

Fair Mobility in the EU and the role of the European Labour Authority

Report of the Belgian Presidency
of the Council of the EU



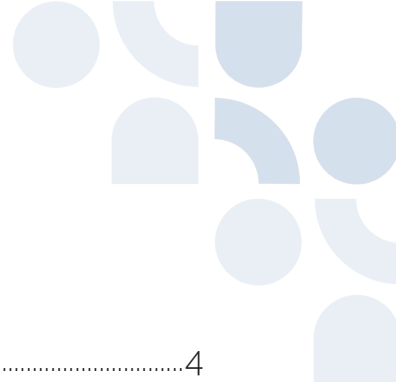
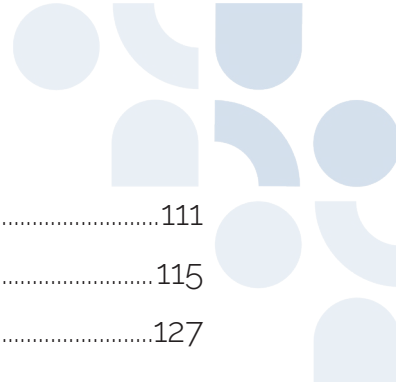


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INTRODUCTION

Cross-border labour mobility in the European Union (EU) benefits individuals, economies and societies as a whole. Of all EU policies and priorities, the free movement of EU citizens, which encompasses the possibility for citizens to live, work, study and do business across the EU, garners the greatest support from citizens¹. Since the accession of new Member States in 2004, 2007, and 2013, intra-EU labour mobility has been on the rise. Between 2006 and 2017, the number of working-age individuals moving within the EU doubled, reaching approximately 10 million in 2020. In addition to the surge in people of working-age moving from one EU Member State to another, other forms of temporary intra-EU labour mobility, such as seasonal workers and posted workers, have shown notable increases over the past two decades. The number of posted workers reached around 2 million in 2019, with 5.8 million postings in the EU. While this type of mobility only comprises a small percentage (around 1%) of the total EU workforce, its concentration in specific sectors, such as construction and road freight transport, as well as in specific host Member States (namely Germany, Austria, Belgium, and France), raises challenges in terms of non-compliance with EU law.

The free movement of workers and the freedom to provide services² within the EU depend on clear, fair and effectively enforced rules on cross-border labour mobility and the coordination of social security systems. To this end, the EU has developed an extensive body of legislation regulating the free movement of workers, the posting of workers³ and social security coordination⁴. In recent years, the latter have been reviewed and enhanced at the instigation of European Commission President

1 Standard Eurobarometer 88 - Public opinion in the EU, December 2017.

2 TFEU, Articles 45 et seq. and Articles 56 et seq.

3 Namely Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, Directive 2014/67/EU on the enforcement of Directive 96/71/EC, Directive (EU) 2020/1057 laying down specific rules for posting drivers in the road transport sector.

4 Regulation (EC) No 883/2004 on the coordination of social security systems.

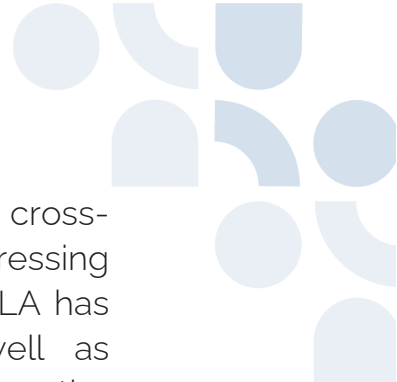


Juncker's commitment to fair mobility. Increased cooperation among Member States was incentivised through the establishment of a European Platform to combat undeclared work in 2016 and the European Pillar of Social Rights was proclaimed in 2017 to act as a compass for a stronger and fairer 'Social Europe'.

In order to protect the rights of mobile workers and to foster fair competition between companies, guaranteeing the cross-border enforcement of EU labour mobility rules and curtailing the risk of abuse are of crucial importance. The European Labour Authority (ELA) was established in July 2019 by Regulation (EU) 2019/1149⁵ (hereinafter: the 'ELA Founding Regulation') as the final element of Juncker's programme to foster fair labour mobility. Since then, it has occupied a unique place in the EU's institutional landscape. Despite the succession of health-related and geopolitical crises, ELA has undertaken extensive efforts to become fully operational and has rapidly grown into an indispensable partner for national authorities, European institutions, social partners and many other stakeholders.

Its missions lie at the heart of the real issues facing mobile workers and companies and focus on the creation of a fair and equitable internal market. This report first and foremost aims to evaluate the way in which ELA is functioning at the present time from a Belgian perspective. It utilises the perspective of the practitioner, that is, those dealing with ELA on a regular basis. It is not an audit and does not look at the way in which ELA is organised or the efficiency of its use of resources – except when these directly impact the operational outcomes. Its benchmarks are the expectations of European workers, companies and institutions, the principles of the European Pillar of Social Rights, the ambitions of previous Commission President Juncker, and the tasks as worded in ELA Founding Regulation. This report aims to draw operational conclusions, on the basis of a rigorous working method. The specific objectives include facilitating access to information,

⁵ Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344.



enhancing cooperation in law enforcement, mediating cross-border disputes, and supporting Member States in addressing undeclared work.⁶ In order to achieve these objectives, ELA has seven defined tasks.⁷ For the reasons above as well as methodological reasons (see Chapter 2), the report only covers the following tasks: supporting concerted and joint inspections, facilitating access to information, supporting the Platform against Undeclared Work, facilitating the exchange of information between national administrations, coordinating EURES and mediating disputes.

The time has come to assess where ELA stands and to reflect on its current and future role in the achievement of a fair labour market. This report is the product of the collective efforts of the entire Belgian operational network responsible for the implementation of cross-border social security and labour law and was subjected to a rigorous methodology⁸. Based on the assessment of ELA's services by both Belgian and European stakeholders, recommendations are put forth for the pursuance of a fair, simple and effective enforcement EU rules on labour mobility and social security coordination.⁹ It complements the forthcoming official evaluation of ELA by the European Commission¹⁰ and the European Parliament Resolution related thereto¹¹.

6 ELA Regulation, Art. 2.

7 ELA Regulation, Art. 4. As outlined in its annual working programmes, ELA has actively engaged in all seven tasks.

8 See chapter 2 related to methodology.

9 Regulation (EU) N2019/1149, recital 17 and Article 1 (2).

10 Regulation (UE) N2019/1149, Article 40, 1, states as follows: "By 1 August 2024, and every five years thereafter, the Commission shall assess the Authority's performance in relation to its objectives, mandate and tasks. The evaluation shall, in particular, address the experiences gained from the mediation procedure pursuant to Article 13. It shall also assess whether there is a need to modify the mandate of the Authority and the scope of its activities, including the extension of the scope to cover sector specific needs, and the financial implications of any such modification, taking into account also the work carried out by Union agencies in those areas. The evaluation shall also explore further synergies and streamlining with agencies in the area of employment and social policy. On the basis of the evaluation, the Commission may, as appropriate, submit legislative proposals to review the scope of this Regulation".

11 Forthcoming



Concerted and Joint Inspections (CJIs)

Belgium, as a major host Member State for posted workers, has long advocated for a stronger cooperation within the EU and for the establishment of a coordinating agency to promote and facilitate cooperation at the European level in the conduction of concerted and joint inspections. This found support in other Member States, leading to ELA's supportive role in the conducting of Concerted and Joint Inspections (CJIs). In a short lapse of time, ELA has demonstrated significant achievements in terms of both the quantity and effectiveness of CJIs, enabling enhanced collaboration between national social inspectorates, as well as with other European agencies such as Europol or Eurojust. This chapter of the report provides a brief overview of the context and current situation, highlights achievements and challenges with respect to the conduction of CJIs and presents recommendations to enhance their effectiveness.


Access to Information

This chapter explores the critical role of access to quality information in understanding and enforcing EU law and safeguarding the rights of mobile workers and businesses. It assesses the quality of information available to individuals and businesses under Article 5 of the ELA founding Regulation,¹² offering recommendations for ELA to play a proactive role in this area to prevent fraud, ensure fair competition, and establish a level playing field.

Integration of the European Platform to enhance cooperation in tackling undeclared work into ELA

After examining the integration of the European Platform to enhance cooperation in tackling undeclared work into ELA as a permanent working group, this chapter provides

¹² Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 (Text with relevance for the EEA and for Switzerland), *OJ L 186, 11.7.2019*.



recommendations aimed at bolstering the battle against undeclared work by reinforcing the synergies between the Platform and ELA.

Exchange of information

Focusing on the utmost importance of cooperation and information exchange among national administrations in the context of cross-border labour mobility, this chapter emphasises ELA's role in facilitating effective compliance with EU principles. It evaluates ELA's current role and advocates for its further development in the exchange of information between national administrations.

Coordination of EURES

This chapter evaluates how ELA has taken on the coordination of the European network of Employment Services (EURES) and supported its services. It assesses ELA's part in the management of the network and advocates for its further development.

Mediation

By setting out an analysis of the mediation mechanism provided by ELA to support Member States in settling disputes related to labour mobility, this chapter assesses the assimilation of basic mediation principles, examines the procedural aspects, and offers forward-looking reflections on the mediation procedure and ELA's evolving role. Recommendations are suggested in order to improve the effectiveness of the mediation procedure.

METHODOLOGY

The evaluation and promotion by the Belgian presidency of the Council of the EU of the activities carried out by the European Labour Authority is based on a rigorous methodology for collecting high-quality material to support the conclusions and recommendations proposed in its report. In this process, the Belgian presidency has benefited from multidisciplinary academic support provided by the University of Antwerpen, the University of Tilburg and The University of Leuven (HIVA).

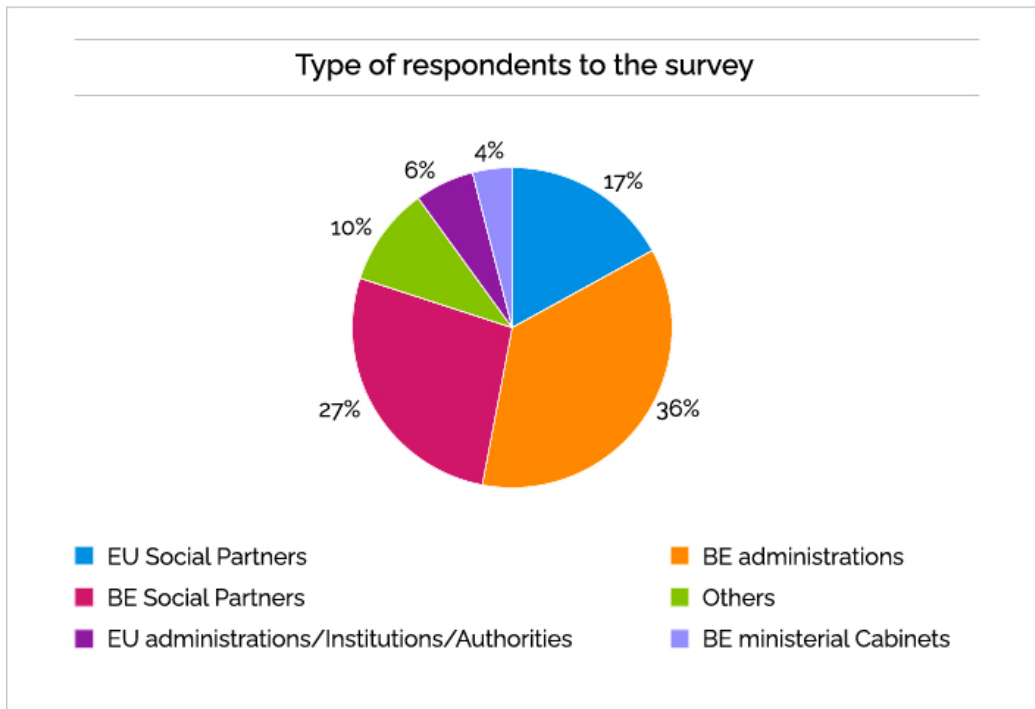
It should be noted that this evaluation is not intended to replace the evaluation carried out by the European Commission, but rather to complement it. A certain informal division of labour had therefore been agreed with the Commission's services.

The project officially began in 2022 and set out to reflect the point of view of those using the services offered by ELA. This participatory approach aimed to identify the needs of users more effectively, in order to propose relevant avenues for improvement. For this purpose, four working groups covering six ELA tasks¹³ and consisting of Belgian experts met from the end of 2022 to the end of 2023. Their main task was to design an online survey (drafting the questions, identifying the relevant recipients and writing background notes).

An online survey was sent out on 5 June 2023 to a large number of recipients, including ELA, the European Commission, the Belgian and European social partners as well as to the Belgian users of services offered by ELA (i.e. social protection and employment administrations). The online survey was answered by 52 respondents representing 42 organisations.

¹³ This selection is the result of a political choice to cover certain missions in particular.

Below are details of the type of respondents to the survey.



Subsequently, around 15 bilateral meetings were held with key stakeholders, such as ELA, the European Commission, the European Parliament and the social partners, with the aim of going beyond the survey and exchanging views on specific topics.

Throughout the process, close collaboration with ELA, the European Commission and the European Parliament was crucial in order to ensure a comprehensive and well-balanced assessment.

Furthermore, an intra-Belgian Workshop supported by the academic team was held on 14 November 2023 with several underlying objectives, such as carefully analysing the material collected and examining the robustness of the recommendations proposed. The workshop was also an opportunity for in-depth reflection with stakeholders to come up with priority and concrete recommendations.

The high-level conference on 25 January 2024 will form the culmination of this ambitious project. On this occasion,



representatives of the Member States, the European institutions, the European social partners and academics highly recognised for their expertise in the field of European worker mobility will have the opportunity to share their views on the future challenges facing ELA and to feed into the conclusions and recommendations put forward by the Belgian presidency. On that day, the report will be officially submitted by the Belgian presidency to the European institutional actors such as the European Commission, the European Parliament and to the European social partners as well.

CONCERTED AND JOINT INSPECTIONS

Descriptive part

Objectives and tasks

Over the past four years, ELA has been instrumental in supporting Concerted and Joint Inspections (CJIs). This introduction provides a descriptive overview of the legal framework for ELA's Inspection Task and the activities it has undertaken in the realm of CJIs.

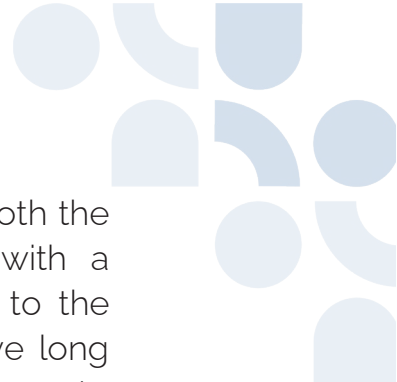
Promoting collaboration, including conducting cross-border inspections, and exchanging information cannot be fully effective unless there is an opportunity to conduct inspections jointly (or in concertation) on enterprises that might not comply with EU and national social security and labour laws.

To enable Member States to ensure the protection of individuals exercising their right to free movement and address cross-border irregularities more effectively, Articles 8 and 9 of ELA Founding Regulation¹⁴ empower ELA to assist national authorities in carrying out coordinated and joint inspections.

Belgium receives a large number of posted workers, and a number of industries are quite reliant on them. Posting has many faces and concerns high-skilled as well as low-skilled workers, both in labour-intensive industries as well as in high value-added service sectors¹⁵. Posting is important for the Belgian economy; it would not be an exaggeration to state that some industries would experience significant difficulties if it were to stop. Moreover, in many cases, it doesn't cause any problems at all and can be

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

¹⁵ FPS Employment, Labour and Social Dialogue and UNIA. Socio-economic monitoring Labour market and origin. Chapter 6 "Posted workers". 2022.



considered a win-win for the workers, the company and both the sending and receiving countries. Nevertheless, faced with a significant number of abuses and forms of fraud linked to the posting of workers on its territory, Belgian authorities have long advocated for the establishment of a coordinating agency to promote and facilitate cooperation on a European level. In the founding Regulation, ELA was entrusted with the responsibility of helping Member States carry out CJIs¹⁶.

In comparison to the pre-ELA era, there has been a noticeable positive shift in cross-border cooperation among services and organisations, both nationally and across the EU. The number of CJIs carried out between Belgium and other Member States has increased markedly. ELA serves as the driving force, by facilitating and enhancing cooperation between Member States in the enforcement of relevant Union law across the Union, including by facilitating and instigating cross-border inspections. Case-related inspections offer distinct advantages, by enhancing the efficiency of information exchange and allowing inspectors to establish more effective contacts related to specific cases.


Inspections conducted during ELA's Week of Actions are primarily non-case-related, but they still contribute significant value, this being particularly evident in areas such as international road transport. They can function as preventive measures or bring the joint activities of competent authorities under ELA flag further to the forefront in the eyes of relevant stakeholders in the field.

Despite ELA's relatively short existence, numerous initiatives, including those initiated by the Working Group on inspections, have been implemented to streamline, facilitate, and promote

¹⁶ See article 8, 2, a)-b).

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

► 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 Authority.



cooperation between inspection services. This involves administrative procedures and meetings, such as staff exchanges before and/or after CJIs.

ELA plays a pivotal role in enhancing the effectiveness of EU law enforcement in Member States by organizing structured cooperation and facilitating the exchange of information. The logistical and financial support provided by ELA is invaluable to Belgian inspectorates at a time of budgetary constraints.

The role of the National Liaison Officer (NLO) is of key importance. On the one hand, the NLO must advocate for the potential of ELA in the organization of Cross-Border Inspections (CJIs), and on the other hand, must address specific challenges that arise during the organization of CJIs.

Overview of ELA activities relating to concerted and joint inspections

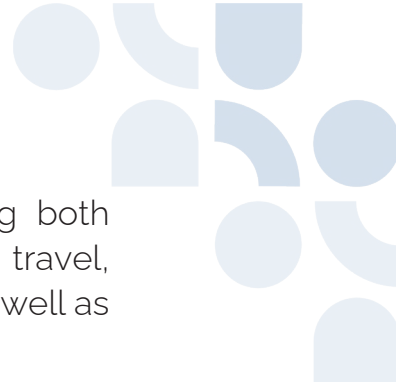
ELA has actively engaged in coordinating and supporting CJIs over the past four years and has made a significant contribution towards cross-border labour inspections.

a. Development of Tools and Procedures to Support Inspections

In 2020, ELA, with the support of the Inspection Working Group, developed a set of tools, instruments and procedures to determine the conditions for conducting CJIs in a transparent and timely way. These tools clarify the roles of the involved actors in initiating and carrying out inspections (Guidelines for CJIs, Workflow guidance, a case description, a model agreement and inspection plan template, and a post-inspection report template).

b. Support and Coordination of CJIs

ELA supports CJIs in various ways, ranging from operational support (technical or specialised equipment and services necessary for the proper execution of the CJIs, interpreters and



translation services, assistance in briefing and debriefing both before and after an on-site inspection, follow-up meetings, travel, accommodation, and catering, IT support, legal support) as well as financial support for costs incurred during the CJIs.

ELA also conducts training sessions to assist Member States in understanding the existing EU legal framework relating to cross-border mobility and, on the other hand, with regard to the supporting documents prepared by ELA concerning the application and organisation of CJIs, and to the reporting of the results.

ELA also holds regular meetings of the Inspection Working Group. The reports of these meetings are available on ELA website, as well as in the Newsletter on the activities of the Inspection Working Group¹⁷.


c. Communication Regarding Conducted Common and/or Agreed Inspections

ELA has an extensive communication department and collaborates with all Member States to implement an effective communication policy following conducted CJIs. To this end, material is provided to Member States that they can use for national communication purposes. Support is provided for all media channels (film, social media, flyers, posters, video content, etc.). Currently, the news section on ELA's website contains a considerable number of news items related to inspections.

d. Cooperation with other EU Agencies in the field of inspections

In 2020, ELA established working relationships with other EU agencies and services such as Europol, EU-OSHA. In 2021, ELA continued to develop these relationships and further operationalised them in the form of working agreements. Regarding inspections and, in particular, in criminal cases involving activities such as human trafficking, document forgery, or

¹⁷ <https://www.ela.europa.eu/en/concerted-and-joint-inspections>



organised social (benefit and contribution) fraud, collaboration with Europol and Eurojust is crucial. ELA shares information and experiences with the SLIC and the European Agency for Safety and Health at Work (EU-OSHA) on aspects relating to safety and health at work that have emerged during its activities.

Number of CJIs conducted

2020


Five test inspections in the sectors of construction, agriculture, and road transport, originally planned for March, took place in the September-October period, due to the COVID-19 pandemic. The degree of involvement of ELA varied from coordinating and supporting preparatory actions and follow-up measures to on-site participation (observation) and testing ELA's design tools and templates.

2021

In 2021, the main objectives pursued by ELA were to initiate CJIs, to expand its support to Member States, to strengthen the capacity of authorities to collaborate across borders, to enforce EU legislation relating to labour mobility and to develop and operationalize strategic partnerships with other EU agencies or bodies. In 2021, ten CJIs were conducted (in eleven Member States, including Belgium). These inspections focused on seasonal work, construction and road transport. The main problem areas identified during the CJIs included undeclared work, working conditions (e.g. wages and working hours), and, in the case of seasonal workers, housing conditions. In many cases, irregularities occurred in subcontracting and posting.

2022

In 2022, there were several ELA Action Weeks (international transport, horticultural and agricultural sectors, HORECA), of which CJIs formed a significant part. In 2022, national authorities from various Member States – labour inspectorates or police services – collectively conducted various EMPACT actions, supported by EUROPOL and ELA, in June and September 2022. In 2022, 34 CJIs were conducted. Considering the situation in Ukraine, ELA



Inspection Working Group discussed how it could contribute to ensuring the rights of Ukrainian refugees. It was discussed that networks are likely to exploit the war and try to exploit refugees from Ukraine.

2023

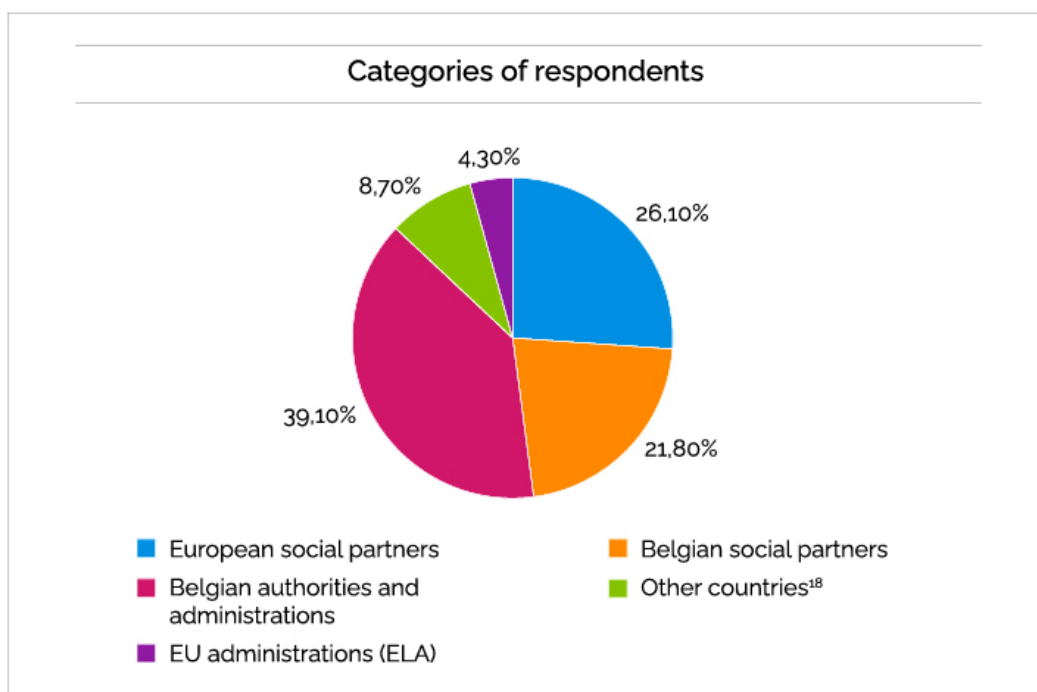
In 2023, Belgium has been involved in 14 CJIs.

