



How to design the European Labour Authority to fight more efficiently social and wage dumping

STUDY



European Economic and Social Committee



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Study

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Abstract

This study presents an overview and analysis of the roles and tasks of the European Labour Authority, with a view to highlight the strengths and possible weaknesses of the current set up and suggest how to support its effective operation. The importance of the tasks assigned to ELA is testified by the size of the phenomena it has to oversee. In 2017, there were 17 million EU citizens living in an EU Member State other than their country of citizenship. Mobile workers (either working or looking for a job) were 9.5 million, posted workers 1.8 million and cross-border workers 1.4 million. The provisional agreement on the establishment of the ELA provides a comprehensive range of tasks, which can be seen as a complete cycle: from information provision to assistance and support in implementing EU legislation, facilitation of joint and concerted actions, mediation and conciliation in case of disputes, and the realisation of studies and analyses. The ELA is located at the centre of a dense network of national authorities and stakeholders and operates as a facilitator and activator of a set of diverse actors and resources. A number of challenges lie ahead in the core task of ensuring the implementation of EU law: the establishment of the necessary institutional and organisation infrastructures within and across Member States, the creation of a shared set of concepts and frameworks to address the issues raised by labour mobility, the development and reinforcement of operational tools. All actors and stakeholders involved in the operation of ELA are key to the accomplishment of such objectives.

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Executive Summary

Introduction

Labour mobility is an essential component of European integration and can help achieve at its highest levels the EU objectives of supporting social cohesion and economic growth, as long as it takes place in ways which protect the rights of workers, ensure fair conditions of employment and good working conditions, avoid social dumping, and promote innovation. The establishment of a European Labour Authority (ELA) has been proposed, in the framework of the European Pillar of Social Rights, with a view to promote fair and effective labour mobility, in order to avoid the negative aspects of the mobility of workers and take full advantage of its potential for social integration and economic growth.

A basic typology of labour mobility

The identification of the tasks and operations of the ELA can be built on the understanding of the complex phenomena that it will be asked to oversee and facilitate. Labour mobility takes place in many different ways and with quite distinct implications, which demand the design and implementation of different instruments. A possible typology includes:

- **Individual personal mobility**, for both temporary and long-term work. In this field, it is very important to *provide information on job opportunities as well as about the EU regulatory framework, national administrative procedures and requirements*.
- **The mobility of workers in the provision of services**, like in the posting of workers and in road haulage. Temporary worker mobility linked to service provision poses specific challenges, especially in the field of the implementation of the EU regulatory framework. In this area, one key role of the ELA is the *coordination and facilitation of the cooperation between the various relevant administrations* in the countries of origin (of both employers and workers) and in those where work is performed.
- **Cross-border labour mobility**. Cross-border workers have specific needs, in addition to those of ‘mobile’ workers in general. For instance, fair tax treatment is particularly important in their case, together with the issues of health protection and the portability of benefits. The multiple role of the ELA as *information provider, facilitator of administrative cooperation, and promoter of improvements in the regulatory and administrative frameworks* is particularly important for catering to the needs of workers and employers involved in cross-border employment.

Labour mobility across the Union

According to the 2018 Annual Report on intra-EU Labour Mobility (Fries-Tersch, Tugran, Markowska, and Jones 2019), after a period of significant increase, the growth of intra-EU mobility has slowed down, but still shows an upward trend. In 2017, there were “17 million EU-28 movers in the EU, according to Eurostat population statistics, among which 12.4 million of working age (20-64 years) compared to 11,8 million in 2016” (p. 13). Cross-border workers were 1.4 million people, the same as the previous year. Active EU-28 movers, those employed or looking for a job, were 9.5 million (compared to 9.1 million in 2016). Postings of employee and self-employed also increased from 2.3 million to 2.8 million, representing an approximate number of 1.8 million workers. Annual return mobility involved some 680.000 persons (data for 2016).

These data provide an indication of the importance of the phenomena that fall within the areas of competence of the ELA. Active EU-movers represent some 4% of the overall workforce of the EU-28. A significant and increasing level, which signals the potential gains in terms of further integration and the relevance of ensuring that such mobility involves fair terms of employment and working conditions. EU-movers, posted workers and their employers, cross-border workers and those who return to their country of origin are the most likely users of the general information which shall be disseminated by the ELA.

Besides information provision, law implementation and enforcement is certainly a key task of the ELA. This shall cover undeclared work, violations in regular employment and frauds involving the misrepresentation of the employment relationship related to labour mobility across the Union (like in the case of bogus self-employment, fraudulent posting of resident foreigners, or letterbox companies). The European Commission estimates that undeclared work of mobile workers can involve some 400,000 persons per year (European Commission 2018, p. 121). The estimate of the potential violations in posting is based on the number of PD A1 withdrawn and ranges between a conservative figure of 2,300 to a higher level of 9,200 people.

Role, objectives, tasks

The ELA has been assigned the role to “assist Member States and the Commission in their effective application and enforcement of Union law related to labour mobility across the Union and the coordination of social security systems within the Union” (Article 1 of the provisional text establishing the ELA). In this, the proposed regulation is quite clear: the ELA does not have specific mandatory powers and it has to rely on the cooperation of Member States as well as of the various stakeholders whose participation and involvement is envisaged.

As explicitly stated in Recital 35, the diversity of industrial relations systems, the autonomy of the social partners and the competences and powers of Member States are not affected by the establishment and the operations of the ELA. Article 1.2a reaffirms that the ELA shall not affect in any respects the fundamental rights recognized at Member State and Union levels, notably the freedom of strike or take action as well as of collective bargaining, in accordance with national laws and practices. In addition, Article 1.5 reiterates that the Regulation shall not affect the autonomy of Social partners and clarifies that the establishments of the ELA is “without prejudice to existing bilateral agreements and administrative cooperation arrangements between Member States, in particular those related to concerted and joint inspections”.

The ELA has been entrusted a number of tasks, which are listed in article 5 and specifically addressed in Articles 6-13. The articles also identify specific actions that the ELA shall take and tools it can develop and use.

Table 1. The roles and tasks assigned to the ELA: The ‘cycle’ of ELA activities

Role	Content/objective
Facilitate	Access to information on rights and obligations (Articles 6 and 7)
Support	Member States with capacity-building regarding the application and enforcement of relevant Union law (Article 12)
Facilitate and enhance	Cooperation between Member States in enforcement of Union law (Article 8)
Support	Cooperation between Member States in tackling undeclared work (Article 12a)
Facilitate and enhance/ Coordinate and support	Concerted and joint inspections (Articles 9 and 10)
Mediate and facilitate	Solution of cross-border disputes on the application of relevant Union law (Article 13)
Carry out	Analyses and risk assessment on issues of cross-border labour mobility (Article 11)

Table 1 summarises the tasks assigned to the ELA and highlights the main role it has to play and the content of the tasks. The tasks have been arranged in order to show what could be regarded as a sort of ‘cycle’ of the ELA activities:

1. The **availability and dissemination of information** about rights and obligations in labour mobility, for both worker and employers, represent the basic requirements to ensure fairness (as well as the condition to identify possible gaps and shortcomings, which is the first step towards taking corrective measures);
2. The core of ELA activities seems to be centred on the **implementation and enforcement of EU law** in the fields it covers, with a further focus on **undeclared work**. This is achieved by supporting the capacity of Member States, when relevant, fostering cooperation between Member States and facilitating concerted and joint actions and notably inspections.
3. If disputes arise in the areas covered by the ELA, it can also operate to promote **mediation** between the Member States.
4. In order to better focus its activities, the ELA can **carry out analyses and risk assessments**.

In this perspective, the various roles and activities of the ELA appear well articulated and integrated and provide a significant potential for effective operations. Although the ELA does not have any specific mandatory powers, the range of its tasks and their integration provide multiple and coherent ways in which it can contribute to ensure “fair labour mobility across the Union” (Article 2.1).

