,000</b>	Translation costs (650 kEUR)	<b>650,000</b>	3,5 M€ for training curriculum + material + platform + network of trainers (benchmark FRONTEX TRU activities) & translations	<b>3,500,000</b>	<b>9,500,000</b>
<b>6 - Mediation between national Authorities</b>	See detailed list in "Existing	-	External expertise (300 kEUR), meetings (100 kEUR), translations (500 kEUR)	<b>700,000</b>		-	<b>700,000</b>
<b>7- Facilitation of cooperation between relevant stakeholders in the event of cross-border labour market disruptions</b>	See detailed list in "Existing tasks" table	-	5 meetings @ 40k EUR per year + 150kEUR translations + 50kEUR awareness raising	<b>400,000</b>	n/a	-	<b>400,000</b>



## ANNEX 5: ELA PROBLEM TREE



## ANNEX 6: EU ACQUIS RELEVANT FOR THE INITIATIVE

This Annex presents the EU acquis in the area of labour mobility that is directly linked and influenced by the initiative as well as the EU acquis in other areas on which the Authority can have an impact.

### Labour mobility

In the field of labour mobility an extensive body of legislation sets the framework to ensure that the fundamental freedoms of the Treaty can work in practice and contribute to a well-functioning internal market:.

- **Free movement of workers** is a fundamental principle of the Treaty enshrined in Article 45 of the Treaty on the Functioning of the European Union and developed by EU secondary legislation. Based on these rules EU citizens are entitled to look for a job in another EU country, work there without needing a work permit, reside there for that purpose, stay there even after employment has finished, and enjoy equal treatment with nationals in access to employment, working conditions and all other social and tax advantages. The following secondary legislation is specifically relevant:

- Regulation (EU) No 492/2011 on freedom of movement for workers within the Union
- Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States
- Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers
- Regulation (EU) 2016/589 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets.

- **Coordination of social security rights** are essential to free movement of workers, with rules protecting **social security rights** when moving within Europe. These rules do not harmonise, only coordinate social security systems which remain very diverse across Europe. The EU rules ensure that the application of the different national legislations respects the basic principles of equality of treatment and non-discrimination, and does not adversely affect persons exercising their right to free movement within the European Union. Since 2010, the following coordination Regulations apply, which are currently ongoing revision:

- Regulation (EC) No 883/2004 on the coordination of social security systems as amended by Council Regulation (EU) No 517/2013 of 13 May 2013.
- Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems as amended by Commission Regulation (EU) No 1224/2012 of 18 December 2012.

The above Regulations are extended by Regulation (EU) No 1231/2010 to nationals of non-EU countries (third-country nationals) legally resident in the EU and in a cross-border situation. Their family members and survivors are also covered by social security coordination if they are in the EU.

#### **- Posting of workers in the framework of service provision**

Specific rules apply to **posted workers** - employees who are sent by their employer to carry out a service in another EU Member State on a temporary basis, without integrating in the labour market there. In order to protect their rights, EU rules ensure for them minimum rates of pay; maximum work periods and minimum rest periods; minimum paid annual leave; the conditions of hiring out workers through temporary work agencies; health, safety and hygiene at work; equal treatment between men and women. These rules are defined in the Posting of Workers Directive which was approved in 1996 and is currently ongoing revision.

In 2014 the Enforcement Directive was approved with the aim to strengthen the practical application by addressing issues related to fraud, circumvention of rules, and exchange of information between the Member States:

- Directive 96/71/EC concerning the posting of workers in the framework of the provision of services
- Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

In addition to the above legislation, Member States also cooperate to **tackle undeclared work**, which may have connections. The cooperation takes place within the framework of the European Platform to enhance cooperation in tackling undeclared work, established by Decision (EU) 2016/344.

Undeclared work is tackled also in the broader context in relation to fight and prevention of **trafficking in human beings** (*Anti-trafficking agenda*) To address trafficking in human beings the EU has put in place a comprehensive, gender-specific and victim-centred legal and policy framework

- Directive 2011/36/EU on combating and preventing trafficking in human beings and protecting its victims
- EU Strategy towards the eradication of trafficking in human beings for the period 2012-2016.
- Communication on "Reporting on the follow-up to the EU Strategy towards the Eradication of trafficking in human beings and identifying further concrete action" (COM(2017) 728 final)

To support economically successful and socially responsible company restructuring, the EU can draw on a variety of instruments, ranging from 'soft' policy guidance and 'hard' company

and labour legislation to financial instruments. The **EU Quality Framework for Anticipation of Change and Restructuring** (COM(2013)882 final) proposes a set of principles and good practices for the anticipation of change and mitigation of the employment and social effects of restructuring activities, addressed to all the stakeholders involved. It contributes to the implementation of legislation and financial instrument by which the EU seeks to facilitate investment in human capital and the reallocation of human resources to activities with high growth potential and quality jobs. There exists important EU legislation on the approximation of Member States' laws relating to **collective redundancies** (Council Directive 98/59/EC) or relating to the safeguarding of employees' rights in the event of **transfers of undertakings**, businesses or parts of undertakings or businesses (Council Directive 2001/23/EC), as well as requirements laid down in a framework for **informing and consulting employees in the EU** (Directive 2002/14/EC of the European Parliament and of the Council), on **takeover bids** (Directive 2004/25/EC of the European Parliament and of the Council) or on **cross-border mergers of limited liability companies** (Directive 2005/56/EC of the European Parliament and of the Council ). In terms of EU financial instruments, the European Globalisation Fund (plays its role of solidarity and emergency fund. It is the EU instrument designed specifically to support employees who lose their jobs as a result of major structural changes in world trade patterns due to globalisation, such as when restructuring involves a large company shutting down or moving production.

## **Internal Market - sectoral policies**

### **- Transport**

A wide palette of sectorial legislation is also in place at EU level in order to ensure that categories of workers in specific sectors have their rights protected when it comes to cross border mobility and social security. Given the high exposure to cross-border situations and therefore its high vulnerability to lack of enforcement of social rules, the following social and market rules **in road transport are particularly relevant:**

- Regulation (EC) No 561/2006 on the driving times, break and rest periods of drivers and enforcement Directive 2006/22/EC;
- Regulation (EC) No 1071/2009 on access to the occupation of road transport operator
- Commission proposal laying down specific rules for posting of drivers in road transport sector, COM(2017) 277

**- Data protection** An increasing body of legislation ensures both transparency and access to data on the one hand and the protection of natural persons as to the processing of personal data on the other hand. For the purpose of the European Labour Authority's functions, which may process micro data on individuals and employers, the following rules on data protection in the internal market and data processing by the European Institutions (under revision), are of relevance:

- Regulation (EC) No 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;
- Commission proposal on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, COM(2017) 8;
- Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the institutions and bodies of the Community and on the free movement of such data;
- Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

### - Third country nationals

There is also an extensive legislative body in place providing for the rules on **cross border mobility of third-country nationals**, depending on their status, notably:

- Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents;
- Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment;
- Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer;
- Directive (EU) 2016/801 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast of Directives 2004/114/EC on students and 2005/71/EC on researchers).

### Coherence with other EU objectives/initiatives

Commission's political priorities as stated by the President in his Political Guidelines at the beginning of the mandate, *A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change*<sup>111</sup> especially with the *priorities of ensuring deeper and fairer internal market; and of a deeper and fairer economic and monetary union*. The first one promotes labour mobility while protecting workers' social rights and ensuring a fair European labour market.<sup>112</sup> For this a good cooperation of national authorities in the area of cross-border labour mobility and social security coordination is vital in addition to rules setting the rights and obligations. Under the second priority, the initiative under discussion is coherent

<sup>111</sup> [https://ec.europa.eu/commission/publications/president-junckers-political-guidelines\\_en](https://ec.europa.eu/commission/publications/president-junckers-political-guidelines_en)

<sup>112</sup> [https://ec.europa.eu/commission/priorities/internal-market\\_en](https://ec.europa.eu/commission/priorities/internal-market_en)

with the ***European Pillar of Social Rights*** aiming at guaranteeing more effective rights of citizens.

The coherence is ensured with relevant policy initiatives and instruments notably in the area of single market, justice and fundamental rights, and migration and home affairs, regional policy.

Within the context of the ***Single Market Strategy***<sup>113</sup> and as a follow up to ***EU Citizenship report 2017***<sup>114</sup> the Commission recently adopted proposals on a ***Single Digital Gateway*** and ***SOLVIT action plan***<sup>115</sup> to give citizens easy, online access to information, assistance and problem- solving services and the possibility to complete online administrative procedures in cross-border situations by linking up relevant EU and national-level content and services in a seamless, user-friendly and user- centric way and to ensure a culture of compliance and smart enforcement to help deliver a true Single Market. Both initiatives are considered in the baseline of this IA and the options of this initiative are designed to contribute to them and to complement them while avoiding overlaps.

***Europe on the move***<sup>116</sup> aims at ensuring a socially fair and competitive internal market for road transport services given the importance of the sector for the Union's economy and society by providing by creating a level playing field in road haulage and enhancing the social framework and employment conditions. The options assessed in the IA, especially its tasks on risk assessment and framework for joint cross-border inspection, complement and can help to improve results of measures foreseen to address the problematic practice of "letterbox companies", complex and non-transparent business models and fight against illicit employment practices.

The initiative is coherent with the ***EU Agenda on migration***<sup>117</sup> and the EU anti-trafficking legal and policy framework. In view of the future demographic challenges the EU is facing, the legal migration will have to be enhanced by policies that attract workers that the EU economy needs and good working EU labour market with labour mobility support services assessed in this IA are contributing to that. Preventing and fighting trafficking in human beings for whatever purpose – sexual or labour exploitation is a top EU priority.

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<sup>113</sup> In 2015, the Commission presented its Single Market Strategy (Upgrading the Single Market: more opportunities for people and business COM/2015/0550) - final roadmap to deliver on President Juncker's political commitment to unleash the full potential of the Single Market and make it the launchpad for European companies to thrive in the global economy.

<sup>114</sup> EU Citizenship Report 2017, Luxembourg: [http://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=51132](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=51132)

<sup>115</sup> May 2017 package included also a third element, a proposal for the Single Market Information Tool (SMIT): [http://ec.europa.eu/growth/content/commission-takes-new-steps-enhance-compliance-and-practical-functioning-eu-single-market-0\\_en](http://ec.europa.eu/growth/content/commission-takes-new-steps-enhance-compliance-and-practical-functioning-eu-single-market-0_en)

<sup>116</sup> Europe on the move – An Agenda for a socially fair transition towards clean, competitive and connected mobility for all, COM (2017) 283 final, <http://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=CELEX:52017DC0283>

<sup>117</sup> COM(2015) 240 final [https://ec.europa.eu/home-affairs/what-we-do/policies/european-agenda-migration\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/european-agenda-migration_en)

The European Semester process has already given prominence to the issues addressed with this initiative. Most recently, the *2018 Annual Growth Survey*<sup>118</sup> highlighted the importance of promoting the mobility of workers across locations, while ensuring the full respect of existing rights as well as the importance of stronger and more efficient public institution in building resilient economic structures.

Common Approach on EU decentralised agencies<sup>119</sup> aims at improving coherence, effectiveness, accountability and transparency in the performance of these agencies. It sets out guidelines in terms of the creation, structure and operation of agencies, together with funding, budgetary, supervision and management issues. It requires an impact assessment to guide a decision to create a new agency, and encourages using common and objective criteria in assessing both the opportunity to disband agencies or to merge them. In that respect, merging agencies should be considered in cases where respective tasks are overlapping, where synergies can be contemplated or when agencies would be more efficient if inserted in a bigger structure. In the joint statement to the Common approach the three institutions urge decentralised agencies to pursue their efforts to streamline their activities and increase their performance.

The Commission decided to curb the financial and human resources committed to the EU agencies.<sup>120</sup> This should be achieved by a yearly 1% reduction of staff over a period of five years for all decentralised agencies taken together (equivalent to a net reduction is a reduction of 276 posts on the 6 050 posts authorised in 2013). To meet the needs for additional human resources in certain agencies, the Commission also proposed to create a ‘redeployment pool’ by applying an annual 1% levy on the posts of all agencies that would then be allocated to ‘start-up phase’ agencies and ‘new tasks’ agencies. In total, the EU decentralised agencies should thus progressively reduce the staffing levels by 10% from 2013 to the end of 2018.

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<sup>118</sup> Annual Growth Survey 2018, COM(2017) 690 final, [https://ec.europa.eu/info/sites/info/files/2017-comm-690\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/2017-comm-690_en_0.pdf)

<sup>119</sup> Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies, 2012, [https://europa.eu/european-union/sites/europaeu/files/docs/body/joint\\_statement\\_and\\_common\\_approach\\_2012\\_en.pdf](https://europa.eu/european-union/sites/europaeu/files/docs/body/joint_statement_and_common_approach_2012_en.pdf)

<sup>120</sup> Communication COM(2013) 519 final on ‘Programming of human and financial resources for decentralised agencies 2014-2020’, 10 July 2013.

## **ANNEX 7: EU LEVEL COMMITTEES AND STRUCTURES IN THE FIELD OF LABOUR MOBILITY**

**The Administrative Commission for the Coordination of Social Security Systems (AC)**, established by Regulations 883/2004 and 987/2009 on the coordination of social security systems, has both a strategic role in the policy and legislative landscape (e.g. interpretation questions, the revision of social security coordination rules, statistical data collection, analytical work, a quasi-legislative function adopting interpretative Decisions and Recommendations); and an operational role (e.g. solving individual cases, the creation of tools such as the EHIC or EESSI). It also provides a conciliation mechanism through one of its subgroups - the Conciliation Board. The AC meets 4 times a year.

**The Advisory Committee for the Coordination of Social Security Systems**, established by Regulations 883/2004 has consultative role to the AC as regards to principles and problems arising from the implementation of the Regulation, with particular regard to the impact of certain categories of persons. It constitutes an important forum for exchange between the Commission (chairing the Committee), government representatives from all Member States, and the social partners.

**The Technical Committee and the Advisory Committee on the Free Movement of Workers** ensures cooperation between Member States and a forum for the exchange of ideas and information. The Technical Committee composed of representatives of Member States assists the Commission in the technical work and measures on Regulation 492/2011 on freedom of movement for workers within the Union. The Advisory Committee extends participation to social partners and discusses questions related to the freedom of movement and employment, having the possibility to submit proposals for the revision of the Regulation. Both Committees meet twice a year.

**The Committee of Experts on Posting of Workers (ECPW)** plays an advisory role to the Commission and Member States. It facilitates exchange of information and good practice, and examines difficulties of implementation of Directive 96/71/EC concerning the posting of workers. The ECPW meets twice per year.

**The European Platform tackling Undeclared Work (UDW Platform)** operates at two levels. At the national level, it supports Member States in promoting better working conditions and formal employment. At EU-level, it provides a forum for the exchange of information and best practices and for engaging in cross-border cooperation and joint activities. The activities of the Platform are conducted on a voluntary basis. Members include one Senior Representative per Member State, and four representatives of cross-industry social partners at Union level. The Platform meets twice a year.

**The EURES network** provides information and recruitment services to workers and employers. It comprises Public Employment Services and the Commission. It formulates the framework for horizontal support (including the EURES Job mobility portal); analysis of mobility; and cooperation for apprenticeships and traineeships. The network is governed by



the EURES Coordination Group, composed of the European Coordination Office (within DG EMPL) and the National Coordination Offices of the Member States, with representatives of the social partners also invited. The EURES Coordination Group meets 4 times a year.

## **ANNEX 8: PRACTICAL TOOLS FOR THE SHARING OF ADMINISTRATIVE DOCUMENTS AND INFORMATION BETWEEN NATIONAL AUTHORITIES IN THE FIELD OF LABOUR MOBILITY**

This Annex provides an overview of the main IT tools set up at European Union level in order to facilitate the exchange of administrative documents and information between national authorities on different aspects of labour mobility.

