



УНИВЕРЗИТЕТ У НОВОМ САДУ
ПРАВНИ ФАКУЛТЕТ У НОВОМ САДУ



SZEGEDI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

**Хармонизација српског и мађарског права са правом
Европске уније**

**A szerb és a magyar jog harmonizációja az
Európai Unió jogával**

**Harmonisation of Serbian and Hungarian Law
with the European Union Law**

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ПРЕДГОВОР

Чињеница да су Мађарска и Србија суседне земље од којих је једна пуноправна чланица, а друга кандидат за чланство у Европској унији, наметнула је, између осталог, и потребу координације двају држава у креирању сопствених правних система. Један од таквих пројеката је и „Хармонизација српског и мађарског права (домаћег) права са правом Европске уније и прекогранична сарадња“. Овај пројекат спроводе научници и сарадници са Правног факултета Универзитета у Новом Саду и Правног факултета Универзитета у Сегедину.

Након Другог светског рата, различити путеви изградње социјалистичког друштва, кроз различите друштвене и опште прилике условили су и различитост правних овира којим су уређена многа важна питања у Србији и Мађарској, а посебно у односу на развијене земље тадашње Европске економске заједнице. Имајући у виду сложеност система наднационалног права Европске уније, као и концептуалне разлике појединачних правних система, хармонизација ових односа свакако представља деликатан и сложен посао. Србија, као земља која претендује на чланство у Европској унији, има прилику да, користећи искуства мађарских суседа који су своје чланство у Унији остварили још 2004. године, прилагоди, унапреди и убрза развој свог правног система. Превазилажење ових различитости ради стварања унификованих и хармонизованих решења, јесте један од задатака овог тематског зборника, у коме се разматрају многи аспекти теорије и социологије права ради проналаска најбољег оквира за примену права. Предлози и решења која се појављују у овом зборнику дају основу органима законодавне власти да се исти инкорпорирају у домаће правне системе, али истовремено и у организационе процесе, пружајући истовремено и могућност студентима, наставно-научном особљу и стручњацима из праксе материјал за лично и професионално усавршавање и надградњу.

И ова свеска тематског зборника, настала као резултат заједничког рада у току 2019. године, представља пример како се кроз систематичан и индукован

облик правне анализе и сарадње два правна факултета могу остварити озбиљни резултати у унапређењу двају правних система, али исто тако и у области научног рада, уз поштовање аутономности сваког појединачног система.

Главни и одговорни уредник
проф. др Бранислав Ристивојевић

ELŐSZÓ

Magyarország és Szerbia szomszédos államok. Az egyik már teljes jogú tagja az Európai Uniónak, míg a másik még csak tagjelölt állam. Ebben a helyzetben valós igény mutatkozik arra, hogy összehangolják a jogrendszereik fejlesztésére irányuló törekvéseiket. Ezt a célt szolgálja *A szerb és a magyar jog harmonizációja az Európai Unió jogával és a határon átívelő együttműködés* elnevezésű projekt is, amelyet az Újvidéki Egyetem Jogtudományi Karának és a Szegedi Tudományegyetem Állam- és Jogtudományi Karának kutatói valósítanak meg.

A II. világháborút követően a divergens szocialista társadalmi modellek különböző társadalmi közeget hoztak létre, amelyben számos fontos kérdés jogi szabályozása Szerbiában és Magyarországon eltérő jogi keretek között valósult meg, különösen, ha azokat összevetjük az akkori Európai Gazdasági Közösség fejlett tagállamaival. Figyelembe véve az Európai Unió nemzetek feletti jogrendszerének összetettségét, valamint az egyes tagállami jogrendek közötti fogalmi különbségeket, az eltérő jogszabályi keretek harmonizációja érzékeny és összetett feladatnak bizonyult. Az uniós tagságra törekvő Szerbia magyar szomszédja tapasztalatára támaszkodva, amely 2004-ben vált az Unió tagjává, fejlesztheti és hangolhatja össze jogrendszerét a közösségi joggal. A jogrendszerek közötti különbségek unifikáció és harmonizáció útján megvalósuló áthidalása a jelen tematikus tanulmánykötet egyik célkitűzése. A kötet szerzői a jogelmélet és a jogszociológia módszerei mentén keresik az egyes jogintézmények gyakorlati alkalmazásának legmegfelelőbb keretrendszerét. A kötetben megfogalmazott javaslatok és jogi megoldások útmutatóként szolgálhatnak a jogalkotó számára, hogyan lehetne őket a nemzeti jogrendszerekbe integrálni. Ugyanakkor, forrásként szolgálhat a hallgatók, oktatók és gyakorlati jogászok számára is, szakmai tudásuk szinten tartásához és fejlesztéséhez.

A jelen tematikus tanácskozási kötet is, amely a 2019. év során megvalósult közös kutatás eredményeit tartalmazza, ékes példája annak, hogyan tud a szisztematikus és átfogó jellegű jogi elemzés és két jogi kar együttműködése jelentős előrelépést elérni a jogfejlesztés és a jogtudomány terén, az egyes jogrendszerek autonómiájának tiszteletben tartása mellett.

Fő- és felelős szerkesztő
Prof. Dr. Branislav Ristivojević

FOREWORD

The fact that Hungary and Serbia are two neighboring states, one of which is a state member of the EU, while the other is a candidate for membership in the EU, imposed, among other, the need for coordination of two states in the creation of their own legal systems.

One of such projects is 'Harmonisation of Serbian and Hungarian (domestic) Law with the European Union Law and Cross-Border Cooperation'. This Project is conducted by scientists and associates from the Law Faculty of the University of Novi Sad and the Law Faculty of the University of Szeged.

After the World War II, different ways of building the socialist society, with different social and general circumstances, conditioned two different legal frameworks by which many important issues in Serbia and in Hungary are regulated, especially in comparison to the members of the ex European Economic Community. Bearing in mind the complexity of the supranational law of the European Union, as well as the conceptual differences between national legal systems, harmonisation of these relations is indeed sophisticated and complex job. Serbia, as a state pretending to become the European Union member, has a chance to adapt, improve and accelerate the development of its legal system, by using the experiences of the hungarian neighbours who became members of the Union in 2004. The overcoming of the mentioned diversity for the purpose of establishing unified and harmonized solutions, is one of the tasks of this Thematic Collection of Papers, where many aspects of the theory and sociology of law are used with the aim of finding the most appropriate framework to apply the law.