Analytical part

Introduction

The analysis of CJIs, as outlined in the survey, indicates the level of participation and satisfaction among stakeholders. Noteworthy findings include a substantial percentage of respondents who have initiated CJIs, which demonstrates a proactive approach towards addressing cross-border employment challenges.


On the subject of CJIs, we received 23 responses from the stakeholders, which can be subdivided as follows:



Stakeholders' assessment of the activities undertaken by ELA: focusing on strengths and weaknesses

ELA's role in improving cooperation between national labour inspectorates has been acknowledged by over half of the respondents, highlighting the positive impact of CJIs on fostering

¹⁸ In agreement with the European Commission the survey was not distributed among other Member States, however, some responded to the survey via another way.



collaboration at EU level. The exchange of information between national labour inspectorates has improved significantly, further emphasising ELA's role as a facilitator in this domain. Additionally, ELA's assistance in resolving of cross-border cases has garnered attention, with opinions varying on its perceived importance.

Summary of the survey's findings

Only one-third of the respondents reported initiating CJIs. Reasons for the absence of initiative were attributed to a lack of awareness, the exclusion of social partners and concerns about reporting inefficiencies.


Regarding participation in CJIs, nearly half of the respondents participated at the request of ELA during Weeks of Action, while some others participated at the request of another Member State. Reasons for non-participation included social partners not being invited and concerns about the technicality of the procedures.

In terms of CJIs promotion, most of the respondents actively promote them, utilizing methods such as internal working groups, committees, and collaboration with national social partner organisations.

A significant portion of respondents are aware of the role and tasks of National Liaison Officers (NLOs), with social partners emphasising their crucial role as information providers and calling for enhanced collaboration.

National services face various obstacles, including limited resources, strict privacy rules, a lack of cooperation with social partners and challenges related to the territoriality of legal competences.

Regarding ELA's achievements in CJIs, half of the respondents believe it plays an important role in improving cooperation



between national labour inspectorates. Similarly, half of the respondents think that ELA is crucial in improving the exchange of information in resolving cross-border cases.

Concerning satisfaction with cost coverage during CJIs, 40% expressed satisfaction, while 40% had no opinion on the matter.

When it comes to building a network of inspection services, half of the respondents believe that ELA has made this network possible.

In terms of cooperation with EU agencies, most of the respondents hold a neutral stance or believe that ELA has improved cooperation with other EU agencies.

Opinions on the improvement of applicable rules vary, with most of the respondents finding ELA's work valuable or expressing a neutral opinion.

Regarding ELA's influence on ensuring labour mobility, most of the respondents hold a neutral opinion or have no opinion on the matter.

There are perceived opportunities for ELA to actively promote CJIs, with most of the respondents suggesting possibilities such as training and information dissemination.

Identified gaps, ambiguities, or weaknesses in ELA Founding Regulation include issues such as short timelines for post-inspection reports, limited mandates concerning third-country nationals and a perceived need for legal support.

Recommendations


The recommendations listed below are drawn directly from the survey and include possible improvements for the future, including regulatory adjustments.

The survey identified the absence of an invitation for social partners as a cause for insufficient initiation and participation in CJIs. It is therefore recommended where possible and relevant to involve social partners in CJIs more often, in close consultation with the relevant national authorities and the inspection services.

The survey also showed that a significant number of respondents participated in CJIs thanks to the organization of Weeks of Action by ELA. Given this successful outcome, it is recommended to extend the possibilities to organize concerted and joint inspections without an underlying case. Although priority should be given to in-depth, case-related joint inspections, these joint inspections without an underlying case can provide some relevant added value. General inspections without an underlying case can have an increased preventive effect and can function as a method of promoting joint action and of spreading the knowledge of joint activities under ELA flag. As such, these are a crucial complement to in-depth case investigations.

In this regard, and since the choice between CJIs on specific cases or in a preventive manner without underlying cases forms the subject of debates, a thoughtful consideration should be undertaken to establish the right balance between the two.

Since the survey also revealed a lack of awareness regarding the work of ELA among certain Belgian organizations, leading to their non-participation in CJIs, training sessions and information sessions facilitated by ELA and the NLO should be organized to enhance awareness of ELA and its comprehensive activities.




For the same purpose, ELA, in cooperation with the Belgian national authorities, should actively support nationally organized training programmes, providing assistance with trainers, financing, content, and coverage of topics such as EU legislation, privacy rules (e.g. GDPR), and information exchange. This support aims to enhance the capacities of national labour inspectorates.

Given the various obstacles identified by the survey (limited resources, strict privacy rules, etc.), streamlining procedures and alleviating administrative burdens associated with organizing CJIs is crucial. Cumbersome processes discourage participation within inspectorates, necessitating a simplification of procedures to encourage engagement. A major obstacle to cooperation between national labour inspectorates highlighted by respondents to the survey is the lack of staff in some Member States. In this respect, the possibility of providing funding at European level to bridge this gap could ensure a level playing field with regard to cooperation between national labour inspectorates.

For the same purpose, when coordinating CJIs, ELA should adhere to the national coordination structure to ensure optimal cooperation, to prevent misunderstandings and to facilitate efficient collaboration between Member States.

The survey also revealed that some respondents lacked awareness of the role and tasks of NLOs. Improving communication about the NLO's role is therefore essential during ELA's activities such as working group meetings, etc., as is the need to emphasize the NLO's pivotal role in organising CJIs and in resolving associated challenges.

According to comments made by respondents, the results of CJIs should be documented in a report submitted to ELA within six months of the inspection. Extending this period is recommended, in order to allow for a more comprehensive display of results and findings.



Respondents also suggested that in order to improve the enforcement of applicable rules, ELA should develop a Union-wide overview of services to facilitate knowledge-sharing and collaboration.

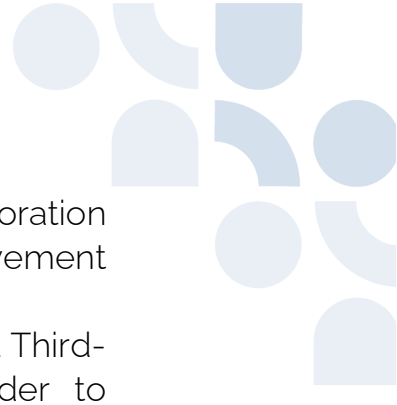
ELA's assistance is appreciated in connection with all activities that precede the inspection (organization, hotels, travel accommodation); however, there is a desire for more feedback on post-inspection results. Post-inspection meetings should therefore be held more frequently.

Finally, the difficulty highlighted in the survey in relation to the posting of third-country nationals concerns the existing divergence of interpretation between Member States and the need for legal clarity. A (legislative) initiative shall be taken at the EU level to harmonize interpretation and implementation among Member States on this subject, due to the absence of a clear legal framework at EU level.

The need to inform third-country workers more effectively of their rights and obligations that apply in an EU Member State to which they are planning to move called for establishment of ELA liaison offices in the most relevant third countries.

In addition, it is recommended to reiterate some of the suggestions made by the respondents:

1. Member States, social partners and other stakeholders should be better informed of CJI results fostering transparency and collaboration between inspectorates and relevant stakeholders. This information should be adapted to the legal situation of each stakeholder and can range from general information on issues such as the type of infringement to more specific information that can help in further inspections.
2. ELA's ambition to build a network of inspectors/inspectorates should include provisions for increased familiarization between these services following a



CJI, for the fostering of better relationships and collaboration and for gradually decreasing the need for ELA involvement in CJIs.

3. Officially broadening ELA's mandate to include posted Third-Country Nationals (TCNs) is recommended in order to address the challenges evolving on the labour market.
4. In order to recognize the strain on national authorities due to ELA's expanding cross-border activities, a strengthened internal cooperation framework between ELA units is advised as a means of managing workloads more effectively. This could be supplemented by initiatives to foster internal coordination between inspectorates and other bodies within Member States and by fostering capacity-building.
5. Ensuring more accessible legal support for CJIs from ELA is recommended to address legal complexities that may arise during joint inspections.
6. Enhancing and facilitating the digital exchange of information between inspectorates and (where appropriate) between social partners is crucial as a means of improving the efficiency and effectiveness of cross-border collaboration.
7. The development of a comprehensive risk analysis tool is recommended in order to assist national authorities in targeting inspections more effectively, and in order to enhance the impact of cross-border activities. This would, for example, mean that when inspecting a company in country X, inspectors would know that the same company committed infringements in country Y.

ACCESS TO INFORMATION

Descriptive part

Objectives and tasks of ELA

One of the objectives of ELA is to help ensure fair labour mobility in the EU. One of the ways of ensuring this fair labour mobility, as listed in Article 2 of ELA founding Regulation, is to improve the availability, quality and accessibility of information of a general nature offered to individuals, employers and social partner organisations regarding rights and obligations deriving from the Union acts listed in Article 1(4) to facilitate labour mobility across the Union.

Article 5 of ELA founding Regulation entrusts ELA with:

- contributing to the provision of relevant information through a single Union-wide website acting as a single portal;
- supporting Member States in the application of the EURES Regulation (2016/589);
- assisting Member States in complying with their obligations regarding access to mobility information, improving Member States' sources of information and services, streamlining Member States' provision of information and services on cross-border mobility;
- facilitating cooperation between competent authorities competent in the context of free movement of workers in the field of information and assistance concerning labour mobility.

Above tasks indicate that ELA has generally more of a facilitator mandate (supportive role vis-à-vis the Member States) than a direct service provider mandate.

In addition, ELA assists Member States in building their capacity to promote the consistent enforcement of EU law. Indeed, Article 11 of ELA founding Regulation provides that ELA shall promote awareness-raising campaigns, including campaigns to inform



individuals and employers, in particular SMEs, about their rights and obligations and the opportunities available to them.

ELA must also support Member States in their efforts to make relevant information available through effective and efficient means of communication, and by using appropriate information channels. ELA will work with the social partners to ensure that the information provided meets the needs of workers and employers and reaches the people concerned.

Overview of ELA activities related to access to information

In order to develop access to information on labour mobility, ELA carries out or plans to carry out several types of activities. Three non-exhaustive examples of actions taken by ELA are listed below.¹⁹

a. Evaluating and improving the quality of the information provided on the websites of the Member States

To this end, ELA organises the translation, at the request of the Member States, of the national web pages dedicated to labour mobility. In 2022, more than 350 documents were translated mainly on the posting of workers, social security, the free movement of workers, road transport, the prevention of undeclared work and those displaced from Ukraine²⁰.

ELA is also conducting peer reviews of national websites dedicated to the posting of workers and road transport, so far on voluntary basis. This type of activity is also planned in the future for the coordination of social security and for the national EURES websites. In April 2023, ELA published a report based on the lessons learnt from the peer reviews of the single official national websites on the posting of workers²¹. In addition, still in connection

¹⁹ Readers wishing to have a complete overview of actions already taken and of those ELA intends to take in the short term are advised to consult [ELA's Consolidated Annual Activity Reports](#) and [ELA's Work Programmes](#).

²⁰ See [ELA Consolidated Annual Activity Report 2022](#).

²¹ See [Lessons learnt for single national websites](#).



with the posting of workers, ELA has developed non-binding templates to help Member States present the required information on their websites.

Finally, ELA also communicated to Member States its comments on the information provided on national websites on the measures taken in the context of the COVID-19 pandemic.

b. Assessing and improving the quality of information on labour mobility on the websites of the European institutions

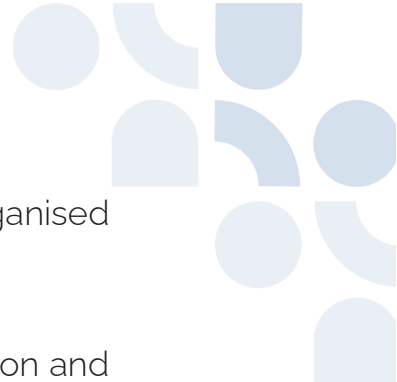
ELA contributes to the implementation of the Single Digital Gateway²² through the proposals for update of the [Your Europe portal](#). It cooperates with the National Liaison Offices for posting, the European assistance services (Your Europe Advice, Solvit, European Enterprise Network), the national free movement bodies and EURES to improve the provision of information.

ELA is also working on the creation of a technology driven 'web hub' solution that would enable central search of information, in keeping with the logic of a one-stop-shop, and would be available in the Member States and at European level on labour mobility.

c. Organising information campaigns and events highlighting good practices in sectors of activity particularly concerned by labour mobility

On the free movement of workers, ELA co-organised an information and awareness raising campaign '[#Rights4AllSeasons](#)' to raise awareness of fair working conditions for mobile seasonal workers in the agricultural sector in the EU and to address the information gaps faced by the workers and their employers concerned. In addition, it also called for good practices in the

²² The Single Digital Gateway facilitates online access to information, administrative procedures, and assistance services that EU citizens and businesses may need in another Member State'. See [Regulation \(EU\) 2018/1724 establishing a single digital gateway to provide information, procedures, assistance and problem solving services](#).



provision of information related to seasonal work and organised workshops on this subject.

In the road transport sector, ELA co-organised an information and awareness raising campaign '[#Road2Fair Transport](#)' with the aim of disseminating information on EU social legislation and on the rights and obligations of drivers and operators, as well as raising awareness of the benefits of declared work. In addition, it organised local and online roadshows for drivers and operators, and several national or regional events for the relevant stakeholders in the Member States.

ELA also recently launched an information and awareness-raising campaign in the construction sector '[#EU4FairConstruction](#)'. The aim of the campaign is to provide information to workers and employers about their rights and obligations in particular related to posting of workers, but also in other areas relevant to labour mobility. Online as well as physical local information sessions and roadshows will be organised for employers and workers concerned.

To support its mission of improving information on intra-EU labour mobility, ELA makes use of a working group that was set up for this purpose. This Working Group on Information, whose work is available on [ELA website](#), is mainly composed of experts from the Member States, representatives of the social partners and representatives of ELA and the European Commission²³. ELA also organises workshops on more specific aspects of information.

²³ See ELA website "What we do": <https://www.ela.europa.eu/en/what-we-do>.

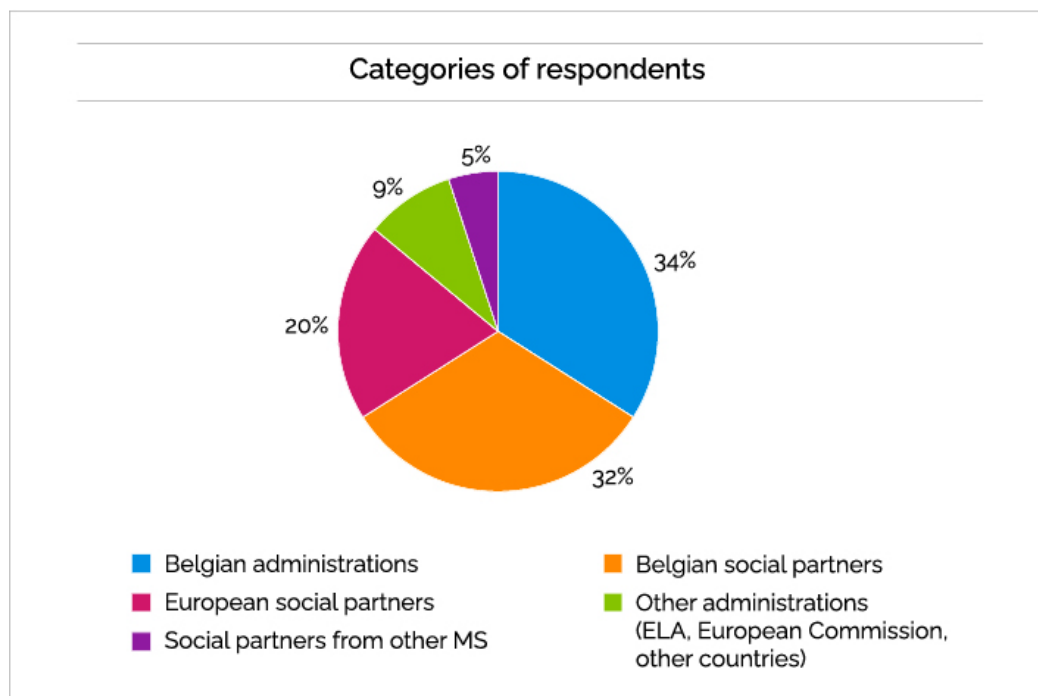
Analytical part

Introduction

Overview of stakeholders interviewed

A large majority of stakeholders who took part in the survey and interviews of the Belgian presidency (44 of the 57) provided valuable input on the topic of access to information.


Categories of stakeholders interviewed by the Belgian presidency – Access to information



Aspects covered by this section on access to information

The contributions received on improving access to information on labour mobility enabled the Belgian presidency to examine ELA's activities in this area from three angles, which form the subject of the three parts of this section of the report:

1. Stakeholders' assessment of each one of the corresponding actions performed by ELA;
2. Quality of the information on labour mobility; and
3. Stakeholders' involvement.



This part of the report will focus on the stakeholders' assessment of the effectiveness and visibility of ELA's information actions. For each one of these activities, stakeholders have identified strengths and weaknesses, which will also be described.

Secondly, this section of the report will offer a reflection on the quality of information made available to mobile citizens and businesses in the EU. More specifically, stakeholders' contributions have been analysed in order to articulate this reflection on quality on the basis of two precise criteria: the relevance and the accessibility of the information provided.


Stakeholders input not only enables conclusions to be drawn about the quality of the information disseminated by ELA, but also, more generally, about the quality of the information available at EU level on labour mobility. Both dimensions will be addressed in this report.

Finally, this section of the report will offer some observations on stakeholder involvement in ELA's work on access to information.

By way of introduction, it should also be pointed out that access to information is a theme that attracted a great deal of interest from the administrations and social partners approached by the Belgian presidency. Indeed, 77% of respondents (44 out of 57) provided an in-depth contribution and reflection on this mission of ELA.

The widespread dissemination of quality information is indeed crucial to the proper implementation of relevant EU law and the materialisation of the social rights deriving from it. Access to information also plays a decisive preventive role in the fight against cross-border fraud and abuse.²⁴ Indeed, access to information

²⁴ See for instance, Recital 18 of Directive 2014/67/EU: "Difficulties in accessing information on terms and conditions of employment are very often the reason why existing rules are not applied by service providers [...]"



helps to establish the rules to be respected by all economic players and the principle of fair competition between them. Moreover, workers who are poorly informed about their social rights and working conditions are more easily manipulated and fall victim to schemes designed to circumvent the application of EU rules in this area.²⁵

²⁵ For instance, reference can be made to the importance of Directive (EU) 2019/1152 on transparent and predictable working conditions, when it comes to providing information to posted workers about the remuneration and additional allowances they are entitled to. Article 7(2) of this Directive stipulates that "Member States shall ensure that a posted worker covered by Directive 96/71/EC shall in addition be notified of: (a) the remuneration to which the worker is entitled in accordance with the applicable law of the host Member State; (b) where applicable, any allowances specific to posting and any arrangements for reimbursing expenditure on travel, board and lodging; (c) the link to the single official national website developed by the host Member State pursuant to Article 5(2) of Directive 2014/67/EU of the European Parliament and of the Council."


Stakeholders' assessment of the activities undertaken by ELA: focus on strengths and weaknesses

In general, a majority of stakeholders surveyed recognise that considerable efforts have already been made by ELA in a very short space of time. Over a quarter of them feel that ELA's action is enabling stakeholders to be better and more quickly informed about intra EU labour mobility. Nearly half of them feel that it is still too early to comment on the effectiveness of the work carried out by ELA. And, finally, 20% of respondents feel that very little progress has been made in terms of access to information.

The table below gives an overview of the level of satisfaction and visibility among respondents (39) to the Belgian online survey for each of the activities on access to information organised by ELA.

Stakeholders' awareness and satisfaction with ELA activities related to access to information

ELA activities related to access to information	Aware			Not aware
	<i>Satisfied</i>	<i>Not satisfied</i>	<i>No opinion</i>	
Information campaigns	24/39	2/39	0/39	13/39
Improving the quality of Member States' websites	6/39	7/39	10/39	16/39
Improving the quality of European websites	6/39	5/39	12/39	16/39
Creating technology driven solutions	5/39	3/39	9/39	22/39



Information campaigns were given greater visibility by respondents and were also positively received. Other activities seem to have had less impact for the time being.

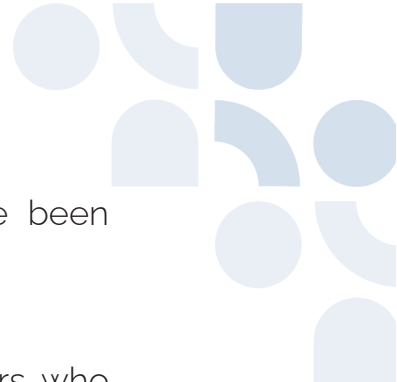
Despite the lack of hindsight emphasised by several respondents, the quality and completeness of the answers provided nevertheless enabled the Belgian presidency to carry out a detailed analysis of ELA's achievements in this field.

Among the initiatives launched to improve access to information, thematic information and awareness campaigns (aimed at seasonal workers and road transport) proved to be the most effective in the eyes of stakeholders. These campaigns offer a number of advantages:

- they enable the dissemination of specific information tailored to target audiences;
- they are strongly linked to current events. In 2021, because of the health crisis associated with COVID-19, seasonal workers were particularly affected by containment measures. In 2022, several key measures in the mobility package for international road transport became applicable²⁶;
- the communication accompanying the campaigns, notably via social media, enables information to be disseminated widely;
- information is available in all EU languages, and even non-EU languages for the road transport campaign;
- ELA provides material that can be reused on the ground by Member States.

However, three main reservations were expressed about the information campaign for seasonal workers: 1) the scope of the information campaign should have been extended to sectors other than agri-food; 2) end-users were not sufficiently widely reached

²⁶ The entire Mobility Package was adopted by the EU in July 2020 and the new rules on driving and rest times were implemented in August 2020. The rules on the posting of drivers and the manual recording of border crossings are due to be implemented on 2 February 2022. The rules on cabotage and access to the transport market were implemented on 21 February 2022.



by the initiative; and 3) the social partners should have been involved in a more fundamental way.