The governance system and the National Liaison Officers

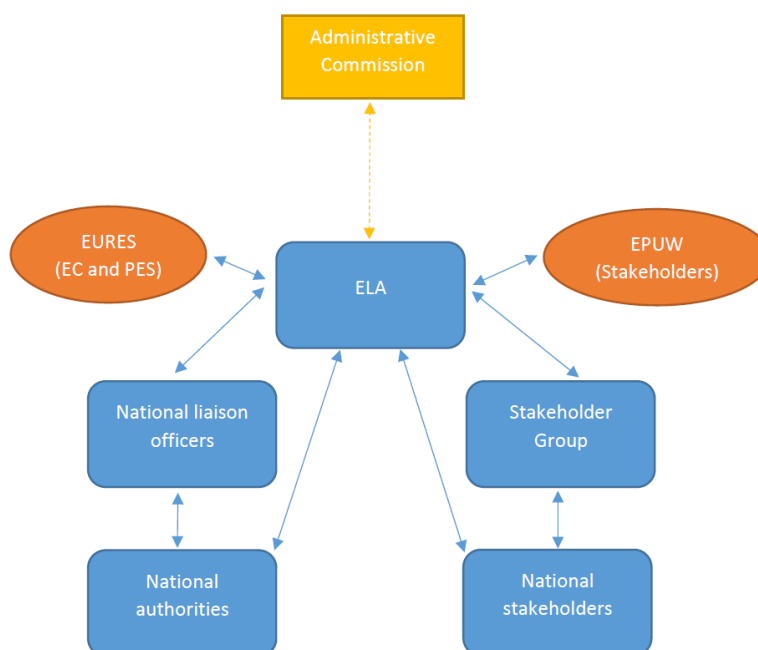
The ELA’s effectiveness essentially relies on the capacity to mobilise stakeholders and provide them with essential resources, such as specialised knowledge and services. Even more importantly, it is the position of the ELA at the intersections of distinct networks of stakeholders that can enable the combination of different expertise and assets with a view to achieve the common goal of ensuring fair labour mobility across the Union.

In this perspective, the composition of the Management Board and the presence of a Stakeholder Group aptly reflect this operational feature of the ELA and can significantly contribute to its effectiveness. Indeed, the inclusion in the management Board of one senior representative from each Member State, two representatives of the Commission, four representatives of cross-industry social partners at Union level, equally representing trade unions and employers’ organisations, as well as one independent expert appointed by the European Parliament provide voice opportunities to various

stakeholders, while reserving the voting rights to the representatives of the Member States and the Commission.

At the operational level, the presence of National Liaison Officers seconded from Member States is probably one of the most important organisational feature of the ELA. Indeed, National Liaison Officers are the ‘terminals’ of the national administrative networks which must be mobilized and activated in order to achieve the ELA’s objectives. Article 33 establishes that “each Member State shall designate one National Liaison Officer as a seconded national expert to [the ELA] and work at its seat”. National Liaison Officers contribute to the tasks of the ELA, “including by facilitating the cooperation and exchange of information”, “the support and coordination of inspections” and “act as national contact points for questions from their Member States and relating to their Member States, either by answering those questions directly or by liaising with their national administrations”.

Chart 1. The relational context of ELA



Lessons from case studies and good practices: fighting social and wage dumping

Operating in a cross-border environment requires the exchange of a significant range of data, which may include information on employment contracts and social security contributions, corporate details and fiscal positions. This entails different activities in the preparation of and after the possible inspections in workplaces and company headquarters. Basic requirements for undertaking such activities are:

- *Legal instruments*, which enable the coordination and exchange of information between different authorities;
- *Offices and roles*, which are responsible for carrying out the various activities in the different phases of the investigations;
- *Procedures*, which clearly identify the steps to be followed to activate the various offices and roles and what must be obtained at each step.

The most established cooperation frameworks are currently based on bilateral agreements and stable relationships between national authorities, like in the cases of Benelux, Spain and Portugal, and France and Belgium (ILO 2010; Van Baelen, Stalpaer, and Kieft 2018; Lavaure, and Anguelova 2018). For the multidimensional character of violations and investigations, it is also important that they cover all the issues that may be relevant to analyse a case (terms of employment, social security positions, corporate data, and fiscal situation). This means that adequate legal infrastructure, stable links between offices and clear and common procedures, both within and across Member States, are fundamental enabling factors in fighting effectively social and wage dumping. One of the main and most challenging tasks of ELA will be to foster developments in this field.

Available studies on transnational cooperation in the field of implementation and enforcement of labour law stress the problems of operating between different regulatory systems and with distinct operational tools, which incorporate diverse definitions and concepts of violations. The variable approaches to violations and frauds are integrated in different tools, such as datasets, forms, questionnaires, and, day-to-day practices, which frame investigations, make comparison across countries difficult and can hinder cross-border cooperation. For this reason, there is a constant emphasis on joint training, peer review, country visits and joint initiatives, which are essential to create common conceptual and analytical frameworks to support joint initiatives.

[The role of social partners](#)

The social partners have a specific role to play in ensuring fair terms of employment and working conditions. The trade unions, in particular, engage consistently in campaigns, awareness-raising initiatives and organizing efforts, which focus on wage and social dumping, including in cross-border situations (Pallini and Pedersini 2010, 2016). In this perspective, their involvement can contribute greatly to the development of a common understanding of frauds and violations, the design of operational tools, and the identification of fraudulent practices. Their experience in dealing with sectoral and workplace issues provides an extensive and valuable knowledge. Similarly, employer and business associations can provide support and instruments to their members to comply with national

and EU laws and they can foster the mobilisation against unfair competitive practices, which involve the undercutting of terms and conditions of employment (Pallini e Pedersini 2016). Together, trade unions and employers can jointly set rules to contrast social dumping or they can engage in tripartite relations with public authorities to ensure fair treatment of workers (ILO 2010). For these reasons, their inclusion and active mobilisation among ELA's stakeholders can be particularly important to support the effectiveness of the whole cycle of its activities.

Final remarks

- The first conclusion that can be drawn from this study is that the various ELA activities can be regarded as parts of a comprehensive 'cycle'. Each one contributes to preparing and providing grounds for the others and their combination reinforces and promotes the role of the ELA.
- The ELA plays an essential role as a facilitator and activator of knowledge and resources pertaining to different networks has been underlined above, so that the lack of mandatory powers does not limit the operational effectiveness of the ELA. The emphasis on the responsibility and cooperation of Union and national stakeholders provides a suitable framework for addressing the problems of cross-border implementation and enforcement of Union law.
- Important premises for the effective operation of the ELA can be produced in everyday interactions between actors and stakeholders and in relational activities such as learning programmes, peer reviews and mutual assistance.
- While the ELA must focus on the competences included in the Regulation, it may use studies and analyses to explore other areas too, given the variable and adaptive nature of the issues it has to address.
- Building new institutions, conceptual frameworks and operational tools is certainly a difficult task. The current design of the Authority takes on board many actors that have experimented in these directions in recent years in the European Union, starting from the national authorities responsible for enforcing national and EU legislation, EURES, the European Platform tackling Undeclared Work, the social partners. The challenge for ELA is now to go beyond those experimentations and create a comprehensive and inclusive system. It will take the effort and commitment of all the involved actors and stakeholders to contribute to build a more cohesive, fair, and integrated European Union.

Study

1. Introduction

Labour mobility is an essential component of European integration and can help achieve at its highest levels the EU objectives of supporting social cohesion and economic growth, as long as it takes place in ways which protect the rights of workers, ensure fair conditions of employment and good working conditions, avoid social dumping, and promote innovation.

Labour mobility has a remarkable potential in terms of building a cohesive European society and making the best use of the skills and competences available in the European Union. Intra-EU mobility has historically contributed greatly to economic development, and provided grounds for developing cross-national economic and social ties and networks, as testified by the presence of important communities of foreign nationals in each Member State, which play a relevant role in both the economic and social spheres. Nowadays, short- and medium-term mobility have acquired more prominence and the issue of supporting this kind of mobility appears particularly important for ensuring a well-functioning internal labour market and for providing European citizens and residents with more job opportunities and better chances for professional advancement and careers.