The proposals and solutions presented in this Collection of Papers provide the basis to be incorporated in domestic legal systems by legislative organs, and at the same time in organizational processess, as well as provide an opportunity to students, teaching stuff and experts in practice, i.e. the material for personal and scientific improvement.

This Issue of the Collection of Papers, appeared as a result of common work in 2019, shows an example of how serious results in improving two legal systems

can be achieved by a systematic and induced approach in the legal analysis, as well as the results in the field of scientific work, with respect to autonomy of each legal system.

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FAIR LABOUR MOBILITY AND THE EUROPEAN LABOUR AGENCY¹

Abstract: *The European Labour Agency (hereinafter: ELA) ensures that EU rules on labour mobility and social security coordination are enforced in a fair and effective way and makes it easier for citizens and businesses to utilize the benefits of the European internal market. The ELA is a permanent structure. At its full operational capacity, it will count with approximately 140 staff members, some of them seconded by the Member States and acting as National Liaison Officers. This article intends to introduce the ELA's main tasks: 1. facilitate access to information and coordinate EURES; 2. facilitate cooperation and the exchange of information between Member States with a view to the consistent, efficient and effective application and enforcement of relevant Union law; 3. coordinate and support concerted and joint inspections; 4. carry out analyses and risk assessment on issues of cross-border labour mobility; 5. support Member States with capacity building regarding the effective application and enforcement of relevant Union law; 6. support Member States in tackling undeclared work and 7. mediate disputes between Member States on the application of relevant Union law.*

Keywords: *European Labour Agency (ELA), European Pillar of Social Rights, labour mobility, free movement, posting of workers, social security coordination, EU internal market.*

Introduction

In their Joint Declaration on the EU's legislative priorities for 2018 to 2019, the European Parliament, the Council and the Commission committed themselves

¹ This research was supported by the project nr. EFOP-3.6.2-16-2017-00007, titled Aspects on the development of intelligent, sustainable and inclusive society: social, technological, innovation networks in employment and digital economy. The project has been supported by the European Union, co-financed by the European Social Fund and the budget of Hungary.

to taking action to reinforce the social dimension of the Union,² by working on improving the coordination of social security systems, by protecting workers from health risks in the workplace, by ensuring fair treatment for all in the Union labour market through modernised rules on posting of workers, and by further improving cross-border enforcement of Union law.³ The freedom of movement for workers (persons), the freedom of establishment and the freedom to provide services are fundamental principles of the internal market of the Union, enshrined in the Treaty on the Functioning of the European Union (TFEU).⁴

As a brief history, the ELA was first suggested by Jean-Claude Juncker, former President of the European Commission, during his 2017 State of the European Union address.⁵ On 13 February 2018, the European Commission presented its first draft of the regulation establishing the ELA.⁶ On 14 February 2019, the Parliament and Council reached a provisional agreement on the proposal.⁷ On 13 June 2019, the Commission announced that Bratislava,⁸ Slovakia would serve as the agency's host city.⁹

The main guiding EU aims of the ELA are: a) make easy for EU citizens to work, provide services and stay in another member states,¹⁰ and b) protect social security rights for migrant persons within EU.¹¹

It contributes to ensuring fair labour mobility in the Internal Market. In this context, the proposal aims at: 1. Improving access to information by individuals and employers about their rights and obligations in the areas of labour mobility and social security coordination as well as access to relevant services; 2. Strengthening operational cooperation between authorities in the cross-border enforcement of

² European Pillar of Social Rights (https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en (26.02.2020.)

³ <https://ec.europa.eu/social/main.jsp?langId=en&catId=25&furtherNews=yes&newsId=9477> (01.03.2020)

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:4301854> (01.03.2020)

⁵ <https://ec.europa.eu/social/main.jsp?catId=1414&langId=en> (01.03.2020)

⁶ Proposal for a Regulation of the European Parliament and of the Council establishing an European Labour ELA Strasbourg, 13.3.2018 COM (2018) 131 final 2018/0064 (COD)

⁷ <https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=9301> (01.03.2020)

⁸ As for its seat, 4 Member States competed in the selection process: Slovakia, Cyprus, Bulgaria and Latvia.

⁹ <https://ec.europa.eu/social/main.jsp?langId=en&catId=89&furtherNews=yes&newsId=9396> (01.03.2020)

¹⁰ The free movement of persons (mainly workers) is a fundamental principle of the EU. EU citizens are entitled to: a) look for a job in another EU country, b) work there without needing a work permit, c) reside there for that purpose, d) stay there even after employment has finished and e) enjoy equal treatment with nationals in access to employment, working conditions and all other social and tax advantages.

¹¹ <https://ec.europa.eu/social/main.jsp?langId=en&catId=25&furtherNews=yes&newsId=9477> (01.03.2020)

relevant Union law, including facilitating joint inspections; 3. Providing mediation and facilitating solutions in cases of disputes between national authorities and cross-border labour market disruptions, such as a restructuring of companies affecting several Member States.¹²

There were several well founded arguments why the ELA was needed to established. Some of them is worthy to mention here: a) About 17.5 million Europeans live or work in a Member State other than that of their nationality. This figure almost doubled compared to a decade ago. Among these, 12.9 million are of working age (20–64 years).¹³ b) 1.4 million Europeans commute daily to another Member State to go to work (frontier workers). c) There are 2.8 million posting operations yearly to carry out services in another Member State on a temporary basis. d) Over 2 million workers in the road transport sector cross intra-EU borders on a daily basis transporting goods or passengers. e) Millions of businesses, notably SMEs, operate across borders.¹⁴

A ELA has been established in order to help strengthen fairness and trust in the internal market. It's objectives are clearly defined, with a strong focus on a limited number of tasks, in order to ensure that the means available are used as efficiently as possible in areas where the ELA can provide the greatest added value. To that end, the it assists the Member States and the Commission in strengthening the access to information, supports compliance and cooperation between the Member States in the consistent, efficient and effective application and enforcement of the Union law related to labour mobility across the Union, and the coordination of social security systems within the Union, and mediates and facilitate solutions in the case of disputes.¹⁵

The ELA is a permanent structure which exists since July 2019.¹⁶ By 2024, it will be made of approximately 140 staff members, some of them seconded from

¹² Proposal for a Regulation of the European Parliament and of the Council establishing an European Labour ELA Strasbourg, 13.3.2018 COM (2018) 131 final 2018/0064 (COD)

¹³ EU movers of working age in the EU have higher activity and employment rates than non-movers: around 77% of them are employed, compared to around 74% of non-movers.

