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## REPORT

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From:	Permanent Representatives Committee (Part 1)
To:	Council
No. prev. doc.:	14247/18
No. Cion doc.:	7203/18 - COM(2018) 131 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a European Labour Authority - General approach

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### I. INTRODUCTION

The Commission proposal, presented on 13 March 2018, is intended to create a new agency, called 'European Labour Authority' (ELA). This body would be responsible, inter alia, for:

- (1) facilitating access to information on rights and obligations in cases of cross-border mobility for employees, employers and national administrations;
- (2) supporting coordination between Member States in cross-border enforcement of relevant Union law;
- (3) mediating between Member States' authorities in order to resolve cross-border disputes between them;
- and (4) facilitating solutions in the event of labour market disruptions.

The Commission proposed that the ELA should pool the technical and operational tasks of seven existing EU bodies (the EURES European Coordination Office, the Technical Committee on the Free Movement of Workers, the Committee of Experts on Posting of Workers, the European Platform on Tackling Undeclared Work and the three subcommittees of the Administrative Commission for the Coordination of Social Security Systems (AC) - the Technical Commission, the Audit Board and the Conciliation Board). ELA should establish a permanent structure with a view to achieving improved and more efficient output on the basis of a strengthened forum for cooperation and joint investigative activities.

Member States should second National Liaison Officers to the ELA. Their task should be to liaise with Member State administrations and facilitate collaboration between and within Member States, following the examples of EUROPOL and EUROJUST.

The establishment of the Authority will not extend substantive Union law. Its tasks will be limited to supporting Member States in the implementation of the existing relevant Union legislation, in particular in the areas of cross-border labour mobility and social security coordination, including free movement of workers, posting of workers and highly mobile services.

The legal basis - Article 46 and Article 48 TFEU - requires the Council to act by qualified majority, in accordance with the ordinary legislative procedure.

Within the deadline of eight weeks from the submission of the Commission's proposal, the national parliaments of Poland and Sweden submitted reasoned opinions.<sup>1</sup>

The EMPL Committee of the European Parliament<sup>2</sup> accepted the draft report on 20 November and the mandate is expected to be confirmed at the plenary session scheduled for 28-29 November 2018.

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<sup>1</sup> The Commission was not required to review the proposal, as the one-third threshold set out in Article 7 of Protocol No 2 TEU was not reached.

<sup>2</sup> Jeroen Lenaers (EPP/NL) is the rapporteur for the EMPL Committee.

The Economic and Social Committee adopted its opinion in the plenary session of 20 September 2018. The Committee of the Regions adopted its opinion in the plenary session of 8-10 October 2018.

## II. DISCUSSIONS IN THE COUNCIL'S PREPARATORY BODIES

Following the Commission presentation on 23 April 2018, the Working Party on Social Questions (SQWP) discussed the proposal in ten further meetings, seven of which under the Austrian Presidency.

The Presidencies steered the intensive work with the aim of clarifying the text and finding compromise solutions to accommodate various concerns raised by delegations. The current compromise text strikes a proper balance.

### **Main issues discussed**

#### **(1) Definition of the scope of the ELA's activities**

The Commission proposed to define the scope by reference to '*matters relating to cross-border labour mobility and the coordination of social security systems within the Union*', while listing the relevant Union acts in recital 7. Member States found that this was not precise enough.

The Presidency therefore proposed to define the scope of the ELA's activities by a closed list of Union acts in Article 1(3), which it drew from recital 7. It was clarified that this list would only be dynamic insofar as amendments of listed acts would enter into the scope of the ELA. This approach found broad support. Specific references were made to cooperation in cases of cross-border labour market disruptions and to coordination of the fight against undeclared work, thereby keeping these activities within the scope of the Agency.

- (2) Respect for the **competences of the Member States**, national industrial relations systems and existing arrangements between Member States.

At the request of delegations, a paragraph was added ensuring that the ELA would not impact in any way on the competences of the Member States as regards the application and enforcement of the relevant Union legislation, their own systems of industrial relations and their national labour laws. It was also clarified that the establishment of the ELA will be without prejudice to existing bilateral agreements and administrative cooperation arrangements between Member States, in particular those related to concerted and joint inspections.

(3) **Tasks of the ELA**

In response to questions and issues raised by delegations, the Presidency proposed several clarifications to the definitions of the ELA's tasks as set out in Articles 5 to 12. In particular, it defined the terms 'concerted inspections' and 'joint inspections' and clarified that participation in these would be voluntary.

In order to spell out the ELA's tasks in tackling undeclared work, the Presidency drew on wording used in Decision (EU) 2016/344 and inserted it as a new article.

At the request of several delegations, and based on elements provided by the Commission, the Presidency clarified the concept of cross-border labour market disruptions and the role of the ELA in such cases (Article 14).

(4) **Integration of sub-bodies of the AC**

The Commission proposal to transfer the activity of the 'Technical Committee' and the 'Audit Board' of the AC to the ELA was not supported by most delegations.

The Presidency therefore removed the references to these bodies from the proposal.

A large number of Member States also felt that the tasks of the Conciliation Board of the AC should not be transferred to the ELA; instead, the Conciliation Board and its tasks should continue to fall within the remit of the AC. It was argued *inter alia* that the ELA might not have the expertise to deal with cases in the field of social security coordination and that it might interfere with the AC's task of interpreting Regulation (EC) No 883/2004.

(5) **Transitional arrangements**

Delegations underlined the need for continuity of those tasks which will be taken over by the ELA from existing bodies and structures, for example, the 'Technical Committee on the Free Movement of Workers' established pursuant to Regulation (EU) No 492/2011, the 'Committee of Experts on Posting of Workers' set up by Commission Decision 2009/17/EC, the 'European Platform to enhance cooperation in tackling undeclared work' set up by Decision (EU) 2016/344 and the ('EURES') 'European Coordination Office' established pursuant to Regulation (EU) No 2016/589.

The Presidency therefore proposed that these structures should continue to exist and be supported by the Commission until the ELA is fully operational.

On 23 November 2018, the Committee of Permanent Representatives (Part I) discussed the latest Presidency compromise proposal (14247/18). While some delegations would have preferred to stick more closely to the Commission proposal, there was very broad support for the Presidency proposal.

## **Main issues discussed**

### **(1) The name of the ELA**

Some Member States wanted to keep the initial name, 'European Labour Authority', in order to highlight the importance of this operational agency compared to others.

However, a majority of Member States were in favour of the Presidency proposal to call this new agency the 'European Labour Agency', particularly as this would reflect the fact that the ELA's role would be limited to supporting the Member States.

### **(2) Road transport**

Some delegations referred to the ongoing negotiations in the area of road transport in the context of the 'mobility package' and called for the related Union acts listed in Article 1(3) under points (g), (h) and (i) to be removed. They also mentioned the risk of overlaps and parallel structures, particularly in the area of road transport.

In order to address the latter concern, the Presidency had inserted an additional phrase at the end of recital 8.