The **Internal Market Information System (IMI-system)**<sup>121</sup> is the corporate IT-based information exchange and information sharing tool, managed by DG GROW, which connects national, regional and local authorities across borders. It facilitates the exchange of information related to the Internal Market field between public administrations across the EEA that are involved in the practical implementation of EU law. It has a multilingual search function that helps authorities to identify their counterparts in another country. The system is based on pre-translated forms, designed to cover the different cases where authorities are likely to need information from abroad. The IMI-system supports to date 11 different policy areas/administrative procedures, including the posting of workers, SOLVIT and the European Professional Card (EPC). Support for the Posting of Workers Directive and the Enforcement of the Posting of Workers Directive have been implemented through a number of modules for different types of exchange. IMI can be used as a common case management tool among national institutions.

**European Register of Road Transport Undertakings (ERRU)** is a system of electronic communication between designated national authorities to exchange information about road transport undertakings and infringements committed by them against the EU social and market rules as well as relevant national rules.

**Electronic Exchange of Social Security Information (EESSI)**<sup>122</sup> – operating in the area of social security coordination - is an IT system which will introduce electronic message exchange between approximately 15.000 national social security institutions, facilitating communication and cooperation on cross border cases. Currently under national implementation, Member States are expected to connect their systems to it until mid-2019. EESSI (Electronic Exchange of Social Security Information) currently provides the national institution directory. It contains national institutions (public and private contracted under the public schemes) in all social security sectors. The EESSI architecture is planned to enable national institutions to exchange information within social security through a number of agreed-upon business messages: Structured Electronic Documents (SED).

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<sup>121</sup> [http://ec.europa.eu/internal\\_market/imi-net/index\\_en.htm](http://ec.europa.eu/internal_market/imi-net/index_en.htm)

<sup>122</sup> <http://ec.europa.eu/social/main.jsp?catId=869>

## Under preparation/implementation/pilots

- **European Professional Card (EPC)**<sup>123</sup> EPC is not a plastic card, but an electronic certificate issued via the first EU-wide fully online procedure for the recognition of qualifications. It is an example of a citizen's usage of electronic certificates for interacting with national institutions. This digital procedure uses IMI. The functionalities covered are: i) information requests – to check the validity of qualifications for professionals wanting to practice in a country; ii) register directory – to find a national register of professionals (architects, accountants, engineers etc.) and iii) notifications – to notify of new diplomas for architects and health professions. EPC is a pilot in operation for five professions: general care nurses, physiotherapists, pharmacists, real estate agents and mountain guides.
- **e-Sens**<sup>124</sup> - The objective of e-SENS in the e-Health domain is to facilitate cross-border access to health services within the EU countries. The cross-border health services domain is now largely regulated by Directive 2011/24 EU on the application of patients' rights in cross-border healthcare, which provides the overall legal framework for the Patient Summary and e-Prescription pilot within the e-SENS project. Furthermore, the e-Confirmation pilot, which addresses administrative issues when accessing healthcare abroad, builds on Regulations 883/2004 and 987/2009 on the coordination of social security systems. The pilots aim to improve the efficiency of the process for healthcare providers, health professionals and patients by enabling the electronic exchange of medical data and insurance information in cross-border settings. The pilots build on the experiences of the epSOS, NETC@RDS and ENED projects, extending their workflows into new areas. Piloting cross-border data exchange supports the feasibility of cross-border services.
- **European Tracking Service (ETS)**<sup>125</sup> ETS would establish a European service giving mobile citizens an overview of their supplementary pensions-portfolio across multiple EU Member States. It would consolidate data from existing national-level solutions and provide a reference implementation for Member States that have no national solution in place. ETS would be the first EU-level initiative within social protection at this level of digital maturity (requiring electronic identification) and was studied to inform planned services at the EU level and the EMPSS digital options.

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<sup>123</sup> [http://ec.europa.eu/growth/single-market/services/free-movement-professionals/european-professional-card\\_da](http://ec.europa.eu/growth/single-market/services/free-movement-professionals/european-professional-card_da)

<sup>124</sup> <https://www.esens.eu/>

<sup>125</sup> <http://ec.europa.eu/social/BlobServlet?docId=16387&langId=en>

## **ANNEX 9: INFORMATION TOOLS AND PROBLEM-SOLVING SERVICES FOR CITIZENS AND BUSINESSES IN THE FIELD OF LABOUR MOBILITY**

This Annex provides an overview of the main information tools and problem-solving services for citizens, including job-seekers, students, workers, inactive and persons, and businesses with the purpose of facilitating and supporting their mobility choices.

**The EURES job mobility portal**<sup>126</sup> for the exchange of job vacancy and CV data across the EU also provides information and guidance to mobile workers and support for employers interested in recruitment. It currently presents almost 1.5 million vacancies. As the digital front-end of the EURES network, it provides the online tools necessary to help fulfil the job search assistance, matching and information activities of around 1,000 EURES advisers who are in daily contact with jobseekers and employers. EURES is also the vehicle for implementing and testing projects in the area of labour mobility, such as the 'Your First EURES job' or the 'European Solidarity Corps'. The pages are available in all official EU languages.

**Single Digital Gateway (SDG)**<sup>127</sup> Part of the compliance package under the Commission's Single Market Strategy, it aims at offering EU citizens and businesses easy and non-discriminatory online access to: information about EU and national rules in the area of the Single Market, procedures for compliance with these rules, and EU and national assistance services, including EURES. It should address a lack of (a) availability of information about national rules, (b) quality of information and assistance services, (c) findability of information, assistance services and procedures, (d) accessibility for cross-border users of information and procedures, and (e) knowledge of real single market obstacles. The gateway will consist of a single EU-level portal, which will be based on the already existing Your Europe portal, with a common user interface, to be established and managed by the Commission giving access to relevant national and EU webpages.

**SOLVIT**<sup>128</sup> is an informal problem-solving service offered by national authorities dealing with cross-border problems related to the possible misapplication of EU law by public authorities. There is a SOLVIT centre in each Member State, as well as in Norway, Iceland and Liechtenstein. A SOLVIT centre will cooperate with the SOLVIT centre in the other Member State concerned to solve the problem. Using SOLVIT takes normally much less time (in average 90 days) than submitting a formal complaint to the Commission or bringing a case before a national court and can solve an individual problem in cross-border situations. The service is free of charge and in average 90% of the cases get solved. Several national institutions have referred to this service as extremely useful. From a mobile citizen's

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<sup>126</sup>[https://ec.europa.eu/eures/public/en/news-articles?p\\_p\\_id=101\\_INSTANCE\\_L2ZVYxNxK11W&p\\_p\\_lifecycle=0&p\\_p\\_state=normal&p\\_p\\_mode=view&p\\_p\\_col\\_id=column-2&p\\_p\\_col\\_pos=2&p\\_p\\_col\\_count=3&101\\_INSTANCE\\_L2ZVYxNxK11W\\_cur=1&p\\_r\\_p\\_564233524\\_categoryId=10537](https://ec.europa.eu/eures/public/en/news-articles?p_p_id=101_INSTANCE_L2ZVYxNxK11W&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-2&p_p_col_pos=2&p_p_col_count=3&101_INSTANCE_L2ZVYxNxK11W_cur=1&p_r_p_564233524_categoryId=10537)

<sup>127</sup> <http://ec.europa.eu/DocsRoom/documents/22761>

<sup>128</sup> [http://ec.europa.eu/solvit/index\\_en.htm](http://ec.europa.eu/solvit/index_en.htm)

perspective, it allows resolution of cases in a short period of time. The pages are available throughout the Your Europe portal in all official EU languages. With the adoption of the SOLVIT Action Plan in 2017, SOLVIT provides regular feedback to the relevant policy units of the Commission.

**Your Europe**<sup>(129)</sup> – Information portal containing practical and user friendly information, in 23 languages, for citizens and businesses, on their EU rights and opportunities in the Single Market, involving Member States as information providers. This information is targeted at people who want to study, work, travel, do business, get healthcare or live abroad, as well as for people staying at home, with information on work and retirement, health, etc. It is written in jargon-free language from a user-perspective. The pages on social security <sup>(130)</sup> explain cross-border coverage in a clear and practical manner. The service provides detailed information for types of cases – with concrete examples. There are links to national institutions by type of benefit <sup>(131)</sup>. The National Contact Points (NCP), under Directive 2011/24, have an obligation to provide information on rights to cross-border healthcare. This includes explaining differences between rights under the social security regulations and under the Directive. Your Europe is providing information on all these NCPs. The number of visits of the Your Europe portal has steadily and significantly increased over the past years and this upward trend continues, having reached 20 M visitors in 2017.

**Your Europe Advice**<sup>132</sup> is an EU-run personal advisory service answering citizens' and businesses' queries (by phone or online) about their EU rights in the Single Market, clarification on EU law in the citizen's and business's particular situation, explanations of how to exercise these rights, and directions to a national institution or other body if needed. 'Your Europe Advice' relies on a network of more than 63 independent legal experts who handle enquiries in all official EU languages.

**Europe Direct Contact Centre**<sup>133</sup> - enables citizens to ask a question about the EU, either by phone or by email. The service is referred to by several national institutions' websites, but it could be emphasised that social security coordination issues may be clarified using this facility.

**Your Europe Business** - EU portal designed to help Small and Medium-sized Enterprises do business cross-border.

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<sup>129</sup> [http://europa.eu/youreurope/citizens/index\\_en.htm](http://europa.eu/youreurope/citizens/index_en.htm)

<sup>130</sup> E.g. Family benefits: [http://europa.eu/youreurope/citizens/family/children/benefits/index\\_en.htm](http://europa.eu/youreurope/citizens/family/children/benefits/index_en.htm).  
Unemployment benefits: [http://europa.eu/youreurope/citizens/work/unemployment-and-benefits/social-security/index\\_en.htm](http://europa.eu/youreurope/citizens/work/unemployment-and-benefits/social-security/index_en.htm).

<sup>131</sup> E.g. Pensions: [http://europa.eu/youreurope/citizens/national-contact-points/index\\_en.htm?topic=work&contacts=id-611493](http://europa.eu/youreurope/citizens/national-contact-points/index_en.htm?topic=work&contacts=id-611493).

<sup>132</sup> <http://europa.eu/youreurope/advice/>

<sup>133</sup> [http://europa.eu/eurodirect/index\\_en.htm](http://europa.eu/eurodirect/index_en.htm)

**DG EMPL website** - Pages on ‘your rights country by country’<sup>(134)</sup> provide a very comprehensive set of information on social security for each Member State, as well as links to the national websites. The pages are available generally in English, French, German, and the national language of the country concerned. Availability of this content in all EU languages would provide mobile citizens with directly understandable information.

The **Bodies on the Free Movement of Workers** comprise different types of institutions across Member States, including Equality Bodies, Ombudsmen, EURES offices, Chambers of Labour, Ministries of Labour. These bodies are tasked to promote equal treatment of EU workers and provide them with assistance (including provision of information and legal advice). The bodies cooperate with assistance and problem-solving services at EU level (e.g., SOLVIT, EURES, Enterprise Europe Network, the Points of Single Contact). A first meeting between national bodies took place in April 2017.

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<sup>134</sup> <http://ec.europa.eu/social/main.jsp?catId=858&langId=en>

## ANNEX 10: OVERVIEW OF POLICY AND DELIVERY OPTIONS

The table below presents three policy options for ELA. The policy options build on each other, i.e. each option broadly incorporates the features of the previous ones.

	Baseline	Policy Option 1 – Support Option	Policy Option 2 – Operational Option	Policy Option 3 – Supervisory Option
<b>1. Labour mobility information and services for individuals and businesses</b>	<p>Several sources and tools managed by EMPL and other services in the areas under ELA's scope.</p> <p>Different contact points at national level in a number of areas.</p> <p>Several tools available to citizens and businesses more broadly in the context of EU rights and obligations (e.g, the Your Europe portal on rights and opportunities in the Single Market, which will be the backbone of the single digital gateway - SDG).</p>	<ul style="list-style-type: none"> <li>• <b>ELA takes over the definition of the user needs and business requirements of the EURES mobility portal</b> and ensures appropriate links to the Your Europe portal and for information relating to labour mobility.</li> <li>• <b>Cooperation with other Union initiatives and networks</b>, e.g. European Network of Public Employment Services and the Border Focal Point.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Coordination of the EURES network</b> with strengthened support (e.g. building on synergies with the risk assessment and capacity building tasks) to increase its outreach to citizens and impact on the labour market.</li> <li>• <b>Technical support to MS for the provision of services at national level</b>, including to facilitate compliance with relevant obligations (e.g. obligations laid down in Regulation [SDG – COM(2017)256] and the enforcement directive on posting 2014/67/EU) and to map and streamline the provision of such services in full respect of MS competences.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Setting of standards for the provision of services at national level</b> based on EU rules and of the <b>creation of single physical national contact points</b>.</li> <li>• <b>Establishment of a single physical national contact point</b> on labour mobility.</li> </ul>
<b>2.Cooperation and exchange of information between national authorities</b>	<p>Systems in place:</p> <ul style="list-style-type: none"> <li>- EESSI on social security (under implementation, mandatory for all cross border case handling)</li> <li>- IMI modules on posting</li> <li>- Collaborative tools for sharing meeting documents</li> </ul>	<ul style="list-style-type: none"> <li>• <b>ELA monitors and suggests improvements to current systems</b> for the exchange of information in the areas of labour mobility (EESSI, Fraud and Error Platform, the use of IMI, ESSN). ELA would ensure consistency in the use of different tools and avoid duplications.</li> </ul>	<ul style="list-style-type: none"> <li>• Promoting and advancing cooperation between national authorities.</li> <li>• <b>Supporting MS' compliance</b> with the information exchange and reporting requirements established by current and future EU rules.</li> <li>• <b>Templates and technical guidance</b> for the submission of information.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>ELA establishes additional mandatory requirements for the collection and exchange of information</b> in the areas of social security coordination, posting of workers, and undeclared work and can request information to MS on its own initiative as necessary to carry out its tasks.</li> </ul>

	Baseline	Policy Option 1 – Support Option	Policy Option 2 – Operational Option	Policy Option 3 – Supervisory Option
	and unstructured communications. The exchange of information mostly takes place on a voluntary basis.	•	• <b>Input for the future evolution</b> of information exchange tools and further digitisation of procedures, including for the development of an alert system with automatic red flags detecting possible problems (e.g. bogus schemes, fraudulent temporary work agencies)..	• <b>Development and inventory of user-friendly templates</b> in aid of comparability of national procedures.
<b>3. Support to joint inspections</b>	No dedicated joint inspection mechanism. Joint inspections are very rare and mainly based on bilateral arrangements.	<ul style="list-style-type: none"> <li>• At the request of Member States, <b>ELA supports national authorities in the coordination of joint inspections</b> by (1) organising joint inspections coordination meetings and (2) developing a model agreement establishing a Joint Inspection Team.</li> <li>• ELA could suggest that Member States jointly investigate a problem, including by encouraging them to organise joint inspections bilaterally or concerted checks in the field of road transport.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Launch of joint inspections</b>, either at the request of the Member States or based on their agreement upon ELA's proposal.</li> <li>• <b>Coordination and logistical support and streamlined procedures</b> for joint inspections.</li> <li>• Facilitation of the organisation and coordination of the <b>concerted checks of compliance with the social rules in road transport</b>, in cooperation with Euro Controle Route (ECR)</li> <li>• <b>Reporting and monitoring</b> of follow up-measures</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Joint inspections requested by ELA.</b></li> <li>• <b>Management 'European Inspector Corps'</b> (drawing on MS' inspectorates) for independent action on the ground.</li> </ul>
<b>4. Cross-border labour mobility analyses and risk assessment</b>	No dedicated function. Analyses and studies carried out (or outsourced) by the Commission when relevant. Some specific monitoring and data collection activities carried out in existing committees.	<ul style="list-style-type: none"> <li>• ELA creates a <b>library of resources and shares relevant findings and reports by EU agencies</b> (e.g. Eurofound, Cedefop, EU-OSHA) and other relevant sources with the Commission and the Member States.</li> <li>• ELA follows-up on reports by EU</li> </ul>	<ul style="list-style-type: none"> <li>• <b>ELA acts as a labour market observatory</b> on cross-border mobility, carrying out analyses and forward-looking risk assessments in the areas under ELA's remit.</li> <li>• ELA takes over some <b>monitoring and data collection activities</b> (e.g. statistical data collection about social</li> </ul>	• ELA carries out <b>in-depth assessments</b> on consistency in enforcement outcomes and issues recommendations to MS on this basis.



