

# Checklist for analysis on EU proposals

<p><b>Title of EU proposal:</b> Proposal for a Regulation of the European Parliament and of the Council establishing a European Labour Authority <b>Lead dept/agency:</b> BEIS <b>Other depts/agencies with an interest:</b> DWP, Director of Labour Market Enforcement, Home Office, Gangmasters and Labour Abuse Authority (GLAA), HMRC, Employment Agency Standards Inspectorate (EAS) <b>Date:</b> 5 April 2018</p>	<p><b>Lead policy official:</b> Naomi Munro-Lott <b>Lead lawyer:</b> Matthew Orme <b>Lead analyst:</b> Ivan Bishop 020 7215 1831 <b>Lead UKRep desk officer:</b> Dr Peter Bod/Nicola Dissem</p>
<p><b>What are the potential impacts of the Commission proposal on the UK?</b></p> <p>The EU Commission is proposing to set up a European Labour Authority (ELA). The ELA would support Member States in the implementation of EU rules on labour mobility and social security coordination with the aim of supporting cross-border mobility and creating new opportunities. The Commission hopes that the ELA will be in place in 2019, and fully operational by 2023.</p> <p>The establishment of the ELA aims to 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.</p> <p>Its main functions would be to:</p> <ul style="list-style-type: none"><li>• Facilitate access for individuals and employers to information on their rights and obligations as well as to relevant services;</li><li>• Support cooperation between EU countries in the cross-border enforcement of relevant Union law, including facilitating joint inspections;</li><li>• Mediate and facilitate a solution in cases of cross-border disputes between national authorities or labour market disruptions.</li></ul> <p>The Commission's impact assessment states that the ELA would not impose new obligations on Member States, individuals or employers. It goes on to say that the ELA would not impinge on national decision-making, legislation, or enforcement activities, which will 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.</p>	

The ELA would:

- a) actively support information sharing through the promotion of electronic tools and devices;
- b) assume the role of launching and providing coordination and logistical support for joint cross-border inspections, with agreement with national enforcement bodies;
- c) run comprehensive mutual learning and technical assistance programmes;
- d) formalise conciliation between national authorities through a mediation mechanism; and
- e) activate ad hoc support to facilitate administrative cooperation in cross-border restructuring cases, upon the request from a Member State.

The details of the UK's future economic partnership with the EU is still to be determined. The ELA will not have reached full operational capacity by December 2020, so the impacts of the ELA are likely to depend on the long-term relationship that the UK has with the EU, following the transition period.

The EU Commission's IA states that the ELA will cover all those subject to EU law including workers, self-employed persons and job-seekers. It covers both EU citizens and third country nationals who are legally resident in the EU. Therefore, third country nationals legally resident in the Union will be covered as long as they are subject to EU labour mobility and social security coordination rules. The UK could continue to participate in the ELA (for instance sending observers to its management board) as a third country after exiting the EU.

If the UK is not to be subject to EU's rules in these areas, the UK may not participate directly with the ELA. However, once the UK leaves the EU there is likely to continue to be a substantial number of EU citizens working and living in the UK, and a substantial number of UK citizens living in the EU. This may mean there is a mutual benefit in the UK government continuing to work with the ELA. For instance, the ELA will, amongst other things, replace the Technical Commission, the Audit Board, and the Conciliation Board of the Administrative Commission for the Coordination of Social Security Systems, whose work includes overseeing payments between Member States for reciprocal healthcare. The UK could continue to participate in these areas, depending on final withdrawal arrangements from the EU.

#### **AFFECTED GROUPS:**

As suggested above, the proposed ELA will essentially interact with national authorities, government and enforcement bodies, and will not impose additional regulatory burden on businesses or individuals.

The UK has several bodies undertaking state enforcement of specific areas of labour market regulation:

- HMRC's NMW enforcement team undertake enforcement of the National Minimum Wage and National Living Wage
- The Employment Agency Standards Inspectorate enforce the compliance of employment businesses and agencies with the Employment Agencies Act 1973 and supporting regulations
- The Gangmasters and Labour Abuse Authority (GLAA) licences labour providers in the agricultural, shellfish and fresh food processing and packaging sectors.

The Director of Labour Market Enforcement is responsible for providing strategic direction to the three bodies.

Primarily, the UK government and enforcement bodies would engage with the ELA and may face costs from the time taken to engage, possibly financially contributing to the ELA (this is voluntary) and possibly committing additional resources to meet ELA requirements. The UK government and enforcement bodies may benefit from the ELA activity in terms of improved enforcement, quicker settlement of disputes with other Member States' authorities and better solutions where cross-border labour market disruptions take place.

Employers looking to set up operations in the UK, or UK businesses looking to set up elsewhere in the EU could benefit from more accessible information on the requirements in each EU country.

Individuals working or looking to work in other countries in the EU (apart from their home country) could also benefit from more accessible information.

Multi-national employers could face a small potential risk of facing additional cross-border inspections proposed by the ELA – but this would be marginal.

### **COSTS & BENEFITS:**

It is difficult to provide any monetised costs and benefits on this proposal, as the Commission's impact assessment has not provided much specific detail about how the ELA would operate in practice, and how far individual countries, including the UK, already achieve a good standard of information provision, and labour market and social security enforcement.