Another request, supported by a number of Member States, was that it should be stipulated in the body of the text that, in the field of road transport, the ELA would be limited to dealing with issues related to cross-border labour mobility and social security coordination.

After legal clarification that this was already the case pursuant to Article 1(2), the Presidency concluded that a clarification in recital 8 would suffice to address this issue. This change is marked in **bold underlined** in the document in the annex.

### (3) **Mediation**

Member States agreed that participation in mediation should be voluntary. Most Member States were equally satisfied with the Presidency proposal that a mediator, together with the Member States concerned, should strive to reach a consensus in order to come to a conclusion, possibly with support being provided by experts from other Member States and the Commission, acting purely in an advisory capacity.

#### Remaining reservations

General scrutiny reservations: HU, MT, PL, SE

Parliamentary reservations: DK, UK

Scrutiny reservation on road transport: BG.

### **III. CONCLUSION**

The Council (EPSCO) is invited to approve the compromise text as set out in the annex to this report with a view to reaching a general approach at its session on 6 December 2018.

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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing a European Labour Agency**

(text with relevance for the EEA and for Switzerland)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 46 and Article 48 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>3</sup>,

Having regard to the opinion of the Committee of the Regions<sup>4</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The free movement of workers, freedom of establishment and freedom to provide services are fundamental principles of the internal market of the Union, enshrined in the Treaty on the Functioning of the European Union (TFEU).

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<sup>3</sup> OJ C [...], [...], p. [...].

<sup>4</sup> OJ C [...], [...], p. [...].

- (2) Pursuant to Article 3 of the Treaty of the European Union, the Union is to work for a highly competitive social market economy, aiming at full employment and social progress and promote social justice and protection. In accordance with Article 9 TFEU, the Union, in defining and implementing its policies and activities, is to take into account requirements linked to, inter alia, the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and the promotion of a high level of education, training and the protection of human health.
- (3) The European Pillar of Social Rights was jointly proclaimed by the European Parliament, the Council and the Commission at the Social Summit in Gothenburg on 17 November 2017. That summit recalled the need to put people first, in order to further develop the social dimension of the Union, and to promote convergence through efforts at all levels, as confirmed during the conclusions of the European Council of 14 December 2017.
- (4) As outlined in their Joint Declaration on the legislative priorities for 2018-2019, the European Parliament, the Council and the Commission are committed to taking action to reinforce the social dimension of the Union, by working on improving the coordination of social security systems<sup>5</sup>, by protecting workers from health risks in the workplace<sup>6</sup>, by ensuring fair treatment for all in the Union labour market through modernised rules on posting of workers<sup>7</sup>, and by further improving cross-border enforcement of Union law.

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<sup>5</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 883/2004 on the coordination of social security systems and regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (COM (2016) 815 final).

<sup>6</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (COM(2017) 11 final).

<sup>7</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (COM (2016) 128 final).

- (5) A European Labour Agency (the ‘Agency’) should be established in order to help strengthen fairness and trust in the Single Market. To that effect, the Agency should support the Member States and the Commission in strengthening access to information for individuals and employers about their rights and obligations in cross-border labour mobility situations as well as access to relevant services. The Agency should also support compliance and cooperation between the Member States to ensure the effective application of Union law in those areas, and to mediate and facilitate a solution in case of cross-border disputes or labour market disruptions.
- (6) The Agency should perform its activities in the areas of cross-border labour mobility and social security coordination, including free movement of workers, posting of workers and highly mobile services. It should also enhance cooperation between Member States in tackling undeclared work, without prejudice to the competences of Member States to decide on the measures taken at national level. In cases where the Agency, in the course of the performance of its activities, becomes aware of suspected irregularities and violations in areas such as mandatory working conditions, health and safety rules, or employment of third-country nationals, it should be able to report them and cooperate on these matters with the national authorities of the Member States concerned, and where appropriate, with the Commission and other competent Union bodies.
- (6a)(new) The scope of activities of the Agency should cover specific Union acts listed in this Regulation, including future amendments to those Union acts.

- (7) The Agency should contribute to facilitating the free movement of workers governed by Regulation (EU) No 492/2011 of the European Parliament and of the Council<sup>8</sup>, Directive 2014/54/EU of the European Parliament and the Council<sup>9</sup> and Regulation (EU) 2016/589 of the European Parliament and the Council<sup>10</sup>. It should facilitate the posting of workers governed by Directive 96/71/EC of the European Parliament and the Council<sup>11</sup> and by Directive 2014/67/EU of the European Parliament and the Council<sup>12</sup>, including by supporting the enforcement of those provisions implemented through universally applicable collective agreements in line with the practices of Member States.

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<sup>8</sup> Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ L 141, 27.5.2011, p. 1).

<sup>9</sup> Directive 2014/54/EU of the European Parliament and the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (OJ L 128, 30.4.2014, p. 8).

<sup>10</sup> Regulation (EU) 2016/589 of the European Parliament and the Council of 13 April 2016 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets, and amending Regulations (EU) No 492/2011 and (EU) No 1296/2013 (OJ L 107, 22.04.2016, p. 1).

<sup>11</sup> Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1)

<sup>12</sup> Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ L 159, 28.05.2014, p. 11).

Without prejudice to the tasks and activities of the Administrative Commission for the Coordination of Social Security Systems, it should also help the coordination of social security systems governed by Regulation (EC) No 883/2004 of the European Parliament and the Council<sup>13</sup>, Regulation (EC) No 987/2009 of the European Parliament and the Council<sup>14</sup>, Regulation (EU) No 1231/2010 of the European Parliament and the Council<sup>15</sup>; as well as Council Regulation (EC) No 1408/71<sup>16</sup> Council Regulation (EC) No 574/72<sup>17</sup> and Regulation (EC) No 859/2003 of the Council<sup>18</sup>.

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<sup>13</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, (OJ L 166, 30.4.2004, p.1, corrigendum OJ L 200, 7.6.2004, p. 1).

<sup>14</sup> Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, (OJ L 284, 30.10.2009, p. 1).

<sup>15</sup> Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality (OJ L 344, 29.12.2010, p. 1).

<sup>16</sup> Council Regulation (EC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ L 149, 5.7.1971 p. 2).

<sup>17</sup> Council Regulation (EC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons, and to their families moving within the Community (OJ L 74, 27.3.1972, p. 1).

<sup>18</sup> Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality (OJ L 124, 20.5.2003, p. 1).

- (8) In certain instances, sector-specific Union law has been adopted in order to respond to specific needs in the concerned sector, such as in the area of international transport. **Within its scope,** the Agency should also deal with the cross-border **labour mobility and social security** aspects of the application of such sector-specific Union law, in particular Regulation (EC) No 561/2006 of the European Parliament and the Council<sup>19</sup>, Directive 2006/22/EC of the European Parliament and the Council<sup>20</sup>, Regulation (EC) No 1071/2009 of the European Parliament and the Council<sup>21</sup> and Directive (*Amending Directive 2006/22/EC – COM(2017)278*)<sup>22</sup>, while avoiding overlaps and parallel structures. The Agency could in particular offer support to the cooperation between Member States where bilateral or multilateral enforcement structures have not been set up by Member States.