	Baseline	Policy Option 1 – Support Option	Policy Option 2 – Operational Option	Policy Option 3 – Supervisory Option
		<p>level citizen-facing services (e.g. SOLVIT) with further analysis. <b>Short country summaries on problems encountered by citizens/businesses</b> are shared with the concerned Member State and the Commission.</p>	<p>security coordination currently carried out by the Technical Committee on Free Movement of Workers).</p> <ul style="list-style-type: none"> <li>• <b>ELA streamlines data collection processes</b>, ensuring consistency and complementarity across all areas.</li> <li>• ELA carries out <b>peer reviews</b> to strengthen consistency in the application and enforcement of Union law and makes follow-up recommendations.</li> <li>• <b>Relevant findings under this task feed into the other tasks</b>, e.g. capacity building.</li> <li>• <b>Regular reporting to the Commission and the Member States.</b></li> </ul>	
<b>5. Capacity Building</b>	<p>Mutual learning activities in the field of labour mobility (in the context of the EURES network) and undeclared work.</p>	<ul style="list-style-type: none"> <li>• <b>Current mutual learning activities increased and extended to all policy areas</b> under ELA's remit. Service, to be agreed in the relevant bodies and committees include: benchlearning, expert reviews, training and technical guidelines.</li> <li>• <b>Thematic Priorities for mutual learning activities are set by relevant Committees.</b></li> <li>• Technical support to Member States for <b>awareness-raising campaigns</b> (+visibility through</li> </ul>	<ul style="list-style-type: none"> <li>• Mutual learning and technical assistance programme <b>are set by ELA</b> in aid of building a common enforcement culture on the basis of (1) common technical standards developed by ELA in cooperation with Member States, (2) needs identified as part of ELA 'risk assessment' task.</li> <li>• Promotion of <b>mutual assistance</b> projects.</li> <li>• Promotion of <b>good practices.</b></li> </ul> <p><b>Support for capacity building activities at national level</b> (e.g. 'train the trainer' programme in the field of</p>	<ul style="list-style-type: none"> <li>• <b>Code for labour and road transport inspections</b> to be used on a pilot /experimental basis by labour and road transport inspectors across the EU</li> </ul>

	Baseline	Policy Option 1 – Support Option	Policy Option 2 – Operational Option	Policy Option 3 – Supervisory Option
		ELA communications channels).	labour inspection, support to national awareness raising campaigns).	
<b>6. Mediation between Member States</b>	Conciliation procedure on social security matters in the framework of the Administrative Commission (AC).	<ul style="list-style-type: none"> <li>• <b>Provision of expert opinions</b> on all areas under ELA's remit upon request by at least one of the interested parties or by the AC Conciliation Board.</li> <li>• <b>Follow-up monitored by the AC.</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Conciliation function absorbed in ELA and extended to all areas under ELA's remit</b> through a dedicated function for mediation.</li> <li>• <b>ELA may issue recommendations</b> to solve the disagreement.</li> <li>• Recommend specific solution</li> <li>• Follow-up monitored by ELA.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Development of pilot on out-of-court dispute settlement</b></li> </ul>
<b>7. Facilitating cooperation in cross-border labour disruptions</b>	Guidance by the EU through the Quality Framework for Restructuring (QFR). Upon certain conditions, financial support is offered via the European Globalisation Adjustment fund. Eurofound constantly monitors restructuring cases through the European Restructuring Monitoring facility.	<ul style="list-style-type: none"> <li>• <b>ELA raises awareness</b> among stakeholders about the EU Quality Framework for Anticipation of Change and Restructuring (QFR) and about relevant EU legislation and available financial instruments.</li> <li>• <b>Cooperation with Eurofound</b> to draw lessons from the European Restructuring Monitor.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Set-up of ad-hoc support to national authorities and stakeholders requiring it</b>, to facilitate administrative cooperation, share information and provide guidance on applicable EU legislation and financial resources, and coordinate in the event of company restructuring events with cross-border implications.</li> <li>• <b>Cooperation with Eurofound and EURES</b> to increase risk assessment capacity on restructuring and to explore potential support in support re-training and re-employment.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Issuing of recommendations</b> as regards to the management of cross-border restructuring, in light of the Quality Framework for Restructuring, and to the implementation of relevant EU legislation.</li> </ul>

## ANNEX 11: LEGAL CHANGES TO IMPLEMENT THE OPTIONS

### Amendments

Free movement of workers (Directive 2014/54/EU; Regulations 492/2011 and 589/2016)			
	Option 1	Option 2	Option 3
<b>Task 1</b>			<p>Directive 2014/54</p> <p>Recital 21</p> <p>Article 4</p> <p>To promote the inclusion of the 'bodies to promote equal treatment and to support Union workers and member of their family' in a single national point of contact on labour mobility and the application of standards set by the Authority.</p>
	<p>Regulation 589/2016</p> <p>Recital 15</p> <p>Article 8.1(a)</p> <p>The operation of the EURES portal is transferred to ELA</p>	<p>Regulation 589/2016</p> <p>Recitals 5, 11, 15, 24, 47, 49.</p> <p>Articles 1, 3, 4, 7, 8, 9, 14.</p> <p>All the responsibilities of the European Coordination Office are transferred to ELA</p>	<p>Regulation 589/2016</p> <p>Recitals 5, 11, 15, 24, 47, 49.</p> <p>Articles 1, 3, 4, 7, 8, 9, 14.</p> <p>All the responsibilities of the European Coordination Office are transferred to ELA</p>
<b>Task 2</b>		<p>Regulation 492/2011</p> <p>Article 30</p> <p>The Authority takes over the tasks of the TCFMW with regard to cooperation and exchange of information.</p>	<p>Regulation 492/2011</p> <p>Article 30</p> <p>The Authority takes over the tasks of the TCFMW with regard to cooperation and exchange of information.</p>
<b>Task 3</b>		<p>Regulation 492/2011</p> <p>Article 30</p> <p>The Authority takes over the tasks of the TCFMW with regard to analyses, data collection and risk</p>	<p>Regulation 492/2011</p> <p>Article 30</p> <p>The Authority takes over the tasks of the TCFMW with regard to analyses, data collection and risk</p>

		assessment..	assessment..
		<p>Regulation 589/2016</p> <p>Article 30</p> <p>The Authority takes over the monitoring and analyses of labour market flows and patterns.</p>	<p>Regulation 589/2016</p> <p>Article 30</p> <p>The Authority takes over the monitoring and analyses of labour market flows and patterns.</p>
<b>Task 6</b>		<p>Regulation 492/2011</p> <p>Article 30</p> <p>The Authority takes over the tasks of the TCFMW with regard to the exchange of experiences and the formulation of guidelines/procedures.</p>	<p>Regulation 492/2011</p> <p>Article 30</p> <p>The Authority takes over the tasks of the TCFMW with regard to the exchange of experiences and the formulation of guidelines/procedures.</p>
<b>Delivery options</b>	<p>Regulation 492/2011</p> <p>Targeted amendments to articles 22 and 30 to adjust the mandate of the ACFMW and TCFMW and allow for participation in the 'network of networks'.</p>	<p>Regulation 492/2011</p> <p>Articles 26, 29-35, and 39.</p> <p>The tasks of the TCFMW are transferred to ELA. The TCFMW ceases to exist. (changes to Article 30 are already mentioned under tasks 2, 3 and 6). ELA participates in the meetings of the ACFMW as a permanent observer, providing technical input and expertise.</p>	<p>Regulation 492/2011</p> <p>Articles 26, 29-35, and 39.</p> <p>The tasks of the TCFMW are transferred to ELA. The TCFMW ceases to exist. (changes to Article 30 are already mentioned under tasks 2, 3 and 6). ELA participates in the meetings of the ACFMW as a permanent observer, providing technical input and expertise.</p>
		<p>Regulation 589/2016</p> <p>Recitals 5, 11, 15, 24, 47, 49.</p> <p>Articles 1, 3, 4, 7, 8, 9, 14, 29.</p> <p>All the responsibilities of the European Coordination Office are transferred to ELA (these changes are already mentioned under tasks 1 and</p>	<p>Regulation 589/2016</p> <p>Recitals 5, 11, 15, 24, 47, 49.</p> <p>Articles 1, 3, 4, 7, 8, 9, 14, 29.</p> <p>All the responsibilities of the European Coordination Office are transferred to ELA (these changes are already mentioned under tasks 1 and</p>

		3).	3).
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Social Security Coordination (Regulation 883/2004 and Regulation 987/2009)			
	Option 1	Option 2	Option 3
<b>Task 2 – cooperation and exchange of information</b>		<p>Article 1, 72(g), 73, 74 and 76(6) of Regulation 883/2004</p> <p>Article 1, 65 and 69 of Regulation 987/2009</p> <p>Cooperation between Member States, in particular on settling financial matters related to the application of Regulation 883/2004 and Regulation 987/2009, and on matters related to electronic data exchange and data processing move from the Audit Board and the Technical Commission to ELA.</p>	<p>Article 1, 72(g), 73, 74 and 76(6) of Regulation 883/2004</p> <p>Article 1, 65 and 69 of Regulation 987/2009</p> <p>Cooperation between Member States, in particular on settling financial matters related to the application of Regulation 883/2004 and Regulation 987/2009, and on matters related to electronic data exchange and data processing move from the Audit Board and Technical Commission to ELA.</p>
<b>Task 3 - cross-border labour mobility analyses and risk assessment</b>		<p>Article 72(g), 73, 74 of Regulation 883/2004</p> <p>Article 65 and 69 of Regulation 987/2009</p> <p>Support on analytical task on financial and technical matters.</p>	<p>Article 72(g), 73, 74 of Regulation 883/2004</p> <p>Article 65 and 69 of Regulation 987/2009</p> <p>Support on analytical task on financial and technical matters.</p>
<b>Task 4 – mediation</b>		<p>Article 1, 5(4), 6(3), 67(7), 76(6). Of Regulation 987/2009 –</p> <p>Conciliation work moving to ELA from AC and from Audit Board.</p>	<p>Article 5(4), 6(3), 67(7), 76(6). Of Regulation 987/2009 –</p> <p>Conciliation work moving to ELA from AC and from Audit Board.</p>
<b>Delivery options</b>		<p>Article 1, 72(g), 73, 74, and 76(6) of Regulation 883/2004.</p> <p>Article 1, 5(4), 6(3), 65, 67(7), and 69 of Regulation 987/2009.</p>	<p>Article 1, 72(g), 73, 74, and 76(6) of Regulation 883/2004.</p> <p>Article 1, 5(4), 6(3), 65, 67(7), and 69 of Regulation 987/2009.</p>

## Repeals

<b>Committee of Experts on Posting of Workers (Decision 2009/17/EC)</b>
<b>European Platform to enhance cooperation in tackling undeclared work (Decision 2016/344/EU)</b>

## ANNEX 12: ANALYTICAL SUPPLEMENT

### 1. Labour mobility in the European Union: key figures

Labour mobility figures provide an idea of the target population which the Labour Authority would potentially serve.

In 2017, about 17 million EU citizens resided or worked in another Member State other than that of citizenship, according to the latest Eurostat data. The core of this group is constituted by the slightly less than 12 million Europeans of working age who were living in a Member State other than their country of citizenship. As their period of residence in the other Member State exceeded one year, they are identified as '*long-term movers*'. Amongst them, about 9 million were 'active movers', i.e. those employed or looking for work.

Long-term movers make up around 4% of the total EU labour force. Since 2006, labour mobility has almost doubled from about 2% of total EU workforce, as EU citizens residing in another Member State were about 9 million. This is in grand part due to the high flows from EU-13 countries to the EU-15 countries and to a much lesser extent from Southern to Northern Member States during the economic crisis.

**Table 1. Mobile citizens workers in the EU, year 2016**

Type of mobility	Extent
<b>'Long-term' EU-28 movers of working age</b> (20-64 years) living in EU-28 (Eurostat demography figures)	11.8 million
<i>(as share of the total working-age population in the EU-28)</i>	3.9%
EU-28 movers of working age living in EU-28 (EU-LFS figures)	11 million
...of which <b>active EU-28 movers</b> (employed or looking for work)	9.1 million
<i>(as share of the total labour force in the EU-28)</i>	4%
<b>Cross-border workers</b> (20-64 years)	1.4 million
<i>(as share of the total employed in the EU-28)</i>	0.6%
<b>Number of postings</b> (of employed and self-employed), (no. of PDs A1, 2016)	2.3 million
<b>Annual return mobility</b> (20-64 years) (2015)	614,453

Type of mobility	Extent
<i>(as share of EU-28 nationals leaving their country of origin in 2014)</i>	55%

Source: "2017 Annual Report on intra-EU Labour Mobility"

Beyond long-term movers, cross-border workers add up a further 1.4 million to the counting of labour mobility. These workers reside in one country but regularly move to another for work purposes, either because they are employed or self-employed in the other Member State. This phenomenon is clearly concentrated in border regions and constitutes 0.6% of the total EU employment.

Finally, the third group of so-called *posted workers* needs to be considered. Posting operations comprise employees or self-employed who are regularly working in one Member State but are sent (or move) to another on a temporary basis in order to carry out a service there. In 2016, there were 2.3 million postings in the EU, up from about 1 million in 2010<sup>135</sup>.

Over the last decade, the number of mobile workers has doubled, also as an effect of the economic crisis. In 2008, EU mobile workers were around 8 million. According to Labour Force Survey data, between 2006 and 2015 the stock of EU-28 movers (i.e. EU citizens *residing* in another Member State) has increased from 7.5 million by 51%, while a further 5% increase was registered between 2015 and 2016<sup>136</sup>. For example, Germany has seen an increase in the inflow of EU mobile workers from 100,000 to over 350,000 individuals between 2009 and 2015, while strong outflows were registered during the same time in Spain and Italy, as well as in Eastern Member States such as Romania, Lithuania and Estonia.

Beside the stock of EU mobile workers, there are some indications that the nature of mobility has been undergoing some important changes. Notably, short-term moves could have bigger role in intra-EU labour mobility in the future, as a consequence of company organizational arrangements (with multinational companies transferring workers on a project basis), of the availability of cheap travel making short-term moves, for example to provide services across borders, more accessible than in the past, and of the "mobility mind-set" developed by current students, in conjunction with the possibilities offered by IT facilities to work from a remote location.<sup>137</sup>

<sup>135</sup> The number of postings does not strictly equalise the number of posted workers, as the same worker can be posted abroad more than once during one year. Indeed, whereas postings make up 1% of total EU employment, registered individual workers constitute some 0.6% of it. However, because of data gaps on the number of individual posted workers in a few Member States, the number of postings is conventionally taken as a reference.

<sup>136</sup> European Commission, "2017 Annual Report on intra-EU Labour Mobility".

<sup>137</sup> Bertelsmann, "Harnessing labour mobility", <https://www.labourmobility.com/wp-content/uploads/2014/04/HELM.pdf>



Labour mobility is also accompanied by beneficiaries of social security benefits drawn from or in another Member States. While there are clear overlaps between the two groups (a newly established mobile worker can apply for family benefits or receive healthcare treatment in the new Member State of residence), not all cross-border social security claimants are in the labour force, most notably pensioners.

Table 2 provides an overview of the number of EU citizens who have drawn social security benefits on the basis of EU social security coordination rules, including pensions, unemployment benefits, family benefits and health care benefits. It also shows the diversity of information that is exchanged between Member States competent authorities.