#### **Government**

Costs:

Participating in the ELA may potentially lead to some additional cost to the UK government and enforcement agencies from the time spent:

- a) providing the information and services required to employers looking to move workers to the UK, or EU citizens (including workers) moving or residing in the UK
- b) exchanging information with other Member States' public authorities and enforcement bodies
- c) engaging in joint cross-border inspections.

The European Commission's impact assessment suggests that it will be up to a Member State's authorities to determine the level of engagement with the ELA, so it would depend on the UK enforcement bodies to determine whether the cost of engagement in time spent on information sharing and joint cross-border inspections was outweighed by the benefits in terms of better enforcement of UK laws in relation to mobile EU citizens and businesses. In these circumstances, the enforcement bodies could choose to engage only when it was net beneficial to their objectives, thereby having a cost-benefit 'safeguard'.

It seems unlikely that the cost of time-spent or engagement would be substantial – though this may depend on the number of additional joint cross-border inspections, and the number of people involved.

There already exists some experience of cross-border inspections (the GLAA has cooperated with Bulgarian and Romanian labour inspectorates). The GLAA is well connected with Europol, which brings labour inspectorates together. Generally, when the GLA is licensing overseas agencies providing labour to the UK, it will check with the labour inspectorate in the agency's country. Over the period 2008 to 2017, the GLAA carried out 116 licensing inspections of agencies from other EU countries. It carries out similar checks on unlicensed agencies supplying or looking to supply labour in the UK (there were around 17 cases in the past three years). There is the potential for the ELA to build on these existing arrangements however during discussions it would be beneficial for the EU to lay out future plans and expectations. The GLAA estimates that a compliance inspection could have a labour cost to the GLAA of up to £1,100, including preparation and following up and reporting post-inspection.

There is a potential cost to the UK of contributing to the financing of the ELA. The European Commission's proposal identifies that the ELA would have an autonomous budget financed from the General Fund of the EU, plus any voluntary funding from Member States plus any contribution from third countries participating in the work of the ELA. No further details about the size of potential contributions from third countries was provided. In principal, there may be an opportunity-cost to the UK contributing to the ELA budget, in terms of greater participation and opportunity to influence.

#### Benefits:

There are potential benefits to the UK government, while it is participating in the ELA:

- a) the ELA's analysis work (of EU wide information) may add value to the knowledge base of UK enforcement agencies – for instance by identifying recurrent patterns of mobility and potentially fraud.
- b) UK enforcement agencies may benefit from the ELA's provision of technical assistance programmes and mutual learning opportunities.
- c) If the UK is in dispute with another country over labour mobility for social security issues, then ELA conciliation may help to enable a faster resolution.
- d) Where there was a cross-border labour market restructuring, the UK government could request ELA assistance in providing support to find a solution that mitigated against the social consequences of the restructuring.
- e) The ELA would provide technical support to assist national authorities in the provision of information and services to businesses and citizens who are (or are looking to) operate in another EU country.

## **Individuals**

### **Benefits:**

The ELA should facilitate improved accessibility of information and services provided by each Member State to UK citizens (including workers) who are living (and potentially working) in EU countries (other than the UK), or are looking to do so. Citizens from other EU countries living in the UK or looking to do so should similarly benefit.

The ELA's work should help to improve enforcement in the areas of labour mobility and social security coordination. This should benefit citizens living and working in other EU Member States, who will be less likely to work for employers non-compliant with EU legislation.

Potentially, UK workers affected by cross-border restructuring may benefit from ELA assistance provided to the UK government to mitigate the social consequences of the restructuring.

## **Businesses**

### **Costs:**

There may be a small cost to multi-national employers from additional joint cross-border inspections facilitated by the ELA, agreed to by Member State. There are currently very few inspections each year and the EU would need to lay out expectations for future cross-border inspections. We estimate that the cost to a business of an inspection by the GLAA is around £400, in terms of time spent by a manager providing documents and talking to the inspector.

### **Benefits:**

As with citizens, there may be benefits to multi-national UK businesses and EU multi-nationals operating in the UK, or businesses thinking of operating in another EU Member State, from the improved accessibility to information and services about employment law in EU Member States. Businesses will be able to find out more easily about their responsibilities when employing people in other EU Member States.

Compliant businesses may benefit from improved enforcement and reduced competition from businesses operating illegally.

Restructuring multi-national companies could benefit from the ELA providing information about possible EU financial resources to help mitigate the effects of restructuring on workers.

## **ENFORCEMENT:**

The proposed ELA would be working to improve enforcement of labour market mobility and social security coordination legislation through existing national enforcement bodies. While the UK participates in ELA activities, it is possible that there might be a small increase in the number of joint cross-border inspections.

**LEGAL IMPLEMENTATION/COPY-OUT:**

This Regulation will not have any impact on UK law. The proposal does not impose new obligations on Member States, individuals or employers nor does it impinge on national decision making, legislation, enforcement activities which remain in the competence of Member States.

Ministerial sign-off:

***I have read the analysis above of the potential impacts of this proposal and I am satisfied that, given the significance of the proposal, the time and evidence available, and the uncertainty of the outcome of negotiations, it represents a proportionate view of possible impacts.***

Signed by the responsible minister:

A handwritten signature in black ink, appearing to read "Amber Rudd". The signature is written in a cursive, slightly stylized font.

Date: 5 April 2018