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<sup>19</sup> Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).

<sup>20</sup> Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35).

<sup>21</sup> Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ L 300, 14.11.2009, p. 51).

<sup>22</sup> COM(2017)278 – Proposal for a Directive of the European Parliament and of the Council amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector.

- (9) The individuals covered by the activities of the Agency should be persons who are subject to Union law within the scope of this Regulation, including workers, self-employed persons, jobseekers, and economically non-active persons; this should cover both Union citizens and third-country nationals who are legally resident in the Union, such as posted workers, intra-corporate transferees or long-term residents, as well as their family members.
- (10) The establishment of the Agency should not create new rights and obligations for individuals or employers, including economic operators or non-profit organisations, as the activities of the Agency should cover them to the extent to which they are covered by Union law within the scope of this Regulation.
- (11) To ensure that they can benefit from a fair and effective internal market, the Agency should promote opportunities for individuals and employers to be mobile or provide services and recruit anywhere within the Union. This includes supporting the cross-border mobility of individuals by facilitating access to cross-border mobility services, such as the cross-border matching of jobs, traineeships and apprenticeships and by promoting mobility schemes such as 'Your first EURES job' or 'ErasmusPRO'. The Agency should also contribute to improving transparency of information, including on rights and obligations stemming from Union law, and on access to services to individuals and employers, in cooperation with other Union information services, such as Your Europe Advice, and taking full advantage and ensuring consistency with the Your Europe portal, which will form the backbone of the single digital gateway established by Regulation [OJ: add references to Single Digital Gateway – COM(2017)256]<sup>23</sup>.

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<sup>23</sup> Regulation [OJ add reference to Single Digital Gateway – COM(2017)256]

- (12) For those purposes, the Agency should cooperate closely in a structured manner with other relevant Union initiatives and networks, in particular the European Network of Public Employment Services (PES)<sup>24</sup>, the European Enterprise Network, the Border Focal Point, SOLVIT<sup>25</sup> and the Senior Labour Inspectors' Committee (SLIC), as well as with relevant national services such as the bodies to promote equal treatment and to support Union workers and members of their family, designated by Member States under Directive 2014/54/EU. The Agency should replace the Commission in managing the European network of employment services ('EURES') European Coordination Office established pursuant to Regulation (EU) No 2016/589, including the definition of user needs and business requirements for the effectiveness of the EURES portal and related IT services, but excluding the IT provision, and the operation and development of the IT infrastructure, which will continue to be ensured by the Commission.

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<sup>24</sup> Decision No 573/2014/EU of the European Parliament and of the Council of 15 May 2014 on enhanced cooperation between Public Employment Services (PES) (OJ L 159, 28.5.2014, p. 32).

<sup>25</sup> Commission Recommendation of 17 September 2013 on the principles governing SOLVIT (OJ L 249, 19.9.2011, p. 10).

- (13) In view of the fair, simple and effective application of Union law, the Agency should support cooperation and timely exchange of information between Member States. Together with other staff, National Liaison Officers working within the Agency should support Member States' compliance with cooperation obligations, speed up exchanges between them through procedures dedicated to reducing delays, and ensure links with other national liaison offices, bodies, and contact points established under Union law. The Agency should encourage the use of innovative approaches to effective and efficient cross-border cooperation, including electronic data exchange tools such as the Internal Market Information (IMI) system, and should contribute to further digitalising procedures and improving IT tools used for message exchange between national authorities.
- (14) To increase Member States' capacity to tackle irregularities with a cross-border dimension in relation to Union law within its scope, the Agency should support the national authorities in carrying out concerted and joint inspections, including by facilitating the implementation of the inspections in accordance with Article 10 of Directive 2014/67/EU. Those inspections should take place at the request of Member States or upon their agreement to the Agency's suggestion. The Agency should provide strategic, logistical, and technical support to Member States participating in the concerted or joint inspections in full respect of confidentiality requirements. Inspections should be carried out in agreement with the Member States concerned and take place fully within the legal framework of the national law of Member States concerned, which should follow up on the outcomes of the concerted and joint inspections according to national laws.

- (15) In order to keep track of emerging trends, challenges, or loopholes in the areas of labour mobility and social security coordination, the Agency should develop an analytical and risk assessment capacity. This should involve carrying out labour market analyses and studies, as well as peer reviews. The Agency should monitor potential imbalances in terms of skills and cross-border labour flows, including their possible impact on territorial cohesion. The Agency should also support the risk assessment referred to in Article 10 of Directive 2014/67/EU. The Agency should ensure synergies and complementarity with other Union Agencies or services or networks. This should include seeking input from SOLVIT and similar services on recurring problems encountered by individuals and businesses in the exercise of their rights in the areas under the scope of the Agency. The Agency should also facilitate and streamline data collection activities provided for by the relevant Union laws within its scope. This does not entail the creation of new reporting obligations for Member States.
- (16) To strengthen the capacity of national authorities and improve consistency in the application of Union law within its scope, the Agency should provide operational assistance to national authorities, including by developing practical guidelines, establishing training and peer learning programmes, promoting mutual assistance projects, facilitating staff exchanges such as those referred to in Article 8 of Directive 2014/67/EU, and supporting Member States in organising awareness-raising campaigns informing individuals and employers of their rights and obligations. The Agency should promote the exchange, dissemination and uptake of good practices.

- (17) The Agency should perform a mediation role. Member States should be able to refer disputed individual cases to the Agency for mediation after having failed to solve the cases by direct contact, by dialogue or by a dialogue procedure put in place for this purpose. The Management Board should put in place rules of procedure setting out the details of the mediation procedure. Mediation should only deal with disputes between Member States, while individuals and employers facing difficulties with exercising their Union rights should continue to have at their disposal the national and Union services dedicated to dealing with such cases, such as the SOLVIT network to which the Agency should refer such cases. The SOLVIT network should also be able to refer to the Agency for its consideration cases in which the problem cannot be solved due to differences between national administrations. The Agency should perform its mediation role without prejudice to the competences of the European Court of Justice concerning the interpretation of EU law. For disputes related to social security coordination the conciliation procedure of the Administrative Commission for the Coordination of Social Security Systems should remain applicable, these disputes should not be handled by the Agency, while both bodies should cooperate, where necessary, in particular by exchanging relevant information.
- (18) The Agency should facilitate cooperation and information sharing among relevant stakeholders in order to address labour market disruptions affecting more than one Member State. Regardless of the nature of events which may have large-scale negative effects on the labour market, whether these are economic or financial difficulties or structural changes of an enterprise impacting employment, the Agency should provide a forum for dialogue and cooperation for stakeholders concerned with the aim of mitigating the consequences of such events.