**Table 2: Social security related portable documents in cross-border situations, the number and their relative importance (2015, 2016)<sup>138</sup>**

Type of document	2015 <sup>a</sup>	2016	Relative size/expenditures
Statement of applicable legislation (PD A1)	2,05 million (+6,5%)	2,3 million (+11%)	<1% of national employment strong concentration in the construction sector
Aggregation of unemployment periods (PD U1)	28 127 <sup>b</sup>	38 831 <sup>d</sup> (-0.2%) <sup>c</sup>	0,2% of total unemployment in reporting MS (2015, 2016) 2% of the annual flow of intra-EU migrants of working age in 2015 (4% in 2016)
Export of unemployment benefits (PD U2)	27 514 <sup>c</sup> (+5-10%)	27 705 <sup>c</sup> (+0.7%)	0,1% of unemployed persons in 2015 (0.2% in 2016) 10% unemployed persons with a PD U2 found work abroad (2015, 2016)
Export/import of family benefits	445 000 households (or 722 000 family members)	539 000 households (or 909 000 family members) <sup>f</sup>	Exports represented 1,4% of the family benefits paid by all reporting MS in 2015 (1.6 % in 2016) excluding LU <sup>g</sup> Strong concentration among a limited number of (neighbouring) Member States.
Summary of pension decisions (PD P1)	119 183 <sup>h</sup>	86 215 <sup>h</sup>	2.8% of the total number of pensioners reside abroad 0.6% of the total amount of paid pensions  2/3 old-age pension 1/3 survivors'and invalidity pensions

<sup>138</sup> There are additional portable documents that are not presented in the table because the statistical data for them is not collected. This is Portable document U3 (PD U3) about circumstances likely to affect the entitlement to unemployment benefits. It informs the employment services of the country paying benefits of changes in person's situation which may lead to a revision of benefit payments. Portable document DA1 (PD DA1) entitles a person to receive medical treatment under special conditions reserved for accidents at work and occupational diseases in another EU country. PD S3 certificates entitlement to healthcare in the former country of employment. Useful for retired cross-border workers who are no longer insured in their former country of employment.

Entitlement to healthcare if living abroad (PD S1)	1,4 million (60% issued to working age + 30% to pensioners +10 % family members)	1,4 million (70 % issued to working age and family members + 30 % to pensioners and their family members)	0,3% of insured persons 0,2% of the total spending of reporting MS
Planned health treatment abroad (PD S2)	34 433 (issued) <sup>i</sup> 34 433 (received)	28 386 (issued) <sup>j</sup> 50 686 (received)	0,01 % of insured persons (2015, 2016) 80% issued to receive treatment in a neighbouring MS

Notes: <sup>a</sup> If available, this column present increase compared to the previous year in brackets. <sup>b</sup> Reported by 24 MS. No data available for CZ, DE, IE, EL, FR, IT, IS, LI. <sup>c</sup> Reported by 29 countries, no data available for FR, EL and LI. <sup>d</sup> Reported by 26 member States. No data available for DE, IE, EL, CY, SI, LI <sup>e</sup> Comparison is based on 21 countries which reported figures for both years. Missing are some countries with high number of certificates, like FR, IT, SI and CZ. <sup>f</sup> No data available for BG, FR, IT, CY, HU, PT, SI, IS, LI and CH. <sup>g</sup> LU is an 'outlier' with regard to the export of family benefits. Including LU doubles the share to approximately 3%. <sup>h</sup> 17 reporting MS in 2015 and 18 in 2016 only. Missing data for a high number of (large) Member States results in an incomplete and distorted overview. Missing in both years: CZ, DE, IE, EL, FR, HR, CY, AT, PT, UK, LI, CH. Missing in 2015: DK, IT, HU Missing in 2016: BE, SI, i No data available for issued PD S2: FR, DE, IS, and no data for received PD S2: DE, ES, FR, CY, PT, SE. <sup>j</sup> No data available for issued PD S2: DE, IT, LV, NL, LI. Because of that, the total number is underestimated as reporting for previous years shows that NL and IT issue on average some 4,500 PDs S2 a year. No data for received PD S2: DE, IT, LV, PT.

Source: Statistical reports on social security coordination<sup>139</sup>

These figures give an indication of the caseload for social security institutions tasked with coordinating cross-border transfers. Within this stock, moreover, possible fraud and errors can occur, as reported in section 2 below.

In light of these changes, administrating labour mobility and enforcing existing EU and national rules could generate further challenges requiring a solid governance structure and appropriate tools.

## 2. Estimating the extent of cross-border undeclared work and the number of fraudulent cases in intra-EU mobility

The number of EU-28 movers in 2016<sup>140</sup> amounts to around 11 million which is 3,9% of the EU working age population; adding the 1,4 million cross-border workers and 2,3 million posted workers, the total of mobile EU workers is well above 14 million. How many of these workers are involved in undeclared work or fraudulent working relations are largely unknown. Reliable and harmonised aggregate data is not available, neither on national level nor on EU level. A rough estimate is carried out on the basis of the available information.

<sup>139</sup> Data are collected via administrative questionnaires within the framework of the Administrative Commission. Not all Member States are always able to provide data. In addition to the EU28 MS, the EFTA countries are included: Iceland (IS), Liechtenstein (LT), Norway (NO) and Switzerland (CH). Reports are available on Commission webpage. <http://ec.europa.eu/social/main.jsp?catId=1154&langId=en>.

<sup>140</sup> European Commission, 2017 Annual Report on intra-EU Labour Mobility

Undeclared work and fraudulent practices are by their very nature undeclared to public authorities. Different methods exist to estimate the size of undeclared work. A variety of studies is available estimating the undeclared work on national and EU level, often applying different methods and criteria, inevitably producing equally varied results<sup>141</sup>. There have been very few measurements of the extent of cross-border undeclared labour as a proportion of the overall undeclared economy; official statistics about fraudulent cases within intra-EU mobility are not available.

However, on the basis of available information it can be concluded that nationality is not a determining factor for participation in undeclared work. The Eurobarometer 284 from 2007<sup>142</sup> states that "People's nationality did not have any significant influence on participation in undeclared work: The share of non-nationals working undeclared was about the same as the share of the resident population". Analysing the answers to the Eurobarometer 79.2<sup>143</sup> from 2013 reveals that on the EU-level, 3.8% of those in the Member State of their nationality engage in UDW compared with 2.6% of those not in the Member State of their nationality. It is worth considering that direct methods such as this survey-based Eurobarometer tend to underestimate undeclared work as interviewed individuals often underreport their undeclared activities and many undeclared activities performed by companies, like subcontracting, are not captured.

In conclusion it can be said that intra-EU mobile workers are significantly less involved in UDW - 2,6 % versus 3,8% - than those working in their own Member States. **In absolute figures, 2,6% of 14 million mobile EU workers would still result in a significant number of almost 400.000 cross-border workers involved in UDW per year.** Putting this in relation to latest estimates of undeclared work in the EU - on average, 11.6% of total labour input in the private sector in the EU is undeclared, and undeclared work constitutes on average 16.4% of gross value added (GVA) – points to a possible underreporting but still confirms the magnitude of the problem.<sup>145</sup>

For undeclared work as a proportion of total labour input there are big differences between EU countries, with figures ranging from 2,7% to more than 20% in Poland. Similar to the mobility flows, these figures are not stable over time; they depend on a variety of structural

<sup>141</sup> European Semester thematic factsheet 'undeclared work' 2017

<sup>142</sup> Special Eurobarometer 284, Undeclared Work in the European Union, 2007

<sup>143</sup> Special Eurobarometer 402, Undeclared work in the European Union, 2013

<sup>144</sup> Williams, C.C. and I Horodnic, (2018) Participation in undeclared work in the EU28: by nationality of participants, 2013 Special Eurobarometer 402 survey, Available from: [https://www.researchgate.net/publication/322835042\\_Participation\\_in\\_undeclared\\_work\\_in\\_the\\_EU28\\_by\\_nationality\\_of\\_participants\\_2013\\_Special\\_Eurobarometer\\_402\\_survey](https://www.researchgate.net/publication/322835042_Participation_in_undeclared_work_in_the_EU28_by_nationality_of_participants_2013_Special_Eurobarometer_402_survey), DOI 10.13140/RG.2.2.33068.97929

<sup>145</sup> Williams, C.C., Horodnic, I.A., Bejakovic, P., Mikulic, D., Franic, J., Kadir, A. (2017) An evaluation of the scale of undeclared work in the European Union and its structural determinants: estimates using the Labour Input Method (LIM).

determinants.<sup>146</sup> The few available national estimates are not comparable due to differences in the methodologies of collecting data and survey dates but they confirm as well the significant cross-border dimension of undeclared work in the EU. One estimate provided by the French government identifies that 10 % of all undeclared work in France in 2004 was conducted by foreign workers without official employment authorisation papers.<sup>147</sup> Another by the Ministry of Labour and Social Insurance in Cyprus identifies that in 2016 based on results of labour inspections, around 19% of work conducted by other EU nationals was undeclared and around 31% of work conducted by non-EU nationals<sup>148</sup> was undeclared.

As stated above no harmonised reliable statistics on fraudulent cases, for example in the area of posting of workers, exist. Some partially available data can, however, be used as proxies to estimate the number of suspicious cases that require further information and can subsequently lead to an investigation and legal action.

The report on fraud and error in the field of EU social security coordination reveals that fraud and error are still generally recognised by Member States as problematic phenomena; the provided data confirm this finding. Among others, the report provides for the number of withdrawn PDs A1 by some Member States. As the number of issued PDs A1 is generally used as indicator for the measuring the extent of posting of workers in the EU, it is put in relation to the number of issued PDs A1.

**Table 1**      **Number of PDs A1 withdrawn, 2016**

	Number of PDs A1 withdrawn (as competent MS)	Total number of PDs A1 issued in 2016	% of withdrawn PDs A1 in 2016
<b>HU</b>	529	65,725	0.8%
<b>PL</b>	2,050	513,972	0.4%
<b>PT</b>	300	64,459	0.5%
<b>IS</b>	1	239	0.4%

**Source** Administrative data PD A1 Questionnaire 2017

These partially available official figures are used as a proxy for the total number of withdrawn PDs A1 on EU level. Withdrawn PDs A1 are not necessarily the proof for fraud but it requires

<sup>146</sup> Idem

<sup>147</sup> DILTI (2004) Commission Nationale de Lutte contre le Travail Illégal. Paris: Ministère de l'Emploi, du Travail et de la Cohesion Sociale.

<sup>148</sup> Nicos Trimikliniotis (2017) Peer country comments paper: Cyprus, Peer Review on "Joint operation groups between public agencies – an effective tool to prevent and tackle undeclared work" Oslo (Norway), 25-26 September 2017.

an action normally based on an initial suspicion to start the withdrawal process. Often this action is initiated by one Member State requesting information and/or action from another Member State after an inspection or control measure.

The total of PDs A1 covered in this sample amounts to almost 30% of all issued PDs A1 on EU level. Two options are proposed to come a realistic figure on EU level: a conservative option with 0,1% withdrawn and a more advanced option with 0,4% withdrawn PDs A1. This results in 2300 withdrawn PDs A1 on EU level for the conservative option and 9200 for the advanced option. Both figures point to a significant number of suspicious cases and hence to a strong need for Member State to interact and exchange information.

Another proxy to estimate the total of suspicious cases is the number of requests between Member States in the posting of workers module in Internal Market Information System<sup>149</sup> (IMI-system). The number of requests is likely to underestimate the dimension of the problem as one request can cover several posted workers, posted by one employer, or active on a construction site or company site. The total number of requests is continuously increasing, up to 3100 requests in 2017. In relation to overall number of issued PDs A1 this would mean a minimum of around 0,13% of suspicious cases within posting of workers.

Always in the report on fraud and error in the field of EU social security coordination the following figures resulting from Belgian investigations carried out by the ‘cross-border’ units from 1 January to 31 December 2016 in the area of applicable legislation are available.

Irregularities	N° of rectifications	Total amount of rectification (in €)	N° of workers rectified
Foreign MS requested to withdraw E101-E102-A1	131	38,722,164.87	1 588
LACK of E101-E102-A1 — Belgian SS rectified	106	17,734,324.45	1 272
Total — request for application of Belgian social security legislation	<b>237</b>	<b>56,456,489.32</b>	<b>2 860</b>
Salaries employees-Declaration	12	2,563,012.03	56
Salaries labourers-Declaration	146	44,853,109.20	2 513
Total — rectified declarations sent to the ONSS	<b>158</b>	<b>47,416,121.23</b>	<b>2 569</b>

Putting this 2569 involved workers in relation to the number of individual persons with a PD A1 - 164,253 - that Belgium reported<sup>150</sup> for 2016 results in around 1,5% of fraudulent cases in the field of applicable legislation.

<sup>149</sup> [http://ec.europa.eu/internal\\_market/imi-net/index\\_en.htm](http://ec.europa.eu/internal_market/imi-net/index_en.htm)

<sup>150</sup> European Commission (2017), Posting of Workers. Report on PD A1 portable documents issued in 2016

Data estimating the extent of social fraud in the EU is insufficient to have a comprehensive picture of the size of the phenomenon.

In the following, however, available data sources are compounded with a view to having an *indicative* picture of the possible caseload which the new Agency may be set to work on. Figures are mainly taken from the EC Fraud and Error Report 2017<sup>151</sup> if not otherwise indicated.

**Table 4. Cases of fraud and error in different social security coordination domains, 2016**

<b>Number of PDs A1 withdrawn, 2016</b>			
	<b>Number of PDs A1 withdrawn (as a competent MS)</b>	<b>Total number of PD A1 issued in 2016</b>	<b>% of withdrawn PDs A1 in 2016</b>
DK	6	29,595	0.02%
HU	529	65,725	0.8%
PL	2,050	513,972	0.4%
PT	300	64,459	0.5%
IS	1	239	0.4%
<b>Cases of inappropriate use of the European Health Insurance Card (2016)</b>			
	<b>Number of cases identified</b>	<b>% share in number of claims paid</b>	<b>% share in total amount reimbursed</b>
EE	193	2.8%	3.0%
LT	284	3.5%	2.0%
NL	< 100	0.1%	0.02%
AT	791	0.8%	0.8%
RO	315	1.0%	0.6%
<b>Cases of fraud and error in the context of aggregation of periods for unemployment benefits (2016)</b>			
	<b>Number of cases identified</b>	<b>Amount involved</b>	<b>% of total PD U1 received</b>
CZ	41	3,925	7.9%
HU	88	6,077	4.5%
ES	< 10	n.a.	0.3%
<b>Cases of fraud and error in case of export of family benefits (2016)</b>			
	<b>Cases</b>	<b>% exported cases</b>	<b>% exported amount</b>
CZ	199	21%	12%
PL	4,033	12%	4%
RO	998	7%	n.a.

Source: Jorens, Y., Gillis, D. and De Potter, T. (2017), *Fraud and error in the field of EU social security coordination*, Network Statistics FMSSFE, European Commission (p. 78),

Overall, the share of detected frauds and errors seems to be a minority share of the total. In the case of the posting of workers, the highest number of withdrawn PD's A1 documents in 2016– Poland's 2,050 – still represents 0.4% of the total documents issued.. In the case of family benefits, on the contrary, problematic cases can be relatively high, sometimes also due to the non-communication by beneficiaries about changes affecting the right to these benefits.

<sup>151</sup> Jorens, Y., Gillis, D. and De Potter, T. (2017), *Fraud and error in the field of EU social security coordination*, Network Statistics FMSSFE, European Commission,

The cases of inappropriate use of the EHIC tend to remain limited and the overall share of rejected invoices between Member States (around 2% of the total number of claims of reimbursement received). However, an increase in the number of rejections is observed, which could lead to an increase in the administrative burden for Member States of stay if additional information has to be provided/asked in order to receive the reimbursement. It will also result in a delay of payment or even in a budgetary cost for the Member State of stay if claims are not accepted by the competent Member States.<sup>152</sup>

However, data limitations should prevent from drawing too optimistic conclusions. First, only a tight minority of Member States communicate their national data, therefore the sample is too limited to allow for generalisations. Second, the number of detected frauds or errors should be weighted against the number of inspections carried out. A small number of detected frauds could simply be the result of few inspections or of limitations of the available tools to share key information and prove between Member States. From section 3 above, we know that the number of controls or inspections per year can range between a few hundreds and the over 3,000 performed by Belgium. Moreover, the resource-intensiveness of cross-border controls, also due to lack of adequate cooperation tools and procedures, may lead to selective controls in the context of limited staff.