¹⁴ <https://ec.europa.eu/social/main.jsp?langId=en&catId=25&furtherNews=yes&newsId=9477> (01.03.2020)

¹⁵ Regulation (EU) 2019/1149 of the European Parliament and Of The Council of 20 June 2019 establishing a European Labour ELA, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344

¹⁶ In a speedy manner, in March 2018 the Commission put forward a legislative proposal to establish the European Labour Agency and on Valentine's Day in 2019, the Commission, the European Parliament and the Council reached a provisional agreement and changed the name from Agency to ELA. Finally, in June 2019, the Council adopted the proposal for a Regulation and selected Slovakia to host the ELA. The ELA is to start its operations in October 2019 already in Brussels and is expected to reach its full operational capacity in Bratislava by 2024. [Update: the Regulation was published in the EU Official Journal in July 2019]

Member States and acting as National Liaison Officers.¹⁷ It is steered by a Management Board, with representatives from each Member State and the European Commission. The Management Board also includes EU social partners and an independent expert appointed by the European Parliament. A Stakeholder Group¹⁸ including EU social partners provides further expertise in an advisory role.

It's activities cover individuals who are subject to the Union law within the scope of the ELA Regulation, including workers, self-employed persons and job-seekers. Third-country nationals who are legally resident in the Union, such as posted workers, intra-corporate transferees or long-term residents, as well as their family members, in accordance with Union law regulating their mobility within the Union.¹⁹

The establishment of the ELA doesn't create new rights or obligations for individuals or employers, including economic operators or not-for-profit organisations as the activities of the ELA envisages such individuals and employers to the extent that they are covered by the Union law within the scope of the Regulation established ELA. Increased cooperation in the area of enforcement will neither place an excessive administrative burden on mobile workers or employers, in particular SMEs, nor discourage labour mobility.²⁰

1. Competences of the ELA

The main objective of the ELA is to assist the Member States and the Commission in their effective application and enforcement of EU law related to labour mobility across the EU and the coordination of social security systems. The ELA has the mandate to act only within the scope of selected EU acts in the framework of: 1. posting of workers, 2. free movement of workers, 3. social security coordination, 4. social aspects of road transport and 5. cooperation between the Member

¹⁷ In order to ensure open and transparent employment conditions and the equal treatment of staff, the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 (17) (referred to as the 'Staff Regulations' and the 'Conditions of Employment', respectively), applies to the staff and to the Executive Director of the ELA, including the rules of professional secrecy or other equivalent duties of confidentiality.

¹⁸ Its function to facilitate the consultation of relevant stakeholders and to benefit from their expertise in areas covered by the ELA Regulation. The Stakeholder Group is attached to the ELA and has advisory functions. The Stakeholder Group will be chaired by the Executive Director and will meet at least twice a year at the initiative of the Executive Director or at the request of the Commission. The Stakeholder Group will be composed of two representatives of the Commission and ten representatives of the Union-level social partners with an equal representation of trade union and employer organisations, including recognised Union sectoral social partners representing sectors that are particularly concerned with labour mobility issues.

¹⁹ <https://www.consilium.europa.eu/en/policies/labour-mobility/eu-labour-ELA/> (01.03.2020)

²⁰ <https://www.eubusiness.com/topics/social/labour-ELA/> (01.03.2020)

States to tackle undeclared work. This catalogue remains closed but can be extended on a basis of any future acts that confer tasks on the ELA. More importantly, to maintain its mandate, the ELA is to neither affect any rights or obligations of individuals or employers that are granted by either EU or national laws, nor the mandate of national authorities responsible for enforcement in these fields.²¹

Furthermore, in order to attain its primary objective, the ELA has been fitted with some additional tasks. Firstly, it is to facilitate access to information on rights and obligations regarding labour mobility across the EU as well as to relevant services. Secondly, it is to promote and enhance cooperation between the Member States in the enforcement of relevant EU law across the Union, including facilitating concerted and joint inspections. Thirdly, it is to mediate and help to look for a solution in cases of cross-border disputes between the Member States. Finally, it is to support cooperation in tackling undeclared work.²²

To increase Member States' capacity to ensure protection of persons exercising their right to free movement and tackle irregularities with a cross-border dimension in relation to Union law, the ELA supports the national authorities in carrying out concerted and joint inspections, including by facilitating the implementation of inspections in accordance with Article 10 of Directive 2014/67/EU.²³

Those inspections take place at the request of Member States or upon their agreement to the ELA's suggestion. However, the concerted and joint inspections should not replace or undermine national competences. National authorities should also be fully associated in the process of such inspections. Where trade unions are in charge of inspections at national level, concerted and joint inspections should take place following the agreement of, and in cooperation with, the relevant social partners.²⁴

Beyond the traditional methods of cooperation the ELA encourages the use of innovative approaches to effective and efficient cross-border cooperation, including electronic data exchange tools such as the Electronic Exchange of Social Security Information (EESSI) system²⁵ and the Internal Market Information (IMI)

²¹ [http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/619007/IPOL_BRI\(2018\)619007_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/619007/IPOL_BRI(2018)619007_EN.pdf) (02-03-2020)

²² <https://ela.europa.eu/index.html> (02-03-2020)

²³ Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation')

²⁴ Regulation (EU) 2019/1149 of the European Parliament and Of The Council of 20 June 2019 establishing a European Labour ELA, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344

²⁵ EESSI is an IT system that helps social security institutions across the EU exchange information more rapidly and securely, as required by the EU rules on social security coordination. At the moment most exchanges are paper-based: these are going to be replaced by electronic exchanges in the coming years, as Member States progress with connecting to EESSI. The central

system,²⁶ and contributes to further digitalising procedures and improving IT tools used for message exchange between national authorities.²⁷

2. Tasks of the ELA

In order to achieve its objectives, it carries out the following tasks: 1. Facilitate access to information and coordinate EURES.²⁸ 2. Facilitate cooperation and the exchange of information between Member States.²⁹ 3. Coordinate and support concerted and joint inspections.³⁰ 4. Carry out analyses and risk assessment on issues of cross-border labour mobility.³¹ 5. Support Member States with capacity building regarding the effective application and enforcement of relevant Union law.³² 6. Support Member States in tackling undeclared work.³³ 7. Mediate disputes between Member States on the application of relevant Union law.^{34 35}

2.1. Coordination of EURES

In order to support Member States in providing services to individuals and employers through EURES, such as cross-border matching of job, traineeship, and apprenticeship vacancies with CVs, and thus facilitating labour mobility across the Union, the ELA manages the European Coordination Office of EURES,³⁶ established under Article 7 of Regulation (EU) 2016/589.