- (19) The European Interoperability Framework (EIF) offers principles and recommendations on how to improve governance of interoperability activities and public services delivery, establish cross-organisational and cross-border relationships, streamline processes supporting end-to-end digital exchanges, and ensure that both existing and new legislation support interoperability principles. The European Interoperability Reference Architecture (EIRA) is a generic structure, comprising principles and guidelines applying to the implementation of interoperability solutions<sup>26</sup>. Both the EIF and the EIRA should guide and support the Agency when considering interoperability matters.
- (19a)(new) The Agency should aim at providing better access to online information and services for Union and national stakeholders and facilitate the exchange of information between them. Therefore, the use of digital tools should be encouraged by the Agency, whenever possible. Besides IT systems and websites, digital tools such as online platforms play an increasingly central role in the cross-border labour mobility market. Thus, such tools are useful to provide easy access to relevant online information and facilitate exchange of information for Union and national stakeholders regarding their cross-border activities.

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<sup>26</sup> Decision (EU) 2015/2240 of the European Parliament and of the Council of 25 November 2015 establishing a programme on interoperability solutions and common frameworks for European public administrations, businesses and citizens (ISA<sup>2</sup> programme) as a means for modernising the public sector (OJ L 318, 4.12.2015, p. 1).

- (19b)(new) The Agency should strive for websites and mobile applications established for the implementation of the tasks laid down in this Regulation to be in line with relevant accessibility requirements of the Union. Directive 2016/2102/EU<sup>27</sup> requires Member States to ensure that their public bodies' websites are accessible in accordance with the principles of perceivability, operability, understandability and robustness and that they comply with the requirements of that Directive. As this directive does not apply to websites and mobile applications of Union institutions, bodies, offices and agencies, the Agency should endeavour to comply with the principles set out therein.
- (20) The Agency should be governed and operated in line with the principles of the Joint Statement of the European Parliament, the Council and the Commission on decentralised agencies of 19 July 2012.
- (21) The Member States and the Commission should be represented on a Management Board, in order to ensure the effective functioning of the Agency. The composition of the Management Board, including the selection of its Chair and Deputy-Chair, should respect the principles of gender balance, experience and qualification. In view of the effective and efficient functioning of the Agency, the Management Board, in particular, should adopt an annual work programme, carry out its functions relating to the Agency's budget, adopt the financial rules applicable to the Agency, appoint an Executive Director, and establish procedures for taking decisions relating to the operational tasks of the Agency by the Executive Director. Representatives from countries other than Union Member States, which are applying the Union rules within the scope of the Agency, may participate in the meetings of the Management Board as observers.

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<sup>27</sup> Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies, (OJ L 327, 2.12.2016, p. 1).

- (22) Without prejudice to the powers of the Commission, the Management Board and the Executive Director should be independent in the performance of their duties and act in the public interest.
- (23) The Agency should directly rely on the expertise of relevant stakeholders in the areas under its scope through a dedicated Stakeholder Group. The members should be representatives of Union-level social partners. In carrying out its activities, the Stakeholder Group will take due account of the opinions and draw on the expertise of the Advisory Committee for the Coordination of Social Security Systems established by Regulation (EC) No 883/2004 and the Advisory Committee on the Free Movement of Workers established pursuant to Regulation (EU) No 492/2011.
- (24) To guarantee its full autonomy and independence, the Agency should be granted an autonomous budget, with revenue coming from the general budget of the Union, any voluntary financial contribution from the Member States and any contribution from third countries participating in the work of the Agency. In exceptional and duly justified cases it should also be in the position to receive delegation agreements or ad hoc grants, and to charge for publications and any service provided by the Agency.
- (25) Processing of personal data carried out in the context of this Regulation should be conducted in accordance with Regulation (EU) No 2016/679 of the European Parliament and of the Council<sup>28</sup>, or Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>29</sup>, whichever is applicable. This includes putting in place appropriate technical and organisational measures to comply with the obligations imposed by those Regulations, in particular measures relating to the lawfulness of the processing, the security of the processing activities, the provision of information and the rights of data subjects.

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<sup>28</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119 of 4.5.2016, p. 1).

<sup>29</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L8, 12.1.2001, p. 1).

- (26) In order to ensure the transparent operation of the Agency, Regulation (EC) No 1049/2001 of the European Parliament and of the Council<sup>30</sup> should apply to the Agency. The activities of the Agency should be subject to the scrutiny of the European Ombudsman in accordance with Article 228 TFEU.
- (27) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council<sup>31</sup> should apply to the Agency, which should accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the OLAF.
- (28) The Agency's host Member State should provide the best possible conditions to ensure the proper functioning of the Agency.
- (29) In order to ensure open and transparent employment conditions and equal treatment of staff, the Staff Regulations of Officials of the European Union (Staff Regulations of Officials) and the Conditions of Employment of Other Servants of the European Union (Conditions of Employment), laid down in Regulation (EEC, Euratom, ECSC) No 259/68 (together referred to as the 'Staff Regulations'), should apply to the staff and to the Executive Director of the Agency, including the rules of professional secrecy or other equivalent duties of confidentiality.

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<sup>30</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

<sup>31</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

- (30) Within the framework of their respective competences, the Agency should cooperate with other agencies of the Union, in particular those established in the area of employment and social policy, building on their expertise and maximising synergies: the European Foundation for the Improvement of Living and Working Conditions (Eurofound), the European Centre for the Development of Vocational Training (Cedefop), the European Agency for Safety and Health at Work (EU-OSHA), and the European Training Foundation (ETF), as well as, as regards the fight against organised crime and trafficking in human beings, with the European Union Agency for Law Enforcement Cooperation (Europol) and European Union Agency for Criminal Justice Cooperation (Eurojust).
- (31) In order to bring an operational dimension to the activities of existing bodies in the areas of cross-border labour mobility, the Agency should take over the performance of tasks carried out by the Technical Committee on the Free Movement of Workers established pursuant to Regulation (EU) No 492/2011, the Committee of Experts on Posting of Workers set up by Commission Decision 2009/17/EC, including the exchange of information on administrative cooperation, the assistance in questions on implementation as well as cross-border enforcement, and the European Platform to enhance cooperation in tackling undeclared work set up by Decision (EU) 2016/344 of the European Parliament and the Council<sup>32</sup>. With the Agency becoming fully operational, those bodies should cease to exist; the Management Board may however decide to set up dedicated working groups or expert panels.

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<sup>32</sup> 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 (OJ L 65, 11.3.2016, p. 12).

- (32) The Agency should not interfere with the competences of the Administrative Commission for the Coordination of Social Security Systems created by Regulation (EC) No 883/2004 ('the Administrative Commission') in so far as it exercises tasks related to the application of Regulations (EC) No 883/2004 and (EC) No 987/2009; the two bodies should cooperate closely with the aim to achieve synergies and avoid overlap.
- (33) The Advisory Committee for the Coordination of Social Security Systems established by Regulation (EC) No 883/2004 and the Advisory Committee on the Free Movement of Workers established pursuant to Regulation (EU) No 492/2011 provide a forum for consultation of social partners and government representatives at national level. The Agency should contribute to their work and may participate in their meetings.
- (34) In order to reflect this new institutional set-up, Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 should be amended, and and Decision (EU) 2016/344 should be repealed once the Agency is fully operational.
- (35) The Agency should respect the diversity of national industrial relations systems as well as the autonomy of social partners as explicitly recognised by the TFEU. Taking part in the activities of the Agency is without prejudice to the Member States' competences, obligations and responsibilities under, inter alia, relevant and applicable International Labour Organization (ILO) conventions, such as Convention No 81 concerning Labour Inspection in Industry and Commerce, and to the Member States' powers to regulate, mediate or monitor national industrial relations, in particular on the exercise of the right to collective bargaining and to take collective action.