On the other hand, the administrations and social partners who took part in the Belgian presidency's survey particularly appreciated the information campaign in the road transport sector. Building on the lessons learned from the first campaign on seasonal workers, ELA has indeed adopted a more professional approach and has involved stakeholders to a greater extent. Moreover, the information campaign aimed at the transport sector was supported by roadshows in several Member States, which has helped to increase its scope and effectiveness.

Other activities undertaken by ELA to facilitate access to information have received less visibility. This is probably due to the fact that these activities do not have the same communication purpose as the information campaigns. They are also relatively recent, and it is still difficult to measure their impact. However, the fact that these other activities have so far met with less enthusiasm does not mean that they are not considered relevant by respondents. In fact, almost two-thirds of them feel that improving national websites is just as important as organising information campaigns. More than half of them believe that improving the information contained on European websites is also essential, while only 43% think that the use of technology-driven solutions, including the creation of a web hub as part of the single window logic, offers real added value.

On the subject of improving the quality of information on national websites, the respondents emphasised that the peer reviews and workshops organised by ELA lead to concrete results such as evaluation reports and brochures which support the Member States in improving the quality of the information available at national level. It seems therefore to be clear from the survey that it is important for ELA to continue this review work. The translation service offered by ELA seems particularly useful, given that the Member States do not have the resources to disseminate information in languages other than those used on a national level.



Some points for attention are nevertheless highlighted:


- the review work should take greater account of the information channels preferred by the intended target groups;²⁷
- the work carried out on single official national websites on posting has focused mainly on the needs of employers. Several stakeholders therefore believe that the needs of workers (particularly vulnerable workers in fraud-sensitive sectors) should also be taken into account;²⁸
- peer reviews should also be organised in the field of social security;
- the same Member States and the same websites seem to have been the subject of several successive peer reviews (at the request of the European Commission and ELA), which does not facilitate the process of adapting the sites concerned;
- the appropriation of recommendations by Member States is not optimal. One of the reasons given is that updating specific information contained in broader structures is often complicated and very slow;
- the review exercise only concerns information contained on the websites of national administrations. Other information providers and other (off-line) formats are not covered.

ELA has already indicated that the methodology should be extended to national EURES websites in 2023 and to social security websites from 2024.

In terms of improving the information contained on European websites, the stakeholders surveyed mainly welcomed the

²⁷ This is an aspect highlighted by the INFO-POW project, which confirms that companies/workers use various information providers (e.g. public authorities, labour inspectorates, employers' organisations, trade unions, NGOs, consultants and business partners) and information channels (e.g. website, event, training, manual, guidelines, video, contact person and local office). INFO-POW is a research project which aims to identify and assess challenges and needs of construction companies in accessing and using relevant information regarding the posting of workers. For more information: <https://hiva.kuleuven.be/en/news/newsitems/INFO-POW-Assessment-of-the-channels-of-information-and-their-use-in-the-posting-of-workers>.

²⁸ This observation was also made as part of the INFO-POW project: <https://www.euro.centre.org/downloads/detail/4794/1>.



addition of a new section on the posting rules for drivers in all EU languages on the Your Europe website. More generally, many respondents felt that there is considerable room for improvement in terms of the relevance and transparency of the information available on European websites (see sections below). Some also mentioned the fact that the links between EURES, Your Europe and the Single Digital Gateway were not always very clear. ELA stressed that effective cooperation has been established with Your Europe and that a systematic review of the EURES information sections has begun.

With regard to the creation of technology-driven solutions and given that ELA is still at the design stage at the time of writing this report, respondents expressed more expectations than assessments. The majority hopes that the web hub initiative will make information more widely available, that it will offer tailored information to target groups (not only online static information), and that it will ensure a degree of uniformity in the way Member States present the rights and obligations associated with labour mobility.

Among the points of attention, some stressed the need to avoid duplication with existing national and European tools. Others also emphasised the need to strike a balance in the information disseminated between the needs of employers and those of workers. Providing reliable information on both the social rights arising from mobility and the administrative obligations to be fulfilled by companies is indeed essential to guarantee a degree of legal certainty.

Some respondents also stressed that the tools developed are, in practice, often more easily accessible to mobile workers with a high level of education and that they should absolutely be designed and made accessible to a wide audience. Finally, improved interaction between the national sites and the European sites is needed, with a reciprocal and coherent referral system. One point to bear in mind, however, is that cross-references are sometimes a source of confusion for users.



The consultations organised by the Belgian presidency also highlighted online initiatives already launched by social partners to centralise access to information for their target audience. Examples include the Intelligence platform developed by the International Road Transport Union (IRU) and Season@Work designed by the European Federation of Trade Unions in the Food, Agriculture, and Tourism sectors and allied branches (EFFAT). The [IRU Intelligence Platform](#) is a central information hub for road transport, which centralises data provided by IRU members and external experts. [Season@Work](#) is an application that provides information, in several languages, to seasonal workers using different formats. Amongst other topics, that information relates to employment contracts, social protection, wages, working time, and health and safety at work.

The survey carried out by the Belgian presidency also focused on the effectiveness of the communication channels used by ELA to build and promote its initiatives. It is clear from the responses received that the various working groups set up by ELA to involve national administrations and social partners are the main gateway to ELA's business. The most effective communication channels, taking all activities together, seem to have been ELA working groups (including the Stakeholder Group, the thematic working groups and ad hoc workshops), whose members then relay the information within their network and organisation. According to the responses received, social media and the websites of ELA and of the Member States have also, to a lesser extent, played a decisive role in ensuring the visibility of the actions undertaken by ELA.

Quality of information

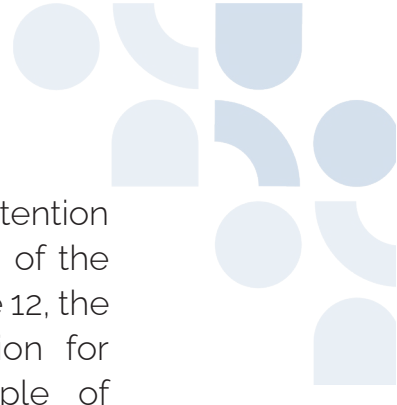
The responses to the survey make it possible to draw, on the one hand, some conclusions about the quality of the information provided by ELA. On the other hand, they also make it possible to draw more general conclusions about the quality of the information available on labour mobility in the EU, on the basis of which ELA could further develop its activities.

Under the concept of quality, two main dimensions are assessed in this report: the relevance and accessibility of the information.

The concept of relevance is used in this context to check whether the content of the information provided on labour mobility meets the needs of the target audience (i.e., individuals, employers and social partner organisations). More specifically, the aim is to verify whether, in terms of content, the information enables the public concerned to understand the rights and obligations arising from the exercise of their right to free movement, as well as from the freedom of establishment and to provide services. In short, it is the clarity, completeness and availability of the information provided that are addressed under the concept of relevance²⁹. This issue represents a major challenge in the case of ELA, given the fairly broad personal and material scopes covered by its founding regulation. It is all about trying to strike a balance in the information provided between the many and varied needs expressed by stakeholders.

The concept of accessibility will be used in this report in order to check whether the format and medium of the information on labour mobility ensures that it reaches the target audience.

²⁹ Dimensions of clarity and completeness are both highlighted in the Enforcement Directive 2014/67/EU, which requires Member States to improve access to information on the terms and conditions of employment which are to be applied and complied with by service providers (see Article 5 of the Enforcement Directive).



The issue of quality of information has received particular attention at EU level in recent years. As part of the implementation of the European Pillar of Social Rights, and in particular its principle 12, the Council Recommendation on access to social protection for workers and the self-employed enshrines the principle of transparency, which covers both dimensions of relevance and accessibility and is defined as “the provision of available, accessible, comprehensive and clearly understandable information to the general public, potential scheme members and scheme members and beneficiaries about the scheme's rules and/or about the individual obligations and entitlements.”³⁰

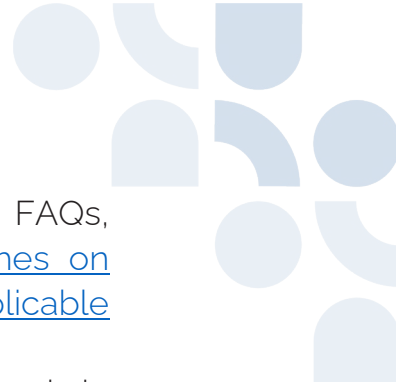
This recommendation calls on the Member States to provide certain guarantees to employed and self-employed workers affiliated to their social security system, regardless of whether or not they have made use of their right to free movement. Its recital (25) stresses in this respect the complementarity of the recommendation with EU legislation which provides for the portability and preservation of rights in the case of mobility between Member States. ELA founding Regulation also refers to the principle of transparency and invites ELA, in its recital (15), to improve transparency of information, including on rights and obligations provided for in Union law.

Beyond this theoretical framework, it is clear from the work of the Belgian presidency that the promises contained in ELA's mandate give rise to legitimate expectations on the part of the target public in terms of centralised, targeted and free access to information.

Relevance of information

The content of the information provided by ELA is generally welcomed by the stakeholders interviewed. Progress was mainly noted in relation to the mobility package for [road transport](#), with improved information on posting and minimum wages.

³⁰ Point 7 (j) of Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed, OJ C 387, 15.11.2019, p. 1–8




Respondents praised the quality of the videos, tutorials, FAQs, folders and leaflets produced by ELA. The [country fiches on teleworking during the COVID-19 pandemic on the applicable social security](#) were also identified as good practice.

Nevertheless, a number of more mixed findings were also made in terms of the relevance of the information disseminated by means of ELA's activities.

*i. **The experience and needs of the target audience are not always sufficiently taken into account:***

- the information disseminated to stakeholders is sometimes too general and theoretical, and lacks practical and operational character. Workers in fraud-sensitive sectors, for example, often lack specific information about their social rights and about the actors who can support them when they are faced with abuse and fraudulent situations. These rights, however, can only be fully enforced and effective if the persons concerned know how to claim them. Another criticism that has also been levelled on several occasions at the nature of the information disseminated is that ELA's information initiatives are aimed more at insiders, professionals in the sector who already have expertise in the field.
- Another finding is that it is not always easy for employers to access concrete and comprehensive information about labour law³¹, social security law, tax law, and migrations law. In this respect, it is worth highlighting the decisive preventive role played by access to information in the fight against social fraud and social dumping. The need for more practical information is also felt by SMEs and self-employed persons, who do not always have sufficient resources to access advisory services to help them make the transition from theory to practice.
- The needs of mobile workers and their employers are changing due to a number of emerging phenomena on the labour market (increased return mobility, (posted) third-

³¹ For example: core employment conditions in EU Member States, such as all legal requirements relating to minimum wages, core working conditions, the types and incidences of abuses, legal implications of law breaches, outcomes of checks and controls, sanction levels, and infringement rates.



country nationals, virtual labour mobility). The information disseminated, however, does not sufficiently reflect these trends and is therefore not always updated in line with the expectations of the target audience.

- Frontier workers represent a large and well-established category of mobile workers on the EU labour market and specific rules often apply to them with respect to labour law, social security and taxation. This category is nevertheless sometimes overlooked and national experiences with frontier workers, such as cross-border initiatives and specific advice bodies, are often not sufficiently promoted or made visible.


ii. Specific features of certain sectors of activity are not sufficiently reflected in the information disseminated:

The stakeholders interviewed stressed that, to be relevant, the information should take account of the specific features of the targeted sectors of activity. This is why the expectations of the stakeholders interviewed seem to be high in relation to ELA's information campaigns: new sectors could be covered (such as the aviation or maritime sector) and the scope of the information campaigns already launched could be broadened.

iii. ELA's actions do not sufficiently cover social security:

Up to now, ELA's information work (in particular through its Working Group on Information) has focused mainly on labour law and much less on social security. Stakeholders are therefore expressing the need for a better balance between the two areas of social law and for tackling social security horizontally, as it concerns all mobile workers regardless of their sector of activity.

In this regard, the joint information initiative launched in June 2023 by ELA and the Administrative Commission is seen as a step in the right direction. This project aims to facilitate the improvement of information resources in the field of registering for insurance and payment of social security contributions in the cross-border context, both on an EU level and a national level, with a focus on the following categories



of information: registering as an employer/ self-employed person, registering employees, determination of the amount and type(s) of contribution, payment of social security contributions and contact points/relevant institutions.

iv. **ELA's activities to date have focused more on the needs of employers than those of workers:**

The work proposed by ELA to improve the single official national websites on posting has focused mainly on technical information useful to employers. Several stakeholders pointed out that related activities have not yet sufficiently made it possible to focus on the information that workers need, especially in fraud-sensitive sectors. On the other hand, it is also recognised that ELA information campaigns have, so far, provided improved coverage of the needs of cross-border workers.

v. **ELA's information work does not take sufficient account of the need to combat misinformation or the lack of information that feeds fraud and social dumping:**

Guaranteeing employees and employers access to quality information about their rights and obligations is a preventive measure in the fight against cross-border social fraud and abuse and is intended to boost the principle of fair competition. With this in mind, the stakeholders regret that ELA's information work does not focus sufficiently on the risks posed by cross-border recruitment systems, the intention of which is to circumvent the application of EU rules. Some social partners pointed out that, in the road transport sector, much recruitment is carried out by fictitious agencies and companies that disseminate false information. This reality is not yet sufficiently taken into account in ELA's actions.

On the question of the relevance of information, the stakeholders stressed that the language used for communications also played a central role. According to them, as the information available in the Member States is mainly only available in the official languages of the country concerned, particular attention should be paid to the fact that



language can represent a considerable barrier to the availability and clarity of information for cross-border workers.


An additional point emphasised is that, under the current ELA mandate, improving the relevance of the information available depends largely on the willingness of the Member States and the investment they can/are prepared to make in this respect. Concerning the single official national websites on posting, for example, ELA is trying to work on the standardisation of the presentation and content of the information they contain, in particular by designing templates on the basis of peer reviews.³²

However, the implementation and monitoring of these quality recommendations is not really in ELA's hands. This is the reason why some stakeholders suggest strengthening ELA's role in setting quality standards.

There are, however, two aspects that require particular attention when it comes to establishing uniform quality standards. The first is that the national administrations cooperating with ELA have limited resources and mandates when it comes to providing information to EU mobile actors. The cost of providing information, such as keeping a website up to date, is considered as one of the main challenges for information providers. For instance, there should be a political willingness (and therefore financial support) to provide exhaustive and correct information by national public authorities. This also raises the question of how far the responsibility of national public authorities extends in terms of providing information.

The second aspect to bear in mind when setting quality standards is that the provision of information always includes an interpretation of the rules concerned. As a result, it is

³² See ELA's booklet on Lessons learnt from peer reviews of single national websites on the posting of workers: <https://www.ela.europa.eu/en/news-event/newsroom/lessons-learnt-peer-reviews-single-national-websites-posting-workers-booklet>.



essential for ELA to coordinate closely with the European bodies responsible for interpreting the European rules concerned, i.e. the European Commission and the Administrative Commission in the field of social security.


It is clear from the above that the expectations expressed by stakeholders are high as far as the relevance of the information on labour mobility is concerned. However, it cannot be ignored that ELA also has limited means and resources, and that it has to make choices about the sectors of activity, themes and needs that are covered.

Finally, it must be stressed that the foregoing observations about the relevance of information obviously do not apply exclusively to the work carried out by ELA. These findings are also of wider relevance to the information sources designed and managed by the Member States and other European institutions. This is a finding that clearly emerges from the survey conducted by the Belgian presidency. For example, respondents highlighted several shortcomings of European websites such as Your Europe and EURES, namely:

- information is not sufficiently targeted at all categories of cross-border workers (e.g. seasonal workers, highly mobile workers and mobile workers affected by emerging labour mobility phenomena);
- the needs and specific features of certain activity sectors are not adequately covered (e.g. seasonal work, road transport);
- due to its legal and theoretical nature, the information provided is often aimed too exclusively at people with a high level of education.

Accessibility of information

Although the stakeholders interviewed praised the scale of the work carried out by ELA over a three-year period, one of the findings made is that information is not always reaching citizens and companies in the best possible way. Indeed, some doubts are expressed as to whether the actions undertaken by ELA are reaching the workers concerned sufficiently. Workers in fraud-



sensitive sectors, for example, are very difficult to reach: they are highly mobile, move from one sector to another (mainly for construction workers), are not members of any organisation or interest group, and are not aware of ELA's existence.

The lack of awareness among mobile workers also stems from the fact that access to information is extremely limited, or even non-existent, in their country of origin before they leave for another Member State. Vulnerable people often travel to other countries with false promises or incorrect expectations. Some of the stakeholders interviewed therefore believe that ELA could play an important role in encouraging Member States to systematically provide upstream access to information about living and working conditions in other employment countries (e.g. for posted workers). ELA seasonal work pilot project of late 2022/early 2023 was a good first step and gave information from other Member States about the challenges this category of workers faces in the field of information provision.

The communication channels used by ELA are not always considered appropriate for target groups. Depending on their situation, different actors employ different means of communication. Consequently, if a specific audience needs to be informed, using the correct channel is key (no one-size fits all).

An additional shared observation in this regard is that ELA has mainly focused on the design and distribution of online information, namely in the context of awareness raising campaigns and the evaluation of the single official national websites on posting. Interviewed stakeholders expressed the need to also develop offline information, with a special focus on the use of communication channels specifically aimed at vulnerable target groups among individuals and employers (for instance: training/information sessions for workers/companies in person, as well as field campaigns and a direct handing-over of information). The use of more 'friendly' communication channels would not only help to reach target groups more effectively, but would also provide them with information that is personal, more individualised, easy to understand. In parallel, some stakeholders also suggested

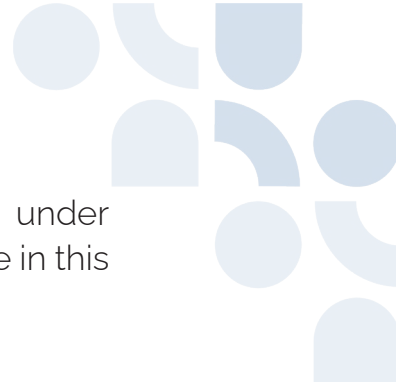


increasing the visibility of ELA's communications by making greater use of media coverage, local press, folders, brochures and social media.

Another suggestion made was to set up an EU hotline or helpdesk for people who have difficulty exercising their right to mobility and do not know where to turn. In this way, some stakeholders stressed the importance for ELA to play a direct assistance role in the implementation of relevant EU law. This type of support would offer direct access to personalised and tailored help, which is particularly useful for the most vulnerable mobile workers who often have difficulty with the language and little confidence in public authorities. The expectations expressed by the stakeholders are therefore in line with the strengthening of ELA as a direct service provider.

Additionally, it should be noted that a majority of respondents to the Belgian survey interestingly gave a rating of 4/5 or higher with regard to putting the needs of individuals (20 respondents), employers (21 respondents), or social partners (22 respondents) down as a top priority for ELA. This represents a tight difference that still demonstrates that ELA should treat all three target groups equally.

A final observation shared by stakeholders is that information on free movement is scattered across several sites and sources. The Your Europe, EURES and Solvit websites are not very accessible to workers, and relevant information is very difficult to find. Indeed, the major problem that emerges from the survey regarding access to information on labour mobility is its fragmentation. Nor is the system of cross-referencing between national and European websites sufficiently understandable, either for individuals or for companies, which, after lengthy searches, still have to turn to an institution or organisation in order to obtain the desired information. Businesses need to be able to find useful and practical/concrete information quickly, particularly concerning the payment of minimum wages, social contributions and other related obligations.




The single official national websites on posting set up under Directive 2014/67/EU are often mentioned as good practice in this respect.

Stakeholder involvement

The involvement of stakeholders in ELA's activities can be examined according to whether it concerns the preparation, implementation or evaluation of these activities. In each phase of activity, ELA seeks to involve relevant stakeholders and has developed indicators and tools to that end. Nevertheless, some of the stakeholders interviewed highlighted a discrepancy in the involvement of actors between the moment at which ELA initiatives are designed and the moment they are implemented. Consultations organised by ELA seem to focus mainly on the preparatory phase and less on the implementation and evaluation phases. A more effective balance in the involvement of ELA stakeholders is therefore suggested in this regard.

Consultation with the social partners is essential to ensure that the information disseminated meets the needs of workers and employers on the ground. In this context, interviewed stakeholders were satisfied overall with the involvement of European social partners who actively participate in ELA governance via the Working Group on Information, the Stakeholder Group and the Management Board. The Forum on the Posting of Workers 360 is also referred to as a good practice that enables stakeholders to exchange views horizontally on a specific topic. Another good practice that was mentioned concerned the involvement of trade unions in the preparatory phase of the 'Framework for Action in Road Transport', established in 2022. Cooperation with national, sectoral, and local social partners could nevertheless be strengthened (such as in capacity-building activities, training session, peer-learning and the sharing of best practices). They do indeed have a better knowledge of the field and of the main trends such as abusive practices. What is more, they form an effective network for disseminating information and conducting




communication actions as they know how to reach the target audience in the most effective way.

ELA's information campaigns, for example, have helped to increase its visibility and were well publicised, but, according to stakeholders, their impact could have been wider by involving national actors including social partners, both from sectoral and cross-industry levels, more closely and in a more timely manner. An improvement in this respect was already noticeable in the second campaign for the road transport sector, but a better and more structural involvement of national stakeholders, including social partners, remains necessary, particularly in the implementation phase, in order to reach the persons concerned. ELA National Liaison Officers (NLO) could play an important role to strengthen synergies between ELA and national stakeholders. In Belgium, several workshops have already been organised for Belgian social partners on the initiative of its NLO.

Some stakeholders have also expressed concerns about the (non-)involvement of individuals (30%) and employers (23%). Indeed, these two groups do not have direct access to ELA's Working Group on Information and are only indirectly represented through European workers' and employers' organisations. In this respect, it is important to point out that the composition of the category of individuals appears not to be clear to some stakeholders. This may be due to the fact that it covers many people who are not represented by the social partners (jobseekers, students, self-employed persons, etc.). Some thought would therefore need to be given to how to involve ELA's audience in ways other than by means of the classic umbrella organisations. In addition, the category of individuals includes groups of people who are more vulnerable in the sense that they have fewer resources to access the information that concerns them. This last observation also applies to smaller employers such as SMEs.

Given the very broad personal scope of ELA founding Regulation, some stakeholders have requested that particular attention be paid to the question of the representativeness of the social



partners in the design of stakeholder consultation processes. ELA did develop online consultations with open surveys for civil society and calls for best practices by civil society. However, it is unsure to what extent these consultations reached civil society, since their frequency was unknown and they were mostly held in English. In the future, it would therefore be appropriate to improve consultations and calls for good practice already made via ELA's website, but also more to reflect broadly on how to improve the involvement of individuals and employers in the design, implementation and evaluation of activities related to access to information.