EESSI system was made available by the Commission in July 2017. (<https://ec.europa.eu/cefdigital/wiki/display/CEFDIGITAL/Electronic+Exchange+of+Social+Security+Information> (29.02.2020.))

²⁶ The Internal Market Information system (IMI) is an IT-based information network that connects national, regional and local authorities across borders. They can then communicate quickly and easily with their counterparts abroad. Main features: 1. a multilingual search function that helps authorities identify their counterparts in another country; 2. pre-translated questions, answers and forms for all cases where they are likely; 3. need information from abroad or where they should be sharing information with other EEA countries, and 4. a tracking mechanism so that users can track the progress of their information requests/communications; this also enables IMI coordinators at national or regional level to intervene if there are problems. (https://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/internal_market_information_system/index_en.htm) (29.02.2020.)

²⁷ Regulation (EU) 2019/1149 of the European Parliament and Of The Council of 20 June 2019 establishing a European Labour ELA, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344

²⁸ Articles 5 and 6 of the ELA Regulation.

²⁹ in accordance with Article 7 of the ELA Regulation

³⁰ Articles 8 and 9 of the ELA Regulation.

³¹ Article 10 of the ELA Regulation.

³² Article 11 of the ELA Regulation.

³³ Article 12 of the ELA Regulation.

³⁴ Article 13 of the ELA Regulation.

³⁵ Regulation (EU) 2019/1149 of the European Parliament and Of The Council of 20 June 2019 establishing a European Labour ELA, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 Article 4.

³⁶ Established by Regulation (EU) 2016/589 of the European Parliament and of the Council.

The European Coordination Office, under the management of the ELA, fulfil its responsibilities in accordance with Article 8 of Regulation (EU) 2016/589, except for the technical operation and development of the EURES portal and related IT services, which continue to be managed by the Commission.³⁷

It also supports ‘Your first EURES job’³⁸ or ErasmusPRO.³⁹ programs. Furthermore, it contributes to improving transparency of information, including on rights and obligations provided for in Union law, and access to services to individuals and employers, in cooperation with other Union information services, such as Your Europe Advice,⁴⁰ and taking full advantage and ensuring consistency with the Your Europe portal, which is to form the backbone of the single digital gateway established by Regulation (EU) 2018/1724 of the European Parliament and of the Council.⁴¹

The ELA’s inherited task to cooperate in other relevant Union initiatives and networks, in particular in the European Network of Public Employment Services,⁴² the European Enterprise Network,⁴³ the Border Focal Point,⁴⁴ SOLVIT,⁴⁵ and the Senior Labour Inspectors’ Committee,⁴⁶ as well as in relevant national services

³⁷ Regulation (EU) 2019/1149 of the European Parliament and Of The Council of 20 June 2019 establishing a European Labour ELA, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 Article 6.

³⁸ <https://ec.europa.eu/eures/public/your-first-eures-job-js> (03.02.2020)

³⁹ ErasmusPro is a new (introduced 2017) action within the Erasmus+ programme to support long-duration work placements of apprentices abroad.

⁴⁰ „Your Europe Advice” is part of a set of information and advice tools for citizens and businesses about their EU rights. (https://europa.eu/youreurope/advice/index_en.htm) (03.02.2020)

⁴¹ Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1).

⁴² The European network of Public Employment Services was established following a Decision by the Council and the European Parliament to maximise efficiency of public employment services (PES). The network comprises all 28 EU countries, Norway, Iceland and the European Commission. It aims to: 1. compare PES performance through benchmarking; 2. identify evidence-based good practices and foster mutual learning (individual PES practices can be found in the PES Repository and outputs from the network activities can be found in the PES Knowledge Centre); 3. promote the modernisation and strengthening of PES service delivery, including of the Youth Guarantee and 4. prepare inputs to the European Employment Strategy and the corresponding national labour market policies.

The network is governed by a Board, where each Member State and the Commission are represented by two members. The Board meets twice a year to conduct strategic discussions and take decisions on the activities of the Network. (<https://ec.europa.eu/social/main.jsp?catId=1100&langId=en>) (03.02.2020)

⁴³ <https://een.ec.europa.eu/> (02.02.2020)

⁴⁴ Overcoming cross border obstacles to boost growth in EU border regions. (https://ec.europa.eu/commission/presscorner/detail/en/MEMO_17_3271) (03.02.2020)

⁴⁵ https://ec.europa.eu/solvit/index_en.htm (03.02.2020)

⁴⁶ [https://circabc.europa.eu/webdav/CircaBC/empl/SLIC%20\(public%20access\)/Library/06.%20SLIC%20Working%20groups/WG%20ENFORCEMENT/Mandate/Doc_588_Mandate_SLIC_WG_Enforcement_EN.pdf](https://circabc.europa.eu/webdav/CircaBC/empl/SLIC%20(public%20access)/Library/06.%20SLIC%20Working%20groups/WG%20ENFORCEMENT/Mandate/Doc_588_Mandate_SLIC_WG_Enforcement_EN.pdf) (03.02.2020)

such as the bodies to promote equal treatment and to support Union workers and members of their family that are designated by Member States pursuant to Directive 2014/54/EU.⁴⁷

2.2. Cooperation and exchange of information between Member States

The ELA facilitates the cooperation and acceleration of exchange of information between Member States and support their effective compliance with cooperation obligations, including on information exchange. It's main tasks in this respect: (a) upon request of one or more Member States, supports national authorities in identifying the relevant contact points of national authorities in other Member States; (b) upon request of one or more Member States, facilitates the follow-up to requests and information exchanges between national authorities by providing logistical and technical support, including translation and interpretation services, and through exchanges on the status of cases; (c) promotes, shares and contributes to disseminating best practices between Member States; (d) upon request of one or more Member States, where relevant, facilitates and supports cross-border enforcement procedures relating to penalties and fines, and (e) reports to the Commission twice a year about unresolved requests between Member States and consider whether to refer those to mediation.⁴⁸

It promotes the use of electronic tools and procedures for message exchange between national authorities, including the IMI system.