- (36) Since the objectives of this Regulation to support the free movement of workers and services and to contribute to strengthening fairness in the internal market cannot be sufficiently achieved by the Member States acting in an uncoordinated manner, but can rather, by reason of the cross-border nature of those activities and the need for increased cooperation between Member States, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (37) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, as referred to in Article 6 of the Treaty on European Union,

HAVE ADOPTED THIS REGULATION:

# Chapter I

## Principles

### *Article 1*

#### *Subject matter and scope*

1. This Regulation establishes the European Labour Agency ('the Agency').
2. The Agency shall assist Member States and the Commission in matters relating to cross-border labour mobility and the coordination of social security systems within the Union.
3. The scope of activities of the Agency shall cover the following Union acts:
  - (a) Directive (EC) 96/71 concerning the posting of workers in the framework of the provision of services<sup>33</sup>;
  - (b) Directive (EU) 2014/67 on the enforcement of Directive (EC) 96/71 concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ("the IMI regulation")<sup>34</sup>;

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<sup>33</sup> Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).

<sup>34</sup> Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ L 159, 28.05.2014, p. 11).

- (c) Regulation (EC) No 883/2004 on the coordination of social security systems<sup>35</sup> and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, including the provisions of Regulation (EEC) No 1408/71<sup>36</sup> and (EEC) No 574/72<sup>37</sup> as far as they are still applicable<sup>38</sup>, Regulation (EU) 1231/2010<sup>39</sup> and Regulation (EC) 859/2003 extending the first two Regulations to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality;
- (d) Regulation (EU) 492/2011 on freedom of movement for workers within the Union<sup>40</sup>;

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<sup>35</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, (OJ L 166, 30.4.2004, p.1, corrigendum OJ L 200, 7.6.2004, p. 1).

<sup>36</sup> Council Regulation (EC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ L 149, 5.7.1971 p. 2).

<sup>37</sup> Council Regulation (EC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons, and to their families moving within the Community (OJ L 74, 27.3.1972, p. 1).

<sup>38</sup> Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, (OJ L 284, 30.10.2009, p. 1).

<sup>39</sup> Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality (OJ L 344, 29.12.2010, p. 1).

<sup>40</sup> Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ L 141, 27.5.2011, p. 1).

- (e) Directive (EU) 2014/54 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers<sup>41</sup>;
- (f) Regulation (EU) 2016/589 on a European Network of employment services (EURES), worker's access to mobility services and the further integration of labour markets, and amending Regulations (EU) No 492/2011 and (EU) 1296/2013<sup>42</sup>;
- (g) Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85<sup>43</sup>;
- (h) Directive 2006/22/EC on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC<sup>44</sup>;

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<sup>41</sup> Directive 2014/54/EU of the European Parliament and the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (OJ L 128, 30.4.2014, p. 8).

<sup>42</sup> Regulation (EU) 2016/589 of the European Parliament and the Council of 13 April 2016 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets, and amending Regulations (EU) No 492/2011 and (EU) No 1296/2013 (OJ L 107, 22.04.2016, p. 1).

<sup>43</sup> Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).

<sup>44</sup> Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35).

- (i) Regulation (EC) 1071/2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC<sup>45</sup>.
4. The scope of activities of the Agency shall extend to the provisions of this Regulation related to:
- (a) the facilitation of cooperation between Union and national stakeholders in cases of cross-border labour market disruptions; and
  - (b) the cooperation between Member States in order to tackle undeclared work.
5. This Regulation shall respect the competences of Member States as regards the application and enforcement of Union law listed in paragraph 3. It shall respect the diversity of national industrial relations systems as well as the autonomy of social partners as recognised by the TFEU. It shall not affect the rights and obligations of individuals and employers granted by Union law and national law, nor the rights and obligations of national authorities deriving thereof.

This Regulation shall be without prejudice to existing bilateral agreements and administrative cooperation arrangements between Member States, in particular those related to concerted and joint inspections.

## *Article 2*

### *Objectives*

The objective of the Agency shall be to contribute to ensuring fair labour mobility in the internal market. To this end, and within the scope pursuant to Article 1, the Agency shall:

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<sup>45</sup> Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ L 300, 14.11.2009, p. 51).

- (a) facilitate access for individuals and employers to information on their rights and obligations as well as to relevant services;
- (b) support cooperation between Member States in the cross-border enforcement of relevant Union law, including facilitating concerted and joint inspections;
- (c) mediate in cases of cross-border disputes between Member States;
- (d) facilitate cooperation between relevant Union and national stakeholders in order to find solutions in cases of cross border labour market disruptions;
- (e) support cooperation between Member States in tackling undeclared work.

### *Article 3*

#### *Legal status*

1. The Agency shall be a body of the Union with legal personality.
2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may, in particular, acquire and dispose of movable and immovable property and be party to legal proceedings.

### *Article 4*

#### *Seat*

The seat of the Agency shall be [x].

## Chapter II

### Tasks of the Agency

#### *Article 5*

#### *Tasks of the Agency*

In order to achieve its objectives, the Agency shall carry out the following tasks:

- (a) facilitate access to information by individuals and employers on rights and obligations in cross-border situations as well as access to cross-border labour mobility services, in accordance with Articles 6 and 7;
- (b) facilitate cooperation and the exchange of information between national authorities with a view to the effective application and enforcement of relevant Union law, in accordance with Article 8;
- (c) support concerted and joint inspections, in accordance with Articles 9 and 10;
- (d) carry out analyses and risk assessments on issues of cross-border labour mobility, in accordance with Article 11;
- (e) support Member States with capacity-building regarding the effective application and enforcement of relevant Union law, in accordance with Article 12;
- (ea)(new) support Member States in tackling undeclared work, in accordance with Article 12a(new);
- (f) mediate in disputes between Member States on the application of relevant Union law, in accordance with Article 13;
- (g) facilitate cooperation between relevant stakeholders in the event of cross-border labour market disruptions, in accordance with Article 14;

## Article 6

### *Information on cross-border labour mobility*

The Agency shall improve the availability, quality and accessibility of information offered to individuals and employers regarding their rights and obligations deriving from the Union acts listed in Article 1(3) to facilitate labour mobility across the Union.

To that end, the Agency shall:

- (a) support Member States in the application of Regulation (EU) 589/2016 on EURES by:
  - i. facilitating access to information to individuals and employers regarding their rights and obligations in cross-border labour mobility situations, as well as on living and working conditions, including by means of reference to national information sources and by contributing to Union level information sources;
  - ii. promoting opportunities to support the labour mobility of individuals, including through non-binding guidance on access to learning and language training;

[...]

