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NOTE

From:	Presidency
To:	Delegations
Subject:	Procedure for the selection of the seat of the European Labour Authority

On 20 February, Coreper I confirmed the agreement reached on the proposal for establishing a European Labour Authority (ELA). The formal adoption of the Regulation is expected to take place in April. The provisions regarding the seat of the ELA were excluded from the Regulation, and the procedure for deciding on the seat should now be launched.

The Common Approach annexed to the 2012 Joint Statement by the EP, the Council and the Commission on decentralised agencies¹ acknowledges that the decision on the seat of an agency is to be taken by common accord of the representatives of the governments of the Member States.

A brief discussion took place in Coreper II on 27 February 2019, followed by a more in-depth analysis of the procedure and criteria in Coreper I on 6 March 2019. In the margins of Coreper I held on 13 March 2019, the representatives of the governments of the Member States approved by common accord the procedure and the criteria as laid out in the Annex.

¹ Doc 11450/12.

PROCEDURE FOR DECIDING ON THE SEAT OF ELA

The decision on the seat of ELA requires common agreement among the Member States². In the past, different procedures have been followed for deciding on the seat of agencies. The procedure for the relocation of the London agencies put great emphasis on transparency and the use of criteria in line with the Common Approach annexed to the 2012 Joint Statement.

This document contains the elements for reaching an agreement on a procedure for ELA, including a roadmap and a set of criteria, with the understanding that all Member States would engage to respect the result of that procedure.

1. Responsibilities

Given the general political nature of the attribution of seats of agencies, this is a matter for the representatives of Member States. The issue will be addressed in the margins of Coreper I. As customary, the Member State holding the Presidency of the Council will lead the process, supported by the General Secretariat of the Council.

2. Timing of the process

The aim is to allow the ELA to become operational as quickly as possible after the entry into force of the Regulation.

² "Common agreement" and "common accord" are terms having the equivalent effect of requiring that all Government Representatives are able to express themselves in favour of the solution retained (no abstention).

3. Criteria

The criteria for the seat of the Agency are based on point 6 of the Common Approach annexed to the 2012 Joint Statement.

Apart from the objective criteria, the Joint Statement also refers to the desirability of geographical spread and to the objective agreed by the leaders in 2003 and confirmed in 2008 to give priority to acceding States in the distribution of the seats of other agencies that would be set up in the future. This has been taken into account in criterion 1.

The following criteria will be taken into account. For information purposes, the technical and operational needs of ELA are set out in Annex 1.

1. Geographical balance:

According to the conclusions of the Representatives of the Member States, meeting at Head of State or Government level in Brussels on 13 December 2003, reiterated in the conclusions of the European Council of 19/20 June 2008³, priority shall be given to newly Acceding States in the distribution of the seats of Community offices or agencies to be set up in the future. Seats of future offices or agencies should be primarily located in the Member States that acceded to the Union in or after 2004, while appropriate priority should be given to the Member States that do not yet host an EU office or agency.

2. The date when the Agency can be set up on site after the entry into force of its founding act:

This criterion concerns in particular the availability of appropriate office premises in time for the Agency to become operational pursuant to Article 45(1) of the draft ELA Regulation. This should include the necessary logistics and sufficient space for offices, meeting rooms and off-site archiving, high-performing telecommunication and data storage networks as well as appropriate physical and IT security standards.

³ Doc 11018/1/08

3. Accessibility of the location:

This criterion concerns the availability, frequency and duration of public transportation connections from the closest airport to the location, as well as the quality and quantity of accommodation facilities. In particular, the criterion implies the capacity to allow for the expected meeting activities of the Agency.

4. Existence of adequate education facilities for the children of agency staff:

This criterion concerns the availability of multi-lingual, European-oriented schooling that can meet the needs for education facilities for the children of staff of the Agency.

5. Appropriate access to the labour market, social security and medical care for both children and spouses:

This criterion concerns the capacity to meet the needs of the children and spouses of staff for social security and medical care as well as the availability to offer job opportunities for them.

4. Offers to host

In order to ensure a fair and transparent process, the following rules and requirements shall apply to the offers:

General rules

Each Member State can make one offer to host **the Agency**.

The Member State should in the offer **address the criteria** mentioned above and, for each of the criteria, specify the conditions that are offered.

All offers should indicate the Member State's commitment to confirming these conditions in a **headquarters agreement**⁴ with the Agency in question. That agreement should be signed before the Agency takes up its seat at the new location.

⁴ Cf. COM guidelines with standard provisions for headquarters agreements of EU decentralised agencies: https://europa.eu/european-union/sites/europaeu/files/docs/body/2013-12-10_guidelines_hq_agreements_en.pdf

All offers to host the Agency should be made in writing to the Secretary-General of the Council and copied to the Secretary-General of the Commission. **The deadline for submitting offers is 6 May 2019 (cob).**

All offers from Member States received within the deadline will be **published** on the website of the Council, with the exclusion of business secrets and other confidential information following consultation with the Member States concerned.

Member States may, together with their offer, submit a **recorded short video presentation** in the form of a link to a Member State website. Such links will be published on the website of the Council alongside the offers.

Publication would take place on 13 May.

Specific issues to be addressed in the offer

The offer should indicate in detail how the five criteria are addressed and should specify the offered conditions.

In particular, the offer should indicate:

The premises that would be offered to be rented or put at the disposal of the Agency and how these premises would meet the specific needs of the Agency as indicated in Annex 1;

The financial terms for the Agency's use of these premises, specifying in particular if the Member State would pay the rent for a given period of time or indefinitely;

The terms concerning maintenance of the building including upgrading and future extensions if needed;

Any special conditions offered with regard to all costs and dedicated infrastructures; and

Any benefits that would be granted to the Agency and/or its staff in addition to those following from Protocol No 7 on the privileges and immunities of the European Union.