It encourages the use of innovative approaches to effective and efficient cross-border cooperation, and promotes the potential use of electronic exchange mechanisms and databases between the Member States to facilitate the access to data in real time and detection of fraud, and may suggest possible improvements in the use of those mechanisms and databases.⁴⁹

2.3. Coordination and support of concerted and joint inspections

In one hand, at the request of one or more Member States, the ELA coordinates and supports concerted⁵⁰ or joint inspections⁵¹ in the areas within it's com-

⁴⁷ Regulation (EU) 2019/1149 of the European Parliament and Of The Council of 20 June 2019 establishing a European Labour ELA, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344

⁴⁸ Article 13(2) of the ELA Regulation.

⁴⁹ Regulation (EU) 2019/1149 of the European Parliament and Of The Council of 20 June 2019 establishing a European Labour ELA, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 Article 7.

⁵⁰ Concerted inspections are inspections carried out in two or more Member States simultaneously regarding related cases, with each national ELA operating in its own territory, and supported, where appropriate, by the staff of the ELA.

⁵¹ Joint inspections are inspections carried out in a Member State with the participation of the national authorities of one or more other Member States, and supported, where appropriate, by the staff of the ELA.

petence.⁵² On the other hand, it may also, on its own initiative, suggest to the authorities of the Member States concerned that they carry out a concerted or joint inspection. Social partner organisations at national level may bring cases to the attention of the ELA.

In the event that one or more Member States decide not to participate in the concerted or joint inspection, the national authorities of the other Member States carry out such an inspection only in the participating Member States. Member States that decide not to participate must keep information about such an inspection confidential.

The ELA establishes and adopt the modalities to ensure appropriate follow-up where a Member State decides not to participate in a concerted or joint inspection. In such cases, the Member State concerned informs the ELA and the other Member States concerned in writing, including by electronic means, without undue delay of the reasons for its decision and possibly about the measures it plans to take to resolve the case, as well as, once known, about the outcomes of such measures. It may suggest that the Member State which did not participate in a concerted or joint inspection carry out its own inspection on a voluntary basis.⁵³

As for the arrangements of concerted and joint inspections, an agreement to carry out a concerted inspection or a joint inspection between the participating Member States and the ELA sets out the terms and the conditions for carrying out that inspection, including the scope and purpose of the inspection and, if relevant, any arrangements with regard to the participation of the staff of the ELA. The agreement⁵⁴ may include provisions which enable concerted or joint inspections, once agreed and planned, to take place at short notice.

The concerted and joint inspections are carried out in accordance with the law or practice of the Member States in which the inspections take place. Any follow-up to such inspections is carried out in accordance with the law or practice of the Member States concerned.

The concerted and joint inspections must take place in an operationally effective manner. To that end, Member States must, in the inspection agreement, grant officials from another Member State participating in such inspections an appropriate role and status, in accordance with the law or practice of the Member State where the inspection is carried out.

The ELA provides conceptual, logistical and technical support, and, where appropriate, legal expertise, if requested by the Member States concerned, including

⁵² Concerted and joint inspections are subject to the agreement of the Member States concerned.

⁵³ Regulation (EU) 2019/1149 of the European Parliament and Of The Council of 20 June 2019 establishing a European Labour ELA, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 Article 8.

⁵⁴ The ELA has to establish a model agreement in accordance with Union law, as well as national law or practice.

translation and interpretation services, to Member States carrying out concerted or joint inspections.

Staff of the ELA may attend the inspection as observers, may provide logistical support, and may participate in a concerted or joint inspection with the prior agreement of the Member State on whose territory they will be providing their assistance to the inspection in accordance with the Member State's law or practice.

The ELA of a Member State that carries out a concerted or joint inspection reports to the ELA on the outcome of the inspection within that Member State and on the overall operational running of the concerted or joint inspection at the latest six months after the end of the inspection.

Information on concerted and joint inspections coordinated by the ELA, as well as information provided by Member States and by the ELA is included in the reports that are to be submitted to the Management Board twice a year. Such reports are sent also to the Stakeholder Group, with sensitive information duly redacted.⁵⁵

2.4. Labour mobility analyses and risk assessment

The ELA, in cooperation with Member States and, where appropriate, the social partners, assess risks⁵⁶ and carry out analyses regarding labour mobility and social security coordination across the Union. In carrying out its risk assessment and analytical work, the ELA, to the extent possible, use relevant and current statistical data available from existing surveys, and ensure complementarity with, and draw on the expertise of Union agencies or services and of national authorities, agencies or services, including in the areas of fraud, exploitation, discrimination, skills forecasting and health and safety at work.

It organises peer reviews among Member States which agree to participate in order to: (a) examine any questions, difficulties and specific issues which might arise concerning the implementation and practical application of Union law within its competence, as well as its enforcement in practice; (b) strengthen consistency in the provision of services to individuals and businesses; (c) improve the knowledge and mutual understanding of different systems and practices, as well as assess the effectiveness of different policy measures, including prevention and deterrence measures.

Where a risk assessment or any other type of analytical work has been completed, the ELA must report its findings to the Commission, as well as to the Member

⁵⁵ Regulation (EU) 2019/1149 of the European Parliament and Of The Council of 20 June 2019 establishing a European Labour ELA, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 Article 9.

⁵⁶ The risk assessment and analytical work sets topics such as labour market imbalances, sector-specific challenges and recurring problems, and the ELA may also carry out focused in-depth analyses and studies to investigate specific issues.

States concerned directly, outlining possible measures to address identified weaknesses.⁵⁷

2.5. Support to capacity building

It supports Member States with capacity building aimed at promoting the consistent enforcement of the Union law. The ELA, in particular, carries out the following activities: (a) in cooperation with national authorities and, where appropriate, the social partners, develop common non-binding guidelines for use by Member States and the social partners, including guidance for inspections in cases with a cross-border dimension, as well as shared definitions and common concepts, building on relevant work at national and Union level; (b) promote and support mutual assistance, either in the form of peer-to-peer or group activities, as well as staff exchanges and secondment schemes between national authorities; (c) promote the exchange and dissemination of experiences and good practices, including examples of cooperation between the relevant national authorities; (d) develop sectoral and cross-sectoral training programmes, including for labour inspectorates, and dedicated training material, including through online learning methods, and (e) promote awareness-raising campaigns, including campaigns to inform individuals and employers, especially SMEs, of their rights and obligations and the opportunities available to them.⁵⁸

2.6. European Platform to enhance cooperation in tackling undeclared work

The European Platform to enhance cooperation in tackling undeclared work (the 'Platform') supports the activities of the ELA in tackling undeclared work by: (a) enhancing cooperation between Member States' relevant authorities and other actors involved in order to tackle more efficiently and effectively undeclared work in its various forms and falsely declared work associated with it, including bogus self-employment; (b) improving the capacity of Member States' different relevant authorities and actors to tackle undeclared work with regard to its cross-border aspects; and in this way contributing to a level playing field; (c) increasing public awareness of issues relating to undeclared work and of the urgent need for appropriate action as well as encouraging Member States to step up their efforts to tackle undeclared work, and (d) carrying out the activities listed in the Annex of the ELA regulation.