- (d) support Member States in complying with the obligations on the dissemination of and access to information relating to the free movement of workers as laid down in Article 6 of Directive 2014/54/EU, and to the posting of workers as laid down in Article 5 of Directive 2014/67/EU, including by means of reference to national information sources such as the single official national website;
- (e) support Member States in improving the accuracy, completeness and user-friendliness of relevant national information services, in accordance with the quality criteria laid down in Regulation [OJ to add reference to Single Digital Gateway – COM(2017)256];
- (f) support Member States in streamlining the provision of information and services to individuals and employers pertaining to cross-border mobility on a voluntary basis.

## Article 7

### *Access to cross-border labour mobility services*

1. The Agency shall provide services to individuals and employers to facilitate labour mobility across the Union. To that end, the Agency shall:
  - (a) promote the development of initiatives supporting the cross-border mobility of individuals, including targeted mobility schemes;
  - (b) facilitate access to the cross-border matching of job, traineeship, and apprenticeship vacancies with CVs and applications for the benefit of individuals and employers via EURES;
  - (c) cooperate closely in a structured manner with other Union initiatives and networks, such as the European Network of Public Employment Services, the European Enterprise Network and the Border Focal Point, the Senior Labour Inspectors' Committee (SLIC), in particular to identify and overcome cross-border obstacles to labour mobility;
  - (d) facilitate cooperation between competent services at the national level designated in accordance with Directive 2014/54/EU to provide information, guidance and assistance to individuals and employers on cross-border mobility, in particular by providing contact details on a website on the bodies established pursuant to Article 4 of Directive 2014/54/EU.
  
2. The Agency shall manage the EURES European Coordination Office and ensure that it fulfils its responsibilities in accordance with Article 8 of Regulation (EU) 2016/589, except for the technical operation and development of the EURES portal and related IT services, which shall continue to be managed by the Commission. The Agency, under the responsibility of the Executive Director as set out in Article 23(4)(k), shall ensure that this activity fully complies with requirements of the applicable data protection legislation, including the requirement to appoint a Data Protection Officer, in accordance with Article 37.

## Article 8

### *Cooperation and exchange of information between Member States*

1. The Agency shall facilitate cooperation between Member States and support their effective compliance with cooperation obligations, including on information exchange, as defined in Union law within the scope of the Agency's competences.

To that end, the Agency shall, upon request of national authorities, and in order to accelerate exchanges between them, in particular:

- (a) support national authorities in identifying the relevant contact points of national authorities in other Member States;
  - (b) facilitate the follow-up to requests and information exchanges between national authorities by providing logistical and technical support, including translation and interpretation services, and through exchanges on the status of cases;
  - (c) promote and share best practices;
  - (d) facilitate cross-border enforcement procedures of penalties and fines according to Directive 2014/67.
- 1a.(new) The Agency shall report to the Commission on a quarterly basis about resolved and unresolved requests between Member States, and if considered necessary, refer those to mediation in accordance with Article 13.

[...]

3. The Agency shall promote the use of electronic tools and procedures for message exchange between national authorities, including the Internal Market Information (IMI) system.

4. The Agency shall encourage the use of innovative approaches to effective and efficient cross-border cooperation, and explore the potential use of electronic exchange mechanisms between the Member States to facilitate the detection of fraud, providing reports to the Commission with a view to their further development.

#### *Article 9*

##### *Support of concerted and joint inspections*

1. At the request of one or more Member States, the Agency shall support concerted or joint inspections within the scope of its activities as set out in Article 1(3).

For the purpose of this Regulation:

- (a) concerted inspections are inspections undertaken by the national authorities of two or more Member States simultaneously regarding related cases, each national authority operating in its own territory;
  - (b) joint inspections are inspections undertaken by the national authority of one Member State on its territory, with participation of the national authorities of one or more other Member State(s) concerned.
- 1a.(new) The request may be submitted by one or more Member States. The Agency may also suggest to the authorities of the Member States concerned that they perform a concerted or joint inspection, subject to the agreement of the Member States concerned.
  2. Where the authority of a Member State decides not to participate in or carry out the concerted or joint inspection referred to paragraph 1, it shall without undue delay inform the Agency and the other Member States concerned in writing or by electronic means of the reasons for its decision.

3. The organisation of a concerted or joint inspection shall be subject to the prior agreement of all participating Member States via their National Liaison Officers pursuant to Article 33. In the event that one or more Member States does not agree to take part in the concerted or joint inspection, the other national authorities shall only carry out the envisaged concerted or joint inspection in the participating Member States. The Member States that did not agree to participate in the inspection shall keep information about the envisaged inspection confidential.

### *Article 10*

#### *Arrangements for concerted and joint inspections*

1. An agreement for setting up a concerted or a joint inspection ('the concerted inspection agreement' or 'the joint inspection agreement') between the participating Member States and the Agency shall set out the terms and conditions for carrying out such an exercise, including, if relevant, any arrangements on the participation of the staff of the Agency in the inspection. The concerted or joint inspection agreement may include provisions which enable concerted or joint inspections, once agreed and planned, to take place at short notice. The Agency shall establish model agreements.
2. Concerted and joint inspections shall be carried out in accordance with the national law of the Member States in which the inspections take place. Their follow-up shall be carried out in compliance with the national laws of the Member States concerned.
3. The Agency shall provide logistical and technical support, which may include translation and interpretation services, to Member States carrying out concerted or joint inspections.
4. Staff of the Agency may participate in a concerted or joint inspection with the prior agreement of the Member State on whose territory they will be providing their assistance to the inspection and in line with its national law.

5. National authorities carrying out a concerted or joint inspection shall report back to the Agency on the outcomes within their respective Member States and on the overall operational running of the concerted or joint inspection at the latest six months after the end of the inspection.
6. Information on concerted and joint inspections undertaken under this Regulation shall be included in quarterly reports to be submitted to the Management Board. A yearly report on the inspections supported by the Agency shall be included in the Agency's annual activity report.
7. In the event that the Agency, in the course of concerted or joint inspections, or in the course of any of its activities, becomes aware of suspected irregularities in the application of Union law listed in Article 1(3), it shall report, where appropriate, those suspected irregularities to the Member State concerned and to the Commission.

### *Article 11*

#### *Cross-border labour mobility analyses and risk assessment*

1. The Agency shall assess risks and carry out analyses regarding cross-border labour mobility flows, such as labour market imbalances, sector-specific threats and recurring problems encountered by individuals and employers in relation to cross-border mobility. For that purpose, the Agency shall use relevant and current statistical data available from existing surveys, ensure complementarity with, and draw on the expertise of, other Union agencies or services and/or national authorities, agencies or services, including in the areas of skills forecasting and health and safety at work. Upon a request by the Commission, the Agency may carry out focused in-depth analyses and studies, when appropriate, based on relevant and current data available to investigate specific labour mobility issues.

