



Department for  
Business, Energy  
& Industrial Strategy

Kelly Tolhurst MP

Department for Business, Energy &  
Industrial Strategy  
1 Victoria Street  
London  
SW1H 0ET

Sir William Cash MP  
Chair, European Scrutiny Committee  
14 Tothill Street  
House of Commons  
London, SW1H 9NB

T +44 (0) 20 7215 5000  
E [enquiries@beis.gov.uk](mailto:enquiries@beis.gov.uk)  
W [www.gov.uk](http://www.gov.uk)

23 May 2019

Dear Sir Bull,

**Council Number 2018/0064: Proposal for a Regulation of the European Parliament and of the Council establishing a European Labour Authority (ELA).**

Thank you for the Committees' report on the European Labour Authority, granting a waiver to vote in favour of the file ahead of the Council meeting. I previously thought the text would be voted on ahead of final adoption in April, however it is now unlikely this will take place before EPSCO on 13 June 2019. Ahead of this meeting, I am now writing to provide responses to your outstanding questions from your recent report on ELA. I will address the questions in turn.

**Changes to the provisions on third country cooperation with the European Labour Authority**

There were no changes to the provisions on third country cooperation during the course of negotiations on the file. Some Member States expressed an interest in future cooperation with and participation of third countries, however the UK did not engage in this conversation due to the commitment to engage 'in good faith' until such time as we leave the EU. The working groups would not have been the appropriate forum to engage on the UK's future relationship with the EU.

**Clear steer from the Government on the possibilities for UK engagement with ELA post-exit:**

- to clarify the scope of the provisions on cooperation with third countries (as set out in Article 43 of the Council General Approach or any successor text included in the final compromise text) and
- their application to the UK post-exit, given that cooperation with and participation in the European Labour Authority appear to be limited to third countries applying "relevant Union law on labour mobility and social security coordination".

The Commission has been clear that in order to achieve the objectives of the organisation, the ELA can cooperate with 'third countries to which the relevant Union law on labour mobility and social security coordination applies'. In the context of EU Exit, and in a deal scenario, Article

31 of the Withdrawal Agreement states that the UK shall continue to apply the rules and objectives set out in Regulation 883/2004 and Regulation 987/2009. The former establishes the Administrative Commission for the Coordination of Social Security Systems (the Administrative Commission). In a deal scenario, the UK will retain participation but not voting rights in the Administrative Commission, for the purpose of Title III of the Withdrawal Agreement as set out in Article 34.

As the scope of ELA is set to include responsibility of social security coordination disputes, it is advantageous for the UK to retain a close relationship with the ELA for social security coordination purposes. Article 34 of the Withdrawal Agreement also makes provision for the UK's participation in an advisory capacity to the meetings of the bodies referred to in Article 73 and 74 of Regulation 883/2004 which under this proposal will include the social security coordination elements of ELA. Equally the UK would benefit from sharing good practice and the aim to improve coordination across labour enforcement.

**Does the commitment made in Part Two of the draft EU/UK Withdrawal Agreement to protect the rights of mobile EU citizens acquired before exit day or the end of any post-exit transition/implementation period bring the UK within the scope of the provisions on cooperation with third countries set out in Article 43 of the Council General Approach?**

Article 31 of the Withdrawal Agreement states that individuals in full scope of Title III of the Withdrawal Agreement by the end of the implementation period will continue to be protected by the relevant EU social security coordination arrangements under the EU Social Security Coordination Regulations. The UK will therefore continue to play a role in the social security coordination for citizens covered by this agreement, which will cross-over with the work of the ELA.

The UK's wider relationship with ELA will be discussed in the Future Economic Partnership (FEP) negotiations. As previously stated, there would be benefits from a close partnership with the ELA but this is a discussion that will be had at a later date. The UK will continue to make representations through the appropriate channels about the benefits of future co-ordination with ELA.

**Does the commitment made in the draft EU/UK Withdrawal Agreement to non-regression of labour and social standards contained in the Protocol on Ireland/Northern Ireland mean that the UK would be bound to apply "relevant Union law on labour mobility and social security coordination" for the duration of the so-called "backstop", should it take effect at the end of a post-exit transition/implementation period?**

The non-regression provisions of the Protocol ensure that both the UK and the EU cannot reduce labour standards in a number of areas. Some areas of Union law related to labour mobility and social security are considered elsewhere in the Withdrawal Agreement.

**Do the commitments made to Parliament in its Command Paper published on 6 March 2019, Protecting and Enhancing Worker Rights after the UK Withdrawal from the European Union to consult Parliament on any diminution in pre-exit EU workers' rights (by means of "a statement of non-regression") or on any new EU laws enhancing workers' rights (by means of "a statement of non-divergence") bring the UK within the scope of the provisions in the proposed Regulation on cooperation with third countries (Article 43 of the Council General Approach) to the extent that UK domestic law remains aligned with EU laws on workers' rights post-exit?**

The legislation to give effect to the commitments in the Command Paper published on 6 March 2019 will be included in the European Union (Withdrawal Agreement) Bill. This will be subject

to amendment during the Parliamentary process. If Parliament decides – whether through this mechanism or otherwise – to ensure UK law aligns with the necessary EU law, then the UK may be able to and decide to cooperate with the ELA.

I expect the file to have final adoption at EPSCO on 13 June 2019. I will write to the Committee following Council with a final update.

I hope this information is of assistance to the Committee.

yours ever



**KELLY TOLHURST MP**

Minister for Small Business, Consumers & Corporate Responsibility

