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REPORT

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	7203/18 - COM(2018) 131 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a European Labour Authority - <i>Analysis of the final compromise text with a view to agreement</i>

I. INTRODUCTION

1. On 13 March 2018, the Commission submitted a proposal for a Regulation of the European Parliament and of the Council establishing a European Labour Authority (ELA) which should in particular:
 - facilitate access to information on rights and obligations in cases of cross-border mobility for employees, employers and national administrations;
 - support coordination between Member States in the cross-border enforcement of relevant Union law;
 - mediate between Member States authorities in order to resolve cross-border disputes between them; and
 - facilitate solutions in case of labour market disruptions.

2. Within the deadline of eight weeks from the submission of the Commission's proposal, the national parliaments of Poland and Sweden submitted reasoned opinions.¹
3. The European Economic and Social Committee adopted its opinion in its plenary session on 20 September 2018. The Committee of the Regions adopted its opinion in its plenary session from 8-10 October 2018.
4. After examination of the proposal by the Working Party on Social Questions (SQWP) and the Permanent Representatives Committee developed during the Bulgarian and Austrian Presidencies, the Council adopted its General Approach on 6 December 2018.² On 1 February 2019, the Permanent Representatives Committee gave further guidance to the Presidency with regard to the negotiations on outstanding issues.³
5. The European Parliament adopted its mandate to open the negotiations in its plenary session on 11 December 2018 and intends to adopt its position at first reading on 16 April 2019.
6. Seven informal trilogues and seven technical meetings have been held since 11 December 2018. At the last trilogue on 14 February 2019, the representatives of the three Institutions reached an agreement ad referendum on the **compromise text**, as set out in Addendum 1 to this Report.

II. CONTENT OF THE PROVISIONAL AGREEMENT

7. The main elements of the compromise text are as follows:
 - (a) **Name of ELA** (Article 1(1)): with a view to reaching a balanced global compromise on the text, in view of the fact that the ELA's tasks are effectively limited to supporting the Member States and taking into account the concessions made by the European Parliament, the Council provisionally agreed with the Commission's and European Parliament's proposal to use the term 'Authority' so as to give the new structure more visibility and send a stronger message to citizens.

¹ The Commission was not required to review the proposal, as the one-third threshold set out in Protocol 2 TEU, Article 7, was not met.

² Doc. 14247/18.

³ Doc. 5617/19.

- (b) **Definition of the scope of ELA's activities** (Article 1): the European Parliament accepted that the scope of ELA's activities would be defined by the list of Union acts in Article 1(3), as provided in the General Approach. However, it requested that the question of related sector-specific legislation be addressed alongside the acts already listed by the Council. As a solution it was provisionally agreed to amend the corresponding recital so that it would include a general reference to sector-specific legislation. This would avoid the insertion of the additional list of sector-specific legislation - as the European Parliament had requested at one point in the negotiations.
- (c) **Seat of ELA** (Article 4): the European Parliament sought a more active role in the selection procedure for the seat. In a spirit of compromise, it could agree to drawing up a joint statement that would reflect the current understanding between the three Institutions on the selection procedure for the agencies' location⁴ and to deleting Article 4 and the recital relating to the seat issue. The text of the draft joint statement was modified in the last trilogue in order to take into account Member States' concerns raised in Coreper II on 13 February.
- (d) **Information on cross-border labour mobility** (Article 6): in line with the scope of the legislation, the European Parliament agreed to delete the references to the freedom of movement for workers and the freedom to provide services in the internal market. The European Parliament's idea of a single website was accepted. In addition, and in keeping with the General Approach, the decision was taken to retain the link to the support which the ELA will provide to Member States in the application of the EURES Regulation.

⁴ See Addendum 2 to this Report.

- (e) **Access to cross-border labour mobility services** (Article 7): the European Parliament wanted EURES to keep its autonomy and visibility. It therefore initially deleted all references to EURES, whereas the Presidency, in keeping with its mandate, insisted on including EURES. As a compromise solution, the EURES European Coordination Office would be incorporated within the ELA (Article 7(2)), in line with the General Approach. However in order to maintain the visibility of the European Coordination Office, the Parliament insisted that some references in the Regulation are made directly to it, as part of ELA, instead of referring strictly to ELA.
- (f) **Cooperation and exchange of information between Member States** (Article 8): a very sensitive point concerned the acts on which ELA may 'facilitate and support cross-border enforcement procedures of penalties and fines' (Art. 8(1)(d)). While the European Parliament wanted an open reference to fines without limitation to specific legal acts, the Council wanted to limit them to Directive 2014/67. As other acts within the scope also contain rules on penalties where ELA's support could be beneficial, it was provisionally agreed to limit this Article to the scope of the Regulation according to Article 1 and to insert the wording 'upon request of one or more Member States, where relevant'.
- (g) **Joint and concerted inspections** (Articles 9 and 10): as this is a sensitive issue, emphasis was placed on the voluntary and non-binding nature of ELA's role in inspections. The European Parliament mostly agreed with these principles, too. Given the importance of the subsidiarity principle in this context, the Presidency could ensure that Member States would not be obliged to confer on foreign inspectors the same powers as those conferred on their own inspectors and that no strict deadlines would be imposed on Member States.

