

## EXPLANATORY MEMORANDUM ON A EUROPEAN UNION DOCUMENT

COM (2018) 131 final

SWD(2018) 80 final

SWD(2018) 69 final

SWD(2018) 68 final

### PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING A EUROPEAN LABOUR AUTHORITY

Submitted by BEIS on 5<sup>th</sup> APRIL 2018

#### SUBJECT MATTER

1. This document is a proposal for a Regulation establishing a European Labour Authority (ELA), a new EU agency aiming to "contribute to the overall objective of ensuring that EU rules on labour mobility are enforced in a fair, simple and effective way and supporting labour mobility in the single market".
2. 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. The Regulation will contribute to the implementation of the principles of the European Pillar of Social Rights.
3. The EU Commission identified the following challenges in enforcing effective labour market mobility rules:
  - Inadequate support and guidance for individuals and businesses in cross-border situations;
  - Insufficient access to and sharing of information between national authorities;
  - Insufficient capacity of national authorities to organise cooperation with authorities across borders;
  - Weak or absent mechanisms for joint cross-border enforcement activities;
  - Lack of a dedicated cross-border mediation mechanism;
  - Insufficient co-operation set-up at EU level.
4. The main functions of the ELA will be to:
  - Facilitate access for individuals and employers to information on their rights and obligations as well as to relevant services;
  - Support cooperation between EU countries in the cross-border enforcement of relevant Union law, including facilitating joint inspections;
  - Provide mediation and facilitating solutions in cases of cross-border disputes between national authorities or labour market disruptions.
5. The proposed ELA will build on existing initiatives to promote fair labour mobility. It will also pool technical and operational tasks of existing EU bodies into a permanent structure, taking over the management of the EURES European Coordination Office. In addition, the ELA will replace: the Technical Committee on the Free Movement of Workers; the Committee of Experts on Posting of Workers; the Technical Commission, the Audit Board, and the Conciliation Board of the Administrative Commission for the Coordination of Social Security Systems.

6. In the areas of social security coordination, the ELA will work closely with the Administrative Commission for the Coordination of Social Security Systems and the Advisory Committee on the Free Movement of Workers. It will be guided by the European Interoperability Framework (EIF) and the European Interoperability Reference Architecture (EIRA)<sup>1</sup>.
7. The ELA is expected to be established during 2019. It is not clear what the role of the UK will be in relation to the ELA once we leave the EU.

#### SCRUTINY HISTORY

8. Not applicable. This is a new proposal.

#### MINISTERIAL RESPONSIBILITY

9. The Home Secretary has overall responsibility for freedom of movement.
10. The Department for Business, Energy and Industrial Strategy leads on European Single Market and Labour Market reform, including transparency in the labour market and enforcement of employment rights.
11. The Secretary of State for Work and Pensions has responsibility for European Employment Services and services linked to DWP's employment and labour market agenda, including coordination of Social Security.
12. The Secretary of State for Health and Social Care has responsibility for reciprocal healthcare including the Audit Board and cross border workers.

#### INTEREST OF THE DEVOLVED ADMINISTRATIONS

13. There is interest from the devolved administrations due to their involvement in certain social security benefits and employability programmes. The devolved administrations have been consulted in the preparation of this EM.

#### LEGAL AND PROCEDURAL ISSUES

##### i. Legal basis

14. The proposed regulation is to be made under Articles 46 (free movement of workers), 48 (social security related to free movement of workers), 53(1) (activities of self-employed persons), 62 (freedom to provide services), 91(1) (common rules on international transport) and 294 (ordinary legislative procedure) of the Treaty on the Functioning of the European Union.

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<sup>1</sup> European Interoperability Framework (EIF) is part of the Communication (COM(2017)134) from the European Commission adopted on **23 March 2017**. The framework gives specific guidance on how to set up interoperable digital public services. The European Interoperability Reference Architecture (EIRA) is a content model that defines the most important building blocks required for the creation of interoperable eGovernment systems. It provides a common terminology for IT architects and facilitates the development of digital public services across borders and sectors.

ii. European Parliament Procedure

15. The Ordinary Legislative Procedure applies.

iii. Voting procedure

16. Voting procedure in the Council will be Qualified Majority Voting.

iv. Impact on United Kingdom Law

17. This Regulation will not have any impact on UK law, except to place a few minor obligations on HMG and national labour market enforcement bodies in relation to dealings with the ELA (e.g. if a national enforcement authority declines to participate in a joint inspection with authorities from other Member States, it must provide the ELA with written reasons for its refusal (but cannot be compelled to participate); where it does participate in a joint inspection it must report back to the ELA on the outcome). Apart from this, 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.

v. Application to Gibraltar

18. This proposal will be applicable to Gibraltar.

vi. Fundamental rights analysis

19. No fundamental rights issues arise from this proposal.

#### APPLICATION TO THE EUROPEAN ECONOMIC AREA

20. This proposal applies to the European Economic Area, as the ELA will functions involve supporting and facilitating labour market aspects of the European Single Market.