### **3. The use of the Internal Market Information system (IMI)**

Enforcement Directive 2014/67/UE has extended the use of the Internal Market Information system to exchanges of information in the context of the posting of workers. Exchanges are structured on four modules, namely:

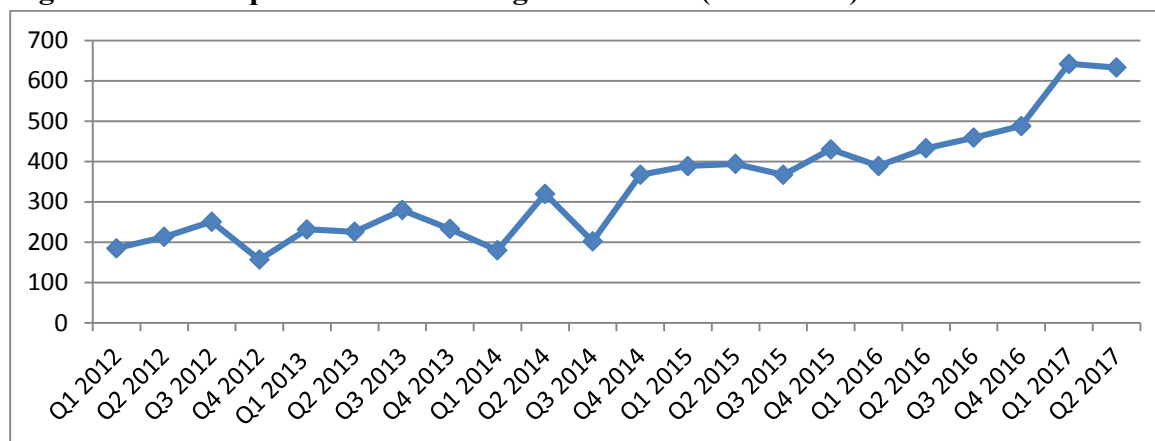
- information requests (including information on posting conditions, occupational health and safety, working conditions; urgent requests concerning companies' establishment and requests to send documents to a service provider);
- Request for Recovery of a penalty and/or fine;
- Request for Notification of a decision vis-à-vis a worker or a company
- Communication of possible irregularities

The instrument has increasingly been used over these last years. Overall, information requests have increased from some 180 in Q1 2012 to over 600 in Q1 2017.

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<sup>152</sup> F. De Wispelaere, J. Pacolet (2017), *Cross-border healthcare*, Reference year 2016, Network Statistics FMSSFE, European Commission.

**Figure 1. IMI Requests on the Posting of Workers (2012-2017)**



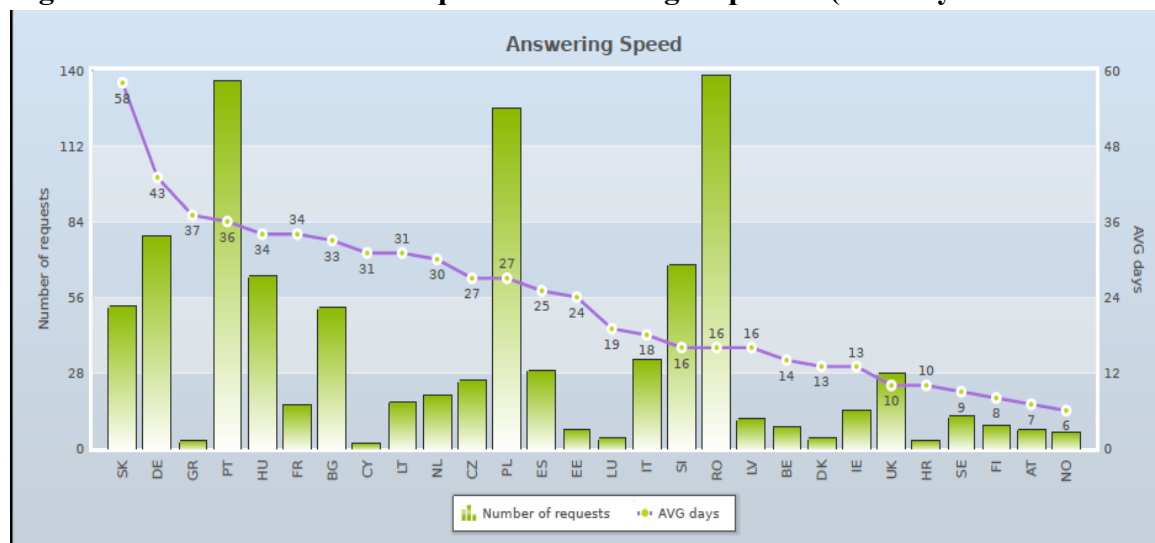
Source: European Commission, Internal Market Information system, statistics ([http://ec.europa.eu/internal\\_market/imi-net/statistics/index\\_en.htm#t\\_1\\_2](http://ec.europa.eu/internal_market/imi-net/statistics/index_en.htm#t_1_2))

Despite this positive development, the use of IMI remains concentrated amongst a few Member States. In 2016 and first semester of 2017 (latest available data), three Member States (AT, BE and FR – with DK joining in 2017) submitted about 80% of the requests. PT, PL, RO and DE were the Member States receiving most of the queries. While these figures partly reflect the ranking in the receipt (and sending) of posted workers in the EU, some Member States seem to making low use of the system, such as Germany or the Netherlands.

Answering speed also varies across the Member States, although there are signs that time is reducing. While in 2016 some Member States had an average response delay of over 100 days, this is no longer the case. In the first semester of 2017, the average answering speed ranged between 6 and 58 days (figure 2), including in cases of Member States with above-average number of requests received. Over half of the Member States remain below the agreed limit of 25 working days to reply to information requests set in Enforcement Directive 2014/67/EU.



**Figure 2. Information request answering speed (January – June 2017)**



Source: [http://ec.europa.eu/internal\\_market/imi-net/statistics/index\\_en.htm#t\\_0\\_4](http://ec.europa.eu/internal_market/imi-net/statistics/index_en.htm#t_0_4)

#### 4. National capacities for cross-border cooperation between inspectorates

Information on the administrative capacities and processes of cross-border cooperation is scant. To date, there is no comprehensive report providing an overview of the control activities of national administrations on companies and workers in cross-border situations, on the required administrative effort (e.g. dedicated staff, working days to process a case), the difficulties encountered, and the needed capacities<sup>153</sup>.

In order to partially fill this information gap, in November 2017, the FreSsco network of experts on labour mobility carried out a survey across the Member States, on behalf of the Commission, entitled "*On the capacities of labour inspectorates to deal with cross-border cases in the Member States*".

The results of the survey are presented below, following the six questions asked. The Study is based on 25 replies (including those of Switzerland, Iceland and Norway) which vary substantially in the amount of information provided.

<sup>153</sup> A further survey is being carried out in the context of the UDW Platform, under the module "Obstacles faced by enforcement authorities in tackling undeclared work". The survey will cover three topics: obstacles faced by enforcement authorities in cross-border cases; National and Bilateral Agreements; and tools for reporting complaints. The results of the survey will be available in the first semester of 2018.

**Table 3. Synthesis of the results of the FreSsco study on the capacities of labour inspectorates in cross-border cases**

Member State	Number of controls/year	Number of staff	Work days standard request	Work days legal investigation	Difficulties	Analytical capacity
AT	-	-	-	-	Linguistics; identification employer; identification MS' admin; prosecution admin penalties	-
BE	3.846 + controls by 5 regional offices	73	2-3 days 278 days 1-3 months  (depending domain)	15-20 days - up to 1 year  (depending domain)	access info; ≠ interpretation; linguistics; regulatory complexity; no uniformity; MS' admin. capacity	risk assessment through data mining & data matching
BG	435 (10 months)	not dedicated	25 days	up to 5-6 months	unwillingness employers	-
HR	no cross-border controls	not dedicated	up to 2 days	3-4 weeks	lack of docs; linguistics; unavailability employers; lack of info employees	-
CY	100	not dedicated	(depending case)	(depending case)	Linguistics; identification of workers; IT tools with real-time into	-
CZ	no cross-border controls	not dedicated	25 days 2-3 months  (depending case)	Months  (depending case)	≠ interpretation; linguistics; lack of info employees	-
DA	24 (first half of 2017)	30-40	-	-	linguistics; cultural differences	data base; cooperation with tax 1 police authorities
DE	-	not dedicated	5-35 days 3_12 month 8-14 days (depending domain)	-  (depending domain)	-	Data base; cooperation with customs authorities
EE	no cross-border controls	not dedicated	2-30 days	30 days 6-12 months  (depending case)	MS' admin. capacity; ≠ interpretation; linguistics; no uniformity;	-
FI	no cross-border controls  (working conditions foreign workers)	20-30 + 119 administr staff internat. soc. secu. benefits	6 minutes to 2 days  (depending domain)	54 minutes to 3-5 days  (depending domain)	unavailability employers, linguistics, incompatibility IT; MS' admin capacity; no uniformity regulations &	cooperation with police, immigration, border control & tax authorities

					procedures	
FR	set target of 1.500/month	dedicated national body + dedicated local units in regions	(depending case)	5 months	SIPSI system not user- friendly; complexity check work- residency permits and wages; need for frequency of controls; linguistics in MS'	coupling data illegal work with data on posted work; identification target sectors
HU	-	not dedicated	1-2 days to 2 months	(depending case)	employers not available- unwilling; MS' admin capacity	IT and filing system for risk assessment
EL	N.a.	N.a.	N.a.	N.a.	N.a.	N.a
HU	-	not dedicated	1-2 days to 2 months	(depending case)	employers not available- unwilling; MS' admin capacity	IT and filing system for risk assessment
IS (Iceland)	-	2	-	-	employers not available; linguistics	cooperation with tax authorities & social partners
IRL	-	not dedicated	matter of days	months to years	-	Predictive analysis and modelling; data matching
IT	N.a.	N.a.	N.a.	N.a.	N.a.	N.a.
LV	-	not dedicated	1-2 days	-	linguistics; no uniformity standards processes; unwillingness employers; MS' admin capacity	cooperation with state revenue office, state social insurance agency
LI (Liechtenstein)	-	-	-	-	lack of info employees; respect wage standards	-
LT	57 (working conditions foreign workers)	not dedicated	18,7 hours	20 days	unavailability employer; no uniform procedures; MS' admin capacity	-
SI	-	not dedicated	-	-	Low readiness to cooperate; MS' admin capacity	-
ES	778	not dedicated	24 hours to 2 days	(depending case)	Collection of fines & admin penalties – MS' admin capacity	Database and records to detect fraud or non-compliance
SE	no 'labour inspectorate' (social partners control conditions posted workers)	-	-	-	Privacy rules between tax authority, social insurance agency & social partners	-
CH (Switzerland)	'labour inspectorate'	-	-	-	lack of info employees;	cooperation with migration office

	not dealing with soc. security; social partners controlling working conditions)				respect wage standards	
UK	N.a.	N.a.	N.a.	N.a.	N.a.	N.a.
LU	N.a.	N.a.	N.a.	N.a.	N.a.	N.a.
MT	no cross-border controls	1	1-2 days	4-5 days	no uniformity	cooperation with PES, social security & inland revenue
NL	-	not dedicated	-	-	-	own analytical capacity; cooperation with social insur. board
NO (Norway)	-	not dedicated	less than one hour	1-2 weeks	access info; inter-agency exchange of info (personal data issues)	own department providing analytical capacity
PL	271 (10 months)	183	2.8-3.8 days	months	Access info; unavailability employer	-
PT	N.a.	N.a.	N.a.	N.a.	N.a.	N.a.
RO	144	not dedicated	-	-	linguistics; unavailability employer; impossibility check wages & payment social security	-
SK	N.a.	N.a.	N.a.	N.a.	N.a.	N.a.

No information: EL, IT, LU, PT, SK, UK.

Source: Ad-hoc FreSsco survey, November 2017

## 5. Examples of bilateral agreements on inspections

Bilateral and multilateral agreements or understanding of cooperation on cross-border labour rules have an established tradition, notably in the area of posting but also on undeclared work. Enforcement Directive 201/67/EU (Article 21(2)) recognises the function of such agreements or arrangements to integrating institutional cooperation, envisages their publicity and commits the Member States to inform the Commission.

This notwithstanding, also owing to the recent implementation of said Directive, there is no repository of bi- and multilateral agreements. Therefore, information is fragmented and not

necessarily up-to-date. Those presented below are examples of bilateral cooperation collected in the framework of the *Eurodetachment* project<sup>154</sup>.

#### **Belgium-Poland (October 2007)**<sup>155</sup>

The agreement signed between the Polish and the Belgian Labour Inspectorates envisages the exchange of information on the working conditions of posted workers within a delay of maximum 4 weeks (and within the limits set by data protection legislation) and the organization of annual meetings of coordination.

#### **France-Italy (September 2011)**<sup>156</sup>

The agreement signed by the Italian and the French Labour Ministries envisages "particularly active" cooperation between the respective labour inspectorates on controls on labour mobility, including the posting of workers, and fight against illegal work.

The agreement establishes that the competent authorities *may* provide mutual assistance on the study and carrying out concerted actions of prevention; communicating to each other changes in the legislative, regulative and administrative framework in the above areas and carrying out coordinated control actions; and exchanging information on the respective methods of controls and inspectorate work.

#### **Finland- Estonia (December 2014)**<sup>157</sup>

The agreement concluded by the Labour Inspectorate of Estonia and the Division of Occupational Health and Safety of the Regional State Administrative Agency for Southern Finland envisages cooperation in information sharing, including on matters where IMI cannot be used, exchange of inspectors on concrete cases including the organisation of training and joint visits in Finland, and efforts to raising awareness of Estonian workers posted to Finland concerning their rights and obligations while working in Finland and the sharing of related information. Bi-annual meetings are envisaged in order to take stock of results and further needs for common action.

#### **Spain-Romania (May 2009)**<sup>158</sup>

The Memorandum of understanding signed by the national labour inspectorates of Spain and Romania establishes a will to cooperate on matters of posting of workers (including the verification of genuine activities of posting companies, also during processes of investigation, and of the status of third-country workers, and the possibility for one of the parties to foster

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<sup>154</sup> *Eurodetachment* is a project coordinated by the French National Institute for Labour, Employment and Vocational Training (INTFEP) which was financed by a grant of the European Commission under the Call for Proposal (VP/2015/007).

<sup>155</sup> <http://www.eurodetachment-travail.eu/datas/files/EUR/Belgique%20Pologne%2011%20oct%202007%20fr.pdf>.

<sup>156</sup> [http://www.eurodetachment-travail.eu/datas/files/EUR/Dichiarazione\\_cooperazione\\_italofrancese\\_27.09.2011.pdf](http://www.eurodetachment-travail.eu/datas/files/EUR/Dichiarazione_cooperazione_italofrancese_27.09.2011.pdf).

<sup>157</sup> [http://www.eurodetachment-travail.eu/datas/files/EUR/Agreement\\_on\\_Cooperation.pdf](http://www.eurodetachment-travail.eu/datas/files/EUR/Agreement_on_Cooperation.pdf)

<sup>158</sup> [http://www.eurodetachment-travail.eu/datas/files/EUR/Memorandum\\_Espana\\_Rumania.pdf](http://www.eurodetachment-travail.eu/datas/files/EUR/Memorandum_Espana_Rumania.pdf)

special campaign of inspections and exchange of information); on the health and safety of workers and on work accidents.

## **6. Conciliation procedure in the field of social security coordination**

In the field of **social security coordination** the Administrative Commission (AC) is designated by a number of provisions of EU rules as the body to resolve such disagreements. When defining the procedure, two mechanisms are in place: Decision No A1 and the setting up of the Conciliation Board.

**The Decision No A1** of 12 June 2009 concerning the establishment of a dialogue and conciliation procedure provides for a settlement of disputes between institutions of different Member States in situations referred to in Articles 5 (Legal value of documents and supporting evidence issued in another Member State)<sup>159</sup>, 6 (Provisional application of legislation and provisional granting of benefits)<sup>160</sup>, 16 (provision of information if person pursuit activities in two or more Member States and 60 (procedure regarding payment of family benefits) of Regulation (EC) No 987/2009. It was adopted with the aim to establish a standard procedure to be followed before a matter may be referred to the Administrative Commission.

This consists of two stages of a dialogue procedure and, as a last stage, the conciliation procedure done through **the Conciliation Board** according to its mandate provided by the AC.

**Dialogue procedure:** The first stage of the dialogue procedure is conducted at the institutional level, i.e. it consists of direct contacts between the institutions concerned. **The second stage** of the dialogue procedure involves the competent authorities, i.e. it is conducted at a ministerial level.