When it comes to measuring the success of activities performed by ELA, the survey by the Belgian presidency shows that end-users, i.e. individuals and employers, are not sufficiently involved. According to stakeholders, ELA should not only evaluate the success of its activities by numbers of clicks and shares, but also by measuring its success with end-users. A quantitative approach does not always seem to be a suitable way of assessing whether mobile workers were really reached by the information and whether they found it useful. As way of example, ELA could explore the user-journey of people who actually use European and national websites in order to gather their feedback. The latter could lead to the creation of new key performance indicators (KPIs) to evaluate which information is reaching ELA's target audience and to check whether it is considered useful.

In addition to launching its own initiatives, a majority of stakeholders also recommend that ELA should rely more on existing initiatives and networks that are managed and deployed on the ground by national and European administrations, and by the social partners. This approach would make it possible to stimulate synergies within existing structures, to strengthen existing initiatives launched on a national and European level, to promote cross-border cooperation and to foster the exchanging of good practice. A number of initiatives can be mentioned by way of example: [Faire Mobilität](#) in Germany, which assists in the enforcement of fair wages and working conditions for migrant workers from Central and Eastern European countries on the

German labour market, and the tools developed by Mutualité Sociale Agricole (MSA) for foreign seasonal workers.


Direct contact with the stakeholders concerned could not only help in making mutual activities more effective but would also help these actors to benefit from better access to information on labour mobility thanks to ELA.

Recommendations

In terms of the relevance of information on labour mobility, it is important that the provision of information should be comprehensive in all its dimensions. This means that the information should be addressed to all actors involved (employers, workers, clients) but also that the information provided is exhaustive both in terms of its breadth (i.e. all relevant aspects including aspect of labour law, social security law, tax law and migration law) and its depth (i.e. including specific sectoral provisions).

With this in mind, ELA should first and foremost take greater account of the needs of its target audience (i.e. individuals, employers and social partner organisations) by:

- disseminating practical information on how rights and obligations arising from labour mobility can be claimed and respected, in addition to general and theoretical information;
- disseminating information that is personal, more individualised, personal and easy to understand, in addition to static online information;
- examining in more detail the consequences of emerging phenomena on the labour market in a cross-border context (e.g. virtual labour mobility, the posting of third-country nationals);
- ensuring a better balance between the needs of workers and those of employers in the information disseminated;
- adapting as far as possible the information to its target audience (different types of cross-border workers, employers, SMEs, workers in fraud-sensitive sectors, self-employed workers, social partners, etc.);
- paying specific attention to frontier workers and their needs for labour law, social security and even tax information about their situation.




More broadly, the issue of improving the relevance of information disseminated also requires ELA to:

- Take greater account of the specific features of certain sectors of activity (e.g. aviation and the maritime sector), in addition to the provision of horizontal information;
- Cover social security to a greater extent;
- Focus information campaigns more closely upon combating misinformation or the lack of information that feeds fraud and social dumping (such as by promoting upstream access to information to mobile workers);
- Assess the possibility of setting quality standards for the presentation and content of the information contained on national and European websites, while taking into account the fact that this exercise depends on the means and the scope of competence of national authorities. By working to define standards, ELA could, in particular, support Member States in implementing, including in a cross-border context, one of the actions set out in the Council Recommendation on access to social protection, namely to ensure that the conditions and rules for all social protection schemes are transparent and that individuals have access to updated, comprehensive, accessible, user-friendly and clearly understandable information about their individual entitlements and obligations free of charge.

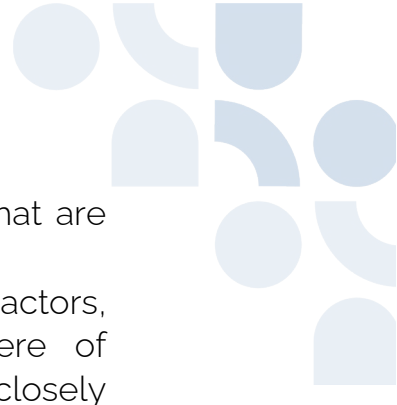
In terms of accessibility, ELA should, as a priority, work to reduce the fragmentation of information on labour mobility, which is often perceived as an obstacle to free movement. Several actions could be envisaged in this respect:

- striking a balance between centralised and decentralised information. A number of concrete ideas have been put forward in this regard:
 - o strengthening ELA's role as a service provider, for example, by setting up an EU hotline or helpdesk for people who have difficulty exercising their right to mobility and do not know where to turn. The expectations expressed by stakeholders point to a strengthening of ELA's mandate in this respect;

- 
- o setting up a one-stop shop offering centralised access to information in all EU languages or improving existing portals, in particular by taking advantage of the new opportunities offered by certain technological advances.
 - encouraging cooperation between national and European administrations and the social partners by promoting good practice and synergies in access to information;
 - working more as a network and relying in a more structural way on national administrations and social partners. This would enable information to be disseminated more effectively, by building on and leveraging existing structures and initiatives. ELA could, via its NLOs in particular, establish a network of national and EU providers of information on labour mobility (administrations, enforcement agencies, social partners, NGOs both on a national and an EU level). ELA should be able to draw on this clearly defined network in order to:
 - o create synergies between its actions and those pursued by other partners;
 - o design and build its information activities on the basis of existing initiatives;
 - o support national and European partners in their initiatives.
 - carrying out and supporting more actions on the ground in order to establish direct contact with the workers concerned. Individual workers, who are considered as a vulnerable and least protected group, have fewer financial and personal capacities (e.g. language skills) to inform themselves than employers or social partners. It is therefore important to reach this target group directly and use adequate channels in order to achieve that, including in order to reach those that are not members of any organisation or interest group.

With regard to stakeholders' involvement, the following recommendations can be made to ELA:

- Involve stakeholders more effectively in implementation and evaluation phases of information initiatives;
- Involve national stakeholders, including national social partners, more effectively in order to reach a wider audience in the implementation phase;

- 
- Involve individuals and employers, including those that are not represented by social partners more effectively;
 - Explore possible cooperation and synergies with new actors, which do not necessarily fall within ELA's sphere of competence, but whose activities nevertheless are closely linked to the issue of labour mobility (e.g. police, justice, tax services, migration services and NGOs).

PLATFORM TACKLING UNDECLARED WORK

Descriptive part


Objectives and tasks

The European Platform tackling undeclared work (hereinafter referred to as the UDW Platform or Platform) was launched in 2016 to enhance cooperation between Member States in their efforts to prevent and to tackle undeclared work³³. Three primary objectives were established when the UDW Platform was created:

1. Strengthening collaboration among relevant authorities of Member States and other stakeholders to more efficiently and effectively address various forms of undeclared work and associated falsely declared work, including instances of bogus self-employment.
2. Enhancing the capabilities of relevant authorities and stakeholders in Member States to address the cross-border aspects of undeclared work, thereby contributing to the establishment of a fair and level playing field.
3. Raising public awareness regarding matters related to undeclared work and emphasizing the critical need for timely and appropriate action. Additionally, encouraging Member States to intensify their endeavours in combating undeclared work.

As of 26 May 2021, the UDW Platform has been transferred to ELA and become a permanent working group of ELA). As indicated in the survey conducted by the Belgian presidency (refer to section 2 below), the integration of the Platform proceeded smoothly, notwithstanding the identification of certain challenges.

³³ Decision (EU) 2016/344 of the European Parliament and of the Council of 9 March 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work. This decision was repealed by Regulation (EU) N°2019/1149



In its Work plan for 2023³⁴, the Platform further refined its strategic priorities as follows:

- Strategic Priority 1: Cooperation and joint action
- Strategic Priority 2: Mutual learning
- Strategic Priority 3: Increasing Knowledge
- Strategic Priority 4: Communication and reporting


The strategic priorities are underpinned by strong thematic priorities and ways of working adapted to the context and the challenges faced. These include the continuing effects of the COVID-19 pandemic, the increase in e-commerce, in addition to the changing world of work, platform-based working, teleworking and complex contractual arrangements, enhanced monitoring of progress in tackling undeclared work, exchange between national authorities (holistic approach), and information activities.

The UDW Platform is composed of Members and Observers. Members are the representatives of the Member States, for example from federal ministries, labour and social inspectorates, tax and customs authorities or social insurance agencies, of EU level cross-industry social partners and of the Commission. Observers are the representatives of social partners representing the sectors of activity most affected by undeclared work, Norway and Iceland as members of the European Economic Area (EEA), European agencies such as Eurofound, the European Agency for Safety and Health at Work (EU-OSHA) and the International Labour Organisation (ILO).

Overview of ELA activities related to the UDW Platform

Activities carried out by the Platform before its integration as a permanent working group of ELA are summarized in the European

³⁴ European Platform Tackling Undeclared Work: *Work Plan 2023 and proposals for 2024-2025*, https://www.ela.europa.eu/sites/default/files/2023-06/Platform-Work-Plan_2023-and-suggestions-for-2024-2025.pdf



Commission Report on the implementation of Decision (EU) 2016/344³⁵. These activities are not covered in the present report.

Activities carried out by the Platform after its integration as a permanent working group of ELA are summarized in the consolidated annual activity report of ELA³⁶.

Activities in 2020

In 2020, ELA actively collaborated with the UDW Platform, contributing to the 2021-2022 work programme, ensuring alignment between its activities and the Platform's objectives. The partnership encompassed coordinated planning and execution of key activities for 2021. ELA also co-led the #EU4FairWork campaign and gained access to the Platform's collaborative workspace, fostering ongoing cooperation until ELA gains expertise for independent management.


Activities in 2021

In 2021, ELA's activity in the field of undeclared work mainly focused on the smooth integration of the Platform. The Platform's work programme for 2021–2022, which was initially adopted in October 2020, was modified in July 2021 to prevent duplication of studies with the European Commission. Despite the challenges posed by the COVID-19 pandemic, most activities outlined in the work programme for 2021 were successfully implemented, apart from two demand-driven activities (staff exchanges and mutual assistance projects).

Additionally, in 2021, the Platform conducted two studies on undeclared work in specific sectors, developed a toolkit on

³⁵ Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation of Decision (EU) 2016/344 establishing a European Platform for enhancing cooperation in tackling undeclared work, [COM\(2020\) 129 final](#)

³⁶ The latest [ELA Consolidated Annual Activity Report 2022](#), was published in June 2023. Previous reports are available on ELA's website : <https://www.ela.europa.eu/en/what-we-do#bcl-inpage-item-161>



cooperation between labour inspectorates and social partners, organized a seminar on tackling undeclared work in the hospitality sector and participated actively in ELA's Action Plan on seasonal workers. Additionally, the Platform played a key role in the #Rights4AllSeasons campaign. Further details and products, including the studies and the toolkit, can be found on the Platform's website.³⁷


Activities in 2022

In addressing undeclared work, ELA implemented the work programme established by the Platform before its transformation into a working group under ELA. Subsequent to its integration into ELA, the Platform adjusted its working priorities to align with horizontal priorities, such as the Framework for Action on Road Transport and urgent measures to safeguard individuals affected by the Russian invasion of Ukraine.

Contributing significantly to the Framework for Action on Road Transport, the Platform, especially its subgroup on 'Communication and information: undeclared work in the road transport sector played a pivotal role in the #Road2FairTransport awareness-raising campaign. Various activities, including a peer-learning dialogue, a workshop on preventing underdeclared employment and a webinar, delved into the challenges of undeclared work in the road transport sector, focusing on issues among drivers of light commercial vehicles. The insights gained were encapsulated in 15 concise reports, emphasizing the importance of customer liability schemes and other approaches to address violations in supply chains.

Undeclared work among displaced persons and refugees from Ukraine received ongoing attention, with a dedicated subgroup being convened to explore how enforcement authorities and relevant organizations could address vulnerabilities and risks related to labour exploitation in the European labour market. This

³⁷ <https://www.ela.europa.eu/en/undeclared-work>




subgroup examined refugee flows, demographics, roles of authorities and organizations, coordination of activities, proposed legislations, and other relevant measures. Videos were developed to reach out to those affected by the Russian war of aggression against Ukraine.

In addition to these focus areas, ELA facilitated cooperation and joint activities among Platform members, observers, and external partners. Plenary meetings and studies supported discussions on the development of a comprehensive approach to tackling undeclared work and assessing the effectiveness of policy approaches and enforcement authority performance. Subgroups were organised to concentrate on activities in 2023 to establish alert mechanisms for early-stage identification and tackling undeclared work.

ELA supported demand-driven activities, including peer-learning dialogues and staff exchanges, with two dialogue sessions and ten staff exchanges contributing to tackling undeclared work. Seminars and thematic review workshops delved into specific issues, emerging practices, and key sectors affected by undeclared work. Learning resource papers followed each event.

Webinars were organized to disseminate knowledge on pre-selected topics to a broader audience, with twenty good-practice fiches showcasing inspiring practices discussed at platform events. The knowledge base was enriched through various studies, including those on measuring the progress of labour inspectorates, developing key performance indicators, assessing the extent of undeclared work in the EU, and examining the extent of dependent self-employment. Additionally, a toolkit on effective penalty measures for tackling undeclared work, including cost-effective administrative actions, was developed.



Since its inception, the Platform has brought together 2,897³⁸ participants to cooperate on a wide range of critical issues, as a means of expanding the knowledge base and understanding of undeclared work. As a result of these ambitious work programmes, it has sought to balance an in-depth analysis of undeclared work and effective policy solutions in key sectors (e.g. collaborative economy, agriculture and road transport), with mutual learning on how to innovate methods (such as by means of risk assessments, data mining and information exchange) or enhanced cooperation between its members and observers (such as between labour inspectorates and social partners). Awareness-raising has become a growing part of the response to undeclared work, including by conducting two successful information campaigns (#EU4FairWork and #Rights4AllSeasons).

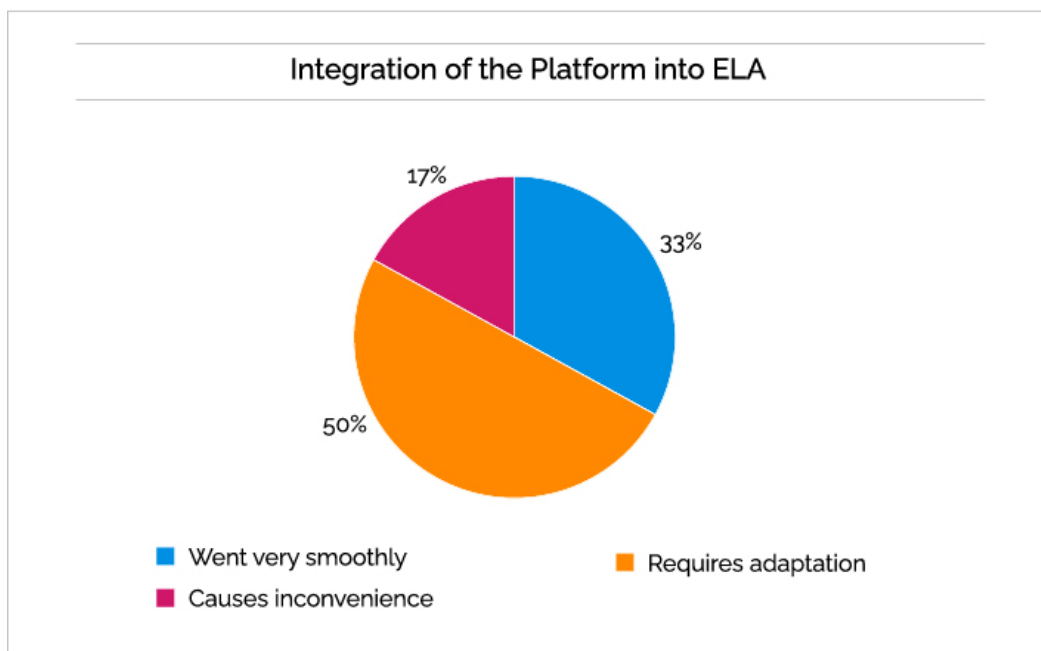
³⁸ From 2016 to 12 October 2022

Analytical part

Following the survey carried out by the Belgian presidency, the main conclusions can be summarized as follows.

Integration of the Platform into ELA

One third of the respondents indicated that the integration of the UDW Platform into ELA went very smoothly. Fifty percent of them indicated that this integration required some adaptation but did not hamper the functioning of the Platform, and 16.7% indicated that it is still causing some inconvenience for the Platform.

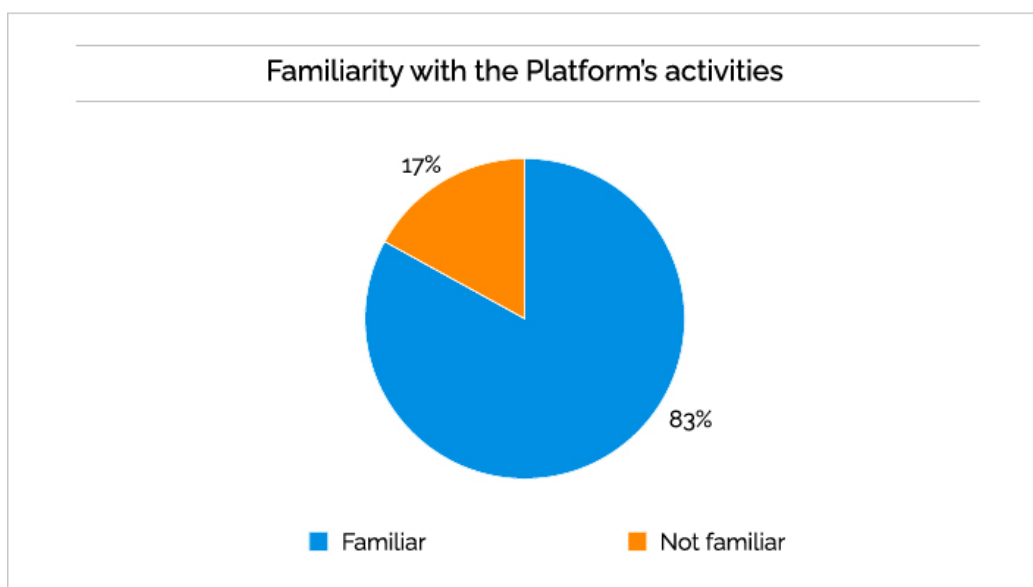


The following challenges have been identified:

- Differences in work culture between the Platform and ELA
- Synergies and complementarity to be enhanced between the Platform and ELA
- Differences in mandate (national versus cross-border)
- Decrease in transparency.

Familiarity with the Platform's activities

83.33% of the respondents indicated that they were familiar with the activities of the Platform.




The Platform's activities which respondents participated in were staff exchanges, thematic workshops, MAP, plenaries, peer learning dialogues, EU4FairWork campaign, topical discussions/thematic meetings, studies, seminars, webinars, and slides listing examples of good practice. One suggestion is to reflect on how to involve a broader target audience, including national social partners, in particular.

The main improvements needed to integrate UDW with other ELA tasks more effectively

According to the results of the survey, the main improvements needed to better integrate the topic of UDW more effectively and increase synergies with other ELA tasks, listed in order of preference:

- i. Better cooperation with the working group on inspections and improving the use of the experience and knowledge of the Platform to shape ELA activities (61%);
- ii. Improved integration of the UDW Platform's work with capacity-building activities and better alignment of ELA with national inspection priorities (via the Platform) (50%);

- 
- iii. Improved coordination between the Platform and governing structures of ELA (38.89%).

Platform's support for ELA in delivering its mandate

When asked the question "How can the UDW Platform's activities support ELA more effectively in delivering its mandate?" respondents provided the following suggestions:

- Inclusion of workshop input and output papers, supported by scientific analysis, could provide valuable insights for national policymaking to address undeclared work.
- Foster more specific collaborative proposals, such as joint investments in databases that require payment.
- Centralize diverse national databases, emphasizing investment in databases beneficial for both ELA and the Platform.
- Utilize Platform conclusions as a foundational framework for guiding ELA's enforcement initiatives.
- Involve the Platform in the formulation of annual action plans for ELA to enhance strategic alignment.
- Coordinate support activities linked to initiatives from other working groups, encompassing both horizontal and sector-specific efforts.
- Improve the coordination among various ELA units handling undeclared work.
- Mitigate potential overlaps between the activities of the Working Group on Inspections and the Plenary Meeting of the Platform.
- Increase the participation and user base of the Platform, including entities like social partners.

Recommendations

The UDW Platform's activities are seen as adding great value in the fight against undeclared work. More specifically, the holistic approach promoted by the Platform is an example for Belgium in the further development of the national strategy in the context of undeclared work.

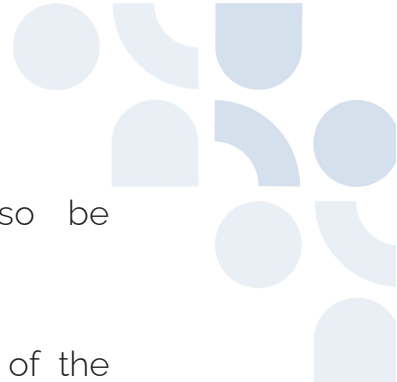
The integration of the UDW Platform went for a large majority of the respondents (very) well, although some challenges were identified. Belgium is convinced that these recommendations will be taken to heart and will result, in time, in ELA / Platform support for the tackling of undeclared work performing even better than it is today.

In addressing the challenges associated with the integration of the Platform into ELA and in order to reply to most of the remarks and suggestions made by the respondents, ELA³⁹ should contemplate the following recommendations.

Cooperation with Working Group on Inspections: Since a majority of respondents considered this a necessity, it is recommended to intensify collaboration with the working group on inspections to leverage their expertise and enhance ELA's activities. For this purpose, it is recommended to organize training sessions and presentations to disseminate insights from Platform activities to ELA units focusing on UDW.

Integration with Capacity-Building Activities: Since half of the respondents considered this a necessity, it is recommended that the Platform's work be more effectively integrated with capacity-building initiatives within ELA, thereby promoting synergy and efficiency. Knowledge dissemination via training sessions and

³⁹ Only the Authority? It depends on whether or not such and such a recommendation will require a change in ELA's founding Regulation.



presentations from the Platform to ELA would also be recommended for this purpose.

Alignment with National Inspection Priorities: Since half of the respondents considered this as a necessity, it is recommended that the focus of ELA be more effectively aligned with national inspection priorities by actively engaging with the Platform.

Enhanced Coordination: Since more than a third of the respondents considered this as a necessity, it is recommended to strengthen coordination between the Platform and ELA's governance structures to ensure seamless integration and collaboration. For this purpose, it is recommended to promote the use of Platform conclusions in the justification of objectives and actions outlined in ELA's annual and multi-annual programming documents. This would also improve the utilisation of the Platform's experience and knowledge to inform and shape ELA's initiatives. For the same purpose, it is recommended to impose regular reporting obligations upon the Platform (summary of the outputs of the activities of the Platform). These reports could be tangible material which ELA could use as a justification for its activities and strategies.

In addition, it is recommended to give echo to some suggestions that were made by the respondents:

- ELA's policy priorities should be aligned with those identified by the Platform to create a unified strategic approach.
- Strategic priorities should be established within the Platform rather than dispersing them across various ELA units.
- The planning of activities between ELA and the Platform should be streamlined and coordinated for increased efficiency.
- 'Silo' working culture within ELA should be mitigated by stimulating greater collaboration and communication.
- Engagement of social partner organizations in the Platform and ELA activities should be enhanced for a more inclusive and collaborative approach.