At the same time, past and current experiences with labour mobility have exposed a number of critical aspects, which can hinder the realisation of its positive potential and result in dysfunctional outcomes, as highlighted in recent opinions of the European Economic and Social Committee (EESC, SOC 541, SOC 531 and TEN 637). These problems include notably instances of unfair treatment of mobile workers, circumvention of EU and national legislation – including in the field of tax and social security provisions, fraudulent forms of contracting of work, undercutting of terms of employment and working conditions, and unfair competition.

The establishment of a European Labour Authority (ELA) has been proposed, in the framework of the European Pillar of Social Rights, with a view to promote fair and effective labour mobility, in order to avoid the negative aspects of the mobility of workers and take full advantage of its potential for social integration and economic growth. In this perspective, it will also entail, as highlighted by the European Commission's Proposal for a Regulation of the European Parliament and of the Council establishing a European Labour Authority (COM(2018) 131 final), the pooling and streamlining of existing bodies and activities, which currently aim to achieve the same objectives. However, the ELA would also take up new tasks and competences in order to address specifically some weaknesses in

the implementation and administration of the various rules supporting labour mobility within the EU. It could also contribute to identify existing loopholes or gaps in the current regulations, procedures and instruments and propose possible adjustments and integrations in order to enhance the overall regulatory and operational framework which accompanies labour mobility.

The present study aims to provide recommendations regarding the operation of the ELA, with the special aim of fighting efficiently social and wage dumping.

2. A basic typology of labour mobility

The identification of the tasks and operations of the ELA must be built on a clear understanding of the complex phenomena that it will be asked to oversee and facilitate. Labour mobility takes place in many different ways and with quite distinct implications, which demand the design and implementation of different instruments. A possible typology includes:

- **Individual personal mobility**, for both temporary and long-term work. In this field, it is very important to *provide information on job opportunities as well as about the EU regulatory framework, national administrative procedures and requirements*. Information on the recognition and certification of education, training and skills as well as details on the portability of welfare benefits are of particular relevance. In the case of self-employed workers, also professional certifications and health and safety standards acquire a particular relevance. In this fields, the Authority represents an important observatory for detecting possible obstacles to individual mobility in all dimensions of the employment relations (from hiring to retirement) and for promoting their removal. Another important area of action will be the fight against bogus self-employment. For these reasons, besides ensuring the provision of comprehensive and easily accessible information, it will be important to support the development of effective two-way communication channels with the ‘mobile’ workers, including in order to ensure that no discrimination based on nationality occurs.
- The **mobility of workers in the provision of services**, like in the posting of workers and in road haulage. Temporary worker mobility linked to service provision poses specific challenges, especially in the field of the implementation of the EU regulatory framework. In this area, one key role of the ELA is the *coordination and facilitation of the cooperation between the various relevant administrations* in the countries of origin (of both employers and workers) and in those where work is performed. Timely and effective cooperation between national administrations is in fact crucial in order to detect fraudulent forms of posting, fight social and wage dumping, and enforce sanctions and remedies. Moreover, one of the key tasks of the ELA in this area is ensuring

that relevant and up to date information is made available to enterprises providing cross-border services and to their workers. In its relationship with national authorities, the ELA could also promote the coordination of domestic instruments to register and monitor the posting of workers, with a view to disseminate good practices and effectively fight social and wage dumping.

- **Cross-border labour mobility.** Cross-border workers have specific needs, in addition to those of ‘mobile’ workers in general. For instance, fair tax treatment is particularly important in their case, together with the issues of health protection and the portability of benefits. The multiple role of the ELA as *information provider, facilitator of administrative cooperation, and promoter of improvements in the regulatory and administrative frameworks* is particularly important for catering to the needs of workers and employers involved in cross-border employment.

The variety of types of labour mobility requires to analyse separately both the actual phenomena and the activities of the ELA, with a view to identify how these separate areas of activity require different approaches in terms of service provision and administrative cooperation.

3. The ELA as a pivotal actor in cooperative networks

For the operation of the ELA, the relationship with existing structures, bodies and initiatives is very important. These include:

- The Administrative Commission for the Coordination of Social Security Systems (AC) and the Advisory Committee for the Coordination of Social Security Systems;
- The Technical Committee and the Advisory Committee on the Free Movement of Workers;
- The Committee of Experts on Posting of Workers (ECPW);
- The EURES network;
- The European Platform tackling Undeclared Work (UDW Platform).

The provisional agreement for the establishment of ELA, in fact, envisages a close link between the ELA, on one side, and EURES and the European Platform tackling Undeclared Work and a tight coordination with the Administrative Commission. In terms of services, the EURES job mobility portal is certainly a fundamental component of the information provision purposes which the ELA is supposed to cover, together with the SOLVIT informal problem-solving service (which is consulted in connection with social security issues in 60% of cases; European Commission 2018, p. 14).

Moreover, the synergies that can be developed with the existing EU agencies, which cover the theme of labour mobility within their broader mission may also be important. The European Foundation for the Improvement of Living and Working Conditions - Eurofound, the European Centre for the

Development of Vocational Training - Cedefop, and the European Agency for Safety and Health at Work - EU OSHA cover, from different perspectives, the issue of internal labour mobility. However, regarding the potential cooperation with the ELA, it must be clear that, while these agencies have a prevalent focus on research and analyses, the Authority has essentially an operational character, with a fundamental reference role for individuals and enterprises, as well as for the administrative structures at EU and national level. The integration between these two dimensions is particularly important and it could be very fruitful. Since the ELA will occupy a privileged vantage point to observe the phenomena of labour mobility, it could promote the collection of data and evidence in cooperation with the EU agencies as well as the development and implementation of specific monitoring tools, analyses and reports.

Another key element of the ELA activities could be the involvement and activation of the various stakeholders at European and national levels. Individual citizens and residents, enterprises, national administrations operating in the various fields affected by labour mobility (such as employment services, social security bodies, and labour inspectorates) have already been cited. Other important stakeholders are trade unions and employer associations, at EU, national, and local levels, as they can be crucial partners to assist the ELA in pursuing its objectives.

The identification of specific measures and provisions which can specify and foster this fundamental role as network facilitator of the ELA, with a specific focus on the fight against social and wage dumping, is the main objective of this study. The present study is structured as follows. Firstly, the next section provides an overview of the relevance of labour mobility in the European Union and of the connected issues that the ELA is mandated to address. Secondly, a detailed analysis of the provisional agreement on the establishment of the ELA is presented, in order to highlight the strengths and possible weaknesses of the envisaged institutional framework. Thirdly, the main results of existing research on transnational cooperation aimed at fighting violations and irregularities in the field of employment are discussed with a view to identify the challenges for the operational effectiveness of ELA. Finally, the closing remarks presents some reflections on how to support the phase in of the ELA and foster effective actions to ensure fair mobility of labour across the EU.

4. Labour mobility across the Union

According to the 2018 Annual Report on intra-EU Labour Mobility (Fries-Tersch, Tugran, Markowska, and Jones 2019), after a period of significant increase, the growth of intra-EU mobility has slowed down, but still shows an upward trend. In 2017, there were “17 million EU-28 movers in the EU, according to Eurostat population statistics, among which 12.4 million of working age (20-64

years) compared to 11,8 million in 2016” (p. 13). Cross-border workers were 1.4 million people, the same as the previous year. Active EU-28 movers, those employed or looking for a job, were 9.5 million (compared to 9.1 million in 2016). Postings of employee and self-employed also increased from 2.3 million to 2.8 million, representing an approximate number of 1.8 million workers. Annual return mobility involved some 680.000 persons (data for 2016).