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<sup>159</sup> As a principle, documents must be accepted by the institutions of the other Member States for as long as they have not been withdrawn or declared to be invalid by the Member State in which they were issued. When there is doubt about the validity of a document or the accuracy of the facts on which the particulars contained therein are based, the institution of the Member State that receives the document must ask the issuing institution for the necessary clarification and, where appropriate, the withdrawal of that document. Ultimately, where no agreement is reached between the institutions concerned, the matter may be brought before the Administrative Commission to reconcile the points of view.

<sup>160</sup> If there is a difference of views between the institutions or authorities of two or more Member States concerning the determination of the applicable legislation, the person concerned shall be made provisionally subject to the legislation of one of those Member States. Thereby the person is still protected and receives benefits.

### **Conciliation Procedure and Conciliation Board:**

in the conciliation procedure disputed issue may be referred by the Administrative Commission to the Conciliation Board. The Conciliation Board is expected to submit its opinion on the case within six months.

The dialogue and conciliation procedure established by Decision No A1 presents a number of challenges:

- The Conciliation Board only deals with disputes where both parties agree to bring the case in front of it, following the two states of dialogue procedure which already took place between authorities.
- The Conciliation Board is not equipped to solve disputes regarding the factual circumstances of a case.
- The Conciliation Board, by its very nature, is not in a position to deliver legally binding decisions, as the only possibility to get a binding decision on EU level in case of a dispute between Member States is to start infringement proceedings pursuant to Article 259 TFEU.
- There is a limited ability to monitor and follow-up on the implementation of its recommendations and decisions. The follow-up relies on Member States reporting back to the AC at the regularly scheduled meetings of this committee (four times a year), without a capacity of directly discussing on ground with the institutions concerned and support them with any difficulties they encounter with the practical implementation of the recommendation and decisions.
- The procedure of dialogue and conciliation can be very lengthy. The big majority of cases are resolved on a bilateral manner between Member States during the two phases of dialogue procedure. Few cases reach the third stage of conciliation: between 2010 and 2017 only nine (9) cases were submitted to the Conciliation Board of the AC. The full "life-cycle" of a case can therefore be as long as over 3 years.
- **Conciliation procedure is limited on posting related issues**, while such interpretation discussions and disagreements are also very relevant in other areas of social security coordination as an example in the area of family benefits or the determination of applicable legislation for areas other than in posting situations. On **family benefits**, wherever family members live in different Member States and may draw rights to family benefits from different countries there are many areas in determining which institution is competent for what type of family benefit which can lead to disputes, with the potential consequence of delaying the granting of family benefits necessary for the financial stability of the family. In order to facilitate and formalise exchanges in this field, the AC adopted Decision F2 in 2016 concerning the exchange of data between institutions for the purpose of granting family benefits with the aim of speeding up these procedures, however in cases of doubt a further formalised procedure would be beneficial, in particular when it comes to disputes.

The revision of the Decision A1 is currently ongoing in order to further streamline the procedure to address as far as possible the above outlined challenges.

Since its creation in October 2010, the Conciliation Board submitted a legal opinion in 2013 and another one 2014 on specific questions referred to it by the Administrative Commission. Five further cases regarding the validity of A1 posting certificates were referred to the Board in 2015, and in three of these cases, a legal opinion was submitted by the Board and later approved by the Administrative Commission. In one of the cases it led to the withdrawal of A1 posting certificates. A further case of referral has been requested for the December meeting of the Administrative Commission in 2016. Two new cases were submitted at the June 2017 Meeting of the Administrative Commission in which the Conciliation Board also submitted a legal opinion in a dispute between two Member States which was unanimously adopted.

**Conciliation is also in use within the framework of the Audit Board (and its Conciliation Panel).**

The tasks of the Audit Board are:

- To verify the method of determining and calculating the annual average costs presented by Member States
- to collect the necessary data and carry out the calculations required for establishing the annual statement of claims of each Member State
- to give the Administrative Commission periodic accounts of the results of the implementation of this Regulation and of the Implementing Regulation, in particular as regards the financial aspect
- to provide the data and reports necessary for decisions to be taken by the Administrative Commission

The Audit Board meets two times a year, and is composed by expert representatives from each of the Member States and observers from EEA countries and Switzerland as determined by the Administrative Commission.

The Audit Board mandated a Conciliation Panel to facilitate closing of accounts where a settlement cannot be reached between Member States within 36 months following the month in which the claim was introduced, dealing with the area of **implementing the financial provisions of social security coordination rules**, specifically Article 67(6) of the Regulation (EC) No 987/2009 and Article 2(3) of the AC Decision No H4. This became particularly relevant since the entry into force of the current social security coordination rules, which introduced clear deadlines on the settlement of claims between Member States for benefits provided across borders. To handle the closing of old claims (dating before 2010, under the rules of the previous social security coordination legislation where no deadlines were



stipulated), the Conciliation Panel dealt with a high number of cases, issuing opinions on over 100 disputes in the course of 2017.

## 7. Your Europe Advice

### 7.1. Introduction

Your Europe Advice<sup>161</sup> (YEA) is an EU-run personal advisory service answering citizens' and businesses' queries (by phone or online) about their EU rights in the Single Market, clarification on EU law in the citizen's and business's particular situation, explanations of how to exercise these rights, and directions to a national institution or other body if needed. 'Your Europe Advice' relies on a network more than 63 independent multilingual legal experts from all EU Member States who handle enquiries in all official EU languages. Replies are provided within less than one week and in any official EU language.

**The number of enquires has been increasing over the time.**<sup>162</sup> Between 2009 and 2016 the number of enquiries more than doubled (from 11540 to 24445 cases per year). Between 2015 and 2016 the use of Your Europe Advice slightly decreased which can be attributed to more relevant and more user-friendly information on the Your Europe website.

The timeliness and quality of replies is being maintained even though **the questions put to Your Europe Advice are increasingly specific and complex.**<sup>163</sup>

**The demand for advice is continuously the highest among employed and in the 25-44 age bracket.** In 2016, 38 % of the enquiries were submitted by employed, 11 % by jobseekers and unemployed, 10 % by self-employed and 8 % by retired and same pattern can be observed in the past.<sup>164</sup> In terms of age, the second place in number of requests goes to the age group 45-64, while there is a big increase in the number of requests of people under 18 years.

**The top enquires relate to the areas of social security, entry procedures, residence, work, motor-vehicles and taxes** (Table).<sup>165</sup> The area of social security has been continuously the

<sup>161</sup> <http://europa.eu/youreurope/advice/>

<sup>162</sup> Single Market Scoreboard, Edition 07/2017.  
[http://ec.europa.eu/internal\\_market/scoreboard/performance\\_by\\_governance\\_tool/youreurope\\_advice/index\\_en.htm](http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/youreurope_advice/index_en.htm)

<sup>163</sup> Single Market Scoreboard, Edition 07/2017.  
[http://ec.europa.eu/internal\\_market/scoreboard/performance\\_by\\_governance\\_tool/youreurope\\_advice/index\\_en.htm](http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/youreurope_advice/index_en.htm)

<sup>164</sup> For one fifth of the enquires the information about their status was not available.

<sup>165</sup> Topics covered under YEA are: access to document, entry procedures, family rights and issues (other than rights of residence), financial services, goods (other than motor vehicles), judicial rights in the EU, motor-vehicles, other consumer issues, other fundamental rights in the EU (incl. Charter), political rights of EU citizens, residence, social security, studies and training, taxes, welfare benefits (non contributory), work.

top one. Around 20% of the enquiries related to social security issues concern forms (i.e. PDs), notably in the sectors of health and unemployment.<sup>166</sup>

**Table: Your Europe Advice - Top subject areas where advice is sought<sup>a</sup>** (% of total enquiries)

TOPIC	2013	2014	2015	2016
Social security	24.86	26.04	25.95	23.52
Entry procedures	13.13	13.68	17.85	19.29
Residence	18.07	16.97	16.35	17.35
Work	10.16	9.13	8.57	8.07
Motor-vehicles	8.97	10.93	9.72	7.25
Taxes	5.06	6.16	5.4	6.85

Note: <sup>a</sup> Share of enquiries higher than 6 %. For other topics the share is if .

Source: Single Market Scoreboard, Edition 07/2017.

## 7.2. Users' satisfaction with advice

Users are overall satisfied with the quality of the replies. In total 80% are satisfied or very satisfied with the service received. **Satisfaction was somewhat lower for enquiries related to tax and social security issues, mostly for lack of practical guidance, insufficient explanations of the relevant legislation and incomplete answers provided.**<sup>167</sup> On average one sixth of all YEA users feel that the service did not fully meet their needs, mostly due to incomplete answers, unhelpful answers and replies that do not contain enough practical guidance. The data gathered suggest that the citizens who submitted enquiries that were ineligible for the service could be better informed about the reasons why their case was rejected.

**The YEA service is not easy to find, but this is intentional.** Due to the budgetary limits to the total number of queries that can be handled in a year, the service is not actively promoted. The costs of providing a personalised, individual assistance via Your Europe Advice are estimated at € 74 per enquiry, which is 75 times more compared to the costs of providing information online (e.g. Your Europe, € 0,92 per enquiry). Therefore the reach of the service is limited considering the number of EU citizens who may require personalised legal advice and assistance on their EU rights.<sup>168</sup>

<sup>166</sup> Feasibility study on a European Mobility Portal on Social Security (EMPSS), 2017, prepared for DG EMPL by COWI A/S (not published)

<sup>167</sup> IA SDG 2017, p. 42

<sup>168</sup> The costs of information provided online via Your Europe are significantly lower (information online, EUR 0,92 per enquiry) compared to the personalised advice via Your Europe Advice (individual assistance, EUR 74 per enquiry). IA SDG 2017, p. 42

### 7.3. Overview of main difficulties in receiving necessary and correct information in the area of social security and work

Since 2012, YEA Quarterly Feedback Reports<sup>169</sup> provides an overview of the main problem issues and 'problem countries'.

**Social security** touches upon health and financial concerns that are perceived as crucial by citizens. A lot of questions evidence the difficulties that citizens experience in receiving information. The social security rules are still not well known by the national authorities, particularly those rules concerning determination of the applicable legislation or the competent Member State. There is a persistent lack of co-operation between national authorities despite the obligation of co-operation imposed by Article 76 of Regulation (EC) No. 883/2004 and number of cases featuring incorrect interpretation or implementation of the rules by national authorities. Due to their failure to communicate and co-operate with each other as they should (Article 76, Regulation (EC) No. 883/2004), national authorities are unable to correctly determine the competent state. Consequently, citizens face problems in claiming social benefits. This leads to serious problems in all branches of social security as citizens do not know where to pay social contributions when they work in two countries, or when they live in one country and work in another, or when they retire to another country.

**Under topic 'work'** many cases general information requests on the rights, conditions and formalities of working in another Member State (e.g. access to employment). Similarly the majority of enquiries received from cross-border workers and posted workers were general information requests.

The recurrent issues identified in the area of social security and work are the following:

#### 1) Social security

- difficulties in obtaining information, especially concerning the **necessary documents and forms**,
- **imperfect understanding of the social security rules by national authorities, in particular, how to determine the applicable legislation or the competent Member State**. Some Member States deny their responsibility and declare themselves as not competent when they are competent. **More and more countries refuse to deliver the appropriate forms**, mostly Form S1 and refuse to recognise those coming from another EU country (especially Romania, Bulgaria, Sweden, Germany and France).
- There is a **persistent lack of cooperation between national authorities** despite the obligation of cooperation imposed by Article 76 of Regulation (EC) No. 883/2004.

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<sup>169</sup> Only available internally for the Commission.

- **Excessive delays in processing family benefit claims and the payments of these benefits** (Germany, Austria).
- Difficulties in providing evidence on health insurance in relation to the right of residence and implementation of Directive 2004/38/EC.<sup>170</sup> **While this can be demonstrated by several means, some Member States refuse to recognise any form other than the Form S1.** They refuse to accept an insurance policy or any other statement or form proving that a citizen is covered by health insurance. YEA received enquiries showing that **an increasing number of Member States refuse to issue Form S1.** This is a recurring issue in Sweden, but it is also appearing in other Member States such as Romania. The French Family Allocations Office (Caisse d'Allocations Familiales - CAF) requires that EU citizens have a residence card to continue receiving benefits.
- **The Romanian authorities do not recognize proof of health insurance contributions in another Member State (such as the Form S1).** Citizens are not even asked to prove that they were subject to another Member State's social security system. The Romanian authorities do not accept portable documents issued in other Member States. In practice, this means that some Romanian citizens are obliged to pay their health insurance contributions twice. The Romanian authorities do not accept and often refuse to issue the necessary forms to EU citizens.
- **The difficulties that students experience in accessing correct information concerning their health care coverage.** Some Member states will only issue an EHIC to them while others issue a Form S1. As the Member States have some discretion to decide the conditions under which they issue a Form S1, this can create difficulties.
- Restricted use of Form A1 in some Member States. For example, citizens have reported that the authorities in their respective countries have refused to issue Form A1 to anyone other than an employed posted worker.
- **Difficulties experienced by EU citizens caused by the uncertainty of Brexit.** Citizens are now afraid that they will miss out on their pensions even though they have made contributions. Some local administrations are making registration more complicated for British citizens and EU citizens living in the United Kingdom are also experiencing difficulties.

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<sup>170</sup> The right of residence under the Directive is subject to evidence of health insurance to ensure that citizens do not become a burden on the social security of the host Member State during their stay.

## 2) Work

- EU citizens and their family members continue to experience **difficulties in accessing work**. A residence card or a national insurance number was required (especially in Sweden and the United Kingdom).
- EU citizens continue to experience **difficulties in having their professional qualifications recognised by other Member States**. Surprisingly, very few cases concerned automatic recognition in the “sectoral” professions.
- **Difficulties experienced in relation to application of the Posted Workers Directive 2014/67/EU as well as the Social Security Regulation (EC) No 883/2004.**
- A number of enquiries related **to obstacles to establish a company or to start a business**

## 7.4. Cases demonstrating lack of cooperation among national authorities and insufficient awareness and/or incorrect interpretation of the law in the area of social security

### 7.4.1 Lack of cooperation between national authorities

#### Healthcare

**Croatia/Germany:** A Croatian citizen required unplanned medical treatment in Germany when temporarily staying there to visit a family member. He had to be hospitalized and treated in a German hospital. The German health insurer requested Form E112 (now Form S2), which is the authorisation to obtain planned health treatment from the Croatian health insurer. The latter refused to issue this document, stating that the citizen was covered by Croatian health insurance, which will cover all costs approved by the German insurer through the European health insurance card. The German insurer refused to consider this case as being one of a citizen seeking unplanned treatment abroad and continues to insist on presentation of Form E112. This lack of coordination and understanding between the two health insurances bodies has created a problem for the citizen to receive the treatment he requires in the knowledge that the cost will correctly be met by the Croatian authorities (228125).

#### Family benefits

**Slovakia/Slovenia:** A Slovak national who lives with her family in Slovenia experienced difficulties in obtaining parental allowance from Slovakia, where she is economically active. The two administrations cannot agree on the comparability of benefits (228313).

#### Unemployment benefits

**Italy/France:** An Italian job-seeker who used Form U2<sup>171</sup> to have his unemployment benefit transferred to France was not advised why the first monthly payment and the third were much lower than the second. As a consequence, he is unsure whether he can extend his job-search in France. He was advised that he would be granted an extension of payment of his unemployment benefit to France, but he risks losing his right to benefit if he does not now return to Italy. The Italian Social Welfare Institution (Istituto Nazionale Previdenza Sociale “INPS”) has failed to respond to the French Job centre (Pôle Emploi) to confirm extension of the transfer of his unemployment benefit (223898).

**Italy/Hungary:** A Hungarian citizen worked in Italy. After becoming unemployed, she registered as a jobseeker with the Italian employment service. She informed the service about her intention to look for work in Hungary. She stayed for four weeks in Italy as required under Regulation (EC) No. 883/2004 then asked the Italian Agency to issue Form U2. The Italian Agency delayed registration of the citizen as a jobseeker in Italy and did not issue Form U2. The Italian Agency suggested that the citizen should first return to Hungary and register as a jobseeker there. The Hungarian Agency should then apply for Form U2 in the name of the citizen. After the citizen had registered in Hungary, the Hungarian Agency notified the Italian service, but the Italian service refused to issue any cash benefits to the citizen because the Hungarian authorities had not sent a request for Form U2. The Hungarian Agency correctly asserts that the Italian service should have issued Form U2 to the citizen before she left Italy, when she applied for issue of Form U2 in person. As a result, the citizen was left without unemployment benefits for the period she stayed in Hungary as a jobseeker (227408).