2. The Agency shall organise peer reviews amongst Member States which agreed to participate in the peer review in order to:
  - (a) examine any questions, difficulties and specific issues which might arise concerning the implementation and practical application of Union law within the scope of the Agency's competences, as well as its enforcement in practice;
  - (b) strengthen consistency in the provision of services to individuals and businesses;
  - (c) improve the knowledge and mutual understanding of different systems and practices, as well as to assess the effectiveness of different policy measures, including prevention and deterrence measures.
3. The Agency shall carry out its analytical and risk assessment task in cooperation with the Member States concerned and shall regularly report its findings to the Member States and to the Commission outlining possible measures to address identified weaknesses.
4. The Agency shall, where appropriate, collect statistical data compiled and provided by Member States in the areas of Union law within the scope of the Agency's competences. In doing so, the Agency shall seek to streamline current data collection activities in those areas to avoid duplication of data collection. Where relevant, Article 16 shall apply. The Agency shall liaise with the Commission (Eurostat) and share the results of its data collection activities, where appropriate.

## *Article 12*

### *Support to capacity building*

The Agency shall support Member States with capacity building aimed at promoting the consistent enforcement of the Union law in all areas listed in Article 1. The Agency shall, in particular, carry out the following activities:

- (a) develop common non-binding guidelines for use by Member States, including guidance for inspections in cases with a cross-border dimension, as well as shared definitions and common concepts, building on relevant work at national and the Union level; those guidelines shall be developed in cooperation with national authorities responsible for their application;
- (b) promote and support mutual assistance, either in the form of peer-to-peer or group activities, as well as staff exchanges and secondment schemes between national authorities;
- (c) promote the exchange and dissemination of experiences and good practices, including examples of cooperation between the relevant national authorities;
- (d) develop sectoral and cross-sectoral training programmes and dedicated training material, including through online learning methods;
- (e) promote awareness-raising campaigns, including campaigns to inform individuals and employers, especially small and medium-sized enterprises ('SMEs'), of their rights and obligations and the opportunities available to them. The Agency shall ensure that the content of the awareness-raising campaigns are complementary to those of other relevant agencies and services.

*Article 12a (new)*

*Cooperation between Member States in order to tackle undeclared work*

1. The Agency shall support the activities of Member States on tackling undeclared work by:
  - (a) enhancing cooperation between Member States' relevant authorities and other actors involved in order to tackle more efficiently and effectively undeclared work in its various forms and falsely declared work associated with it, including bogus self-employment;
  - (b) improving the capacity of Member States' different relevant authorities and actors to tackle undeclared work with regard to its cross-border aspects; and in this way contributing to a level playing field;
  - (c) increasing public awareness of issues relating to undeclared work and of the urgent need for appropriate action as well as encouraging Member States to step up their efforts to tackle undeclared work.
  
2. The Agency shall encourage cooperation between Member States through:
  - (a) exchanging best practices and information;
  - (b) developing expertise and analysis, while overlaps shall be avoided;
  - (c) encouraging and facilitating innovative approaches to effective and efficient cross-border cooperation and evaluating experiences;
  - (d) contributing to a horizontal understanding of matters relating to undeclared work.

## *Article 13*

### *Mediation between Member States*

1. The Agency may perform a mediation role in disputes between two or more Member States regarding individual cases of application of Union law in areas covered by Article 1, with the exception of Article 1(3)(c).
  - 1a.(new) The Mediation shall serve to reconcile divergent points of view between the Member States concerned by the dispute and to adopt a non-binding opinion. The Mediation is carried out between the Member States concerned by the dispute and a mediator. Experts of Member States and of the Commission may participate in an advisory function.
2. Upon request of one or more of the Member States concerned by a dispute which could not be solved in the preceding direct contacts and dialogue between the disputing Member States, the Agency shall launch a mediation procedure. The Agency may also suggest to launch a mediation procedure among Member States concerned by a dispute.
  - 2a.(new) The Management Board shall adopt the rules of procedure of the Mediation, including working arrangements, on the appointment of mediators and on the involvement of experts of the Member States and of the Commission.

- 2b.(new) The participation of Member States concerned by the dispute in the mediation procedure shall be voluntary. Where a Member State concerned by the dispute decides not to participate, it shall inform the Agency and the other Member States concerned by the dispute in writing or by electronic means about the reasons of its decision within the period set by the Management Board in the rules of procedure.
3. When presenting a case for mediation to the Agency, Member States shall ensure that all personal data related to that case is anonymised and the Agency shall not process the personal data of individuals concerned by the case at any point in the course of the mediation procedure.
  4. Cases in which there are ongoing court proceedings at national or Union level shall not be admissible for mediation by the Agency. In the case court proceedings are initiated during the mediation procedure, the mediation shall be suspended.
  5. Within three months of the adoption of the non-binding opinion, the Member States concerned shall report to the Agency on measures they have taken resulting from the opinion in order to follow-up on it or on the reasons for not taking action in the event that they did not follow-up.
  6. The Agency shall report to the Commission once a year about the outcomes of the mediation cases it handled and cases which were not pursued.

## *Article 14*

### *Cooperation in case of cross-border labour market disruptions*

1. At the request of the Member States concerned, the Agency may facilitate cooperation between relevant Union and national stakeholders which are open to participate in a dialogue aimed at addressing large-scale labour market disruptions affecting more than one Member State, including cases of large-scale restructuring or relocations as well as company closures impacting employment or leading to collective redundancies.
2. The Agency shall facilitate information sharing between relevant stakeholders, such as the involved enterprises, the national and local authorities, social partners and the Commission, and it shall provide awareness raising of relevant Union legislation and of financial instruments available to mitigate the consequences of such cases.

## *Article 15*

### *Cooperation with other agencies*

The Agency shall establish cooperation arrangements with other decentralised Union agencies where appropriate aimed at avoiding overlaps as well as promoting synergy and complementarity in their activities.

## *Article 16*

### *Interoperability and exchange of information*

The Agency shall coordinate, develop and apply interoperability frameworks to guarantee the exchange of information between Member States and also with the Agency. Those interoperability frameworks shall be based on and supported by the European Interoperability Framework and by the European Interoperability Reference Architecture referred to in Decision (EU) 2015/2240 of the European Parliament and of the Council <sup>46</sup>.

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<sup>46</sup> Decision (EU) 2015/2240 of the European Parliament and of the Council of 25 November 2015 establishing a programme on interoperability solutions and common frameworks for European public administrations, businesses and citizens (ISA<sup>2</sup> programme) as a means for modernising the public sector (OJ L 318, 4.12.2015, p. 1).

## Chapter III

### Organisation of the Agency

#### *Article 17*

##### *Administrative and management structure*

1. The Agency's administrative and management structure shall be composed of:
  - (a) a Management Board, which shall exercise the functions set out in Article 19;
  - (b) an Executive Director who shall exercise the responsibilities set out in Article 23;
  - (c) a Stakeholder Group, which shall exercise the functions set out in Article 24.
2. The Agency may set up working groups or expert panels with representatives from Member States and/or from the Commission, or external experts following selection procedures, for the fulfilment of its specific tasks or for specific policy areas, such as tackling undeclared work, posting of workers or freedom of movement for workers.