5. Commission examination of the offers

The Commission will prepare a general assessment of all the offers received within the deadline on the basis of the criteria mentioned under point 4. The Commission will describe how each offer meets the criteria and how it addresses the stipulated specific issues. Before 3 June 2019, the Commission will submit its assessment of the offers to the General Secretariat of the Council which will distribute it to the Member States and make it publicly available.

6. Decision-making and voting process

The decision-making process is informed by the assessment referred to in point 5. It will be preceded by a political discussion organised among the representatives of the Member States on the basis of the Commission's assessment. It will be held in the margins of Coreper I on 5 June. The Commission will make an oral presentation of its assessment of the offers. Member States which have submitted an offer to host the ELA seat will be given the occasion to make a short presentation of their offer (maximum 3 minutes).

The voting process will take place in the margins of the EPSCO Council on 13 June (in Luxembourg). The voting process should consist of successive voting rounds. The votes are cast by secret ballot and each Member State has one vote. All offers, except for any withdrawn by the Member States concerned, will be submitted to the vote. The voting process on the seat shall not involve the drawing of lots.

1st voting round

In this round, each Member State has one vote which should be allocated to the preferred offer.

If within the first voting round one offer receives more than half of the votes counted, hence representing the majority, this offer will be considered the selected offer.

If no offer receives more than half of the votes counted, the two offers having received the highest number of votes will be subject to the second voting round. If three or more offers have received the highest number of votes these offers will participate in the next vote pursuant to the following subparagraph. Similarly, in case there is one offer having received the highest number of votes, but two or more offers have received the second highest number of votes, all these offers will participate in the next vote pursuant to the following subparagraph.

This first voting round process shall be repeated until either one offer has received more than half of the votes counted and is thus considered the selected offer or only two offers have received the highest number of votes. In the latter case, these two offers will participate in the second voting round.

2nd voting round

In the second voting round, each Member State has one vote that it can give to one of the two offers which have been chosen for the second voting round.

If one offer receives more than half of the votes counted, hence representing the majority, this offer will be considered the selected offer.

In case of a tie, new vote(s) will take place after a cooling off period of minimum one hour. Its precise length is determined by the Presidency. Votes will take place until one offer has received the majority of votes.

Decision

The decision on the seat of the Agency reflecting the outcome of the voting process will be confirmed by common agreement of the Member States' representatives at the same meeting.

7. Information of the European Parliament and the public

The Presidency will inform the European Parliament about the fact that the procedure has been launched, about the offers received and about the final decision taken. This information will also be made public.

Technical and operational needs of the European Labour Authority (ELA)⁵

ELA will support fair labour mobility within the EU, allowing citizens and businesses to seize the opportunities offered by the single market, while at the same time preventing and tackling social fraud and abuse. The scope of activities of ELA covers cross-border labour mobility and the coordination of social security systems. The objectives of ELA are to:

- Provide tools for effective and swift cross-border enforcement of EU rules, such as joint and concerted inspections by Member States;
- Mediate in cases of cross-border disputes between Member States;
- Act as a hub for facilitating the exchange and provision of information.

The Authority will be entrusted with a number of operational tasks, including the facilitation of access to information by individuals and employers, support to Member States in cooperation, information exchange, concerted and joint inspections, risk assessment, capacity building, mediation, and tackling undeclared work.

It will provide operational support, resources for common activities, and a forum for the exchange of information and the creation of mutual trust and a closer administrative culture across the Member States.

ELA will be established by pooling the expertise and work of several committees and structures currently in place. It will be important to ensure that such work can continue without disruption and that ELA will be able to attract the necessary staff from the relevant sectors.

During 2019, the number of ELA staff is estimated to reach 23, out of which 7 contract staff, and 16 temporary staff (administrators (AD) and assistants (AST)). During 2020, ELA staff is expected to reach a total of 65, out of which 15 contract staff, 20 temporary staff, and 30 seconded national experts. At full capacity, expected to be reached within 5 years of its establishment, the ELA staff is estimated to comprise 144 members, out of which 60 experts seconded by their Member States.

⁵ Based on a contribution by the Commission's services.

At the future seat of ELA, the necessary logistics and sufficient office space will need to be ensured to accommodate its staff, along with the necessary telecommunication and data storage networks in line with physical and IT security standards.

In terms of premises, it can be anticipated that the Authority will require common infrastructure and rooms to accommodate for meetings of the Management Board, the Stakeholder Group, as well as meetings bringing together Member States for joint activities (e.g. organisation of joint and concerted inspections, capacity building), and meetings of working groups created by the ELA Management Board (notably the Mediation Board, the European Platform to enhance cooperation in tackling undeclared work, and any other working group set up by the Management Board). It is expected that some of these meetings can last several days, requiring overnight stays and therefore sufficient capacity for adequate accommodation/hotel.

Office spaces will be required for approximately 144 members of staff. The size of ELA's premises should be sufficient in order for it to fulfil its activities in an optimal manner. Indicatively, the size of ELA's premises should be between 5000 and 7000 square meters in total (which would include meeting rooms and common infrastructure).⁶

ELA is expected to organise regular missions for its staff within Europe (e.g. participation of ELA staff in joint or concerted inspections), requiring easy access to air and rail transport linking with European capitals.

ELA staff, including 60 seconded national experts, will represent nationalities from all EU Member States, as well as the European Economic Area and Switzerland. Therefore, the availability of multi-lingual, European-oriented schooling is crucial to meet the needs for education facilities for the children of ELA staff.

⁶ The figures indicated are based on information about other EU agencies and on the figure referred to in the Communication of the Commission on buildings policies and infrastructures in Brussels, COM(2003)755 final.