**Italy/France:** An Italian citizen sought to transfer unemployment benefit from France to Italy. The French Employment Centre issued Form U2. The citizen registered with the commune employment centre where he resided. However, the employment centre (city of Benevento) was unaware of how confirm the registration to the French Job centre (Pôle Emploi) and did not accept the Form U2 form issued in France. Consequently, the Italian citizen has been unable to transfer and benefit from his French unemployment benefit. Art. 76(4) of Regulation (EC) No. 883/2004 and Art.2(2) of Regulation (EC) No. 987/2009 lay down the principle of mutual information and cooperation between the competent authorities of the Member States to ensure correct implementation of the EU social security rules. The institutions are obliged to provide or exchange, without delay, all data necessary for establishing and determining the rights and obligations of persons (to whom the basic Regulation (EC) No. 883/2004 applies). The fact that the Italian social security Agency did

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not communicate with its French counterpart and did not accept the Form U2 form issued in France, represents misapplication of the principle of cooperation, as laid down in EU legislation and was solved via Solvit (22308311).

**Ireland/Lithuania:** No response was received from the competent Irish social security institution to an enquiry regarding a Lithuanian citizen's unemployment insurance periods in Ireland (228117).

**Romania/Germany:** A Romanian citizen made voluntary contributions in Romania for two and a half years. She is now pregnant. She paid sickness insurance cover on a quarterly basis in Romania. Such contributions are accepted from non-active citizens. She and her husband wish to settle in Germany. To register residence there, she is required to participate in the German public health insurance system. She was advised in Germany to obtain Form E104. She was refused the Form because she had paid her social insurance contributions quarterly rather than monthly. The citizen was unable to discuss her situation as the phoneline for enquiries repeatedly rang out. The citizen is in a very difficult situation because despite having paid social insurance contributions for the past two and a half years, she is being denied benefits in Germany because she cannot obtain Form E104 from the Romanian authorities. She cannot obtain the Form E104 because she paid social insurance contributions there quarterly rather than monthly. (222944, 222944 and 222676).

#### **Old age and invalidity pension**

**Bulgaria/Greece:** A Bulgarian citizen worked in Greece. On her return to Bulgaria, she required an urgent operation and was asked to pay three years of health insurance contributions in Bulgaria by the National Social Security Institute (NSSI). After receiving invalidity pension in Bulgaria, she requested confirmation of her pension rights in Greece in 2016. By 2017, the Bulgarian citizen still had not received a reply about her pension rights in Greece. Citizens should not be required to pay double insurance contributions when resident in another Member State. Responses to enquiries about EU social security coordination should be received within a reasonable period of time (223252).

**France/Romania:** A Romanian citizen living in France experienced excessive delays in obtaining details of his pension rights for the years he had worked in Romania. According to EU rules, as he has worked in both France and Romania, the competent institution in France may require its Romanian counterpart to provide information on insurance periods completed there. Delays in providing such information can deprive citizens of their pension income for the period of the delay (226810).

**France/Spain:** A French pensioner residing in France worked there until 2006. He then worked in Spain from 2006 to 2016. He sought Form E205 from his French insurer to give to his Spanish insurer. However, the French insurer has failed to send the form to its Spanish counterpart. This is an infringement of Article 76 (4) of Regulation (EC) No. 883/2004 which requires national authorities/bodies to cooperate. (227187).

**Sweden/Spain:** A Spanish citizen lives in Sweden. He has worked both in Sweden and Spain. He is retired and has applied for old age benefits. The Spanish authorities have not provided him with information and his application is being delayed. This suggests that there may be problems in communication between the national competent authorities (223998).

**United Kingdom/Spain:** The British social security authorities failed to respond for more than seven months to an old-age pension application from a Spanish resident made through the Spanish authorities for aggregation of periods and calculation of contribution records (226188).

#### ***7.4.2 Insufficient awareness and/or incorrect interpretation or implementation of the law by national Agency***

**Germany:** a German citizen resides in Belgium. Between 2014 and 2016, while residing in Belgium, she maintained a part-time job there and also commenced working as an independent consultant in Germany. She paid social insurance contributions to the Belgian national social security Office (Office National de Sécurité Sociale - ONSS) and social insurance contributions in respect of her work in Germany to a German social security agency. The Belgian National Institute for Social Security of the Self-employed (L'Institut national d'assurances sociales pour travailleurs indépendants - INASTI) is now requesting that she pays them the social contributions for the work she did in Germany. In fact, INASTI is correct to claim that the social contributions as an independent consultant should have been paid in Belgium. Indeed, under Article 13(3) of Regulation (EC) No. 883/2004, when a person receives a salary from a Member State and works as an independent in another Member State, she should pay her social contributions in the Member State where she receives her salary. But INASTI should have first sought reimbursement from the German social security authorities based on Article 76(4) of Regulation (EC) No. 883/2004 which provides for cooperation between Member States' bodies. This case demonstrates unawareness of EU law by INASTI (227659).

**France:** an Irish posted worker living and working in France with his family experienced



difficulties in having his Form A1<sup>172</sup> registered by the French competent authorities (Caisse Primaire d'Assurance Maladie- CPAM). This has resulted in his medical bills mounting to almost €3,000 over the last 2.5 years which he was required to pay up-front and for which he has not been compensated (224607, similar case 224599)

**Cyprus:** An EU national worked and paid social security contributions in Cyprus for nine consecutive years. She then left for Bulgaria and applied for unemployment benefit there but did not receive any. Four months later, she returned to Cyprus where she also applied for unemployment benefit. She later applied for sickness benefit, maternity and a birth allowance in Cyprus. The Cypriot authorities have refused all her claims, insisting that the Bulgarian authorities are competent. Pursuant to Regulation (EC) No. 987/2009, where there is a dispute as to which institution is competent, the person should be provisionally covered in her country of residence and paid benefits under that legislation until the matter is resolved. The two institutions must communicate to resolve this issue and decide what is her country of 'habitual residence' (227446).

**Spain:** There is a recurring problem in the failure by the Spanish authorities to aggregate contributions<sup>173</sup> in the calculation of pension and invalidity pensions. A Spanish citizen worked for more than twenty years in Germany and nine and a half years in Spain. He applied for German and Spanish old-age pensions, but his Spanish pension has been refused because the citizen does not have a minimum of ten years of contributions required for payment even though he had also worked in Germany for twenty years (224917).

**France:** A French citizen living in France applied for his pension in France. The French competent authorities have refused to consider his Luxembourg contributions (223491).

**Austria:** Recurring complaints that the Austrian tax authorities fail to pay a family allowance supplement. A Slovak citizen experienced problems claiming family benefits from Austria. Despite providing all documentation more than six months ago, she is still waiting for a decision and payment of the benefit. Such long delays breach the citizen's mobility rights in the EU (223141).

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<sup>172</sup> Form A1 confirms that an employee or self-employed person pays social insurance contributions in his or her country and that they are insured. Consequently, it is not necessary to pay insurance contributions in the country, where he or she is posted. In some sectors, it is difficult to use this form and some countries limit the scope of form A1 to employed posted workers when, in fact, it has wider use.

<sup>173</sup> Article 6 of Regulation (EC) No 883/2004 recognises the principle of aggregation of periods, which means that acquisition of the right to receive benefits in one Member State must take into account periods of insurance, employment, self-employment and residence in another Member State. Some enquiries demonstrate the difficulties that citizens experience in receiving clear and correct information about aggregation of periods of insurance in different Member States.

## **7.5. Cases demonstrating lack of general information for citizens and/or incorrect interpretation of the law by the national authorities in the area of work**

Certain Member States refused EU jobseekers the right to take up employment because they lacked resident status or a personal tax number (“personnummer”) (for example Spain 227971 and Sweden 223362, 225422). However, the authorities would not issue the personal tax number unless the citizen could demonstrate that they were in employment.

Similar cases are reported in establishing a business. E.g. in **Finland**, to establish a business, a person should have a personal number and there is also an obligation to register residence as an EU citizen. Although these are two separate administrative proceedings and should be able to be carried out independently of each other, the citizen can easily become confused and feel in a Catch-22 situation, as it is not possible to carry out one process without having already completed the other (224012).

**Sweden:** The Swedish authorities refused to recognise the right of a worker to retain his status as such. He had worked for approximately three years before becoming unemployed. Then, he resumed work for approximately a year before becoming unemployed due to hospitalisation (224523).<sup>174</sup>

**The Netherlands/Portugal:** A Portuguese citizen posted in the Netherlands was defrauded by the temporary work agency which employed him. He was not granted paid annual leave or an end of year bonus. Moreover, his salary was taxed twice (225153).

**Ireland/France:** A posted worker could not obtain an extension of his Form A1 because the French competent body failed to approve it (224599).

**Portugal:** A posted worker misunderstood his social security contribution obligations while posted abroad (223395).

## **7.6. Cases showing a worrying lack of training and preparation among national authorities**

This section present some cases that show a worrying lack of training and preparation among local authorities in providing correct and clear information about their social security rights to mobile EU citizens. The cases demonstrate that information from the national authorities

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<sup>174</sup> Article 7(3) of Directive 2004/38/EC states that EU nationals who have worked in the host Member State for longer than one year but who have lost their employment involuntarily are allowed to retain their EU worker status and all connected rights.

often contradict each other, individuals are sent from an administration to another and have to face real difficulties just to have access to basic information. Such cases could be avoided by national interlocutors being correctly trained on the coordination of the social security system.

### ***Lack of general information***

[225092] **A Portuguese citizen** has residence in Portugal and has the European Health Insurance Card. She wonders if she can use the EHIC from Portugal in Germany or has to request an S1 form. She is very confused regarding what covers what. She made researches, it is impossible to find clear and correct information.

[224497] **Interns:** The type of social security scheme a Finnish person doing an internship in Italy should subscribe to is unclear. The citizen does not currently have any social security coverage because the Finnish authorities insist that an internship constitutes employment, but the Italian authorities refuse to acknowledge that they are responsible for her social security. In Italy, special provision is made for certain internships, but this citizen is facing difficulties in being accepted under this provision. She does not know whether she should fall under the special provisions for interns in Italy or be treated as a normal employee

### ***Implementation of rules***

[227504] **Italy:** An Italian citizen could not provide the U2 form with the 7 days term to the Italian employment service because of the conduct held by some officials. YEA assessment confirmed that the officials did not apply properly the Regulation 883/2004 and advised the case to be assessed by Solvit office.

### ***Exchange of information and lack of cooperation***

[223941] **France/Bulgaria:** The Bulgarian citizen lives in France and is applying for a French pension. She has worked in France since 2008 and before that 25 years in Bulgaria. The French authorities want her to produce the document establishing her insurance periods in Bulgaria in trimesters otherwise her Bulgarian insurance periods would not be taken into account and she would be granted a pension of 93 euro. However, given that she lives in France, the French authorities are responsible for processing her pension application and collecting information about her pension contributions in Bulgaria using standard E-forms, and the insurance periods do not have to be in trimesters.

[224136] **Italy/Lithuania:** A resident of Lithuania has been working in Italy since 2016. She filed a petition for the "Deprivation of Sanctions for Temporary Compulsory Health Insurance Contributions" from the Sodra Panevėžys Division, as she has not yet been able to receive certificates regarding the payment of a PSD abroad in Italy. She contacted the Italian department of the Palermo INPS and submitted to them an E104 form which has to confirm that she pays social insurance contributions in Italy. The Italian INPS has not provided her

with a certificate, and the Lithuanian SODRA is penalizing her for not paying my contributions in Lithuania. However, as she is legally employed in Italy, she is not obliged to pay compulsory health insurance contributions in Lithuania but has to provide upon request to tax administrator a document, which confirms that she insured in another country. This document can be obtained also directly by the competent Lithuanian institution – Social Insurance Fund Board – from the competent Italian institution – Istituto Nazionale Previdenza Sociale (INPS).

[227518] **Bulgaria/United Kingdom/Portugal:** Two years ago the citizen applied for a pension in Bulgaria. As he had worked in the UK and in Portugal, the Bulgarian pension institution requested information from the Portuguese and the British pension authorities. Neither has responded yet. As a result, the citizen is without a pension. Delaying the exchange of information and the decision on his pension for some 2 years is not compatible with the principle of good administration laid down in Article 76 of Regulation 883/2004.

## 8. SOLVIT

The cases submitted to SOLVIT in the area of social security in the last three years are as follows:

Row Labels	2015	2016	2017
<b>SOCIAL SECURITY cases in SOLVIT</b>			
Family benefits	534	764	373
Old-age benefits	189	211	237
Unemployment benefits	229	205	190
Other	64	87	80
Sickness benefits	76	65	74
Necessary healthcare abroad and the European Health Insurance Card (EHIC)	84	64	50
Invalidity benefits	54	40	46
Survivors' benefits	25	34	36
Maternity and equivalent paternity benefits	22	20	33
Benefits in respect of work accidents and occupational diseases	7	6	5

Death grants	5	4	3
Pre-retirement benefits	1	3	3
Planned treatment	9	4	2
<b>Grand Total</b>	<b>1299</b>	<b>1507</b>	<b>1132</b>

Furthermore SOLVIT has handled in the same period the following number of cases in the area of free movement of workers:

<b>3. FREE MOVEMENT OF WORKERS</b>	<b>Total</b>			
Other	13	10	10	33
Access to employment (access to labour market, access to posts, e.g. recruitment procedures)	9	12	8	29
Employment related rights (working conditions, such as salary and grade; recognition of professional experience and seniority)	13	9	7	29
Posting of workers	6	3	3	12
<b>Grand Total</b>	<b>41</b>	<b>34</b>	<b>28</b>	<b>103</b>

Another valuable source of information is the problem cause of SOLVIT cases. Looking at the more than 4000 cases of the last three years, the picture is as follows:

<b>Row Labels</b>	<b>Real numbers</b>	
1. Structural problems due to lack of/inappropriate transposition of EU law	0.5%	20
2. Structural problem due to a national rule conflicting with EU law (mostly legislation and written instructions)	1.0%	42
3. Recurrent misapplications of EU law (is the same as administrative practice) and/or national law (without national written rule)	19.4%	782
4. Individual (a one-off) misapplication of EU law and/or national law (national law that has implemented EU law)	42.3%	1709
5. Clarification case (no misapplication or absence of EU law)	36.8	1488

%

<b>Grand Total</b>	<b>100.</b>	<b>0%</b>	<b>4041</b>
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1.5% of the cases were marked as being of structural nature, whereas most cases were either individual misapplications (42%) of an Agency or cases which turned out to be no misapplication (37%).

## 9. SME feedback database

### 10.1 Introduction

The "SME feedback database" is a register of practical problems with EU legislation experienced by SMEs. Enterprise Europe Network (EEN) partners - during their interaction with a client SME - identify problems encountered by the company in the Single Market. The EEN partners' role is on one hand to propose a solution to the SME and on the other hand to make the problem known to the European Commission.

Around 6% of all cases in the period 2006-2015 were related to employment and social affairs (including free movement of workers) (502 out of 8182), with the number of requests declining over the time. The highest number of cases is related to the mobility issues (see table).

**Table: Cases related to employment and social affair, per sub-area, 2006-2015**

Sub-areas	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015 *
Mobility (free movement of workers, co-ordination and transferability of social rights, professional recognition, posting of workers)	93	77	27	36	46	15	18	14	8	3
Social security schemes	9	9	4	5	11	2	3	2	1	
Health & Safety at work	6	10	3	4	6	1	3	2		
Other	13	12	2	8	8	1	3		3	
Corporate Social Responsibility aspects		2					1		1	
No reference (blanks)	6	9	1	4	3	1	3		3	
<b>Total</b>	<b>127</b>	<b>119</b>	<b>37</b>	<b>57</b>	<b>74</b>	<b>20</b>	<b>31</b>	<b>18</b>	<b>16</b>	<b>3</b>

Note: \*only cases until mid-2015.