EXCHANGE OF INFORMATION

Descriptive part

Objectives and tasks of ELA

Cooperation between Member States with regard to the exchange of information is highly important. This cooperation can happen through formal and informal means. Today, bilateral and multilateral agreements between Member States⁴⁰ already exist to ensure this cooperation. However, significant fragmentation between these initiatives still exists within the EU. In that context, one of the tasks of ELA is to facilitate cooperation and the exchange of information between Member States with a view to the consistent, efficient and effective application of relevant EU law relating to intra-EU labour mobility. Furthermore, exchange of information is useful within the entire enforcement chain of EU law, in other words, for prevention, detection, control, sanctioning, and recovery.


This mission is described more precisely in Article 7 of ELA Founding Regulation, which provides for several specific actions:

- promoting cooperation and the acceleration of the exchange of information between Member States;
- providing information at the request of Member States in order to help them effectively apply the Union acts included in the material scope of ELA⁴¹;
- promoting the use of electronic tools and procedures for the exchange of messages between national authorities, including the Internal Market Information System (IMI). Recital 17 of ELA founding Regulation also refers to the System for the Electronic Exchange of Social Security Information (EESSI);

40 Annex II of the Fraud & Error report

<https://ec.europa.eu/social/BlobServlet?docId=25348&langId=en>

41 Article 1, 4, of ELA Funding Regulation N2019/1149.

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- encouraging the use of innovative approaches for effective and efficient cross-border cooperation and promote the possibilities of using electronic exchange mechanisms and databases between Member States to facilitate access to real-time data and fraud detection, as well as to suggest possible improvements in the use of such mechanisms and databases.

To facilitate the cooperation and the exchange of information between Member States, ELA can count on its National Liaison Officers network (NLOs). Indeed, they 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. National Liaison Officers are entitled to request and receive all relevant information from their Member States, as provided for by ELA Founding Regulation, while fully respecting the national law or practice of their Member States, in particular with regard to data protection and the rules on confidentiality⁴².


Overview of ELA activities related to the exchange of information

In the context of exchange of information, ELA has taken a range of different initiatives. This section delves into some of them, mainly focusing on IMI⁴³.

One of the activities carried out by ELA in this field is IMI-PROVE. IMI-PROVE is a programme in line with ELA's Mutual Learning and Understanding Framework (MLUF) and aims to strengthen cooperation and mutual assistance between Member States by promoting greater and more effective use of the

⁴² Regulation (EU) N2019/1149, Article 32.

⁴³ For a complete overview of actions taken and those that ELA takes, consult [ELA Consolidated Annual Activity Report](#) and ELA's [Annual Work Programme](#)




modules of the Internal Market Information System (IMI)⁴⁴ for posting of workers and road transport. This programme is a multi-year exercise that focuses on practical issues and pragmatic solutions, creating a community of practitioners capable of proposing common rules and guidelines for the use of the relevant modules.

As one of the few secure and multilingual tools for information exchange and cooperation available to Member States in the field of labour mobility (especially the posting workers EU Directives), IMI is of strategic importance for the application and enforcement of existing rules on posting and mobility in the road sector. Nevertheless, the system is still under-used: on average, there were only between 1,000 and 1,500 'posting information exchanges' per quarter within the EU, the majority of which related to 'information requests', and to a lesser extent as a method with which 'to send documents'. In general, Austria and Belgium are the most intensive users of the IMI tool. Moreover, despite being the main receiving Member States of posted workers, Germany and France do not use IMI as much⁴⁵.

The main role of ELA is to support Member States in the consistent and effective use of the IMI tool, also collecting feedback on the functionality of the system (e.g. identification and reflection on underused modules, understanding of predefined questions of the tool, etc.). The meetings were very productive and resulted in significant feedback that will now be incorporated into an appropriate report and follow-up action plan.

44 The Internal Market Information System (IMI) is an online tool that facilitates the exchange of information between public authorities involved in the practical implementation of EU law. One of the aims of IMI is to support administrative cooperation and mutual assistance between the competent authorities of the Member States concerning the application and enforcement of the Posting of Workers Directive. Indeed, the tool can be used by labour inspectorates to request and exchange information.

45 For the most recent statistics see https://ec.europa.eu/internal_market/imi-net/statistics/2021/02/exchanges/index_en.htm



With this programme, ELA aims to focus on the use of digital tools for information exchange and then open the debate on two other digital tools such as the Electronic Exchange of Social Security Information (EESSI) – which are ongoing discussions between ELA

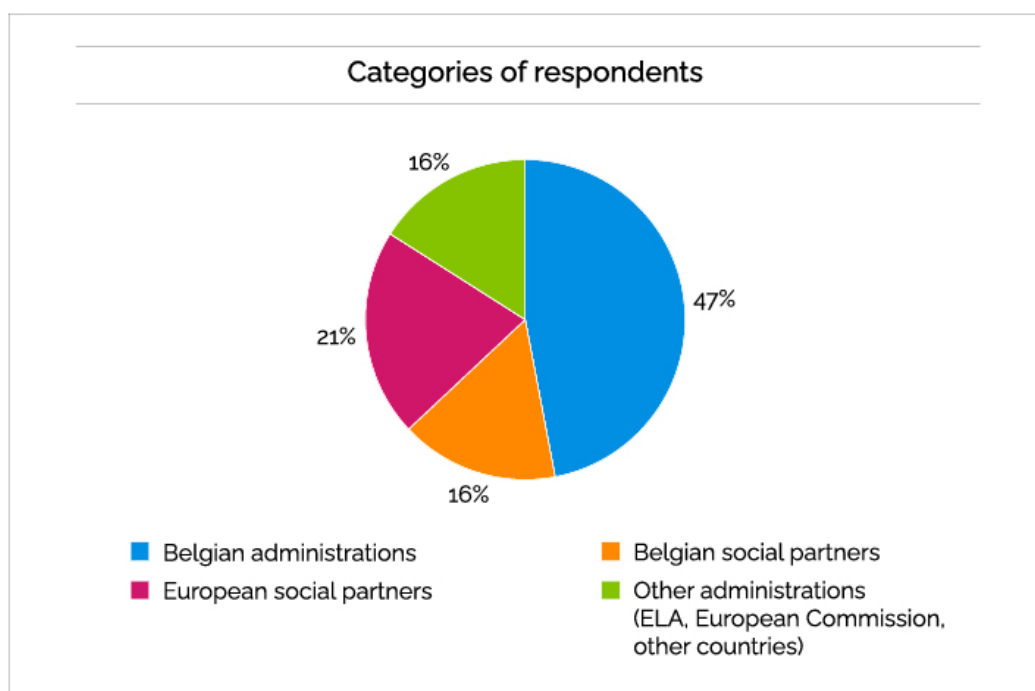
and the AC – and the European Register of Road Transport Undertakings (ERRU).

In the final quarter of 2022, ELA also organised a conference on digitalisation at its headquarters in Bratislava, namely, to discuss innovative technological solutions supporting the application and enforcement of EU labour mobility rules ([AET TECH Conference 2022](#)).

Analytical part

Introduction

In total, 19 stakeholders responded to the section on exchange of information. Here is an overview of the stakeholders involved:

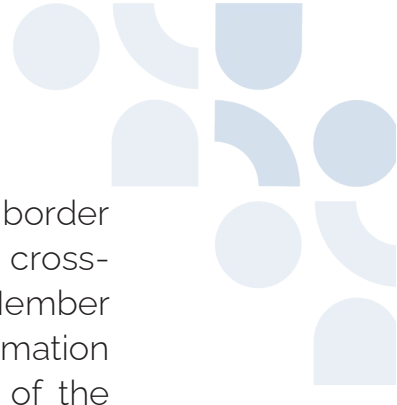


Stakeholders' assessment of the activities undertaken by ELA (strengths and weaknesses)

Facilitating cooperation

ELA has been regarded as having a high potential to facilitate the cooperation and the exchange of information between Member States. In general, its work to provide information to Member States has been seen as a good initiative. As exchanging information is mostly based on the principle of loyal and mutual cooperation⁴⁶, ELA plays an important role in the reinforcement of this basic principle in national administrations. Indeed, exchanging

⁴⁶ See, for example, Art. 76 of Regulation 883/2004




information is a principal component for combatting cross-border social security fraud and for the recovery of social security cross-border claims⁴⁷. It is therefore highly important for every Member States to engage data. Moreover, the exchange of information between administration is highly valuable in the context of the European Pillar of Social Rights, since it provides for fair working conditions, social protection and inclusion.

It has been highlighted that the exchanged information between national administrations sometimes lack quality and/or reliability. Some Member States do not always cooperate and do not exchange data in a timely manner with others, with delays of information as a consequence. This lack of cooperation forms the primary issue for administrations in need of the information. Accordingly, ELA's role to facilitate the cooperation and accelerate the exchange of information could yield a more vigorous exchange between Member States, especially by providing common interpretation of EU legislation within one country and across Member States. In addition, it is necessary to make ELA's role more comprehensive. Indeed, some respondents highlighted that the division of competences between ELA and the European Commission are sometimes unclear.

In addition, it has been mentioned that even with all the information provision, encouragement, and recommendations from ELA, Member States could always choose to not comply with requests to exchange information. In that instance, another way to enhance the exchange of information would be to open national and European databases for national administrations to look up information. This means that databases would be open and directly

⁴⁷ For instance, Decision No A1 of 12 June 2009 lays down the rules for the application of a dialogue and conciliation procedure concerning the validity of documents, the determination of the applicable legislation and the provision of benefits under Regulation (EC) No 883/2004. There are three phases defined in the dialogue and conciliation procedure. In the first stage, in the event of doubts concerning the validity of the PD A1 issued by the competent institution of another Member State, or in the event of a dispute relating to the (provisional) determination of the applicable law, the inspection services send a reasoned request to the competent institution(s) in the other Member State concerned, asking them to provide the necessary clarifications concerning its decision and, if necessary, to withdraw the PD A1.



available to all Member States and information from one Member State would be accessible to any other important national administration.


The electronic tools

The process of digitalisation in the last couple of years provides new ways for national administrations to exchange information with each other. Rather than exchanging information through usual channels, electronic systems are now being used for the cross-border exchange of information. The technology available today is highly efficient and should be utilised further to facilitate the task of national administrations and to promote the free movement of EU citizens as well as the freedom to provide cross-border services. A first consolidation of electronic initiatives has already taken place in the EU, such as EESSI, IMI, the SDG, ERRU... and additional initiatives could come into play in the future, such as ESSPASS⁴⁸ and an electronic labour card. In this context, ELA plays an important role in the promotion of the use of these existing tools, in the development of new electronic tools in the future, and in the reinforcement of EU coordination in this new digital age.

In its work to improve exchange of information, ELA's initiatives to promote the consistent and effective use of electronic tools, such as IMI, EESSI, and ERRU⁴⁹, is mostly appreciated. A first highlighted problem is the lack of comparability and compatibility in the use of these electronic tools within the various national administrations. Different websites do sometimes lack comprehensiveness and are not necessarily user-friendly. This remains an administrative burden for Member States. In many cases, national staff did not

⁴⁸ See Communication from the Commission and the European Parliament, the Council, the European Economic and social Committee and the Committee of the Regions, COM(2023) 501 final, Brussels 6.9.2023


⁴⁹ ERRU, which is operational since 1 January 2013, has been progressively modified in order to respond to a growing number of needs related to the enforcement of road transport legislation. The current version of ERRU provides information, among others, on the good repute of transport managers, on the validity of community licences and on infringements committed by transport undertakings in foreign territory. From 2023 onwards, ERRU will undergo further modifications in order to include the information regarding the risk rating of the transport undertakings and additional information facilitating the detection of letterbox companies.



receive the appropriate training about digitalisation. Individualised and personal training provisions are therefore urgently needed in each Member State to combat unfair cooperation. ELA, in this way, has an important role to play in promoting these digital tools – focusing on soft tools, the sharing of good practices and the coherent understanding and use of the system. A second problem that was identified is the legal barriers, such as the constraints on GDPR that can be seen as obstacles to launching new initiatives. It is therefore necessary for ELA to improve the users' knowledge with regard to these barriers. Accordingly, this would increase the end-users' knowledge on the use of the electronic tools and their rights and obligations while using these tools.

Concerning ELA's role in improving the use of IMI with the IMI-PROVE Programme, only three respondents were IMI-users and competent to respond. Two of them were mostly satisfied with ELA's work and its positive results. One aspect rated as good was the sites' obligation to respond and its translation device. On the other hand, some aspects could still be improved. In fact, it was highlighted during a bilateral meeting with some privileged stakeholders that the system is not tailored to the administrative and procedural needs of the users.

For the work on other digital tools such as EESSI and ERRU, not a lot of has been assessed by the respondents. In general, it was stated that the sites must provide correct and useful information. ELA should therefore provide support to national administrations to enhance the users' knowledge. It is worth noting that the proposal to set up a new Programme relating to the use of EESSI is highly relevant and needed for national administrations. By working in close collaboration with governing bodies of the Administrative Commission for the Coordination of Social Security Systems and notably its sub-committee, the Technical Commission, and by reinforcing its synergies, ELA could and should be able to contribute towards procedures leading to increased digitalisation and to improve the IT tools used for the exchanging of messages between national authorities. In that way, it would support digital exchange of information between Member States. Moreover, by identifying the different needs of the target



audiences and tailoring the programme to those needs, it can be expected to have a significant impact upon end-users.

Furthermore, with all the already existing electronic tools for labour mobility, ELA could work on a possible centralisation to make these tools more coherent for the users.


The NLOs' role

NLOs also play an important role for the exchange of information between national administrations by facilitating the cooperation and exchange of information as set out in Article 7 of ELA founding Regulation⁵⁰. The survey by the presidency provided a list of activities carried out by the NLOs. Respondents had to indicate the activities which they already had experienced, highlighting how they perceived the added value of NLOs in their daily work. As the survey was mainly answered by Belgian administrations and European partners, it can be noted that these outcomes are mostly about the Belgian NLO.

According to the respondents, the most prominent activity was the NLO's role in the exchange of good practices and/or experiences with colleagues from other Member States. This was closely followed by three other activities carried by the NLOs, namely the exchange of information and access to the right services or staff to complete cases faster, the expansion of the network by meeting with colleagues from similar or other departments in other Member States and improving understanding of the operation and potentialities of ELA by means of a presentation. The additional activities can be listed in order:

5. A better understanding of the operation and capabilities of ELA following the organisation of an NLO event;
6. No real experience with NLO;
7. Access to more complete and accessible information originating from other Member States;

⁵⁰ See the (EU) Regulation N 2019/1149, article 32.

- 
8. Settlement of a case pending for some time by obtaining information from the correct and/or competent institution or authority(es);
 9. Better understanding of the operation and capabilities of ELA as a result of a bilateral or multilateral meeting with other Member State(s);
 10. Obtaining an answer to pending issues related to the issuance or withdrawal of portable documents A1;
 11. Obtaining concrete data or facts in context of a mediation procedure.

The NLO's role is therefore of utmost importance. In its different tasks, it provides more and better information to national administrations, which can result in a more effective exchange of information between them. In addition, in the context of exchange of information, NLO's role and activities could be further enhanced.


Recommendations

Exchange of information and cooperation between Member States is of utmost importance for the consistent, efficient and effective application and enforcement of relevant EU law relating to intra-EU labour mobility. While preserving the voluntary basis of Member States' participation, ELA can enhance the loyal and mutual nature of the cooperation between Member States. It has the potential to facilitate a more vigorous exchange of information between national administrations. ELA should be encouraging Member States to transmit information and documents to each other on their own initiative and in a timely manner. What is more, ELA should make them accountable for the quality of information they exchange.

Hereafter, some more specific recommendations.

Firstly, ELA should provide more and better information regarding the exchange of information towards national administrations. It should further provide Member States with practical and legal assistance, by making studies, analyses, models, and guidelines on what Member States should (not) share and how to share it. In that instance, for example, ELA should analyse the main bottlenecks put forward by users, connect files to existing realities and add criteria for deadlines and provide further information in responses to other Member States. Furthermore, ELA should map which practices exist, and which do work and which do not, so that the best practices can be shared with national administrations. In fact, national administrations should know which initiatives have already been undertaken by other Member States. In that context, ELA should bring Member States together to exchange best practices with each other. This is highly valuable since ELA has launched its second call for good practices in 2023.

Secondly, ELA should be able to intervene in exchanges whenever Member States do not comply with the regulations. Whenever information is not exchanged in a correct manner; when it lacks




clarity, quality, reliability, or is not sent in a timely manner, ELA should be able to call out the Member State and further recommend the exchange of reliable and high-quality information.

Thirdly, ELA should explore new ways of working between national administrations, with direct access to national and EU databases. If, in some instances, Member States do not exchange the necessary and correct information, ELA should support the efforts to obtain better and direct access to important administrations' databases. It should therefore promote the opening up of databases from all different Member States, while providing enough information on the consequences and results to the administrations. Moreover, ELA should work on building a "European general database"⁵¹, in which individuals – and specifically workers – would be given a unique "European identification number". This number should, for example, make it possible to check whether a particular employer does not employ the same employees consecutively in several Member States (by means of posting, for example). The working methods for this new identification number could be based on EU tools already in existence⁵².

Fourthly, ELA should share better and more comprehensive information the available electronic tools, such as IMI, EESSI, and ERRU, and how to use those tools. On the one way, the use of the tools should be less burdensome. On the other way, the end-users should have a better knowledge of their rights and obligations while using these digital tools. In addition, ELA should further

⁵¹ A specific example of a database that is useful for the selection of inspections and the process afterwards (identifying network of subsidiaries) and for recovery is ORBIS. [Orbis](#) is a database from Bureau van Dijk which contains (non-)financial information from private companies across the world. In the Orbis database, a broad scope of information can be consulted, including the address of the company, headquarters, the sector of activity, foreign subsidiaries and shareholders, financial information, balance sheet information, and information on directors, managers and advisors.

⁵² An idea for this "European general database" could be based on the EU [Business Register Interconnection System](#), within which the trade registers of the various EU Member States are interconnected with each other. When looking up a company, one will find an "EUID" at the bottom. This "EUID", referring to the number in the national trade register of the Member State, could, for example, be a step towards the introduction of a "unique European identification number".



enhance these websites, by making sure that all relevant information is available and accessible for the national administrations. For example, administrations should have access to specific modules and receive *clear* answers from the websites.

Beyond ELA mandate itself, more work should be done to simplify and integrate different electronic tools.

Finally, the principal role of the NLO is to enable national administrations to exchange information. NLOs are very important contact persons for the coordination and exchange of information between ELA and Member States. In addition, their role should be strengthened even further, including by having additional contacts with social partners about information and digital systems.

Descriptive part

Objectives and tasks

EURES is a cooperation network formed by the European Commission, ELA, national public employment services and other admitted employment services in the EU, Iceland, Liechtenstein, Norway and Switzerland. Trade unions and employers' organisations also participate as Partners. The aim of the EURES network is to facilitate the free movement of workers within the European Economic Area (EEA) and Switzerland by providing information and employment support services to workers and employers, and by enhancing cooperation and information exchange between its member organisations.⁵³

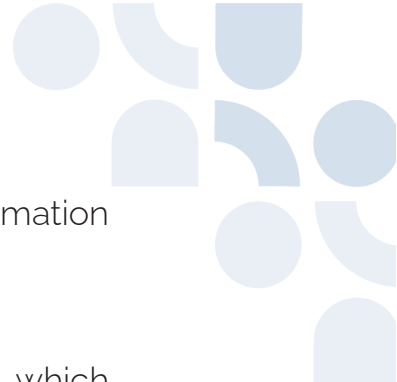
The network was launched in 1994 and reformed in 2016.⁵⁴ Today, EURES offers a network of over one thousand advisors who can provide information, help and assistance to jobseekers and employers through personal contacts. EURES staff are trained specialists who provide the three basic EURES services, namely information, guidance and placement, to jobseekers and employers interested in the European labour market.

Its mission fits squarely within the 4th principle of the European Pillar of Social Rights, which promotes active support to employment. According to this principle, "everyone has the right to timely and tailor-made assistance to improve employment or self-employment prospects. This includes the right to receive support for job search (...)".⁵⁵ It also contributes to the realization of the 7th

⁵³ Art. 46 TFEU and Regulation (EU) 2016/589 (hereinafter: 'EURES Regulation'), Recital 1.

⁵⁴ [Reform of the European jobs network EURES - Consilium \(europa.eu\)](#).

⁵⁵ [The European Pillar of Social Rights in 20 principles - Employment, Social Affairs & Inclusion - European Commission \(europa.eu\)](#).



principle of the Pillar, which encompasses the right to information about employment conditions.

EURES consists of a European Coordination Office (ECO), which oversees activities at European level, and National Coordination Offices (NCOs), appointed by the Member States, which oversee activities at national level. All NCOs, the European Commission and the ECO exchange information and support the implementation of the EURES Regulation in the EURES Coordination Group (ECG), which coordinates the activities and operation of the EURES network.

The founding Regulation of ELA entrusts it with the management of the European Coordination Office (ECO).⁵⁶ ELA has taken over this task from the European Commission. However, the technical operation and development of the EURES portal and related IT services continue to be managed by the Commission. In addition, policy steering, including legislation, reporting, evaluation and management of grants, continues to be managed by the Commission.

The process for integrating the ECO into ELA and the transfer of the ECO from the Commission to ELA were prepared in 2020 and finalised in 2021. It included:

- the annual programming cycle;
- the governance of the EURES network (meetings of the EURES Coordination Group, working groups and the admission system);
- training activities;
- communication activities;
- management of the EURES portal (including helpdesk, translation, hosting costs, licences and employment of business analysts);
- the performance management system.

⁵⁶ ELA Founding Regulation, Art. 6.

The EURES network as such continues to operate as before on the basis of the EURES Regulation (Regulation (EU) 2016/589).

Ratio legis for the integration of EURES in ELA

The free movement of workers is a fundamental freedom of citizens of the Union and one of the pillars of the internal market, enshrined in Article 45 of the Treaty on the Functioning of the European Union (TFEU).⁵⁷ Moreover, fair mobility of workers is a key driver of economic growth, social cohesion and an improved employment rate across Member States.⁵⁸ Enabling and enhancing fair mobility lies at the heart of the European project and is paramount to the success of the Commission's European Pillar of Social Rights Action Plan.⁵⁹

ELA was set up with a key role in this regard, with the aim of "facilitating the application and enforcement of Union law"⁶⁰. This facilitation takes the form of a two-pronged strategy to improve compliance with EU labour mobility rules and national labour law rules in a preventive way (the *ex-ante* approach) and to support Member States' control upon compliance with aforementioned rules (the *ex-post* approach). This first approach consists in supporting EURES, which provides information and employment support services to workers and employers and enhances cooperation and information exchange between its members. The aim is hence not only to facilitate the freedom of movement of workers, but also to minimise the risk of EU and/or national labour law infringements when this freedom is exercised⁶¹ by providing information and individualised, high-quality assistance.