Table 1. Labour mobility in the European Union (2017)

EU-movers (living in a MS other than their country of citizenship)	17 million
<i>of which:</i>	
EU-movers of working age (20-64) years	12.4 million
EU-movers employed or looking for a job	9.5 million (4% of EU overall workforce)
Cross-border workers	1.4 million
Posted workers (employees and self-employed)	1.8 million (2.8 million postings)
Road transport workers crossing internal borders daily	2.0 million*
Return mobility	680 thousand (2016)

Source: Fries-Tersch, Tugran, Markowska, and Jones (2019); * European Commission (2018)

These data provide an indication of the importance of the phenomena that fall within the areas of competence of the ELA. Active EU-movers represent some 4% of the overall workforce of the EU-28. A significant and increasing level, which signals the potential gains in terms of further integration and the relevance of ensuring that such mobility involves fair terms of employment and working conditions. EU-movers, posted workers and their employers, cross-border workers and those who return to their country of origin are the most likely users of the general information which shall be disseminated by the ELA.

4.1 Other issues related to labour mobility

The impact assessment carried out in preparation of the proposal for establishing the ELA (European Commission 2018) includes further information, which contribute to depict more clearly the types and extent of activities that the Authority will have to perform.

In the area of social security, the most common issue concerns the application of the legislation of the country of habitual residence in the case of temporary mobility, like in the posting of workers and in the cross-border provision of services (2.3 million workers in 2016). The access to healthcare if living abroad involves some 1.4 million people (60% working-age movers, 30% pensioners and 10% family members). The export and import of family benefits cover some 539 thousand households or 909 thousand family members. Less relevant, but still involving between 30 and 80 thousand people, are the issues concerning unemployment benefits, pension decisions and cross-border health treatment. Since social security issues can have a very significant impact on the living standards and conditions of the people involved, the enhancement of information provision and the resolution of possible disputes appear particularly important and valuable for ensuring fair and adequate protections to European citizens.

Besides information provision, law implementation and enforcement is certainly a key task of the ELA. This shall cover undeclared work, violations in regular employment and frauds involving the misrepresentation of the employment relationship related to labour mobility across the Union (like in the case of bogus self-employment, fraudulent posting of resident foreigners, or letterbox companies). These are different types of irregularities, which imply distinct challenges and possibly diverse tackling tools (Pallini and Pedersini 2016). It is always difficult to estimate the extent of irregular behaviour. The most common approaches include surveys (which generally underrepresent irregularities, since people tend to under-declare their deviant behaviour) and the utilisation of proxies, such as data on the detection of irregular behaviour (which can be biased by a number of factors, including the different levels of available resources and effort put in investigating distinct phenomena). With such limitations and caution, the European Commission estimates that undeclared work of mobile workers can involve some 400,000 persons per year (European Commission 2018, p. 121). The estimate of the potential violations in posting is based on the number of PD A1 withdrawn and ranges between a conservative figure of 2,300 to a higher level of 9,200 people.

A possibly more reliable indicator of the effective demand for more action in the field of implementing and enforcing EU legislation across borders is the growing number of requests for information on the posting of workers administered by national authorities through the Internal Market Information System. Such requests amounted to 3,100 in 2017 (European Commission 2018, p. 123). Currently, the data for the three first quarters of 2018 (*Source: IMI Statistics, 9/2018 Edition*) indicate already a figure of over 3,500 requests. Since each request may involve more than one workers, we can consider that the lack of proper information, which leads to the demand for further details about the employer and the employees in the sending countries, is important. It should be noted that the distribution of requests is concentrated in certain receiving countries and in some

sending countries. In the first three quarters of 2018, four countries (Austria, Belgium, Denmark, and France) put forward some 2,800 requests, amounting to 80% of the total. This tends to reflect the significant concentration of posting in a limited number of Member States. However, it is influenced by the public relevance of the issue and by the perception of posting as a problematic type of cross-border employment. In this perspective, one important role of the ELA shall be, on one side, to reinforce the awareness of the challenges and problems that the posting of workers may involve. On the other side, a strengthened capacity to oversee posting and intervene to redress frauds and violations is a key factor in improving both the reality and the perception of posting, which may help to fully benefit of its potential for growth and employment, while ensuring fair treatment of workers.

Table 2. Specific issues concerning labour mobility

Maintain national social security coverage while temporarily abroad	2.3 million workers
Access to health service while living abroad	1.4 million people
Access to family benefits	539,000 households 909,000 family members
Undeclared work	400,000 mobile workers
Violations in posting	2,300-9,200 people

Source: European Commission (2018)

5. The state of play

The discussion about the establishment of the ELA is well advanced and a provisional agreement has been achieved on the text of the Regulation between the Parliament and the Council, with the assistance of the Commission. It is therefore important to summarise the main features of the envisaged Authority to better focus the analysis. Moreover, since the formal setting in which the ELA will operate has already been set, besides highlighting the strengths and the possible weaknesses of the current arrangements, the focus is more on the operation of the Authority and how to accompany its development and consolidation.

5.1 Role, objectives, tasks

The ELA has been assigned the role to “assist Member States and the Commission in their effective application and enforcement of Union law related to labour mobility across the Union and the

coordination of social security systems within the Union” (Article 1 of the provisional text establishing the ELA). In this, the proposed regulation is quite clear: the ELA does not have specific mandatory powers and it has to rely on the cooperation of Member States as well as of the various stakeholders whose participation and involvement is envisaged.

As explicitly stated in Recital 35, the diversity of industrial relations systems, the autonomy of the social partners and the competences and powers of Member States are not affected by the establishment and the operations of the ELA. Article 1.2a reaffirms that the ELA shall not affect in any respects the fundamental rights recognized at Member State and Union levels, notably the freedom of strike or take action as well as of collective bargaining, in accordance with national laws and practices. In addition, Article 1.5 reiterates that the Regulation shall not affect the autonomy of Social partners and clarifies that the establishments of the ELA is “without prejudice to existing bilateral agreements and administrative cooperation arrangements between Member States, in particular those related to concerted and joint inspections”.

The scope of the activities of the ELA mostly corresponds to the focus on the cross-border issues. These notably include:

1. The **posting of workers in the framework of the provision of services** (Directive EC 96/71, Directive EU 2014/67);
2. The **coordination of social security systems** (Regulation EC No 883/2004, Regulation EC No. 987/2009, Regulation EU 1231/2010 and Regulation EC 859/2003);
3. The **freedom of movement for workers within the Union** (Regulation EU 492/2011, Directive EU 2014/54) and the **integration of the Union labour market** (Regulation EU 2016/589);
4. The **specific cross-border labour and social security issues linked to road transport** within the Union (Regulation (EC) 1071/2009, Regulation EC No. 561/2006, Directive 2006/22/EC);
5. Moreover, the activities of the ELA extend to the **cooperation between Member States in order to tackle undeclared work** (article 1.4).

In these areas, the ELA has been entrusted a number of tasks, which are listed in article 5 and specifically addressed in Articles 6-13. The articles also identify specific actions that the ELA shall take and tools it can develop and use.

Table 3. The roles and tasks assigned to the ELA: The ‘cycle’ of ELA activities

Role	Content/objective
Facilitate	Access to information on rights and obligations (Articles 6 and 7)
Support	Member States with capacity-building regarding the application and enforcement of relevant Union law (Article 12)
Facilitate and enhance	Cooperation between Member States in enforcement of Union law (Article 8)
Support	Cooperation between Member States in tackling undeclared work (Article 12a)
Facilitate and enhance/ Coordinate and support	Concerted and joint inspections (Articles 9 and 10)
Mediate and facilitate	Solution of cross-border disputes on the application of relevant Union law (Article 13)
Carry out	Analyses and risk assessment on issues of cross-border labour mobility (Article 11)

Table 3 summarises the tasks assigned to the ELA and highlights the main role it has to play and the content of the tasks. The tasks have been arranged in order to show what could be regarded as a sort of ‘cycle’ of the ELA activities:

5. The **availability and dissemination of information** about rights and obligations in labour mobility, for both worker and employers, represent the basic requirements to ensure fairness (as well as the condition to identify possible gaps and shortcomings, which is the first step towards taking corrective measures);
6. The core of ELA activities seems to be centred on the **implementation and enforcement of EU law** in the fields it covers, with a further focus on **undeclared work**. This is achieved by supporting the capacity of Member States, when relevant, fostering cooperation between Member States and facilitating concerted and joint actions and notably inspections.
7. If disputes arise in the areas covered by the ELA, it can also operate to promote **mediation** between the Member States.
8. In order to better focus its activities, the ELA can **carry out analyses and risk assessments**.