National requirements that prevent correct functioning of the internal market, severe difficulties in finding information and wrong interpretations at national level of a European text are among key problems identified by companies (table ) and the top solution for many of those problems is making information more accessible (table)

**Table: Cases reported in the area of employment and social affairs by key problems encountered by the companies (2006-2015)**

Problem	Is the case related to cross-border activities?	
	Yes	No
National requirements in a cross border activity avoid correct functioning of the Internal Market	166	11
Others	80	37
Severe difficulties to find European information needed to carry out the activity.	69	19
Wrong interpretation at national level of a European text	34	20
Lack of detail in the text of the European legislation/programme	31	12
The wording of the European legislation/programme or the procedure negatively affects in particular SMEs	15	11
<b>Total</b>	<b>395</b>	<b>107</b>

*Note: <sup>a</sup>The problem could be attributed to several categories, but only one can be selected, i.e. the one considered to be the most relevant. Many cases on national requirements are closely related also to the lack of information. <sup>b</sup>Cases are considered to be related to cross-border activities if they include activities like selling or buying goods, delivery of services, establishing in other country*

**Table: Cases reported in the area of employment and social affairs by key solutions identified by the EEN correspondent (2006-2015)**

	Is the case related to cross-border activities?	
	Yes	No
Making available the information through more accessible means (internet, in the language of the SME, etc)	98	19
A more homogeneous interpretation of EU rule/programme across Europe (national responsibility)	83	18
Modifying the national legislation implementing EU rules/programme in a certain countr	81	27
Modifying and better adapting the EU programme/legislation to SMEs characteristics	53	17
Others	50	20
Providing more detailed information on implementing rules in the EU rule/programme (EU responsibility)	30	6
<b>Total</b>	<b>395</b>	<b>107</b>

*Note: <sup>a</sup>The solutions could be attributed to several categories, but only one can be selected, i.e. the one considered to be the most relevant. <sup>b</sup>Cases are considered to be related to cross-border activities if they include activities like selling or buying goods, delivery of services, establishing in other country*

The sections below present a selection of cases demonstrating the problems that companies are facing and where the Authority could be helpful in providing support services/advice to businesses and by capacity building activities to ensure correct interpretation at national level of a European text.

## 10.2 Cross-border cases showing lack of accessible information

[2015, 083930510271007715] **France/Denmark** French company wanted to provide temporary services in Denmark. It found a lot of information on the Danish point of single contact website but had the highest difficulties to know for sure the minimum wage he will have to respect for his posted employees. As there is no general minimum wage in Denmark the EEN needed to identify which collective agreement to apply and the competent Union for this agreement. It is estimated that up to one month was lost in order to find the information. As the points of single contact are developing ready to use websites, the same layout would be really helpful to find the information. The first step in avoiding social dumping is to communicate clearly on the minimum wages to apply and for companies to have access to the information free of charge.

(2015) **Czech republic/Italy** The Czech company wanted to provide guarding services (surveillance of the service centre) during a cyclocross race in Riva Del Garda in Italy for about a week through posting of their workers. It received only partial information from local administration and they wanted to be sure to come in Italy following the proper procedures. Not knowing the Italian legislation on posting of workers with the precise framework of application (maximum working time and minimum rest periods; minimum period of paid annual leave; minimum wages, included the overtime; temporary transfer of workers conditions, in particular the supply of temporary workers by temporary employment agencies; safety, health and hygiene at work; equal treatment between men and women and other provisions against discrimination) created a problem in planning the provision of services. In addition there is also a national contract regulating the provision of security services which should be known. An easily reachable information (e.g. in English) could have created less difficulties to the company. At the end the client decided not to provide this service in Italy.

[2014, [824615434011435000] **United Kingdom/Germany** The UK company wanted to employ a German to do the marketing and sales on the German market for them. They were informed that he had an employee restraint of trade so could not be hired immediately by them. The UK company did not know these regulation from their country of origin, doubted that this was legal and needed to get information on the legal framework on this and lost time in finding information on that. Though freedom of workers/ employees is a well-known thing to companies, there are special circumstances that are tricky for the companies. This problem was solved through the cooperation of the EEN partners and EEN correspondents consider that the EURES offices could be helpful in cases like this as well.

(2013) 622560015461513513 **France/several other countries** The main activity of the French company is to organize theatre pieces and other recreational artistic activities at the occasion of bigger events. They work with French artists as they have the special know-how in street art theatre. This company has international clients from Belgium, Luxembourg, United Kingdom, Germany and even Qatar, but has difficulties in finding information about



formalities to follow, notably in the UK, like how to declare taxes, do the artists need special authorizations or other work permits to go to perform in other countries, how to declare their salaries and what contracts to sign. The company lost time spent on research for formalities and their legal and administrative obligations. There is a competent person on this subject in South West of France, but the delays for the answer were very long, so that my company has lost time with their clients.

2013 [656826520541401713] **Slovakia/Germany** The Slovak company specialized in assembling/ disassembling tent structures at events like festivals or concerts wanted to provide services in Germany. It had heard that under certain circumstances they had to pay money to a German social security scheme, even though they were in Germany only for little time of the year. In order to act according to the rules it wanted to know a) if that was really the case and b) if yes, how that scheme works but couldn't find the information. The EEN correspondent considers that the availability of information in the respective national language is a general problem, especially for small companies, when providing their services in other countries or when trying to bid for a public tender abroad.

#### **2012 (223049303271835512 France/Spain**

A French company wants to recruit a Spanish national, living in Spain, as an employee to work in Spain. The company is not established in Spain and does not want to set up a legal structure there. The French company tries to find out about the procedure to follow in this specific case with regard to paying social security contributions. The company finds it difficult to obtain the information while in France a brochure exists that explains such specific recruitments by companies that are not established in France. The company cannot find out how to recruit an employee in Spain without being established there and this difficulty delays the recruitment of its Spanish employee.

It would have been preferable that the recruitment procedures of employees in countries where the recruiting company is not established could have been found on the EURES website. i

2012 [728516943201135212] **Italy/France** The Italian enterprise wanted to know which is the regulatory framework in area of health and safety at work in France it should comply with if it builds a private housing estate (for example the construction foreman's duties). The problem caused a loss of time because the Italian company had to make a research from various French sources, without finding out the solution. It contacted the EEN because it wasn't able to find correct information due to language and bureaucratic problems. The EEN correspondent suggests that these kind of problems could have been avoided by making available - for instance through the European information network - some practical summary report or technical guidance to all operators; on the second hand these kind of problem could have been avoided making available an on-line platform for sharing information.

2012 710281916141234812 **Italy/Portugal** The Italian company could not find information related to labour law and social obligations for Portugal, with particular reference to the service and multiservice sector. In Italy, some collective workers' agreement in specific sectors (among which collective agreement for services and multiservice – such as cleaning service) sets that in case a new provider of service takes over the duties of a former provider (signing a contract between private parties) he is obliged to hire all the employees of the former's provider which was providing that service. The Italian enterprise wanted to know if the same regulatory framework applies in Portugal. The problem caused a loss of time because the Italian company had to make a research from various Portuguese sources, without finding out the solution. It contacted EEN because it wasn't able to find correct information due to language and bureaucratic problems. The EEN correspondent suggested that the problem could have been solved by providing basic information on EU website, for example by translating into a common language (English) the relevant measures put in place by each EU Member State. Besides it, by means of more resources (e.g. to be assigned to the Enterprise Europe Network) an expertise service for supporting and assisting companies on the subject could be activated (i.e. fact sheets on labour market).

### **10.3 Cross-border cases showing wrong interpretation at national level of a European text**

[2014] 180468336321621714 **France/Greece** Entrepreneur of Greek origin worked over his entire career in France and moved to Greece after retirement.

The case concerns a businessman of Greek origin having lived and worked for over 30 years in France. Upon taking retirement and complying with a number of administrative obligations in Greece for having sold his company, he was confronted with a demand from the Greek social security office for the self-employed to pay social security contributions. This occurred despite the fact that he had never been self-employed in Greece and all social security contributions as an entrepreneur had been correctly paid in France. He tried to explain the situation to the Greek authorities, including on the basis of French documents providing proof that social security contributions had been duly paid in France, but to no avail.

A better coordination between national authorities, possibly through an interlocutor with access to information on the systems in different Member States and charged with cross-border cases could have prevented loss of over 6 months and insecurity.

**2014 110987524581120214 Germany/Belgium** The owner of a German craft business (installation of finished building parts) moved to Belgium for private reasons in 2005. In order to be able to work in Belgium he applied for the VAT-number in Belgium. The owner is registered for social security in Germany. He sent a proof of insurance to the Belgian authorities. Nevertheless he received a letter from the INASTI in Brussels every year in which the authorities claim the payment of social insurance. The German owner charged task advisers and lawyers with the clarification of the situation, without success and without

reaction of the INASTI. In May 2014 the INASTI sent a payment notification of 184.985,81 € via bailiff. Basis for the claims is the Royal Decree no. 38 of July 27th 1967 regarding the setup of the social status for the self-employed. The German never registered a business in Belgium. He only lived in Belgium but the craft business remains in Germany.

The request for payment threatened the existence of the company and of the 12 jobs and the costs/loss was estimated to be more than 50 000 euro. INASTI gave notice to have collected the amount of 184.985,81 by a bailiff. The case was transferred to SOLVIT and the German Office of the Chamber of Trade in Brussels.

#### **(2011) French company in Belgium**

The applicant wishes to recruit a full-time employee in Belgium even though his company is not established in that Member State. The appropriate procedure to apply in this case is known in France as "isolated employee". It is a procedure that is recognized by Community law and is applicable in all Member States.

The procedure is poorly applied in many Member States. It is difficult to obtain information and some Member States, for tax reasons, prefer that the European companies concerned create on their national territory a secondary establishment of subsidiary or branch type.

It is easy to imagine a simplified regime concerning the declaration and the status of these "isolated employees" in order to facilitate and generalize this form of presence for SMEs in Member States where these are not established. It would avoid negative social and / or effects on individual (s) or general public.

## ANNEX 13: EU DECENTRALISED AGENCIES IN THE AREA OF EMPLOYMENT

This Annex presents the objectives and organisation of the four decentralised agencies operating under the remit of DG Employment, Social Affairs & Inclusion (DG EMPL): Eurofound, Cedefop, EU-OSHA and ETF<sup>175</sup>. A full assessment of four agencies and evaluation findings will be presented in the separate Commission staff working document on the evaluation.<sup>176</sup>

The evaluation of four agencies is a separate process which is done in line with the Commission's Better Regulation Guidelines and the Financial Regulation requirements for a periodic evaluation of EU interventions of over 5 million EUR.<sup>177</sup> It encompasses both an individual assessment of each agency as well as a cross-cutting and comparative perspective for the period 2011-2016, as well as a prospective assessment with regard to the future functioning of the agencies.

The prime objective of the agencies is to generate knowledge and contribute to the policy process in their respective fields of activity:

- Cedefop works to promote vocational and of in-service training
- ETF mandate encompasses human capital development
- Eurofound covers broadly living and working conditions
- EU-OSHA focusses its activities on occupational safety and health

The current modus operandi of the agencies is:

- to provide policy advice and assistance to the Commission (Eurofound and Cedefop). Eurofound is primarily a research and research management institution. Cedefop has a similar path to Eurofound although, in addition to its EU-level role, it occasionally engages with policy makers within Member States to provide evidence that has fed into national policy reforms
- to provide information to the Community bodies, the Member States and social partners (EU-OSHA), e.g. running communication campaigns to raise awareness about OSH amongst workers/the general public. This sets it apart from Eurofound whose focus is on policy-makers.
- to contribute, in the context of EU external relations policies, to improving human capital development in a number of countries and regions outside the EU (ETF). ETF conducts

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<sup>175</sup> Eurofound (European Foundation for the Improvement of Living and Working Conditions) is based in Dublin, Ireland; Cedefop (European Centre for the Development of Vocational Training) is based in Thessaloniki, Greece; EU-OSHA (European Agency for Safety and Health at Work) is based in Bilbao, Spain; and European Training Foundation (ETF) is based in Florence, Italy.

<sup>176</sup> Forthcoming in 2018.

<sup>177</sup> The ongoing evaluation is assessing the four agencies as regards their relevance, effectiveness, efficiency, coherence and EU value-added.

research and provides advice to the EU partner countries in the Balkans, North Africa, Central Asia and other regions.

The table below lists the specific objectives of the agencies and presents examples of corresponding outputs (Table 1).

**Table 1. Specific objectives, activities and outputs of the agencies**

	Specific objectives	Activities	Examples of outputs
<b>Cedefop</b>	<ul style="list-style-type: none"> <li>• Contributing to continuous renewal and reform of VET to recover from the economic crisis and ensure long-term growth and prosperity</li> <li>• Support to policies that help people pursue adult and work-based learning assisting their career transitions, and enterprises and sectors facing change and increased competition</li> <li>• Systematic consideration and anticipation of external drivers which influence knowledge, skills and competence needs and produce implications for VET</li> </ul>	<ul style="list-style-type: none"> <li>• Monitoring</li> <li>• Research</li> <li>• Support</li> <li>• Communication and dissemination</li> </ul>	<ul style="list-style-type: none"> <li>• VET in Europe country reports, national news on VET, European mobility scoreboard for initial vocational education and training</li> <li>• Project Apprenticeships in work-based learning, European guidelines for validating non-formal and informal learning</li> <li>• Project Assisting EU countries in skills matching, Trends and skill needs in tourism, EU Skills Panorama</li> </ul>
<b>Eurofound</b>	<ul style="list-style-type: none"> <li>• Providing policy-relevant knowledge for increasing labour market participation and combating unemployment – by creating jobs, improving labour market functioning and promoting integration</li> <li>• Supporting policy-makers with evidence in the field of working conditions and sustainable work</li> <li>• Monitoring trends and developments in industrial relations</li> <li>• Conducting research for improving standards of living and promoting social cohesion in the face of economic disparities and social inequalities</li> </ul>	<ul style="list-style-type: none"> <li>• Monitoring</li> <li>• Research</li> <li>• Communication and dissemination</li> </ul>	<ul style="list-style-type: none"> <li>• European Company Survey, follow-up reports</li> <li>• European Working Conditions Survey, follow-up reports</li> <li>• Mapping key dimensions of industrial relations in Europe</li> <li>• European Quality of Life Survey; report Delivering public services: a greater role for the private sector?</li> </ul>
<b>EU-OSHA</b>	<ul style="list-style-type: none"> <li>• Promoting cooperation among MS and stakeholders to make the best use of OSH resources</li> <li>• Generating and high-quality knowledge on OSH new and emerging risks, their health effects and prevention</li> <li>• Raising awareness of OSH risks and their prevention</li> <li>• Making knowledge and good practices accessible for those involved in OSH and stimulating dialogue on different levels</li> </ul>	<ul style="list-style-type: none"> <li>• Developing forecasting information</li> <li>• Generating and maintaining information on working environment</li> <li>• Promoting networking and coordination</li> <li>• Communicating and raising awareness</li> </ul>	<ul style="list-style-type: none"> <li>• Campaign toolkit</li> <li>• European Survey of Enterprises on New and Emerging Risks</li> <li>• OSH wiki, Napo</li> <li>• OSH e-tools, E-guide on vehicle safety, E-guide for all ages</li> </ul>

<b>ETF</b>	<ul style="list-style-type: none"> <li>• Governance, systems and policy-making</li> <li>• VET provision and quality assurance</li> <li>• Qualifications and qualifications systems</li> <li>• Entrepreneurial learning and enterprise skills</li> <li>• Labour market information systems and skills of employability</li> </ul>	<ul style="list-style-type: none"> <li>• Provision of information, policy analysis and advice</li> <li>• Support in capacity building</li> <li>• Knowledge dissemination and networking</li> <li>• Provision of expertise in EC project and programming cycle</li> </ul>	<ul style="list-style-type: none"> <li>• VET Governance partner country profiles</li> <li>• Torino process reports</li> <li>• Project Qualifications for the Mediterranean</li> <li>• Entrepreneurship competence framework</li> <li>• Country reports education, training and employment developments</li> </ul>
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*Source: Evaluation report of four agencies, forthcoming 2018*