The European Parliament agreed to reword its proposal which would have made Member States, which choose not to participate in an inspection, subject to ELA recommendations and to a thorough follow-up to inspections carried out by that Member State. This was limited to 'information on the possible measures planned by the Member State and the outcome thereof'. The European Parliament's amendment regarding the use of information collected during inspections to be used as evidence in legal proceedings was reformulated. The new wording takes into account Member States' procedural autonomy ('in accordance with the national law and/or practice'). The European Parliament also accepted the Council definitions on concerted and joint inspections, with the inclusion of minor amendments designed to clarify the role of ELA staff and the possible involvement of social partner organisations.

- (h) **Support for capacity building** (Article 12): the European Parliament's amendments under this Article were mostly withdrawn or added to other parts of the text. The Council accepted that not only national authorities, but also social partners may have, "where appropriate", a role in the development of guidelines.
- (i) **Cooperation on Undeclared Work** (Articles 1(4)(b) and 12a): on the transfer of the Platform for tackling undeclared work, the European Parliament's initial position was to keep the platform as provided under Decision (EU) 2016/344. The ELA would have limited its involvement to one of cooperation only. However, the Commission and the Council wanted to transfer the platform's tasks to the ELA and repeal Decision (EU) 2016/344. As a compromise solution, the European Parliament agreed to repeal Decision (EU) 2016/344, in return for which the platform would be integrated with the ELA.
- (j) **Mediation/conciliation mechanism** (Article 13): in their initial mandate, the Council and the European Parliament did not support the Commission's proposal to include social security in ELA's mediation task. However, after listening to the Commission's arguments, the European Parliament showed great flexibility on this issue.

As middle ground, the Council proposed a two-step approach in view of the proposed procedure for the mediation process provided for under the Council's General Approach and in an attempt to take into account elements from the existing procedures of the Conciliation Board of the Administrative Commission. This mechanism includes the following guiding principles:

- a) a voluntary process and a non-binding decision at all stages;
- b) the first stage would take up the procedure agreed by the Council. Here a mediator nominated by ELA and the Member States concerned will strive to reaching an agreement by consensus. Experts from other Member States and the Commission would also play an advisory role. If no agreement is found, the process can be continued in the second stage of mediation/conciliation, if all Member States involved wish so;
- c) the second stage takes place in the format inspired by the Conciliation Board of the Administrative Commission. This involves a mediation/conciliation board that includes experts from different Members States. The Management Board would determine the rules of the specific procedure;
- (d) in cases related to social security coordination, the Administrative Commission would be informed and could request a case referral. Any of the Member States concerned could also submit a request for referral to the Administrative Commission; once the case has been sent to the Administrative Commission the mediation can only continue on labour law aspects.
- (e) there is no duplication between ELA and the Administrative Commission, but a strong cooperation system. The competences of the Administrative Commission remain untouched as the Administrative Commission has the final say on social security coordination issues and its acquis has to be taken into account by ELA

This compromise was provisionally accepted by the European Parliament and the Commission subject to minor changes:

- the ELA and the Administrative Commission will be obliged to establish a cooperation agreement in order to avoid duplication of work and ensure good cooperation;
- the six-month deadline for concluding the second stage of mediation will be removed as the Management Board is better placed to determine such deadlines; and
- the whole procedure including both stages is called "mediation".

(k) **Cooperation in case of cross-border labour market disruptions** (Articles 1(4)(a) and 14): while the Commission reiterated its request to provide for such a task under the ELA, the European Parliament maintained its reservation as it does not see any added-value therein. The Presidency, in a spirit of compromise, provisionally agreed not to include the proposed task.

(l) **Governance - Management Board and Stakeholders group** (Articles 18 and 24)

(i) *Composition of the Management Board*: while not insisting on a tripartite composition, the European Parliament requested that six Union-level social partners be nominated and given voting rights and that it should be allowed to appoint three independent experts to the Management Board.

As a compromise solution, the Presidency agreed with the appointment by the European Parliament of one independent expert (as recently accepted for the tripartite agencies Cedefop, EU-OSHA and Eurofound) and the appointment of four representatives of cross-industry social partners at Union level (this number was put forward to enable SME representation). All these additional members would not have voting rights. The above compromise includes a non-participation clause covering deliberations on items related to sensitive information.

- (ii) *Composition of the stakeholders' group*: there was recognition of the need for flexibility as regards the ten (up from six) social partner representatives. Even so, there was no acceptance of the European Parliament's proposal that the Chair of the Stakeholders Group would not be the Executive Director but would be elected from among its members. There was no acceptance either of the proposal that the members of the Stakeholders Group should be allowed to attend as observers at the Management Board's meetings. The European Parliament's proposal for the Stakeholder Group's tasks were reviewed so as to respect the advisory capacity of the Stakeholders Group.
- (iii) The remaining of the sections on governance were aligned with the text agreed on with the other agencies in the same field (Cedefop, EU-OSHA and Eurofound). The differences of ELA were taken into account.

III. CONCLUSION

8. The Permanent Representatives Committee is therefore invited:
- to confirm the final compromise text, as contained in Addendum 1 to this Report;
 - to authorise the Presidency to send a letter to the Chair of the European Parliament's EMPL Committee confirming that the Council would, in accordance with Article 294(4) of that Treaty, approve the European Parliament's position and the act would be adopted with the wording that corresponds to the European Parliament's position. This is subject to the European Parliament adopting its position at first reading, in accordance with Article 294(3) TFEU, in line with the final compromise text contained in Addendum 1 to this Report, and to the revision by the lawyer-linguists of both institutions;
 - to endorse the Joint Statement of the European Parliament, the Council and the Commission concerning Regulation 2019/xx of the European Parliament and the Council contained in Addendum 2 to this Report.