In this perspective, the various roles and activities of the ELA appear well articulated and integrated and provide a significant potential for effective operations. Although the ELA does not have any

specific mandatory powers, the range of its tasks and their integration provide multiple and coherent ways in which it can contribute to ensure “fair labour mobility across the Union” (Article 2.1).

6. Detailed analysis of the ELA tasks

In the areas defined by Article 1, the ELA has an important set of attributions. They are mostly defined in terms of facilitating and supporting the actions of Member States and national authorities. However, as it will be shown, the position of the ELA at the intersection of a plurality of stakeholders, the resources it can mobilise as well as the combination of its various tasks can represent key factors in making the ELA a fundamental player in the field of the implementation of EU labour law and enhance the functioning and integration of the Union labour market.

In the following analysis of the various tasks assigned to the ELA, the cycle depicted above will be followed, rather than the numerical ordering of the articles of the proposed Regulation.

6.1 Facilitate access to information on rights and obligations (Articles 6 and 7)

According to Article 6, the ELA *shall improve the availability, quality and accessibility of information of a general nature offered to individuals, employers and social partner organisations regarding rights and obligations [within its scope of activities] to facilitate labour mobility across the Union*. Article 7, as a complement to such objectives, provides that the ELA shall *manage the EURES European Coordination Office*.

More specifically, Article 6 lists a number of activities within the remit of the ELA:

- Contribute to the provision of relevant information on the rights and obligations of individuals in cross-border labour mobility, including through a single Union-wide website in all official languages of the Union for accessing information sources and services at Union and national levels.
- Support Member States in complying with the obligations on the dissemination of and access to information relating to the free movement of workers.
- Support Member States streamlining the provision of information for workers and employers on cross-border mobility.
- Support Member States in meeting the quality criteria established for information services and sources.
- Support Member States in the application of the regulation on EURES.

- Facilitate the cooperation between Member States to provide assistance to individuals and employers about employment in the internal market.

In the field of information provision, the ELA has both a pro-active and a facilitating role. The article does not mention it explicitly, but all concerned parties who have been interviewed for this study agree that the single Union-wide website providing the full range of information on labour mobility shall be under the responsibility of the ELA. Therefore, it can be useful to see the various tasks listed in the article as part of the same overall process. The creation and maintenance of the single Union-wide website will provide the opportunity to compare, cross-check and assess the information currently available through the channels established by the Member States. The need to ensure the accessibility, comprehensiveness, homogeneity, and quality of the information on rights and obligations for workers and employers may represent the basis for the activation of Member States, with the promotional and supportive role of the ELA. In this endeavour, the integration of the EURES Coordination Office provides the access to a fundamental asset in terms of knowledge, experience, connections and practices that may contribute greatly to the performance of these tasks and to the achievement of the ELA objectives in this domain.

6.2 Support Member States with capacity-building regarding the application and enforcement of relevant Union law (Article 12)

Article 12 establishes that *the ELA shall support Member States with capacity building aimed at promoting the consistent enforcement of the Union law in all areas [within its scope of activities]*.

In particular, it can:

- Promote awareness-raising and information campaigns for individuals and employers, especially SMEs, about rights and obligations and opportunities.
- Promote the exchange and dissemination of experiences and good practices, including on cooperation between relevant national authorities.
- Develop sectoral and cross-sectoral training programmes, including for labour inspectorates, and dedicated training material.
- Promote and support mutual assistance in the form of peer-review, group activities, staff exchanges, secondment schemes between national authorities.
- Develop non-binding guidelines, in cooperation with national authorities and social partners, including guidance on inspections with a cross-border dimensions and shared definitions and common concepts.

Capacity building must be considered a key premise for the effectiveness of the ELA. On one side, it is a fundamental enabler of the various stakeholders concerned with fair labour mobility, starting from the workers and the employers involved. The knowledge about rights and obligations is the first component of a broad mobilisation and commitment to ensure fair labour standards and conditions – and this is very important in tackling labour-related frauds, since detection and sanctioning is difficult (Pallini e Pedersini 2016). On the other side, the facilitator role of the ELA must necessarily rely on shared concepts, analyses and practices. In this sense, all the activities which capacitate Member States, national authorities, and social partners are in fact empowering the ELA and its networks to achieve their institutional missions.

6.3 Facilitate and enhance cooperation between Member States in enforcement of Union law (Article 8)

Article 8 provides that the ELA *shall facilitate cooperation and acceleration of exchange of information between Member States and support their effective compliance with cooperation obligations, including on information exchange, as defined in Union law [within its scope of activities]*.

In this field, the ELA can:

- Upon request of Member States, support national authorities in identifying the relevant contact points of national authorities in other Member States
- Promote the use and development of electronic exchange mechanism and databases between the Member States.
- Upon request of Member States, provide information to support the effective application of Union acts falling within the competence of the ELA.
- Promote, share and contribute to disseminating best practices between Member States.
- Upon request of Member States, provide logistical and technical support, including translation and interpretation, to facilitate follow-up and exchanges on the status of cases.
- Upon request of one or more Member States, facilitate and support cross border enforcement procedures of penalties and fines.
- With the agreement of all Member States concerned, refer unresolved requests to mediation as per Article 13. It shall also report biannually to the Commission about unresolved requests by member States.

These tasks partly complement the capacity building activities. However, the emphasis on the requests of Member States clearly indicate that the ELA shall function as a valuable specialised service provider for Member States. In this sense, the ELA does not operate from the EU level with a top-down approach. Rather it is meant to be responsive to the demands and needs of Member States, national authorities (and social partners, as it will be seen). Such mutual dependence between the ELA and the other stakeholders is probably one of the most important structural elements on which the actual operations of the new Authority can be built and developed effectively (see Coleman 1990, Chapter 12 on Social Capital).

The intermediating role of the ELA shall, however, be interpreted in a subsidiary manner. The establishment of the ELA should not be considered the interposition of a new level between national administrations. As mentioned above, the ELA has a facilitator and capacitating role and is meant to support the independence of national authorities in dealing with one another. The Authority has certainly an active role in building the preconditions or the operational tools of cooperation, but it shall not be regarded as a necessary intermediary. It should be involved only when difficulties arise in the direct relationship between national authorities, with a view to solve them and provide assistance and eventually mediation and conciliation services.

6.4 Support (Cooperation between) Member States in tackling undeclared work (Article 12a)

The new Article 12a specifies how the ELA shall support cooperation between Member States in tackling undeclared work. It actually focuses on the activities of the permanent working group, called the European Platform to enhance cooperation in tackling undeclared work (the Platform), to be created by the ELA according to Article 17. In practice, such provision envisages the incorporation within the ELA of the current European Platform to enhance cooperation in tackling undeclared work, which was set up in accordance with the Decision 2016/344 of the European Parliament and the Council of 9 March 2016. The Platform has its own objectives and tasks, as identified in Article 12a, and *it shall support the activities of the Authority in tackling undeclared work.*

As it has been put in one interview, the incorporation of the Platform in the ELA is meant to provide continuity to a significant experience, which has delivered important results, without dispersing its legacy. Actually, the Platform takes within the ELA an important endowment in terms of knowledge, networks and achievements, which can benefit the overall operations of the Authority. The spill-overs and synergies between the existing Platform and the ELA can be substantial and trigger important learning effects. Although undeclared work does not necessarily involve labour mobility across the Union, the main rationales for this ‘merger’ are that the stakeholders concerned are the same, the cross-border element of undeclared work can make implementation and enforcement particularly

difficult, the methods to be applied to tackle undeclared work, on one side, and ensure fair labour mobility, on the other, overlap to a large extent. All these factors make the potential prospects of the integration of the Platform within the ELA particularly positive.

6.5 Facilitate and enhance/Coordinate and support concerted and joint inspections (Articles 9 and 10)

Articles 9 and 10 certainly cover a set of activities which will be particularly important for the ELA. In a certain sense, they envisage the more direct actions in ensuring fair labour mobility through concerted and joint inspections. Certainly, in this field competences firmly remain with the Member States and national authorities. However, the ELA is meant to play a key role, in an area where administrative processes can represent an obstacle hindering the full integration of the Union labour markets and in the implementation of Union law.