⁵⁷ Regulation (EU) 2019/1149 of the European Parliament and Of The Council of 20 June 2019 establishing a European Labour ELA, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 Article 10.

⁵⁸ Regulation (EU) 2019/1149 of the European Parliament and Of The Council of 20 June 2019 establishing a European Labour ELA, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 Article 11.

The Platform encourages cooperation between Member States through: (a) exchanging best practices and information; (b) developing expertise and analysis, while avoiding any duplication; (c) encouraging and facilitating innovative approaches to effective and efficient cross-border cooperation and evaluating experiences, and (d) contributing to a horizontal understanding of matters relating to undeclared work.

The Platform is composed of: (a) a senior representative appointed by each Member State; (b) a representative of the Commission, and (c) a maximum of four representatives of cross-industry social partner organisations at Union level, appointed by those organisations, with an equal representation of trade union and employer organisations. The Platform is chaired by a representative of the ELA.

The following stakeholders may attend the meetings of the Platform as observers and their contributions is taken into due consideration: (a) a maximum of 14 representatives of social partner organisations in sectors with a high incidence of undeclared work, appointed by those organisations, with an equal representation of trade union and employer organisations; (b) one representative of each of Eurofound, EU-OSHA and the ILO, and (c) one representative of each of the third countries in the European Economic Area.⁵⁹

2.7. Mediation between Member States

It may facilitate a solution in the case of a dispute between two or more Member States regarding individual cases of application of Union law in areas covered by this Regulation, without prejudice to the powers of the Court of Justice. The purpose of such mediation is to reconcile divergent points of view between the Member States that are party to the dispute and to adopt a non-binding opinion.

Where a dispute cannot be solved by direct contact and dialogue between the Member States that are party to the dispute, the ELA launches a mediation procedure upon request of one or more of the Member States concerned. It may also suggest launching a mediation procedure on its own initiative. Mediation is conducted only with the agreement of all Member States that are party to the dispute.

The *first stage of mediation* will be conducted between the Member States that are party to the dispute and a mediator, who adopts a non-binding opinion by common agreement. Experts from the Member States, the Commission and the ELA may participate in the first stage of mediation in an advisory capacity.

If no solution is found in the first stage of mediation, the ELA launches a *second stage* of mediation before its Mediation Board, subject to the agreement of all Member States that are party to the dispute.

⁵⁹ Regulation (EU) 2019/1149 of the European Parliament and Of The Council of 20 June 2019 establishing a European Labour ELA, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 Article 12.

The Mediation Board composed of experts from Member States other than those that are party to the dispute seeks to reconcile the points of view of the Member States that are party to the dispute and agree on a non-binding opinion. Experts from the Commission and the ELA may participate in the second stage of mediation in an advisory capacity.

The Management Board adopts the rules of procedure for mediation, including working arrangements and the appointment of mediators, the applicable deadlines, the involvement of experts from the Member States, the Commission and the ELA, and the possibility of the Mediation Board to sit in panels composed of several members.

The participation of the Member States that are party to the dispute in both stages of mediation is voluntary. Where such a Member State decides not to participate in mediation, it informs the ELA and the other Member States that are party to the dispute in writing, including by electronic means, of the reasons for its decision within the period set in the rules of procedure.

Cases in which there are ongoing court proceedings at national or Union level will not be admissible for mediation by the ELA. Where court proceedings are initiated during the mediation, the mediation procedure must be suspended.

Mediation is without prejudice to the competence of the Administrative Commission including all decisions it takes. Mediation takes into account all relevant decisions of the Administrative Commission.⁶⁰

When a dispute relates, fully or in part, to matters of social security, the ELA must inform the Administrative Commission. Upon request of any Member State that is party to the dispute, the ELA refers the issue concerning social security coordination to the Administrative Commission. That referral may be made at any stage of the mediation. Mediation may continue on the issues not concerning social security.⁶¹

As a follow-up procedure, within three months of the adoption of the non-binding opinion, the Member States that are party to the dispute reports to the ELA with regard to the measures that they have taken for the purpose of following up on the opinion or, where they have not taken measures, with regard to the reasons why they have not done so.

⁶⁰ The Administrative Commission for the coordination of social security systems comprises a representative of the government of each EU country and a representative of the Commission. It is responsible for dealing with administrative matters, questions of interpretation arising from the provisions of regulations on social security coordination, and for promoting and developing collaboration between EU countries. The composition, operation and tasks of the Administrative Commission are laid down by Articles 71 and 72 of Regulation 883/2004.

⁶¹ In order to ensure good cooperation, to coordinate the activities in mutual agreement and to avoid any duplication in cases of mediation which concern both issues of social security and labour law, the Administrative Commission and the ELA will establish a cooperation agreement.

The ELA must report to the Commission twice a year with regard to the outcome of the mediation cases it has conducted and about cases which were not pursued.⁶²

2.8. Cooperation with agencies and specialised bodies

The ELA aims in all its activities at ensuring cooperation, avoiding overlaps, promoting synergies and complementarity with other decentralised To that end, the ELA may conclude cooperation agreements with relevant Union agencies, such as Cedefop, Eurofound, EU-OSHA, ETF, Europol and Eurojust.⁶³

2.9. Interoperability and exchange of information

The ELA coordinates, develops and applies interoperability frameworks to guarantee the exchange of information between Member States as well as with the ELA. Those interoperability frameworks are based on and supported by the European Interoperability Framework⁶⁴ and by the European Interoperability Reference Architecture referred to in Decision (EU) 2015/2240.⁶⁵

3. The Organisation of the ELA

The administrative and management structure of the ELA comprise: a) a Management Board; b) an Executive Director; c) a Stakeholder Group.

The ELA may set up working groups or expert panels comprising representatives from Member States or from the Commission, or external experts following a selection procedure, or a combination thereof, for the fulfilment of its specific tasks or for specific policy areas. It set up the Platform⁶⁶ as a permanent working

⁶² Regulation (EU) 2019/1149 of the European Parliament and Of The Council of 20 June 2019 establishing a European Labour ELA, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 Article 13.