⁵⁷ EURES Regulation, Recital 1.

⁵⁸ EURES Regulation, Recital 2.

⁵⁹ European Pillar of Social Rights Action Plan, 2021, available at: [EUROPEAN PILLAR: SOCIAL RIGHTS: ACTION PLAN \(europa.eu\), p. 21 .https://op.europa.eu/webpub/empl/european-pillar-of-social-rights/downloads/KE0921008ENN.pdf](https://op.europa.eu/webpub/empl/european-pillar-of-social-rights/downloads/KE0921008ENN.pdf)

⁶⁰ ELA Founding Regulation, Recital 11.

⁶¹ ELA Founding Regulation, Recital 1 *juncto* Recital 6.

An overview of ELA's activities related to EURES

The priority of ELA was to ensure business continuity with regard to both the IT portal and the human network.

At present, ELA manages the EURES portal, including the maintenance of the portal's functionalities. As of the end of the second semester of 2022, the EURES portal, through its self-service function, registered 93,186 jobseekers and 5,919 employers.⁶²

ELA also prepares and chairs the meetings of the EURES Coordination Group (ECG). It initiated a process of review and preparation of a summary of the work programmes and the evaluation of the NCOs' activity reports. It collects national data in compliance with the regulations on the measurement of EURES' performance. In this context, ELA published an EU report on labour market shortages and surpluses.⁶³

ELA is also in charge of the EURES Academy training programmes. In 2022, a new framework contract for the EURES Training Academy was signed. In this context, ELA identified the training needs of the network, ensured the establishment of a training catalogue and ensured the provision of training, while also progressing towards an improved mechanism for direct controls/quality assurance of training offers.⁶⁴

ELA organises information and communication activities on the EURES network, such as regular newsletters, portal and extranet articles, social media and other promotional activities targeting the network, jobseekers and employers. It launched a "Jobs for Youth"

62 Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on EURES activity July 2020 - June 2022 (COM(2023) 724 final).

63 ELA Consolidated Annual Activity Report 2022, p. 9.

64 ELA Consolidated Annual Activity Report 2022, p. 37.



campaign to help the European Commission raise awareness of EURES services amongst young graduates and university students, as well as amongst employers recruiting young jobseekers. In addition, it continued to support the European Online Job Days.⁶⁵

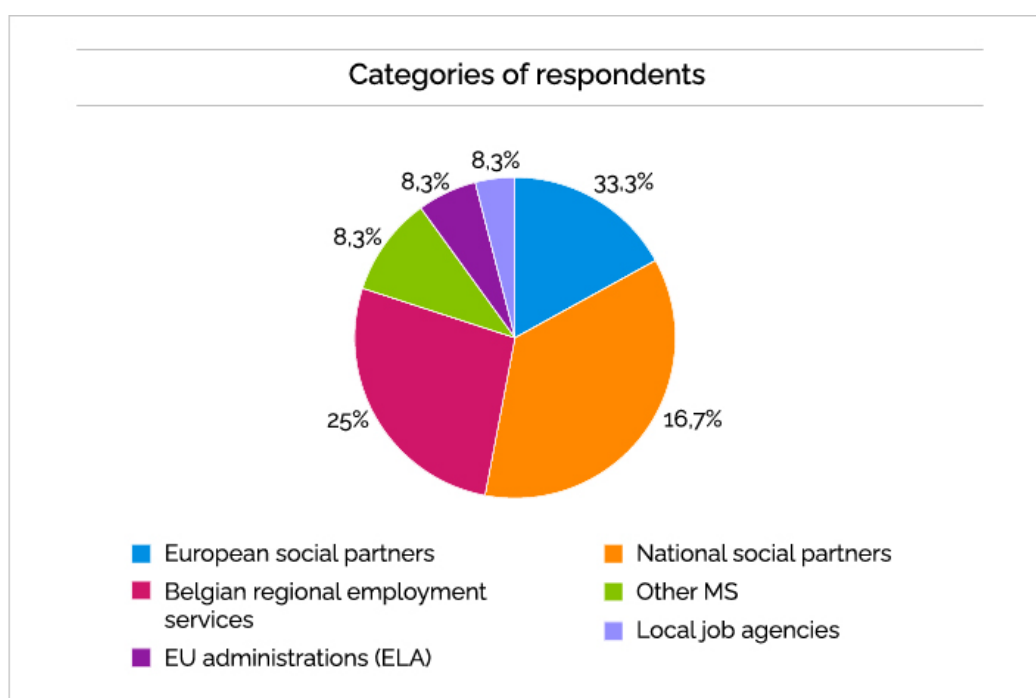
Finally, ELA supported the European Commission (DG HOME) in launching the EU Talent Pool pilot initiative. This is an online job search tool based on the EURES portal for people fleeing the war in Ukraine, seeking employment in the EU and enjoying temporary protection.

⁶⁵ ELA Consolidated Annual Activity Report 2022, p. 9.

Analytical part

Introduction

A limited number of stakeholders provided their insights on the EURES network and on ELA's work related to it. In the survey, there were 12 answers in total, which can be sub-divided as follows:



The input from the survey was further consolidated by means of subsequent bilateral meetings with privileged stakeholders (ELA was for example also consulted separately) and an intra-Belgian Workshop (see Chapter 2 on methodology). Finally, the reports published by the European Commission in August 2021 and November 2023 based on Art. 33 of the EURES Regulation, were used as additional source material for this report.⁶⁶

⁶⁶ Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the operation and effects of Regulation (EU) 2016/589 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets (submitted pursuant to Article 35 of Regulation (EU) 2016/589) (COM(2021) 452 final); Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on EURES activity July 2020 - June 2022 (COM(2023) 724 final).

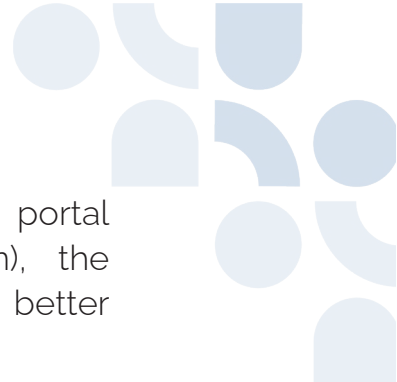
Stakeholders' assessment of the activities undertaken by ELA: focus on strengths and weaknesses

Though the majority had a positive impression of how the integration of EURES into ELA was managed, stakeholders criticised a lack of clarity regarding the roles and responsibilities of the entities involved in EURES and its management (ELA, ECO, Commission, ECG, NCO, WGs...). To avoid ambiguity and ensure effective execution, it was stressed that a clear division of roles and responsibilities, as established in both EURES and ELA regulations (Art. 6 of ELA Founding Regulation and Art. 8,9, 12 and 14 of the EURES Regulation) should be upheld. This is partly contingent on a thorough understanding of the operations and structure of EURES by the units that form part of ELA.

Respondents raised information provision as a major point of improvement. This firstly aimed at EURES' visibility and its efforts to reach a large public through information and awareness campaigns. Secondly, and more crucially, it is the quality of the information available on the EURES portal (or even the absence of much needed information) that was highlighted by respondents. Though this is partly the result of inconsistent use of the portal by Members and Partners, they believe better integration of ELA's information provision with EURES may help in mitigating this.

This further ties into the issue of the portal's user-friendliness. For example, it was advised that job vacancies should mandatorily be advertised in English. Additionally, and in line with the Commission's 2021 evaluation of EURES⁶⁷, it was suggested that ELA should perform an analysis of potential overlaps of

⁶⁷ Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the operation and effects of Regulation (EU) 2016/589 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets (submitted pursuant to Article 35 of Regulation (EU) 2016/589) (COM(2021) 452 final), p. 9.



information and services provision on the Your Europe portal (implementing the Single Digital Gateway Regulation), the Europass portal and the EURES portal, and subsequently better integrate the EURES portal with said platforms.

Regarding the services provided by EURES staff, respondents advocated for further harmonisation by ELA of the minimum level of quality of services across the network. Moreover, it was argued that information services could be more tailored to end-users. Beyond the technical information on EU and national labour law that EURES staff generally offer, they could for example play a part in providing a realistic picture about working abroad. Vulnerable people often travel to another Member State on the basis of false promises or incorrect expectations. ELA, together with EURES, could play an important role in bringing to the attention of 'sending countries' the information about living and working conditions available in 'receiving countries'. ELA seasonal work pilot project of late 2022/early 2023, for example, was a good first step and gave information from other Member States about the challenges that exist in the field of information provision.

Additionally, the overall policy that aims to increase the employment rate (as stated in the Porto targets related to the Commission Action Plan for the European Pillar of Social Rights) requires a comprehensive understanding of the EU labour market and its internal dynamics. Various respondents suggested that ELA engage in monitoring and data collection activities for labour market analysis purposes. These labour market analyses would enable stakeholders to better understand the market in which they are operating.

Finally, to ensure the sustained growth of fair mobility within the EU, there was a call for long-term efforts focused on the enlargement of the EURES network. This call aligns with the European Commission's suggestion that National Coordination

Offices should continue to proactively identify, attract, and admit new members and partners, with a facilitating role for the European Coordination Office.⁶⁸


⁶⁸ Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the operation and effects of Regulation (EU) 2016/589 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets (submitted pursuant to Article 35 of Regulation (EU) 2016/589) (COM(2021) 452 final), p. 9, and reiterated in Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on EURES activity July 2020 - June 2022 (COM(2023) 724 final).

Recommendations

Following up on the results of Belgium's consultation of EURES stakeholders as laid out in the previous chapter, this chapter seeks to explore all actions that could be taken in order for EURES to fulfil its mission optimally, and hence contribute to the realisation of the social Pillar's objectives, in particular its fourth and seventh principles. These recommendations are not confined to ELA's purview with regard to EURES. They cover both changes of a practical nature and changes entailing legislative action, whether these involve a modification of ELA Founding regulation or the EURES regulation.

Firstly, the governance of EURES should be clarified. A better circumscription of the roles and responsibilities of the entities involved in EURES (ELA, ECO, EC, ECG, NCO, WGs...), would benefit both said entities and EURES stakeholders, which could include responsibilities shifting between entities wherever that is deemed relevant. This may be achieved by amending the EURES and ELA regulations, or by clarifying the internal rules of procedure. Furthermore, the promotion of a thorough understanding of the operations and structure of EURES within ELA would enable EURES' activities to be more effectively aligned with ELA's horizontal strategies and with actions in other domains.


Secondly, multiple strategies should be set up to tackle shortcomings in the *quality* and the *accessibility* of the information on the EURES portal, as raised by respondents. Guaranteeing a high standard for the quality of information can be pursued by (1) outlining processes through which the ECO can identify gaps in the information provided by NCOs and through which it can review the accuracy and accessibility of information, as well as by (2) setting clear standards for the information provided on the portal. This information should subsequently be completed with and fact-checked against the body of information available within ELA.



With regard to the accessibility of information, respondents highlighted the need for an increase in information and awareness campaigns. More broadly, ELA should develop new communication strategies involving the EU, national and regional levels, identifying additional communication channels, defining targeted communication actions, linking communication outputs to EURES outcomes, and raising the visibility of the EURES portal among search engines.⁶⁹ In addition, the EURES portal should be upgraded. As of now, the scope of ELA's responsibilities with regard to the ownership, financing and technological development of the EURES portal remains uncertain and is impeding ELA's ability to support the evolution of the portal. For that reason, an entity (such as a unit within ELA) should be made responsible for its user-friendliness and be given the authority to (1) redefine the format in which Member States, as well as EURES Members and Partners are required to make information available on the EURES portal, (2) set standards for the language used (i.e. the availability of information in English and the availability of information in plain and understandable language) and (3) investigate synergies and identify duplications with other online platforms such as the *Your Europe* and *Europass* portals.

A third set of recommendations addresses the services delivered by EURES staff, and advocates for their adaptation and adaptability to the rapid changes to the European labour market and to the trends that exist within it. A first challenge is the unevenness of the quality of services across the network. A short-term solution to this challenge entails the temporary reinforcement of the capacity of the helpdesk supporting the staff of EURES Members, Partners and NCOs. From a long-term viewpoint, however, the quality of the services delivered can only be fundamentally improved if adequate training is provided. The current focus of training

⁶⁹ See also, similarly, the Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the operation and effects of Regulation (EU) 2016/589 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets (submitted pursuant to Article 35 of Regulation (EU) 2016/589) (COM(2021) 452 final), p. 9 and reiterated in Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on EURES activity July 2020 - June 2022 (COM(2023) 724 final).

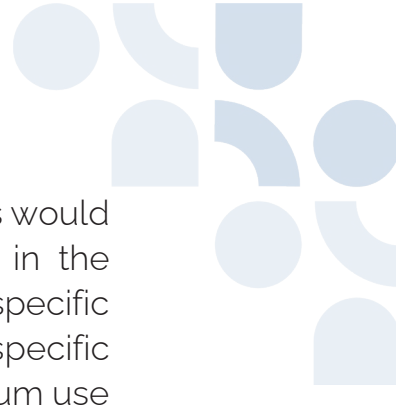


provisions for EURES staff lies upon recruitment, whereas other topics, such as the rules applicable to posted workers and the correct application of social security coordination rules, remain undertaught. Different strategies, which build upon knowledge already present within ELA, should be adopted. These strategies include leveraging ELA's legal expertise to enrich the content of these trainings, implementing a shift towards a more sectoral approach and informing EURES staff about the specific rules applicable to the various forms of cross-border labour mobility. Moreover, they should be trained to offer post-recruitment services and to facilitate access to authoritative information on working conditions abroad. Additionally, EURES and its network could help EURES advisors reinforce their cross-border activities overall, for example by setting up offices or appointing liaison officers in other EU Member States when they deem this to be relevant.

Finally, this report promotes a future-oriented review of the scope, purposes and activities of EURES. This firstly entails that steps should be taken to ensure that enlargement of the EURES network remains a priority⁷⁰. The integration of the Talent Pool Initiative into EURES would seem logical and could also serve as a blueprint for a EURES strategy for the future inclusion of more Members and Partners from candidate Member States and third countries. Secondly, this report calls for the strengthening of ELA's data collection and labour market analysis capacities. The latest EURES report on labour shortages and surpluses stresses the importance of the collection, analysis and centralisation of information on labour market imbalances to properly tackle them⁷¹. The

⁷⁰ The EURES network has grown more slowly than expected, with the admission of only 26 private Members and 62 Partners out of the total 238 public and private organisations between July 2020 and June 2022. See the Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on EURES activity July 2020 - June 2022 (COM(2023) 724 final), p. 16.

⁷¹ See, amongst others, the EURES report on labour shortages and surpluses 2022, p. 88: "While the number of identified widespread shortage occupations which are also identified surplus occupations in another country is limited, there are a large number of occupations which have been identified as both shortage and surplus occupations in different countries. Such information is potentially valuable in any policy initiative which is designed to address labour market imbalances. These data have to be made available to the relevant stakeholders - particularly EURES and the national Public Employment Services (PES) - in a user-friendly,



availability of said information to EURES and its stakeholders would underpin a stronger role for the network and its portal in the realisation of demand-driven and fair labour mobility. In specific terms, a 'map' of the EU labour market, pinpointing where specific skills are in demand or in supply, would allow for the optimum use of the EURES portal. This could be complemented by a EURES initiative on fair mobility for trainees and cross-border internships⁷². Thirdly, with the rapid development of AI technology, this report sees potential for the EURES portal to be developed as an ideal match-making tool. To this end, ELA's mandate with regard to the development of the EURES portal should be clarified and/or strengthened.

timely and flexible format. The data require to be arranged in such a manner that relevant stakeholders can easily and quickly identify those countries where the occupations which are classified as shortages in their country are classified as surpluses."

⁷² A total of 19 EURES countries have reported having organised activities relating to the support of apprenticeships and traineeships in 2020, 16 EURES countries organised such activities in 2021, and 21 EURES countries planned to organise these activities in 2022, based on their work programmes. In some countries, apprenticeship and traineeship offers were exchanged on the EURES portal. See the Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on EURES activity July 2020 - June 2022 (COM(2023) 724 final), p. 8.

MEDIATION

Descriptive part

Objectives and tasks

The functioning of the free movement of workers depends largely on sincere and mutual cooperation and exchange of information between Member States to ensure the proper protection of mobile workers, in line with the European pillar of social rights⁷³. However, the implementation of relevant EU law is often the subject of misunderstandings and divergences of views.

Following the creation of the European Labour Authority (ELA), a mediation mechanism was set up to support Member States in settling disputes relating to labour mobility⁷⁴. ELA founding Regulation⁷⁵ provides the framework for the functioning of the mediation procedure.

Overview of ELA activities related to mediation


In accordance with Article 13, 6, of ELA founding Regulation, ELA's Management Board adopted, in November 2021, the [rules of procedure applicable to mediation](#). The latter specifies the functioning and working methods of the procedure.

In addition, ELA has developed guidelines and workflows. These documents are intended to serve as a guide for Member States and relevant stakeholders, covering all practical issues relating to the mediation procedure. They describe the mediation procedure in a structured and accessible way and are mainly aimed at key

73 Principle 12 states as follows: "Regardless of the type and duration of their employment relationship, workers, and, under comparable conditions, the self-employed, have the right to adequate social protection".

74 ELA mandate is limited to individual cases and does not concern general disputes on labour mobility.

75 Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing the European Labour Authority.



actors who are directly involved in the mediation process. There are four types of guidelines:

- o [general guidelines and workflows for the mediation procedure](#);
- o [guidance for Member States on the mediation procedure](#);
- o [guidance for the mediators and the Mediation Board on the mediation procedure](#);
- o [workflow guidance for the interaction between ELA and the Administrative Commission for the coordination of social security systems \(ACCSS\)⁷⁶](#).

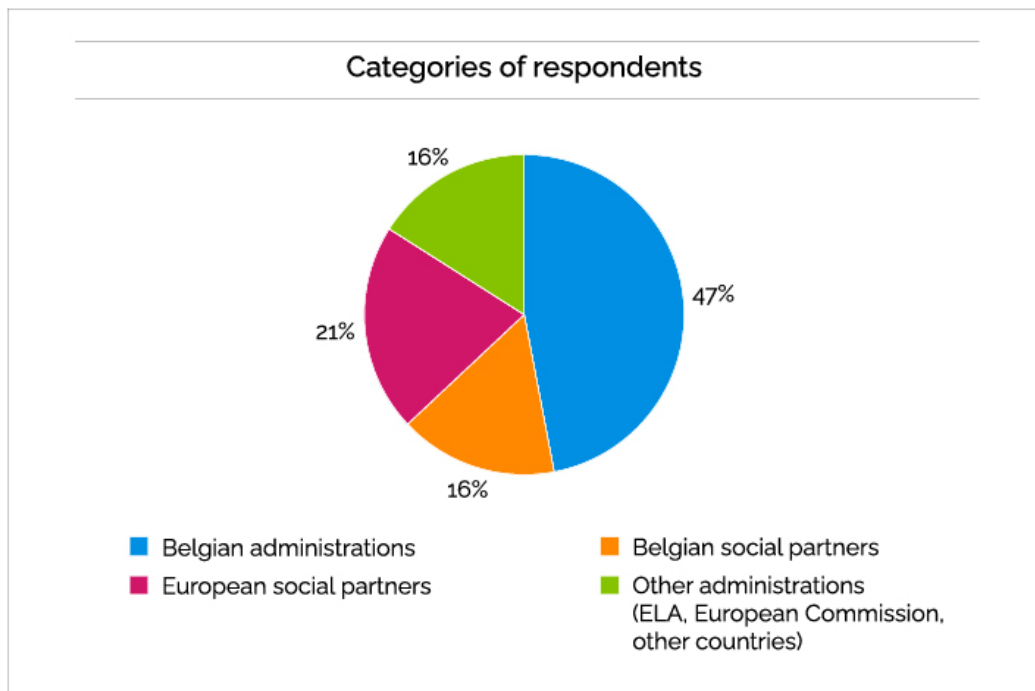
ELA has also concluded two cooperation agreements. The cooperation agreement between [ACCSS and ELA](#), in force since 1 June 2022, provides for rules to ensure good cooperation between the two entities, to coordinate activities by mutual agreement and to avoid duplication in mediation cases concerning social security issues. [The cooperation agreement between ELA and SOLVIT](#), which has been in force since 20 January 2022, aims to enable the SOLVIT network to submit cases, in which the problem cannot be resolved due to divergent opinions between national administrations, to ELA for examination.

⁷⁶ <https://ec.europa.eu/social/main.jsp?catId=857&intPagelId=983&langId=en>.

Analytical part


Introduction

Nineteen institutions responded to the section relating to mediation. Here is an overview of the stakeholders involved:



The mediation procedure has been effective since September 2022. As of 25 October 2023, almost a year after its launch, four cases have been officially submitted to ELA. Three cases were initiated by Member States, and one case was referred to ELA by a national SOLVIT centre. So far, no cases have been referred for mediation at ELA's own initiative. The requested Member State decided not to participate in the procedure (Art. 13(7) ELA-Regulation) in two of the four cases. In the third case, it is premature to ascertain whether the parties will finally agree to submit the case to mediation. As such, only one case has therefore actually been referred to the mediation procedure.

Given the fact that the mediation procedure is relatively little used and given the lack of quantitative data, this evaluation of the mediation procedure will focus primarily on understanding



whether all the rules of procedure and basic principles underpinning the mediation procedure were well understood by its potential users and actors⁷⁷. On the one hand, the evaluation therefore sought to propose possible recommendations for improving the appropriation of the mediation procedure by all potential users/actors and on the other hand to explore other factors that might explain why only a single case was handled using the mediation procedure.

The evaluation proposed by the Belgian presidency is based on the qualitative feedback received through the answers to the online survey and the bilateral interviews. These relate to the experiences of users who have already used the procedure, as well as to the expectations that the mediation procedure can reasonably raise. The evaluation will begin with an analysis of the way in which the nature and scope of mediation is assimilated by the users. Why was the mediation procedure set up? What is its added value? This first section aims to answer these questions. The second section will provide an in-depth analysis of the mediation procedure as such: the different phases, the timeframes, the workflows, etc. Finally, the last section proposes some recommendations in order to tackle the main challenges.

⁷⁷ The actors are : ELA, experts, NLOs and the social partners while the users are the Member States and Solvit.