In particular, Article 9 provides that the ELA can:

- Provide conceptual, logistical and technical support in concerted and joint inspections, upon request of the Member States concerned.
- Coordinate and support concerted or joint inspections, upon request of one or more Member States.
- Suggest to the authorities of the Member States to perform a concerted or joint inspection, on its own initiative. In this respect, social partner organisations at national level may bring cases to the attention of the ELA.

The article also establishes that concerted or joint inspections are subject to the prior agreement of all participating Member States and are carried out in accordance with the national law and practices of the Member States in which the inspections take place. Similarly, follow-ups are performed according to national legislation and procedures. If one or more Member States decide not to participate in the concerted or joint inspection, the other national authorities may only carry out the envisaged inspection in the participating Member States. The Member States that decide not to participate must inform the ELA and the other Member States about the reasons of their decision and possibly about the measures they plan to address the case, and the outcomes of such measures. In this case, the Member States do not participate in the inspections and the ELA may suggest that the Member State which do not participate in a concerted or joint inspection carries out their own inspections on a voluntary basis. Article 10 defines the more technical and procedural elements of concerted or joint inspections.

As in the previous articles, it is possible to identify a combination of different roles of the ELA: specialised service provider and facilitator, promoter of concerted and joint inspections, activator of the network of stakeholders, including social partners, Member States and national authorities. The pivotal role of the ELA seems to be particularly crucial in this domain of activities, in view of extending the existing good practices in cross-border cooperation in inspections and law enforcement (Mineva and Horodnic 2018). A very important role would be to turn the fruitful experiences in bilateral cooperation into a multi-lateral platform to amplify the impact in terms of law implementation and enforcement, with a substantial contribution to fair terms of employment and working conditions within the Union labour market.

6.6 Mediate and facilitate the solution of cross-border disputes (on the application of relevant Union law) (Article 13)

Article 13 envisages that the ELA may facilitate a solution in case of disputes between two or more Member States regarding individual cases of application of Union law in areas [within its scope of activities], without prejudice to the powers of the Court of Justice of the European Union. Mediation shall serve to reconcile divergent points of view between the Member States concerned by the dispute and to adopt a non-binding opinion.

In particular, the ELA:

- Shall launch a mediation procedure to solve dispute between Member States, upon request of one or more Member States.
- May suggest to launch a mediation procedure, on its own initiative.

As in the case of concerted and joint inspections, the agreement of all Member States concerned is required in order to proceed with the mediation procedure. A Member State which decides not to participate in the mediation procedure must inform the ELA and the other Member States concerned about the reasons of its decision. The mediation procedure, which is a two-stage process, leads to non-binding opinions and the Member States must report about the measures taken to follow-up on it or about the reasons for not taking action. The ELA has to report to the Commission about the outcomes of the mediation cases. In order to manage the mediation procedure, the ELA shall appoint mediators and set up a Mediation Board, as provided for in Article 17.

The mediation tasks complement the ‘cycle’ of the activities by including a dispute resolution procedure, which maintains a non-binding nature and therefore underlines and confirms the cooperative framework in which the ELA shall operate and establish its role. This is particularly

important because recourse to the ELA is defined as an opportunity, which does not entail formal constraints.

6.7 Analyses and risk assessment on issues of cross-border labour mobility (Article 11)

Finally Article 11, identifies an area where the ELA can act on its own right in a clearer way. In fact, the ELA *shall, in cooperation with Member States and, where appropriate, social partner organisations, assess risks and carry out analyses regarding labour mobility and social security coordination across the Union.*

In addition, the ELA can organize peer reviews on: a) the provision of services to individuals and businesses; b) the knowledge and mutual understanding of different systems and practices; c) the assessment of the effectiveness of difference policy measures, including prevention and deterrence measures; d) the implementation and enforcement practices of Union law. The ELA can also collect data in the areas of its competences.

These analytical tasks are functional to the other activities outlined above, from the provision of information to capacity building, from the facilitation of cooperation in the implementation of EU law to the tackling of undeclared work. Peer reviews may in fact be seen as an instrument to disseminate best practices, establish common concepts, and provide mutual assistance.

7. The governance system and the National Liaison Officers

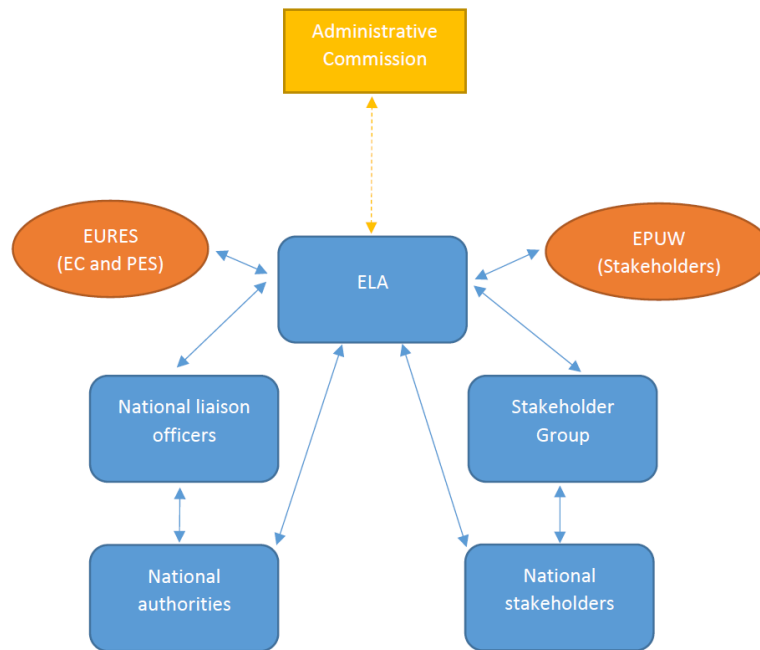
It has already been underlined the importance of the relational dimension in the design and operation of the ELA. As a facilitator, the ELA's effectiveness essentially relies on the capacity to mobilise stakeholders and provide them with essential resources, such as specialised knowledge and services. Even more importantly, it is the position of the ELA at the intersections of distinct networks of stakeholders that can enable the combination of different expertise and assets with a view to achieve the common goal of ensuring fair labour mobility across the Union.

In this perspective, the composition of the Management Board and the presence of a Stakeholder Group aptly reflect this operational feature of the ELA and can significantly contribute to its effectiveness. Indeed, the inclusion in the management Board of one senior representative from each Member State, two representatives of the Commission, four representatives of cross-industry social partners at Union level, equally representing trade unions and employers' organisations, as well as one independent expert appointed by the European Parliament provide voice opportunities to various stakeholders, while reserving the voting rights to the representatives of the Member States and the Commission.

The creation of a broad Stakeholder Group with advisory functions is particularly important. First, for the quality of the involvement in the operation of the ELA, since it “shall receive prior briefing and may, upon request by the Authority or on its own initiative, submit opinions to the Authority on important issues concerning its activities” (art. 24). Second, because it includes the ELA Executive Director, as its chair, two representatives of the Commission and ten representatives of Union-level social partners equally representing trade unions and employer’s organisations, including recognised Union sectoral social partners representing industries particularly concerned by labour mobility issues. In this way, it provides a fora for discussing key issues for the ELA with a high degree of competence and connection with the operational level of the Authority.

At the operational level, the presence of National Liaison Officers seconded from Member States is probably one of the most important organisational feature of the ELA. Indeed, National Liaison Officers are the ‘terminals’ of the national administrative networks which must be mobilized and activated in order to achieve the ELA’s objectives. Article 33 establishes that “each Member State shall designate one National Liaison Officer as a seconded national expert to [the ELA] and work at its seat”. National Liaison Officers contribute to the tasks of the ELA, “including by facilitating the cooperation and exchange of information”, “the support and coordination of inspections” and “act as national contact points for questions from their Member States and relating to their Member States, either by answering those questions directly or by liaising with their national administrations”.