⁶³ Regulation (EU) 2019/1149 of the European Parliament and Of The Council of 20 June 2019 establishing a European Labour ELA, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 Article 14.

⁶⁴ The 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. It offers public administrations 47 concrete recommendations on how to improve governance of their interoperability activities, establish cross-organisational relationships, streamline processes supporting end-to-end digital services, and ensure that both existing and new legislation do not compromise interoperability efforts. The new EIF is undertaken in the context of the Commission priority to create a Digital Single Market in Europe. (Further info: https://ec.europa.eu/isa2/eif_en) (03.02.2020.)

⁶⁵ Regulation (EU) 2019/1149 of the European Parliament and Of The Council of 20 June 2019 establishing a European Labour ELA, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 Article 15.

⁶⁶ See in Article 12.

group, and the Mediation Board.⁶⁷ The rules of procedure of such working groups and panels will be set out by the ELA after consulting the Commission.⁶⁸

3.1. The Management Board

In order to bring an operational dimension to the activities of existing bodies in the areas within the scope of this Regulation, the ELA carries out the tasks of the Technical Committee on the Free Movement of Workers established pursuant to Regulation (EU) No 492/2011, the Committee of Experts on Posting of Workers set up by Commission Decision 2009/17/EC (18), including the exchange of information on administrative cooperation, the assistance in questions on implementation as well as cross-border enforcement, and the platform established by Decision (EU) 2016/344. Once the ELA is operational, those bodies cease to exist. The Management Board may decide to set up dedicated working groups or expert panels.

The Advisory Committee for the Coordination of Social Security Systems and the Advisory Committee on the Free Movement of Workers provide a forum for the consultation of social partners and government representatives at national level. The ELA contributes to their work and may participate in their meetings.⁶⁹

The composition of the Management Board is as follows: 1. *Members*. The Management Board composed of: a) one member from each Member State; b) two members representing the Commission; c) one independent expert appointed by the European Parliament; d) four members, representing cross-industry social partner organisations at Union level, with an equal representation of trade union and employer organisations.⁷⁰ 2. *Observers from EU*. A representative of Eurofound, a representative of EU-OSHA, a representative of Cedefop and a representative of the European Training Foundation may be invited to participate as observers in the meetings of the Management Board in order to enhance the efficiency of the agencies and the synergies between them. 3. *Observers of third-country-nationals (TCN)*. Representatives from third countries which are applying the Union law in areas covered by the ELA Regulation may participate in the meetings and deliberations of the Management Board as observers.

Among the above mentioned members, only the 1. members from each MSs and 2. two persons representing the Commission have the right to vote.⁷¹

⁶⁷ See in Article 13.

⁶⁸ Article 16.

⁶⁹ Regulation (EU) 2019/1149 of the European Parliament and Of The Council of 20 June 2019 establishing a European Labour ELA, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344

⁷⁰ Each member of the Management Board has an alternate. The alternate will represent the member in the member's absence. In case of MS's member the alternates are appointed by their Member State

⁷¹ Articles 17-21 of the ELA Regulation.

Members of the Management Board and their alternates are appointed on the basis of their knowledge in the particular fields, taking into account their relevant managerial, administrative and budgetary skills. The term of office of members and alternates is four years. That term can be renewable.⁷²

3.2. Executive Director

The Executive Director is responsible for the management of the ELA. The Executive Director is accountable to the Management Board. The Executive Director reports to the European Parliament on the performance of his or her duties when invited to do so. The Council may invite the Executive Director to report on the performance of his or her duties. The Executive Director is the legal representative of the ELA.

The Executive Director is responsible for the implementation of the tasks assigned to the ELA by this Regulation, in particular: (a) the day-to-day administration of the ELA; (b) implementing decisions adopted by the Management Board; (c) preparing the draft single programming document and submitting it to the Management Board for approval; (d) implementing the single programming document and reporting to the Management Board on its implementation; (e) preparing the draft consolidated annual report on the ELA's activities and presenting it to the Management Board for assessment and adoption; (f) preparing an action plan following up conclusions of internal or external audit reports and evaluations, as well as investigations by OLAF and reporting on progress twice a year to the Commission and regularly to the Management Board; (g) protecting the financial interests of the Union by applying preventive measures against fraud, corruption and any other illegal activities, without prejudicing the investigative competence of OLAF by effective checks and, if irregularities are detected, by recovering amounts wrongly paid and, where appropriate, by imposing effective, proportionate and dissuasive administrative, including financial, penalties; (h) preparing an anti-fraud strategy for the ELA and presenting it to the Management Board for approval; (i) preparing the draft financial rules applicable to the ELA and presenting them to the Management Board; (j) preparing the ELA's draft statement of estimates of revenue and expenditure as part of the ELA's single programming document, and implementing its budget; (k) in accordance with the decision referred to in Article 18(2), taking decisions with regard to the management of human resources; (l) taking decisions with regard to the ELA's internal structures including, where necessary, deputising functions which may cover the day-to-day management of the ELA and, where necessary, their amendment, taking into account the needs relating to the ELA's activities and sound budgetary

⁷² Regulation (EU) 2019/1149 of the European Parliament and Of The Council of 20 June 2019 establishing a European Labour ELA, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344

management; (m) where relevant, cooperating with Union agencies and concluding cooperation agreements with them; (n) implementing measures established by the Management Board for the application of Regulation (EU) 2018/1725 by the ELA, and (o) informing the Management Board about the submissions from the Stakeholder Group.⁷³

3.3. Stakeholder Group

To facilitate the consultation of relevant stakeholders and to benefit from their expertise in areas covered by this Regulation, a Stakeholder Group is established. The Stakeholder Group is attached to the ELA and has advisory functions.

The Stakeholder Group is chaired by the Executive Director and meets at least twice a year at the initiative of the Executive Director or at the request of the Commission.

The Stakeholder Group is composed of two representatives of the Commission and ten representatives of the Union-level social partners with an equal representation of trade union and employer organisations, including recognised Union sectoral social partners representing sectors that are particularly concerned with labour mobility issues. The Stakeholder Group may invite experts or representatives of relevant international organisations to its meetings.

The ELA provides the secretariat for the Stakeholder Group. The Stakeholder Group adopts its rules of procedure by a majority of two-thirds of its members entitled to vote. The rules of procedure is subject to approval by the Management Board.