#### SUBSIDIARITY

21. The subsidiarity principle applies since the proposal does not fall under the exclusive competence of the EU. The objectives of the proposal are to add value for cross-border working and coordination and are thus more suited to transnational intervention rather than being carried out at national, regional or local level.

#### POLICY IMPLICATIONS (including exit implications where appropriate)

22. The UK is firmly committed to protecting workers' rights and has strong employment rights which are enforced through employment tribunals and some state enforcement. Citizens of other EU Member States are generally subject to the same worker rights and responsibilities when residing and working in the UK as UK citizens.

23. The UK does not have a unitary labour inspectorate. Instead, individuals pursue claims for breaches of employment rights directly to Employment Tribunals. In addition, several agencies undertake specific state enforcement in certain areas of regulation. HMRC's NMW enforcement team undertake state enforcement of the

National Minimum Wage and the National Living Wage. In England, Scotland and Wales the Employment Agency Standards Inspectorate (EAS) enforce compliance by employment agencies and employment businesses with their statutory obligations under the Employment Agencies Act 1973 and supporting regulations. In Northern Ireland, the Employment Inspectorate (EAI) enforce compliance by employment agencies and employment businesses with their statutory obligations under The Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 and the Conduct of Employment Agencies and Employment Business Regulations (Northern Ireland) 2005. The Gangmasters and Labour Abuse Authority (GLAA) licences labour providers in the agricultural, shellfish and fresh food processing and packaging sectors. The GLAA also has powers under the Police and Criminal Evidence Act 1984, which enables the Authority to investigate serious labour market offences using police powers across any sector of the labour market in England and Wales. The Health and Safety Executive (HSE) regulates occupational safety and health standards (however these are not within the scope of the ELA). The GLAA operates in Northern Ireland but the powers are not directly equivalent to those elsewhere in the UK.

24. These agencies work independently of each other, but also carry out joint operations with targeted inspections in a given geographical area or economic sector. The Director of Labour Market Enforcement is responsible for providing strategic direction to the three enforcement bodies, but is not responsible for operational oversight which falls to HMRC, BEIS and to the GLAA Board. The EAI in Northern Ireland is not within the remit of the Director of Labour Market Enforcement.
25. The framework for coordinating social security across the EU is governed by Regulation 883/2004. In December 2016, the EU published the Commission's Labour Mobility Package which announced an accelerated negotiation/agreement on a package of reforms including changes to Regulation 883. The aim is to have the package agreed at the latest within the lifetime of the current European Parliament (Spring 2019). The UK will continue to engage with social security coordination post-Exit because the provisions will apply to those EU and UK citizens covered by the Withdrawal Agreement (the Citizens' Rights provisions.)
26. The UK considers that it is important that the ELA respects Member State competence. For the ELA to add value it must respect the competence of national labour enforcement agencies and complement their work, particularly on cross border mobility, employment and social security matters.
27. The ELA proposal aims to subsume the Conciliation Board of the Administrative Commission for the Coordination of Social Security Systems.
28. The proposal aims for the ELA to share social security data in the case of cross-border disputes. Whilst this will be anonymised, the protection of Social Security data remains a priority for the UK. In a time when even large, well-protected organisations are vulnerable to cyber-attacks the sharing of social security data would need to be strictly regulated.
29. It is expected that the UK will be a participant in the ELA's activities during the implementation period. Our role and relationship in the long term will depend on the arrangements agreed with the UK and the EU for the future economic partnership.

## CONSULTATION

30. The European Commission conducted an internet-based open public consultation on its main parameters from 27 November 2017 to 7 January 2018. This exercise resulted in 8,809 responses, of which 8420 were identical relies inspired by an ETUC campaign. There were 389 unique responses, with the largest number from a single Member State being the 61 responses from the UK. Overall respondents to the public consultation expressed strong support for a new Authority.
31. The European Commission also conducted a series of targeted consultations of EU bodies in the field of labour mobility and social security coordination. A dedicated hearing of social partners at EU level was organised on 11 December 2017 and a strategic dialogue meeting with EU level civil society organisations was held on 15 December 2017. These meetings collected written and oral contributions which welcomed the creation of a new authority to improve cooperation between national authorities, although they underlined that the new authority should fully respect Treaty-based national competencies.
32. As the ELA proposal is for an EU Regulation, the government does not propose to conduct a consultation.

## IMPACT ASSESSMENT

An Impact Assessment Checklist is annexed.

## FINANCIAL IMPLICATIONS

33. The costs under this Multiannual Financial Framework (2019-2020) will be met partially through redeployment from existing activities currently implemented under the EU Programme for Employment and Social Innovation (EaSI). The EU Commission may also look to voluntary contributions to funding from Member States, and contributions from participating third countries.
34. There are possibly some costs to the UK government and enforcement agencies through increased administrative work in participating with the ELA, and possibly some costs in ELA related cross border joint inspections. However, the costs are likely to be low, and the 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 the UK could determine whether the benefits from participation outweigh the costs and how much to engage with the ELA.

## TIMETABLE

35. The European Commission document anticipates that the ELA will be established in 2019 and fully operational by 2023.

SIGNATURE 

DATE: 5 April 2018

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