The 'mediation'

1. The purpose of mediation⁷⁸

ELA founding Regulation⁷⁹ states that it shall “mediate and facilitate a solution in cases of cross-border disputes between Member States.” In particular, “the Authority 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 [...] The purpose of such mediation shall be to reconcile divergent points of view between the Member States that are party to the dispute and to adopt a non-binding opinion.”⁸⁰


The survey carried out by the Belgian presidency shows that 72% of respondents consider that the objective of mediation is clear. However, some nuance must be added to this finding. Firstly, it means that almost 30% of respondents believe that the purpose of the procedure is not clear. Secondly, the majority of respondents to the survey are Belgian. Belgium is one of the five Member States to have worked with ELA experts to co-organise two training sessions on the mediation procedure: one dedicated to the experts from the competent social security institution in charge of determining the applicable legislation and the other dedicated to criminal court judges and public prosecutors. These training sessions improve the understanding of the mediation mechanism amongst potential users. It would be interesting to question the Member States that have not requested such a training session on mediation in order to obtain their views. Apparently, it seems that the mediation function is not yet sufficiently well known among target audiences (Member States, Solvit)⁸¹. As ELA points out in its response to the online survey: “the Authority has one year of

⁷⁸ See K. J. HOPT and F. STEFFEX, *Mediation: principles and regulation in comparative perspective*, Oxford University Press, 2013, which shows that the concept of mediation covers a wide range of mechanisms with different characteristics. In short, mediation as a mechanism for resolving disputes does not point to a single model, but rather to a wide variety of mechanisms. It is therefore more important to analyse the different components of the mechanism in order to draw operational conclusions.

⁷⁹ Article 2, (c) of the Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing the European Labour Authority.

⁸⁰ Article 13(1) of the Regulation (EU) 2019/1149.

⁸¹ According to an ELA mediator.



experience in offering mediation services. The purpose of such services and the extent to which they may assist the Member State to reach agreement may become clearer in the future."

2. The scope

Article 13(1) of the founding regulation is very important when it comes to the scope of the mediation: "The Authority 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 delimitation of the scope of the mediation procedure requires three elements to be present:


- a dispute, or a divergence of opinion ⁸² ;
- in which two or more Member States are involved⁸³ ;
- concerning individual cases in relation to the European instruments listed in the material scope of ELA founding Regulation ⁸⁴.

Neither the survey nor the bilateral interviews that have taken place have called into question the material scope of the mediation procedure. A problem mostly arises when it comes to linking the material scope of the mediation procedure to the realities that exist on the ground. According to some respondents, the types of issues or cases that may be included within the scope of mediation are not clear. Not many examples are produced in the guidelines drafted by ELA on what types of issues and cases could become subject to mediation. This is confirmed by the answers received from respondents to the following question in the survey: "Are you aware of any disputes that could be submitted for mediation before ELA?" 70% of the respondents answered "No" while many of them received training that aimed at providing a clearer definition of the kind of dispute that could be submitted to ELA mediation. The ones who answered "Yes" had some difficulties in defining precisely some specific cases that could be referred to

⁸² A simple request for information in the context of loyal cooperation does not seem to fall directly within the scope of mediation.

⁸³ In particular, disputes between companies are excluded. Similarly, the mediation procedure only deals with cross-border situations. It therefore ignores disputes relating to purely internal situations.

⁸⁴ Article 1(4), Regulation (EU) 2019/1149.



ELA mediation. What emerges here is the difficulty in identifying concrete cases that may be included within the scope of the mediation procedure. This is particularly true for cases concerning labour law, for which a dispute resolution procedure is something completely new.

3. The interconnection with the Administrative Commission for the Coordination of Social Security Systems (ACSS)

Disputes between Member States which (fully or only partly) concerning the application of EU social security coordination Regulations may be settled either by ELA mediation or AC⁸⁵ by means of the Administrative Commission conciliation procedure⁸⁶. In theory, Member States can therefore choose between two potential avenues for the amicable settlement of their disputes relating to the application of EU social security coordination Regulations⁸⁷.

Article 13 (10) of ELA founding Regulation provides that “the mediation before ELA shall be without prejudice to the competence of the Administrative Commission, and all decisions it takes shall take into account all relevant decisions of the Administrative Commission.” To this end, “the Administrative Commission and the Authority shall establish a cooperation agreement.”⁸⁸ The AC-ELA agreement was adopted by the AC Administrative Commission and approved by ELA's Management Board. It entered into force on 1 June 2022.


As part of the online survey carried out by the Belgian presidency, a comparative table between ELA mediation and Administrative

⁸⁵ Decision No A1 of 12 June 2009 concerning the establishment of a dialogue and conciliation procedure concerning the validity of documents, the determination of the applicable legislation and the provision of benefits under Regulation (EC) No 883/2004 of the European Parliament and of the Council.

⁸⁶ ELA, Workflow Guidance for the interaction between ELA and the Administrative Commission, October 2022, page 3.

⁸⁷ <https://www.ela.europa.eu/sites/default/files/2022-12/ela-workflow-guidance-interaction-administrative-commission-mediation-2022.pdf>

⁸⁸ Article 13(11) of Regulation 2019/1149.



Commission conciliation was drawn up and sent to the respondents concerned.

Despite this comparative table and the fact that the respondents were mainly Belgian and had received the opportunity to take part in a training course organised with the collaboration of ELA, the survey revealed a difficulty in clearly identifying when it is best to submit a case to ELA mediation or to the Administrative Commission conciliation. The added value of ELA mediation procedure compared to the Administrative Commission conciliation procedure has also been questioned. Finally, and even if the rules are clear, a question arises as to the need to clarify the situations that will give rise to a review of the case by the Administrative Commission if a question of interpretation of the social security regulations arises.

The procedure

1. Prerequisites

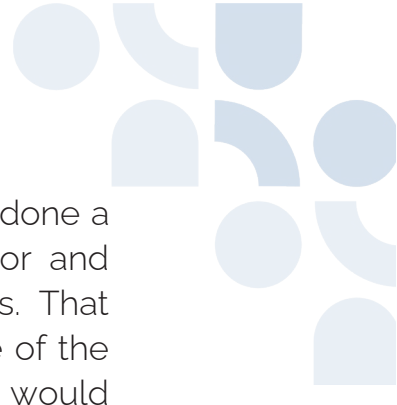
Several key elements make up the mediation 'procedure'. Because of their impact on mediation, some of these elements received a more in-depth analysis. This report addresses two of them: the formal nature of the procedure and the voluntary principle on which it is based.

a. Formal processes

Workflows and guidelines have been drawn up to make the mediation procedure operational. The most recent documents to make the mediation process definitively operational were published in October 2022.

Accurate workflows and detailed processes are positive aspects. The procedure in place in order to mediate a case is well defined and leaves little room for interpretation⁸⁹. Finally, there are also two

⁸⁹ The general guidelines and workflows are 78 pages long, while the guidance for Member States on ELA Mediation procedure is 22 pages long. The workflow guidance for the interaction between ELA and the Administrative Commission is 34 pages long.



cooperation agreements (with Solvit and the AC). ELA has done a high-quality job. However, it will take time for each actor and potential user to take full ownership of these workflows. That ownership will be strengthened by a more substantial use of the procedure of mediation with a larger number of cases that would enable to confront theory with practice and provide best practices in this respect.

Like any administrative process, if a precise procedure has the advantage of providing legal certainty during the process of settling the dispute, a very detailed procedure risks being cumbersome and not very flexible. This red tape is a point raised by the Belgian presidency as a potential brake on the use of mediation. Several respondents to the survey mentioned a certain fear of using the mediation procedure because of the administrative procedures/workload involved. Particular attention should be paid to both of the following aspects: the anonymisation of data and the drafting of notes prior to any case being referred to mediation.

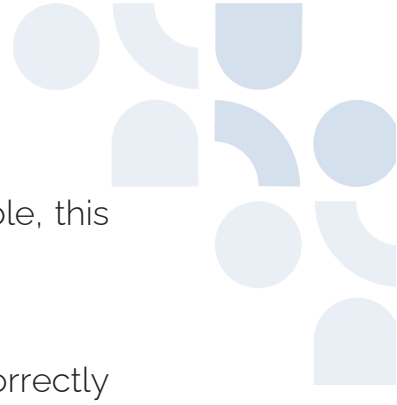
Anonymisation

This is a key principle of the mediation procedure⁹⁰ that is guaranteed by ELA founding regulation. The Member States “shall ensure that all personal data related to that case is anonymised in such a manner that the data subject is not or no longer identifiable.”⁹¹

In terms of workload, this obligation is not insignificant, and must not be underestimated, especially in major cases involving a large quantity of evidence. ELA has not identified any problem in this

⁹⁰ The same principle applies to conciliation procedure and any legal or non-legal procedures in which personal data are involved.

⁹¹ Article 13(8) of Regulation (EU) 2019/1149.



respect⁹². But if sufficient human resources are not available, this could lead to the under-use of the mediation procedure.

Anonymisation raises a second issue. The risk of not correctly assessing the factual situation of the case without personal data (e.g. where a structure involving a lot of companies: chain of subcontractors) has also been reported. As will be discussed below, this is a crucial element in many cases. Divergences of opinion with regard to the factual situation are, in the experience of the Administrative Commission dialogue and conciliation procedure, more often an issue than a divergence of interpretation as to the rules of law as such. How is it conceivable for a dispute between two parties to be settled without first ensuring that the parties share a common view of the factual situation in question? This point will be discussed hereafter in the report.


b. Prior formalities to launch an ELA mediation procedure

In order to launch a case before ELA's mediation procedure, a 'letter of request for Mediation' needs to be completed and signed by the mandated representative of the national public institution/authority that is requesting mediation by ELA⁹³. In the 15 working days after the request for mediation is submitted, the Member State has to submit a 'detailed statement'. In the Detailed Statement, the requesting party must describe the scope, the details of the dispute or divergent points of view and must also demonstrate that sufficient prior direct dialogue has taken place between the competent authorities of the parties concerned. The Detailed Statement should include all the necessary information that will enable ELA to verify the admissibility of the case, i.e. whether the case can be accepted for mediation⁹⁴.

⁹² For instance, at the request of the Federal Public Prosecutor's Office, Belgium referred a major case in the road transport sector to ELA for mediation. Letters rogatory had been issued between Belgium and the other Member State concerned, enabling decisive evidence to be collected (pictures, hearings, etc.). A full-time member of staff was given a period of one week in which to anonymise all the relevant documentation. This represents a non-negligible cost that should be taken into account before filing.

⁹³ Guidance for Member States on ELA Mediation procedure, page 6.

⁹⁴ Ibidem.



This obligation to complete these two formal documents and to have the request for mediation signed by a mandated representative generates an additional workload.

In order to fully understand the extent to which this apparent red tape may hinder the use of mediation, it is important to view the above-mentioned elements in the light of a second fundamental element on which mediation is based: the consent of the parties.

c. The voluntary nature of the mediation procedure

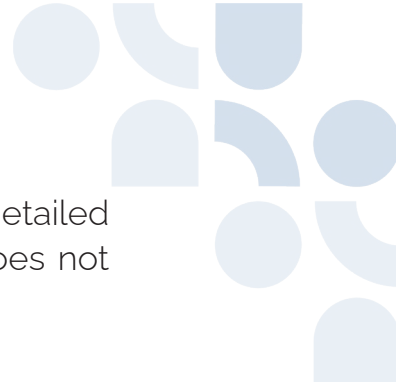
Throughout the entire procedure, mediation before ELA remains a voluntary process⁹⁵, in which Member States decide to take part. This means that they may at any time during the proceedings (in the first or second stage of mediation procedure) decide to withdraw from the proceedings or request to suspend it in certain circumstances, such as the commencement of a judicial proceeding on the subject matter of the dispute^{96,97}.

The procedure is therefore only officially initiated if all the parties to the dispute have given their agreement. However, as previously seen, a great deal of work has already been done by the requesting party in order to formalise the request to mediation. Of the four cases submitted to mediation by 1 October 2023, two were refused by the requested party. The work carried out in advance by the requesting party proved to be useless, although very time-consuming. This fact is unlikely to motivate other users to take up mediation. This report raises the issue of an imbalance between the formal obligations of the requesting party and those of the

⁹⁵ Article 13(7) of Regulation (EU) 2019/1149

⁹⁶ Article 18(3/a) of the Rules of procedure for mediation of the European Labour Authority: "By a written request of one or more Member States that are party to the dispute, at any stage of the mediation procedure, indicating that Court proceedings were initiated after the launch of the mediation procedure."

⁹⁷ The AC conciliation procedure is also a voluntary mechanism that enables disputes to be settled out of court. If a party does not wish to enter into an AC conciliation procedure, the dispute cannot be referred to the Conciliation board. However, the requesting party always has the option of asking the Administrative Commission to discuss the case in order to obtain the opinion of the Administrative Commission (including its secretariat).




requested party. One question will also merit more detailed analysis in the future: what happens if a Member State does not respond to the request for mediation?

The opinions that may be issued at the end of a mediation process are not binding on the parties to the dispute either⁹⁸. The implementation of these opinions remains subject to the consent of the other party, whatever the final direction of the said opinions might be.

Fears about the voluntary nature of the procedure are shared by several respondents. The majority of respondents therefore fear that the shortcomings and weaknesses of the Administrative Commission conciliation procedure will be repeated with the mediation mechanism operated by ELA. However, ELA has an important role to play in the mediation procedure by proactively supporting and improving sincere and loyal cooperation between the parties to the dispute: sincere and mutual cooperation is the cornerstone of the mediation procedure and of all the tasks that ELA must carry out to support the Member States and the European Commission with a view to the proper application and enforcement of the European legal framework relating to labour mobility.

Although the voluntary basis on which mediation is based raises major issues concerning its use, there does not seem to be unanimity on changing the existing framework. While for several respondents, the voluntary aspect of mediation seems to be an obstacle to its use, some respondents, on the other hand, welcomed the voluntary and consensual nature of the mediation procedure. ELA must also go beyond its role as 'receptionist' for cases brought before it for mediation (before mediation is initiated) and promote sincere cooperation between parties to disputes, particularly when the requesting party has made a great deal of

⁹⁸ Article 13(1) of Regulation 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority.



effort to substantiate its case by providing supporting evidence and not limit itself to the (often pro-forma) justification given by the requested party.

The survey revealed the hope that sincere and mutual cooperation would be encouraged by the ability to lodge cases with ELA for mediation.

2. The different phases of the mediation procedure


This report now turns to the formal phases of the procedure. It will examine what happens before, during and after the formal procedure. The question of the expertise of the players and the deadlines are addressed later in this section.

a. Before the mediation procedure

Before requesting the opening of a mediation procedure before ELA, Member States parties to the dispute must demonstrate that they have not been able to resolve it beforehand by means of direct contact and dialogue. Most of the respondents agreed that the conditions of 'pre-dialogue' are sufficient. Currently, ELA guidelines provide that confirmation from the Member States parties to the dispute is sufficient to conclude that prior direct contacts and dialogue have taken place.

The conditions and practical guidelines for filing a case under the mediation procedure of ELA seemed relatively clear to the majority of respondents⁹⁹. However, according to some respondents, further efforts could be made in this area, particularly with regard to the added value that ELA mediation procedure provides, when compared to the A1 procedure. It is important to point out that ELA is always open to offering guidance to Member States via NLOs and in national meetings and information sessions. ELA Mediation Secretariat can also provide guidance.

⁹⁹ They are set out in the rules of procedure and the guidelines.



Regarding the deadlines for the initiation phase (between 35 and 65 working days), it is important that this process does not take too long if it is to remain effective in relation to other procedures and because disputes often concern temporary and therefore volatile cross-border mobility. ELA reminds us that the indicative timelines for a mediation procedure reflect a balanced compromise that was achieved after discussions with the experts in the Mediation working group.

b. During the mediation procedure

The first stage of the procedure


The first stage of the mediation procedure essentially aims to overcome divergences of opinions between the parties on the application of the relevant EU labour mobility law in an individual case, with the support of a mediator who has been appointed by common agreement of the Member States to the dispute. The mediator facilitates the process with the aim of reconciling divergent points of view between the Member States that are party to the dispute, which ultimately may result in a mutually acceptable solution. The first stage of mediation is in principle expected to last for 5 months maximum¹⁰⁰.

According to the Belgian survey, the deadlines and the processes launched for the first phase are sufficient. The majority of responses were neutral.

The second stage of the mediation procedure

The underlined objective of the second stage of the mediation procedure is to give Member States an additional opportunity to resolve their dispute if no solution was found during the first stage of the procedure and hence no agreement was reached on a non-binding opinion. Whereas during the first stage of the mediation one mediator facilitates the process, the mediation that takes place during the second stage is conducted before the Mediation Board, which is composed of experts from the Member States other than

¹⁰⁰ <https://www.ela.europa.eu/sites/default/files/2022-12/ela-guidance-ms-mediation-2022.pdf>, page 8.



those that are party to the dispute¹⁰¹. In addition, a rapporteur is nominated who is responsible for preparing the factual report and the non-binding opinion, taking into account all the views of the members of the Mediation Board or the panel¹⁰².

The majority of respondents seems to be dissatisfied with the deadlines fixed for the second stage of the mediation procedure (i.e. between 95 and 110 working days). They consider them too long.

c. After the mediation procedure

Once the mediation process is concluded and a mutually acceptable solution has been reached by the Member States, i.e. at the end of the first or second stage of the mediation procedure, Member States are required to report on the progress of implementation of the agreed opinion within a period of three months¹⁰³. In addition, ELA must report to the European Commission, twice a year, on the outcome of mediation cases and cases not prosecuted. By 1 August 2024, the European Commission will evaluate the mediation procedure in particular¹⁰⁴.

Once an agreement has been reached between the parties, according to the respondents, it is important for ELA to be able to monitor the implementation, by the parties to the dispute, of the opinions arising from the mediation procedure.

Compliance with the deadlines

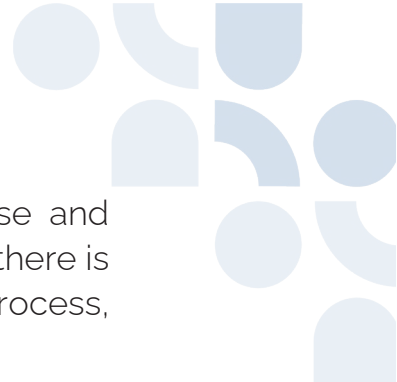
The question of deadlines is crucial. If the deadlines are too short, there is a risk that the solution will be rushed and that the players

¹⁰¹ Article 13,6, of ELA funding Regulation states as follows: "The Management Board shall adopt 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 Authority, and the possibility of the Mediation Board to sit in panels composed of several members."

¹⁰² *Idem*, page 10.

¹⁰³ *Idem*, page 12.

¹⁰⁴ Article 40 of ELA funding Regulation states as follows: "[...] The evaluation shall, in particular, address the experiences gained from the mediation procedure pursuant to Article 13."



and stakeholders will not have taken the time to analyse and discuss the merits of the case. If the timeframe is too long, there is a risk that the parties will lose interest in the mediation process, given the workload involved.

For some respondents, the general time limits, based on the assumption that they will be respected, already act as a brake on the use of mediation. They remain considerable, considering the necessary period of investigation prior to the procedure. It is nevertheless important to keep in mind that there is an option of a fast-track mediation with shorter timelines.


Alongside the question of deadlines in general, compliance with them is essential for the mediation procedure to be a reliable and credible tool. This is currently one of the greatest challenges facing the Administrative Commission procedure: in the majority of cases reported by the Belgian authorities¹⁰⁵, the deadlines are exceeded. Frequently, cases are not closed for several years, with all of the consequences that this implies: the administrative burden has increased, fraud has continued, recovery is even more complex, etc.

The expertise of those involved in mediation

One of the roles of those involved in mediation is to reconcile divergent points of view between the Member States. In this respect, they need specific tools and need to receive high-quality trainings in mediation techniques¹⁰⁶. The survey sought to find out how respondents assessed these skills (despite the small number of cases referred to mediation) aimed at reconciling divergent points of view between the Member States that are party to the dispute.

¹⁰⁵ Note AC 292/20.

¹⁰⁶ Several training sessions have already been given by ELA to the appointed mediators and experts.



The level of expertise, qualifications and skills of the various actors and users involved in the mediation procedure does not appear to be a barrier to its use. The majority of respondents consider that the distribution of roles and responsibilities in the mediation procedure (ELA, mediators, Mediation Board and its (Vice-)Chair, invited experts from the European Commission, the Member States, as well as social partners¹⁰⁷) is sufficiently precise to ensure that a high-quality and intense dialogue between the parties to the dispute is maintained and promoted throughout the procedure. The roles foreseen are those laid down in ELA funding Regulation and whose content has been specified following extensive discussions in the Mediation working group. The role and timing of the social partners' involvement, however, should be further clarified in the documents relating to the mediation procedure and illustrated with concrete examples. Especially as this is not specified in ELA founding regulations.

With regard to the information and tools made available by ELA with a view to developing and supporting the mediation actors' expertise, a similar conclusion can be drawn. Overall, actors are satisfied with the training they received. A majority of respondents emphasised the importance of being informed about completed mediation procedures that have already taken place, mainly with regard to the conduct of the procedure (incidents, difficulties encountered, etc.): lessons should be learnt from these procedures and good practices should be shared. Those involved in mediation who responded to the survey consider that they have sufficient expertise to play their role in the mediation procedure efficiently.

¹⁰⁷ The expertise of the social partners is highly relevant when a dispute concerns the application of collective labour agreements.

Conclusion of the chapter

The Belgian presidency wishes to encourage ELA's mediation mission. As with any dispute resolution procedure aimed at achieving an amicable settlement of the dispute in question, the mediation procedure is an expression of sincere cooperation¹⁰⁸.

The chapter of the report relating to mediation has been built around two axes: the nature of the mediation mechanism and its procedural rules.

With regard to the first section, the Belgian presidency points out that the objective of the procedure and its scope are understood by the actors and users, but it is difficult to apply them to concrete cases. This is particularly true in cases relating to labour law. As regards the links with and the added in relation to the existing A1 procedure, a similar observation can be made. Everything is clear in theory, but there is not enough practice to determine precisely which cases should be referred to ELA for mediation and which should be referred to the Administrative Commission for conciliation. Disseminating these various elements more directly to the target audiences of mediation is an avenue for improvement that is raised in this respect.

The second aim was to assess the fundamental elements on which the mediation procedure is based and their impact on the potential use of the mediation procedure: timelines, voluntary nature, the various formal stages, the expertise of those involved in the mediation procedure and, finally, the workload for national administrations. A mixed feeling emerged in this respect. While the stages of the procedure, the deadlines set out and the expertise of those involved in mediation do not seem to raise any particular issue, the same cannot be said of the administrative complexity involved in launching and following up a mediation case and the voluntary nature on which the procedure is based. Simplifying the

¹⁰⁸ Article 4(3) TEU.

processes and reducing the workload on the shoulders of any requesting party are possible solutions put forward by this report.

This part of the report therefore concludes with an overall positive assessment, while identifying ambitious prospects for the future of a mediation procedure that has not yet truly taken off.


Recommendations

Recommendations to improve the degree of ownership of the mediation procedure by its users and actors:

- ELA should further promote the mediation procedure and its objectives with a view to making it more widely known. In particular, the potential users of mediation (administrations and Member States' institutions) should be targeted in future communication campaigns on mediation launched by ELA. Training sessions by ELA should be heavily promoted. National Liaison Officers (NLOs) are requested to play a part in that;
- Member States should promote the mediation tool internally amongst the authorities and institutions concerned. They should therefore, in collaboration with ELA, organise training to raise awareness amongst users as to its potential use, to promote the tool, and to explain the ins and outs of the tool.