The ELA makes public the opinions, advice and recommendations of the Stakeholder Group and the results of its consultations, except in case of confidentiality requirements.⁷⁴

Summary

An idea for a (pan)-European labour inspectorate has been considered for a long time as simply ‘the wishful thinking’ of some social partners, especially workers organisations. It also has never really attracted a lot of attention, as the Commission feared scoring an own goal due to a lack of the Member States’ support to set up such an agency in the first place. However, the Juncker Commission has finally put the social rights back at the EU agenda and proposed a rather breakthrough initiative in a dazzling form of the European Pillar of Social Rights (EPSR). The Commission has already delivered quite plenty on the Pillar and mainstreamed many fruitful debates surrounding the social aspects of employment that under the years of austerity and flexicurity have been put aside. The ELA indeed emanates from the EPSR and aligns well with the accompanying proposals presented

⁷³ Article 22 of the ELA Regulation.

⁷⁴ Article 23 of the ELA Regulation.

by the Commission within a broad framework of European Union cross-border employment and the Social Fairness Package.

The potential of the ELA cannot be surely underestimated. Its main advantages can be summarised in three aspects. Firstly, in the field of legal issues of international employment, it will provide the national authorities with some valid operational and technical support, mostly to exchange information, develop some best practices, carry out inspections and also to settle any disputes. Bridging the information and cooperation gap between the Member States is indeed a noble objective and quite a desired one as well. In practice, it is often the case that national authorities are unable to facilitate dialogue with each other and exchange information due to the complex and lengthy internal procedures and the language barrier. Having national liaison officers from all Member States designated to be at the ELA's disposal will definitely plug that gap and speed things up. Moreover, some national authorities might not have even dreamed of an ability of concerted and joint inspections, which is now a powerful tool in the ELA's arsenal, subject however, to reaching an agreement between the ELA and the concerned Member State(s).

Secondly, what the enforcement of EU employment and social security law often lacked at national level, were synergies with the already existing EU agencies that would allow to rely on their expertise in areas such as health and safety at work, the management of an undertaking that is being restructured, skills forecasting or tackling undeclared work. Therefore, it is the ELA's task to facilitate it all to untap the available potential and to strengthen the enforcement levels.

Finally, the ELA will simplify cooperation by integrating a number of existing committees and networks amongst the Member States which will hopefully lead to eliminating fragmentation in that area.

On the other hand, the ELA will definitely not serve as a panacea for all the flaws in the system. The role it will play mostly depends on how active the ELA with its Executive Director decides to be. There is a considerable room to be claimed by the ELA with some space for manoeuvre, but there are some open-ended questions as well. Sceptics and pragmatics may wonder how willing some of the national authorities will be to cooperate within the ELA's network and agree to, for example, conduct inspections on their territory, which can expose the flaws of their own systems on an EU scale. It is also unsure whether the Member States known for a rather lenient approach towards social security laws will deem it in their best interest to assist ELA with the fight against fraud and abuse on their territories, as no such obligation arises. For them, it could mean the end of their competitive advantage of providing a legal framework for cheaper labour through foxy constructions such as letterbox companies.

As it is foreseeable, the ELA will be up to its adopted strategy, action plans and frankly, leadership. The ELA has definitely promising potential but it remains to be seen how it will be utilised and how big of a dossier can it claim and handle. The expectations are high.

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A munkavállalók tisztességes mozgása és az Európai Munkaügyi Hatóság

Absztrakt: *Az Európai Munkaügyi Hatóság (EMH) biztosítja a munkavállalói mobilitásra és a szociális biztonsági rendszerek összehangolására vonatkozó uniós szabályok tisztességes és hatékony végrehajtását, és megkönnyíti a polgárok és a vállalkozások számára, hogy maximálisan élni tudjanak a belső piac kínálta előnyökkel. Az EMH állandó szervezeti keretek között működik.*

Teljes kiépülése után előreláthatólag 140 fő – főállású vagy a különböző tagállamokból kiküldött – munkatársa lesz. Jelen cikk az EMH alábbiakban felsorolt legfontosabb feladatait mutatja be: 1. könnyebben hozzáférhetővé teszi az információkat és koordinálja az Európai Foglalkoztatási Mobilitás Portálját (EURES portál); 2. megkönnyíti az uniós tagállamok számára az együttműködést és az információcserét, hogy a vonatkozó uniós jog alkalmazása és érvényre juttatása következetes, hatékony és eredményes legyen; 3. koordinálja és támogatja a közös ellenőrzéseket; 4. elemzéseket és kockázatértékelést végez a határokon átnyúló munkaerő-mobilitás kérdéseivel kapcsolatban; 5. támogatja az uniós országokat a kapacitásépítésben, hogy a vonatkozó uniós jog alkalmazása és érvényre juttatása eredményes legyen; 6. támogatja az uniós országokat a be nem jelentett munkavégzés elleni küzdelemben, és 7. közvetít az uniós tagállamok között, ha vita alakul ki köztük a vonatkozó uniós szabályozás alkalmazásával kapcsolatban.

Címszavak: *Európai Munkaügyi Hatóság, Szociális Jogok Európai Pillére, munkavállalói mobilitás, szabad mozgás, kiküldetés, szociális biztonsági koordináció, EU belső piac*

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Мобилност радника и Европско надзорно тело за рад

Сажетак: Европско надзорно тело за рад (у даљем тексту: ЕТР) основано је ради обезбеђивања надзора над поштовањем правила Европске уније (у даљем тексту: ЕУ) о мобилности радника и координацији система социјалног осигурања, а све то како би грађани и привредна друштва у њуном квалитету искористила предности јединственог тржишта ЕУ. ЕТР има своју сталну организацију која се састоји од око 140 запослених, од којих су неки постављени од стране држава чланица као њихови представници у овом телу. У овом раду, аутор настоји да представи основне циљеве и задатке ЕТР, а то су: 1. олакшавање приступа информацијама и координација унутар Европског портала за мобилност радника; 2. олакшавање сарадње и размене информација између држава чланица у циљу доследне и ефикасне примене релевантног права ЕУ; 3. координација и подршка у реализацији инспекцијског надзора; 4. анализа и процена ризика у погледу прекограничне мобилности радника; 5. подршка државама чланицама у изградњи квалитета у циљу доследне и ефикасне примене релевантног права ЕУ; 6. подршка држава чланицама у сузбијању рада на црно; 7. посредовање између држава чланица у споровима поводом примене релевантног права ЕУ.

Кључне речи: Европско надзорно тело за рад; стубови европске социјалне сигурности; мобилност радника, слобода кретања; упућивање запосленог на рад на другом месту или код другог послодавца, координација система социјалног осигурања; јединствено тржиште.