Chart 1. The relational context of ELA



8. Lessons from case studies and good practices: fighting social and wage dumping

The dense web of actors which have been included in the governance and operational structure of the ELA (Chart 1) provides essential horizontal and vertical links to take advantage of a broad set of knowledge, expertise and practices which can help the Authority to operate effectively. The specificity of the Authority is to operate across national regulatory systems with a view to support and facilitate cooperation between different national authorities and without specific mandatory powers. The latter limit should not be considered a limitation, but it sets the framework for the development of the ELA's activities.

8.1 Tackling undeclared work and fraudulent forms of contracting work

The position of the ELA as a coordinator and facilitator of national authorities makes it a peculiar entity, with no specific equivalents at national level. Although, at first sight, it could be associated with labour inspectorates, their respective positions cannot be directly compared. However, we can still look at the experiences at national level with a view to identify the initiatives and practices which have proved effective in fighting social and wage dumping.

Research on tackling undeclared work and fraudulent forms of contracting work point to a number of strategies that can be implemented to reduce violations. As a general framework, we can use the types of measures identified by Eurofound (Williams and Renooy 2013), which include provisions aimed to: a) improve deterrence, by making detection and penalties more effective, b) enhance prevention, c)

strengthen remedies, and d) promote commitment to rule compliance. Preventative and curative measures imply the introduction of new regulations, such as the obligation to register workers before starting occasional work or the use of vouchers schemes to pay casual or seasonal workers (Williams and Renooy 2013, pp. 17-21). For this reason, they fall outside the scope of the ELA's activities, which operates within the established regulatory framework. Of course, we can assume that the ELA may and probably will suggest changes in Union legislation, based on its experience and activities, but this pertains to the dynamic perspective. In a static condition, that is with a specific set of rules in place, the ELA activities will essentially cover enhancing detection, ensuring the enforcement of penalties, and fostering commitment.

Table 4 connects the various tasks assigned to ELA with these different ways to fight social and wage dumping (Williams and Renooy 2013; Pallini e Pedersini 2016).

Access to information on rights and obligations. Awareness-raising campaigns about workers' rights and protections, the dissemination of information and guidelines on the proper utilisation of the various employment contracts, the presence of dedicated channels to report possible cases of fraud, often organised and managed by trade unions and sometimes jointly by the social partners, are common practices in many Member States. They strengthen commitment, facilitate peer surveillance, and provide information about possible violations, thereby contributing to improved detection capacity. As part of providing relevant information on the rights and obligations of individuals in cross-border labour mobility through access to information sources and services at Union and national levels, the ELA may, on one side, cover the initiatives developed at Union and national levels by social partners and, on the other, promote similar initiatives, at EU-level or involving specific Member States, as appropriate.

Capacity building, cooperation, concerted and joint inspections. The enhancement of implementation and enforcement of Union law in cross-border labour mobility is certainly the core objective of ELA, but its premises are the effectiveness of national enforcement systems and the cooperation between Member States, including in the application of penalties and sanctions. National initiatives in this field include: the coordination between different enforcement authorities at national level (labour inspectorates, health and safety authorities, tax authorities, police); the establishment of specific task-forces dedicated to fight the fraudulent contracting of work; the concentration of inspections in specific sectors, according to data on the diffusion of violations, or in workplaces with high risk indicators; the use of specific certified ID in workplaces, with extensive information on the worker's personal and employment details; the establishment of special registration procedures, usually on-line, which collect data and can make them available to the various inspection authorities, like in the case

How to design the European Labour Authority to fight more efficiently social and wage dumping

of posting. A significant challenge for ELA in these fields is the promotion of peer review and mutual learning, with a view to identify good practices, but also increase common knowledge and understanding, so to make cooperation and joint initiatives viable.

Table 4. The tasks assigned to the ELA: Tackling social and wage dumping

Task	Objective
Facilitate access to information on rights and obligations (Articles 6 and 7)	Commitment, detection
Support Member States with capacity-building regarding the application and enforcement of relevant Union law (Article 12)	Detection
Facilitate and enhance cooperation between Member States in enforcement of Union law (Article 8)	Detection, penalties
Support cooperation between Member States in tackling undeclared work (Article 12a)	Detection, penalties
Coordinate and support concerted and joint inspections (Articles 9 and 10)	Detection, penalties
Carry out analyses and risk assessment on issues of cross-border labour mobility (Article 11)	Detection, prevention and remedy?

Carry out analyses and risk assessment. Investigations and studies are usually carried out at national level to analyse specific phenomena, such as undeclared work or bogus self-employment, and help devise policies to tackle social and wage dumping as well as unfair competition that may result from them. As noted above, this is the activity where the ELA has a clear autonomy and decision-making capacity. This can provide the opportunity to investigate on the various dimensions of social and wage dumping in cross-border labour mobility, including with a view to propose new policy initiatives or to identify new areas in which implementation and enforcement of Union law should be reinforced.

8.2 The role of social partners

The social partners have a specific role to play in ensuring fair terms of employment and working conditions. They can provide valuable information on workplace situations and ensure links with workers and employers. The trade unions, in particular, engage consistently in campaigns, awareness-raising initiatives and organizing efforts, which focus on wage and social dumping, including in cross-border situations (Pallini and Pedersini 2010, 2016). In this perspective, their involvement can contribute greatly to the development of a common understanding of frauds and violations, the design of operational tools, and the identification of fraudulent practices. Their experience in dealing with sectoral and workplace issues provides an extensive and valuable knowledge. Similarly, employer and business associations can provide support and instruments to their members to comply with national

and EU laws and they can foster the mobilisation against unfair competitive practices, which involve the undercutting of terms and conditions of employment (Pallini e Pedersini 2016). Together, trade unions and employers can jointly set rules to contrast social dumping or they can engage in tripartite relations with public authorities to ensure fair treatment of workers (ILO 2010). For these reasons, their inclusion and active mobilisation among ELA's stakeholders can be particularly important to support the effectiveness of the whole cycle of its activities.

8.3 The issue of cross border implementation and enforcement

There are a number of studies which cover specifically the issue of international cooperation in the field of fighting undeclared work or work-related frauds and misclassification (see for instance, ILO 2010; Williams and Renooy 2013; Wagner 2015; ENACTING 2016; Pallini e Pedersini 2016; Wispelaere and Pacolet 2016; Hastings and Cremers 2017; Mineva and Horodnic 2018; Williams and Puts 2018). The presence of a cross-border dimension represents a clear challenge because it requires a common framework to approach the various issues by the different authorities involved, joint tools to investigate the actual circumstances by collecting and exchanging relevant data, shared criteria to evaluate them as well as effective measures to intervene and correct any violations or irregularities which may be detected, with proper follow-up schemes. In this perspective, the current provisional agreement resulting from inter-institutional negotiations on the establishment of the ELA is a promising starting point, but the actual work lies ahead.

The analysis of existing literature points to a number of enabling elements which support and can be regarded as requirements for successful international cooperation. They consist in the presence of: 1) adequate infrastructure, 2) common conceptual and analytical frameworks, and 3) effective operational tools.

8.3.1 The legal and organisational infrastructure

Operating in a cross-border environment requires the exchange of a significant range of data, which may include information on employment contracts and social security contributions, corporate details and fiscal positions. This entails different activities in the preparation of and after the possible inspections in workplaces and company headquarters. Basic requirements for undertaking such activities are:

- *Legal instruments*, which enable the coordination and exchange of information between different authorities.
- *Offices and roles*, which are responsible for carrying out the various activities in the different phases of the investigations;

- *Procedures*, which clearly identify the steps to be followed to activate the various offices and roles and what must be obtained at each step.