Recommendation in order to clarify the scope of the mediation:

- ELA should provide a wide range of concrete examples of cases that could be included within the scope of mediation. ELA should disseminate these examples to the target audience for mediation. National administrations and institutions responsible for social security and labour law should, in particular, be targeted;
- ELA should provide greater transparency regarding mediation cases. This could take the form of greater transparency regarding the content of the cases (while protecting the privacy of personal data) and their conclusions for use by the expert on the mediation board and by the mediators. The aim is both to have concrete examples of cases brought before the mediation board and to exchange best practices. It is also important to take account of lessons learned.
- ELA should provide qualitative and quantitative monitoring of the mediation procedure;
- ELA should be able to take on cases on its own initiative. This is intended to increase the number of cases submitted to ELA for mediation and therefore provide specific examples


- 
- illustrating the possibility of submitting a case to mediation. Best practices could also emerge from these cases;
- o ELA should clarify whether a lack or an absence of cooperation can justify the use of mediation. If not, ELA must take the necessary steps to ensure that this reason is admissible in the future.

Recommendations for a clearer distinction between ELA mediation procedure and the dialogue and conciliation procedure:

- o ELA should summatively identify and disseminate, to target audiences, the differences between the two procedures for cases relating in whole or in part to social security. This will enable potential users to analyse the added value of using one of the two procedures, in comparison to the other;
- o ELA should clarify situations that will give rise to a re-examination of the case by the AC if a question of interpretation of social security regulations arises.

Recommendations aimed at limiting the impact of the procedure on the workload of the parties to the dispute:

- o Ensure a more equitable balance between the obligations of the requesting party and those of the requested party. This could be achieved by:
 - Requiring the requested party to provide more detailed arguments if mediation is refused. Refusal should be the exception rather than the rule;
 - Reducing the workload associated with anonymisation, e.g. by not requiring full anonymisation until the requested party has accepted the case;
- o Simplify processes and make them more operational;
- o Make the mediation procedure less dependent on the free will of the parties. This could be achieved in particular by removing the possibility of withdrawing from mediation once it has begun, after mutual agreement has been given by the parties involved in the dispute;
- o Provide for the possibility of consulting ELA without initiating a mediation procedure. This could take the form of a request for an opinion, advice or support to restart the dialogue or identify the problems encountered;

- 
- o Promote the existence of the fast-track procedure and its specific rules (conditions, deadlines, procedure, etc.).

Recommendations for streamlining the various stages of the procedure:

- o Consider as sufficient pre-dialogue the lack of response in unduly delays or disagreements¹⁰⁹;
- o In addition to the mandatory reports provided for in the guidelines and workflows, guaranteeing the full implementation of the non-binding opinions accepted by the Member States.

Recommendations to guarantee that deadlines will be respected:

- o Report on the issue of compliance with the deadlines during the qualitative and quantitative monitoring of cases submitted to mediation, for the various phases and key stages of the mediation procedure;
- o Ensure strict compliance with the deadlines set out in the mediation procedure.


Recommendations to clarify the roles and training of the actors involved in the mediation procedure:

- o ELA should clarify the role and the moment of intervention of social partners in the mediation procedure more effectively;
- o ELA should develop tools, examples and lessons learned for the actors of mediation from mediations that have already taken place, in order to increase expertise.

Recommendations for ELA, given its position, to improve the quality of sincere cooperation between Member States:

- o Link mediation with the possibility of coordinating joint and concerted inspections on the ground;

¹⁰⁹ In its well-established case law, the ECJ has now ruled that where the requested party has not taken into consideration the evidence of fraud within a reasonable time, the other party may bring the case before a national court (meeting the conditions of the ECHR: impartial judge in particular) and produce the evidence. In the Atlun case rendered by the ECJ (EU:Case C-359/16, :2018:63), and in such cases, the disputed A1 portable documents may be disregarded by the institution of the Member State of employment.

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- In its analysis of the admissibility of cases and in its reports, ELA should pay particular attention to the quality of the responses provided prior to the mediation procedure. Low-quality responses (that are incomplete or inadequate) should not be sufficient for the requested party to reject a mediation procedure before ELA;
 - In its analysis of the admissibility of cases and in its issued reports, ELA should pay particular attention to the way in which the evidence has been challenged by the stakeholders;
 - ELA should carry out an analysis of the impact of anonymisation on the recognition of the factual elements on which the case is based and on the proper understanding of the case by all the involved actors of the mediation;
 - In the follow-up to mediation cases (reports, etc.) in which non-binding opinions have been approved by the parties involved in the dispute, ELA could support Member States in the recovery of cross-border debts and notably facilitate the exchange of information between Member States with a view to the effective recovery of any cross-border claims;
 - ELA should encourage reflection with a view to identifying practical solutions leading to the effective recovery of any cross-border claims.

CONCLUSION

Since 2017, employment and social policies in the EU are guided by the European Pillar of Social Rights. The proclamation of the Social Pillar was swiftly followed by the announcement of the creation of ELA. In his 2017 State of the Union, the Commission President at the time, Jean-Claude Juncker, set forth that: "We should make sure that all EU rules on labour mobility are enforced in a fair, simple and effective way by a new European inspection and enforcement body. It is absurd to have a Banking Authority to police banking standards, but no common Labour Authority for ensuring fairness in our single market. We will create such an Authority."

Less than two years after Juncker's announcement, the European Labour Authority became a reality. Since then, it occupies a unique place in the EU's institutional landscape. As this report has shown, its added value is undeniable and its potential for development tremendous. Its missions lie at the heart of the real issues facing mobile workers and companies, and of the efforts to create a fair and equitable internal market. The establishment of ELA has given a significant impetus to the cooperation between the Member States to enforce EU law on labour market mobility and social security legislation. It has, however, also underlined that more can and needs to be done. This report first and foremost aims to evaluate the current functioning of ELA. It uses the perspective of the practitioner, that is, those dealing with ELA on a regular basis. It is not an audit and does not look at the way in which ELA is organised or the efficiency of its use of resources – except when these directly impact the operational outcomes. Its benchmarks are the expectations of European workers, companies and institutions, the principles of the Pillar, the ambitions that Juncker expressed and the missions included in ELA mandate. This makes it possible to draw operational conclusions, based on a rigorous working method. It further provides a framework to reflect on ELA as an essential (but not the only) building block to realise 'fair mobility' in the EU labour market.

Building on ELA's achievements


In the still very few years of its existence – it was not expected to be fully up and running until this year – ELA has rapidly grown into an indispensable partner for national authorities, European institutions, the social partners and many other stakeholders. This was achieved in difficult circumstances, dominated first of all by the COVID-19 crisis that challenged both the very essence of ELA's mandate, labour mobility in the EU, and its operations at a time when it was very much in its establishment stage, and later on by the Russian war of aggression against Ukraine. The time has come to assess where ELA stands and to use the impressive progress that has been made to further its aims.

On the subject of Concerted and Joint Inspections, this report acknowledges the positive shift in cross-border cooperation among services and organisations, both nationally and across Europe. ELA serves as the driving force, facilitating and instigating cross-border inspections and fostering a culture of cooperation between inspection services. ELA's pivotal role in organising structured cooperation, as well as its logistical and financial support, is therefore enthusiastically utilised by Belgian inspectorates. While the success and the number of CJIs must be saluted, there is a need for additional efforts to enhance their effectiveness and raise awareness. This could involve increasing the participation of social partners wherever this will help enhance the effectiveness of the inspections, extending the possibilities to organise concerted and joint inspections without an underlying case, in the framework of a specific campaign or as the result of operational risk analysis, reinforcing capacity-building for the national inspectorates and alleviating administrative burdens associated with organising CJIs. Moreover, while CJIs are being carried out, a larger amount of online and/or directly accessible information could be made available to the inspectors, both on legal matters as well as to enable them to assess the situation and the risks at hand – including information on previous cases involving the same company or group. These improvements could require equipping ELA with specific investigative powers, not in order to carry out inspections but to be in a stronger position to support them. Moreover, it would also involve adapting data




protection rules applicable to ELA and giving ELA access to more European and national data.

As regards access to information, ELA has, in a very short time, launched a variety of initiatives the relevance and usefulness of which are recognised by the majority of stakeholders questioned by the Belgian presidency, with a special mention for the thematic information campaigns. Nevertheless, expectations in terms of information are very high and very varied in view of the broad audience served by ELA. ELA has a central role to play in improving the relevance and transparency of information on labour mobility. It should ensure in particular that better account is taken of the needs of the target audiences and the different sectors of activity. It should establish quality standards that guarantee a balance within the nature of the information disseminated (theoretical vs. practical, general vs. specific, centralised vs. decentralised and static online vs. personalised). There is also additional scope to combat misinformation and lack of information and to ensure that communication channels are appropriate to each target audience. ELA must also promote networking, cooperation and the exchange of best practices between national and European players responsible for disseminating information on labour mobility. A particular issue in that respect is the availability of transparent structures which not only allow users to obtain information about rights but which also enable infringements to be reported so that they can be acted upon. In this respect, it seems appropriate to reinforce the role of ELA overall in the information provision process, by making sure Member States do what they can do implement the guidelines. Moreover, it is clear that in the future and in order to be able to fulfil all legitimate expectations, ELA will inevitably have to invest more significantly in direct communication with the target audiences. The high expectations from technological solutions (based on artificial intelligence) notwithstanding, this may nevertheless require additional resources beyond the development of these systems. Finally, providing information is often not enough, and needs to be accompanied by the availability of effective assistance for both employers and employees, including help to exercise their right to redress. The “Faire Mobilität” centres that have been set up in Germany can certainly serve as an inspiration in this respect.




With regard to the European Platform to enhance cooperation in tackling undeclared work, its activities are seen in Belgium as adding considerable value in the fight against undeclared work. More specifically, the holistic approach promoted by the Platform is an example for Belgium in the further development of the national strategy in the context of undeclared work. Belgium also sees the integration of the Platform tackling undeclared work within ELA as a success, although some challenges were identified. In addressing the challenges associated with the integration of the Platform to enhance cooperation in tackling undeclared work within ELA, the Authority should consolidate the coordination between the governing structures of the Platform and of ELA itself. In particular, it should contemplate intensifying its collaboration with the working group on inspections or even consider making the working group part of the Platform. Furthermore, it would be better if ELA were to integrate the Platform's work with capacity-building initiatives within ELA itself and to align the focus of ELA with national inspection priorities.

ELA has facilitated the exchange of information between national administrations for the last four years. This is seen as highly valuable and should continue. The Belgian presidency wishes to draw attention to the high importance of ELA as a means of enhancing the loyal and mutual nature of cooperation between Member States on the subject of cross-border mobility. By providing information to national administrations and promoting tools and approaches, ELA has the power to improve the exchange of information between administrations. This work would also enhance the European Pillar of Social Rights. While preserving the voluntary nature of Member States' participation, ELA's power of initiative could be strengthened. In this context, some recommendations have surfaced for the ongoing work of ELA. Firstly, ELA could provide Member States with practical and legal assistance, and with the drawing up of studies, analyses, models, and guidelines. Secondly, ELA could share the best practices of Member States. Thirdly, it could share comprehensive information on how to use the available electronic tools. Fourthly, NLOs would continue to be important as points of contact for the coordination and exchange of information.



ELA has also been assigned the task of managing the European Coordination Office of EURES in order to support Member States in providing services to individuals and employers. It has therefore been conferred with a pivotal role in the pursuit of fair mobility of workers, more specifically with regard to the completion of the fourth and seventh principles of the European Pillar of Social Rights. To mitigate negative aftereffects of the transfer, the Belgian presidency recommends action be taken to clarify the roles and responsibilities of the entities involved in EURES and to increase awareness of EURES amongst the individual units of ELA and of EURES' importance to ELA's mission. Accessibility and the quality of information on the EURES portal should be at the heart of ELA's efforts – and the EURES Portal Strategy 2023-2030 is a promising step in that direction. In this respect, synergies with the EU Talent Pool initiative should be envisaged. ELA can further enhance EURES communication campaigns and improve the information on the EURES portal by including expertise in labour mobility. Data collection could further reinforce ELA's EURES-related work, in particular with regard to labour market matching. This could foster additional initiatives, such as targeting trainees and interns. Satisfaction amongst end-users will heavily depend on further improvement of the portal's user-friendliness and on the quality of the services delivered by EURES staff. More diverse and advanced training, including on the legislation with respect to labour law and social security for mobile workers should prepare EURES staff to provide services tailored to the needs of end-users. Finally, ELA's management should focus on the long term, in particular in light of the likely enlargement of the EU and of initiatives relating to third-country nationals.


Although it is yet young, both ELA and its mediation procedure have enormous potential within the labour and social security law landscape. Belgium supports the existence of mediation as a tool and wishes to promote its development. According to this report, the foundations on which mediation are based are appropriate. Difficulties arise, however, when it comes to applying this body of theory to concrete cases. ELA and the Member States should make a greater effort to bring the ideal of mediation closer to the people who are likely to use it on a daily basis. This is particularly true in the field of social security, which now has two dispute



resolution tools at its disposal. In addition, the procedures are complex and give the impression of a heavy workload. This is exacerbated by the obligations placed on the shoulders of the requesting parties (anonymisation, detailed statement, etc.). Efforts should be made to reduce this burden and rebalance the workload between the requested and requesting parties. This report proposes several measures intended to achieve just that. This report also highlights the fact that ELA has sufficient resources to exert an influence, in the long term, via its mediation role, on improving loyal cooperation between Member States and therefore strengthening the fight against cross-border fraud. This part of the report therefore concludes with an overall positive assessment, while identifying ambitious prospects for the future of a mediation procedure that has not yet really taken off.

On top of the specific themes that the report deals with, a number of horizontal conclusions on ELA's operations can be drawn. The rapid growth of the Authority has led to the perception that internal coordination within the Authority can be improved. Whether this is due to the way in which ELA works or to the way in which Member States interact with it (see the next section) is a matter for discussion, but it is surely something to take into account. This also reflects on ELA's governance structures overall. Self-evidently, ELA is too young to fully assess which of the structures it has created as 'temporary' working groups will have to become permanent and which not, but overall, there is scope to at least clarify the relation between the Platform tackling undeclared work and the working group on inspections. With regard to EURES and while respecting the role of ELA's formal decision-making bodies, effective control should remain in the hands of the EURES Coordination Group.

In the way ELA was conceived and operates, the National Liaison Officers (NLOs) play a central role. They act as the bridge between the Member States and the European Labour Authority and often act as the 'lubricant' that makes ELA machinery run. Even when Member States carefully select them, making sure that they can easily access a broad national network, in some cases it would be




good to give Member States that wish so the possibility to designate a second NLO, to further facilitate cooperation.

Finally, as already mentioned, the current mandate limits ELA's possibilities to collect and process data. Improved access to existing databases and the possibility to collect data from national authorities would improve ELA's analytical capabilities. This should however be done from an operational perspective, as a means of improving ELA's work with regard to enforcement, information provision and exchange and the matching of demand and supply on the labour market. ELA should not take over the role of the European Commission and other agencies such as Eurofound and Cedefop in the analytical field. The specific nature of ELA's work will also require data protection rules that are too restrictive to be alleviated, thereby bringing the provisions of ELA mandate in line with those that apply to agencies such as EUROPOL and EUROJUST.

Beyond Bratislava: improving the framework within which ELA operates

More than six years after Juncker's speech laying the foundations for the European Labour Authority, the moment has also come to take a step back and to have a fresh look at the environment that surrounds the European Labour Authority, and more in general at labour mobility in the EU.

ELA was created with high expectations from the European Commission and the co-legislators, the Council and the Parliament. Whether they realised this or not, five years of functioning have shown that in actual fact, some of those expectations were out of reach for an EU agency from the start. This partly has to do with the nature of Member State cooperation with ELA. It would not be wise to question the underlying principle that all cooperation should be voluntary. However, it should also be sincere, as the Treaty rightly intends. It would therefore be a positive step to complement the voluntary nature of the cooperation with a more onerous aspect based on the principle of




'comply or explain'. This applies to the exchange of information, to the provision of information (where unwillingness to implement

some of ELA guidelines can often not really be justified), to the organisation of CJIs or to engaging in a CJI.

Even more importantly, the functioning of ELA has shown that the capacity of national administrations to interact with the Authority was insufficiently taken into account when ELA itself was set up. The lack of a coordination structures on a national level to interact with hampers ELA's ability to operate and forces it to navigate uncharted waters. What can be a complex but still manageable system on a national level becomes impossible to deal with when it is brought into contact with another similarly complex system in another Member State. A national coordination structure, whether it were to be called the 'National Labour Authority' or not, would not need to be a very heavy structure – as the Belgian SIIS (SIOD/SIRS) shows – but would represent a genuine step forward. However, even when there is coordination, capacity can still be an important issue. Cooperation with ELA sometimes stretches the resources in Belgium to their limits, and we know very well that we are in a relatively privileged situation. Incentives should be created to reinforce inspection and information services dealing with labour mobility in the Member States. One way to do so would be to create a kind of 'impulse financing' from the EU, managed in conjunction with ELA but also involving other international organisations such as the ILO and the OECD.

All of this would be of considerable help to ELA so that it can become even more efficient in making sure that the single European labour market represents a level-playing field. Nevertheless, we should also recognise that the game itself has changed since ELA was created. New legislation has been adopted, in particular in the transport field. Other legislation, necessary to clarify and improve in particular the social security rules surrounding labour mobility, got stuck in the legislative process. New initiatives on digitalisation have been taken, all of which were well-intended but often in a somewhat disparate way, leading to confusion and mistrust and more importantly to



insufficient progress, in a world where the possibilities offered by digitalisation have increased dramatically, and, in the case of artificial intelligence, literally even extend beyond human comprehension. The EU labour market was confronted with a crisis that was never seen before, leading governments to close down large chunks of the economy overnight, only to see an unprecedented resilience, record-low unemployment levels and unprecedented shortages on the labour market afterwards. This reinforced, specifically in the domain of labour mobility, the existing tendency of posting to become not just a means for EU citizens to quickly move into another EU Member State to perform their job, but more and more also for third-country nationals. And the EU itself, which consists of 27 Member States today, could tomorrow become a Union of 30 and later on 35 or more countries, maybe stretching beyond the Black Sea and with Ukraine as its biggest (though not most populous) Member State.

Where would this leave us? The issue of third-country nationals seems to be the most pressing and the closest to the core of ELA's activities. The posting of non-EU-citizens in the Union is legally mainly based on the Van der Elst court case¹¹⁰. This is interpreted very differently in different Member States, and is also accompanied by particular difficulties in terms of enforcement and by an enhanced risk of fraud and often involves very vulnerable individuals, whose right to stay in the Union will, on a practical level, depend on the continuation of their posting. A specific directive, taking on board issues such as the right to stay in the EU for some time after a posting has ended, or even to change employer in such a case, as well as providing the posted third-country nationals with appropriate assistance, should be considered.

110 ECJ, Judgment of the Court of 9 August 1994. - Raymond Vander Elst v Office des Migrations Internationales, Case C-43/93, EU:C:1994:310; see literature on this judgment: Castillo de la Torre, Fernando: La libre circulation des services et les ressortissants des pays tiers: quelques réflexions au sujet de l'arrêt Vander Elst, *Revue du marché unique européen* 1995 n° 2 p.131-15; Peers, Steve: Indirect Rights for Third-country Service Providers Confirmed, *European Law Review* 1995 p.303-309 ; Van Ooik, R.H.: Vrij verkeer onderdanen derde landen in dienst van Europese werkgevers, *Migrantenrecht* 1995 p.27-33



Beyond posting, however, there is a growing recognition that the EU is in need of third-country nationals in order to keep its labour market and economy functioning. As to the extent to which this is the case, opinions will differ, and it goes without saying that attracting third-country nationals should never go at the detriment of trying to integrate as many EU citizens as possible into the EU labour market – be it in their own or in another Member State. It seems clear, however, in any case that additional European cooperation in this field is warranted; there is no point in every Member State separately trying to assess the availability of workers within the EU for a specific job, trying to assess the value of a certificate obtained in a university in a small country ten thousand kilometres away, and/or trying to provide information in many different languages on what is, after all, a single labour market. There are many legal obstacles, and the last thing we would want to recommend is to overload ELA's boat. Nevertheless, as a Union, we need to wonder if setting up one system (the EU Talent Pool for example) for third country nationals and another one (EURES) for EU citizens is the most efficient way to organise ourselves. And finally, given that no EU agency is dealing with labour migration from outside the EU and the labour and social security rights of the people involved, opening ELA's mandate to engage with these issues could be warranted – but would also require a stronger cooperation with the European and national authorities in this field.

There would not be a European Labour Authority if the EU did not have an extensive rulebook on labour mobility and social security coordination. It lies beyond the scope of this report to assess whether that rulebook as a whole is fit for purpose – many parts of it are moreover rather recent. What is striking, however, is the fact that the differences between labour law and social security rules with regard to posting constitute a complication that creates room for misunderstanding and can therefore hamper labour mobility and lead to fraud. A new revision of the social security coordination regulations ('883') could also be seen in this light. Moreover, many of the most complex cases in the most vulnerable industries have to do with supply chains and subcontracting. Limiting subcontracting in cases where there is no strong economic basis for it could be one approach in order to tackle this further.



Reinforcing due diligence rules could be another way.

The issue of regulation also extends beyond the EU level. It would be good to also review the relevant national legislation and check whether its interaction with EU level rules is up-to-date and sufficiently operational, i.a. with respect to recuperation of wages or fines and the implementation of judgments.

A good regulatory framework is one thing, but implementation and enforcement are of course not always self-evident. Excess regulatory burden and difficulties navigating the system are too often limiting labour mobility on both the workers' and employers' side, and are therefore having an impact on economic development. Digitalisation is key in this respect. An ambitious, encompassing digital backbone, substantially owned by the employment and social security institutions themselves, building on what exists but not hampered by an attachment to particular or outdated systems, centred around a unique EU social security number and consisting at least of a European Social Identity Card and a uniform posting declaration, would be a big step forward in many respects, not least from the viewpoint of ELA. This would probably need to be accompanied by an update of data protection rules, that have served European citizens well in many respects but may have complicated back office operations (and the compilation of statistics) to an unnecessary extent.

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This report is the end result of more than a year and a half of preparatory work by the Belgian presidency of the Council of the EU. We hope it will constitute a step along the road towards greater ambition for the European Labour Authority.

It is now up to the European Commission to make good use of the content of this report to feed into its own evaluation, and it is then up to the Council and the European Parliament to act on their conclusions, if they so wish.

Whatever the outcome of this process, however, we hope that we have contributed towards the development of ELA and, in so doing, have nurtured the ideal of a fairer, more social and more harmonious EU.



APPENDIX

Appendix n° 1

List of the stakeholders interviewed by the Belgian presidency during bilateral meetings in September, October and December 2023:

European Labour Authority
European Commission
European Parliament
Netherlands
Spain (DG social inspectorate)
Chair and Vice-Chair of Mediation Board
France
Germany
EU Social Partners
The office of the Belgian minister M. Vandenbroucke
The office of the Belgian minister M. Clarinval
The office of the Belgian minister M. Dermagne
Belgian National Labour Council
IRU Road Transport
The offices of the Belgian Ministers of the Federated Regions/Communities