As for the presence of an appropriate legal infrastructure, it is important to underline that this requirement applies at national level too. As underlined above, the cooperation between the different authorities responsible for terms of employment, working conditions, health and safety, social security, taxation is usually crucial, but it can be difficult, even within national boundaries. At cross-border level, further constraints and obstacles are added. Currently, the EU legal basis may not be sufficient to make the necessary information available. If mere exchange of information is needed, the IMI system and EU legislation may be adequate. However, existing research shows that a proactive commitment, often built through professional networks, country visits and informal cooperation, is needed to make the system function effectively (Mineva and Horodnic 2018). The organisational infrastructure of offices, roles and procedures provides the necessary resources and stability to perform the tasks associated with the monitoring of terms and conditions of employment. Moreover, it helps develop an informal relational infrastructure among officers and inspectors, which contributes to foster trust and cooperation.

The most established cooperation frameworks are currently based on bilateral agreements and stable relationships between national authorities, like in the cases of Benelux, Spain and Portugal, and France and Belgium (ILO 2010; Van Baelen, Stalpaer, and Kieft 2018; Lavaure, and Anguelova 2018). For the multidimensional character of violations and investigations, it is also important that they cover all the issues that may be relevant to analyse a case (terms of employment, social security positions, corporate data, and fiscal situation). This means that adequate legal infrastructure, stable links between offices and clear and common procedures, both within and across Member States, are fundamental enabling factors in fighting effectively social and wage dumping. One of the main and most challenging tasks of ELA will be to foster developments in this field.

8.3.2 Conceptual and analytical frameworks

Available studies on transnational cooperation in the field of implementation and enforcement of labour law stress the problems of operating between different regulatory systems and with distinct operational tools, which incorporate diverse definitions and concepts of violations. The variable approaches to violations and frauds are integrated in different tools, such as datasets, forms, questionnaires, and, day-to-day practices, which frame investigations, make comparison across countries difficult and can hinder cross-border cooperation (Mineva and Horodnic 2018). For this reason, there is a constant emphasis on joint training, peer review, country visits and joint initiatives,

which are essential to create common conceptual and analytical frameworks to support joint initiatives.

8.3.3 Operational tools

As mentioned above, operational tools are not mere instruments, but embody a conceptual element and codify and channel information. Therefore, national tools may not be adequate to support cross-border cooperation, since they can carry information which is not immediately comprehensible across border (leaving aside the problem of language, which remains one of the main obstacles to cross-border cooperation). The availability of European exchange mechanisms, like the IMI system, is an important asset in this respect, although existing instruments may not be completely fit to the purpose. For instance, according to existing research, the IMI is very useful to support cross-border cooperation, but it has some limitations (Mineva and Horodnic 2018). On one side, the standardisation of questions and information allows a more rapid treatment of cross-border requests. On the other side, sometimes more information is required and therefore the operators have to send attachments with the extra details, but, in these cases, communication may be hindered by language problems or by the differences in the ways the different administrations operate (the forms they use, the information they gather compared to the information requested). Again, personal contacts may be important to overcome such operational difficulties, since they help build commitment and they support cooperation. In this, country visits and contacts through professional networks can be helpful.

9. Final remarks and recommendations

9.1 No priority, but a comprehensive set of tasks

The first conclusion that can be drawn from this study is that the various ELA activities can be regarded as parts of a comprehensive ‘cycle’. Each one contributes to preparing and providing grounds for the others. More importantly, their combination reinforces and promotes the role of the ELA. The operational effectiveness of the ELA will most likely depend on a number of factors which will emphasise its relational role: network building, awareness and commitment, mutual learning and peer support. The creation of a sense of community among the various concerned stakeholders, the establishment of common concepts and practices, the sharing and diffusion of expert knowledge pertaining to the various stakeholders are the outcomes of the whole range of tasks, rather than the output of one of them.

9.2 A facilitating role

The lack of mandatory powers does not (necessarily) hinder the operational effectiveness of the ELA. The emphasis on the responsibility and cooperation of Union and national stakeholders provides a suitable framework for addressing the problems of cross-border implementation and enforcement of Union law, which have been underlined by a number of studies and analyses. The potential of the ELA as a facilitator and activator of knowledge and resources pertaining to different networks has been underlined above. Clearly, this is only a potential, though a considerable one. From the operational point of view, it also represents a challenge. Bringing different stakeholders and network together may be quite a difficult task and requires an entrepreneurial drive (Burt 1995). One of the main assets of the ELA is that it does not start from scratch. In fact, it incorporates and connects important partners, stakeholders and their networks. Table 5 provides an indication of the actors involved in the current design, as well as the Road Transport European Sectoral Social Dialogue Committee. A general recommendations in order to strengthen and realise the potential of the ELA for effective operation is to foster the involvement and participation of all the concerned stakeholders, including by extending the reach at national and sectoral levels, within a participatory and collaborative framework.

In this perspective, taking advantage of its privileged position at the centre of a stakeholder network, the ELA may promote joint studies with national authorities and social partners as well as special initiatives, such as information and awareness-raising campaigns.

Finally, as previously indicated, the creation of an interposition in cross-border relations with the ELA as a stable mediator should be avoided. On one side, this would probably represent an excessive burden for the Authority. On the other side, it would probably impact negatively on cooperation and performance. The facilitating role is correctly implemented by capacitating and empowering the various actors and stakeholders to operate independently. The mediation of ELA should be limited to solve problems and assist national authorities and stakeholders to collaborate directly.

Table 5. The ELA as a network of stakeholders

Issues covered	Partners and stakeholders
Posting	National authorities (and the national monitoring and enforcement systems developed to implement directives)
Social security	Administrative Commission and national authorities

Labour market integration	EURES
Road transport	Sectoral social dialogue committee
Undeclared work	European Platform to tackle undeclared work

9.3 The importance of relational activities

The premises for the effective operation of the ELA can be produced in everyday interactions and in relational activities such as learning programmes, peer reviews and mutual assistance. Such ‘soft’ activities can represent a fundamental input for ‘harder’ tasks, such as support of cross-border implementation and enforcement, concerted and joint inspections, mediation procedures. Existing research highlights that some of the most challenging problems linked to operating across different regulatory systems can be overcome with the help of the shared identities built during joint training, country visits and previous professional interactions.

9.4 A more open focus?

Given the role of ELA in the coordination and mobilisation of different actors as well as the variable and adaptive nature of the issues it has to address, a more open range of competences than those strictly defined in Article 1 could have provided a better basis for its operation. However, while its ‘hard’ competences cannot go beyond what is stated in the Regulation, the most forward looking ones, like those pertaining to studies and analyses, may explore other areas too. The investigation of connected issues may in fact be relevant for the evaluation and review of the performance of the Authority established by Article 41, which envisages “the possible need to modify the mandate and scope of the Authority, including the extension of its scope”.

9.5 Independence and cooperation

Concerning the cooperation with the European agencies covering work-related issues (Eurofound, Cedefop, and EU OSHA), the operational focus of the ELA should reduce the risk of overlap and duplication. In the field of studies and research, there may be some scope for cooperation, but *ad-hoc* studies would be better designed and developed internally, together with the various stakeholders, due to their very specific focus. Some closer cooperation may be useful in the areas of surveys, for instance with Eurofound, in order to include sections aimed to investigate the issues directly covered by the ELA in this very important and powerful research instruments.

9.6 A difficult task

The final words must be devoted to underline the difficult task which lie ahead of the European Labour Authority. As pointed out by the existing literature mentioned in section 8 above, it takes more than a network to build new institutions, conceptual frameworks and operational tools. Certainly, the ELA is not starting from scratch. Many experiences and initiatives have experimented in the same directions in recent years in the European Union. The current design of the Authority takes on board the actors that have done so, starting from the national authorities responsible for enforcing national and EU legislation, EURES, the European Platform tackling Undeclared Work, the social partners. The challenge for ELA is now to go beyond those experimentations and create a comprehensive and inclusive system. It will take the effort and commitment of all the involved actors and stakeholders to contribute to build a more cohesive, fair, and integrated European Union.

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Interviews (organisation, number of interviewees)

-BusinessEurope, 1

-ETUC, 1

-European Commission, 1

-European Economic and Social Committee, 1

-European Parliament, 2

Contacted bodies and organisations:

-Advisory Committee for the Coordination of Social Security Systems

-European Transport federation (ETF)

-International Road Transport Organisation (IRU)



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