The rules of procedure of such working groups and panels shall be set out by the Agency following consultation of the Commission.

## SECTION 1

### MANAGEMENT BOARD

#### *Article 18*

##### *Composition of the Management Board*

1. The Management Board shall be composed of one senior representative from each Member State and two representatives of the Commission, all of whom have voting rights.
2. Each member of the Management Board shall have an alternate. The alternate shall represent the member in his or her absence.
3. Members of the Management Board representing their Member States and their alternates shall be appointed by their respective Member States.

The Commission shall appoint the members who are to represent it.

All members of the Management Board shall be appointed in light of their knowledge in the fields referred to in Article 1, taking into account relevant managerial, administrative and budgetary skills.

The Member States and the Commission shall endeavour to limit the turnover of their representatives on the Management Board in order to ensure continuity of the Board's work. All parties shall aim to achieve balanced representation between men and women on the Management Board.

4. The term of office for members and their alternates shall be four years. That term shall be extendable.
5. Representatives from third countries, which are applying the Union law in areas covered by this Regulation, may participate in the meetings of the Management Board as observers.

## *Article 19*

### *Functions of the Management Board*

1. The Management Board shall, in particular:
  - (a) provide strategic orientation and oversee the Agency's activities;
  - (b) adopt, by a two-thirds majority of its members entitled to vote, the annual budget of the Agency and exercise other functions in respect of the Agency's budget pursuant to Chapter IV;
  - (c) assess and adopt the consolidated annual activity report on the Agency's activities, including an overview of the fulfilment of its tasks, and send it to the European Parliament, the Council, the Commission and the Court of Auditors before 1 July each year. The consolidated annual activity report shall be made public;
  - (d) adopt the financial rules applicable to the Agency in accordance with Article 30;
  - (e) adopt an anti-fraud strategy, proportionate to the risk of fraud, taking into account the costs and benefits of the measures to be implemented;
  - (f) adopt rules for the prevention and management of conflicts of interest in respect of its members, the members of the Stakeholder Group and the working groups and panels of the Agency set up in accordance with Article 17(2), and shall publish annually on its website the declaration of interests of the Management Board members;
  - (g) adopt and regularly update the communication and dissemination plans referred to in Article 37(3), based on an analysis of needs;
  - (h) adopt its rules of procedure;
  - (ha)(new) adopt the rules of procedure of the Mediation pursuant to Article 13(2a)new;

- (i) set up working groups and panels pursuant to Article 17(2) and adopt their the rules of procedures;
- (j) in accordance with paragraph 2, exercise, with respect to the staff of the Agency, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude a Contract of Employment<sup>47</sup> ("the appointing authority powers");
- (k) adopt implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations;
- (l) establish, where appropriate, an internal audit capacity;
- (m) appoint the Executive Director and, where relevant, extend the term of office or remove the Executive Director from office in accordance with Article 32;
- (n) appoint an Accounting Officer who shall be subject to the Staff Regulations and Conditions of Employment for Other Servants and who shall be totally independent in the performance of his or her duties;
- (o) determine the procedure for selecting the members and alternates of the Stakeholder Group set up in accordance with Article 24 and appoint the said members and alternates;
- (p) ensure an adequate follow-up to findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations from the European Anti-fraud Office (OLAF);

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<sup>47</sup> Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

- (q) take all decisions on the establishment of the Agency's internal committees or other bodies and, where necessary, their modification, taking into consideration the Agency's activity needs and having regard to sound financial management;
  - (r) approve the Agency's draft single programming document referred to in Article 25 before its submission to the Commission for its opinion;
  - (s) adopt, having received the opinion of the Commission, the Agency's single programming document by a two-thirds majority of members entitled to vote and in accordance with Article 25;
  - (t)(new) cooperate with the Administrative Commission for the Coordination of Social Security Systems to synchronize the activities in mutual agreement and avoid any overlap.
2. The Management Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and Article 6 of the Conditions of Employment of Other Servants delegating the relevant appointing authority powers to the Executive Director and setting out the conditions under which this delegation of powers can be suspended. The Executive Director shall be authorised to sub-delegate those powers.
3. Where exceptional circumstances so require, the Management Board may, by way of decision, temporarily suspend the delegation of the appointing authority powers to the Executive Director and those sub-delegated by the Executive Director and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director.

## *Article 20*

### *Chairperson of the Management Board*

1. The Management Board shall elect a Chairperson and a Deputy Chairperson from among the members with voting rights, and shall strive for gender balance. The Chairperson and the Deputy Chairperson shall be elected by a majority of two-thirds of the members of the Management Board with voting rights.

In the event that a first vote does not reach the two-thirds majority, a second vote shall be organised whereby the Chairperson and Deputy Chairperson shall be elected by a simple majority of the members of the Management Board with voting rights.

The Deputy Chairperson shall automatically replace the Chairperson if he or she is prevented from attending to his or her duties.

2. The term of office of the Chairperson and the Deputy Chairperson shall be four years. Their term of office may be renewed once. Where, however, their membership of the Management Board ends at any time during their term of office, their term of office shall automatically expire on that date.

## *Article 21*

### *Meetings of the Management Board*

1. The Chairperson shall convene the meetings of the Management Board.
2. The Executive Director of the Agency shall take part in the deliberations, without the right to vote.
3. The Management Board shall hold at least two ordinary meetings per year. In addition, it shall meet at the request of its Chairperson, at the request of the Commission, or at the request of at least one-third of its members.

4. The Management Board shall convene meetings with the Stakeholder Group at least once a year.
5. The Management Board may invite any person or organisation whose opinion may be of interest to attend its meetings as an observer.
6. The members of the Management Board and their alternates may, subject to its rules of procedure, be assisted at the meetings by advisers or experts.
7. The Agency shall provide the secretariat for the Management Board.

## *Article 22*

### *Voting rules of the Management Board*

1. Without prejudice to points (b) and (s) of Article 19(1) and to Articles 20(1) and 32(8), the Management Board shall take decisions by the majority of members with voting rights.
2. Each member with voting rights shall have one vote. In the absence of a member with the right to vote, his or her alternate shall be entitled to exercise his or her right to vote.

[...]

4. The Executive Director shall take part in the deliberations, without being entitled to vote.
5. The Management Board's rules of procedure shall establish more detailed voting arrangements, in particular the circumstances in which a member may act on behalf of another member and the circumstances in which written procedures are to be used for voting.

## SECTION 2

### EXECUTIVE DIRECTOR

#### *Article 23*

##### *Responsibilities of the Executive Director*

1. The Executive Director shall manage the Agency. The Executive Director shall be accountable to the Management Board.
2. The Executive Director shall report to the European Parliament on the performance of his or her duties when invited to do so. The Council may invite the Executive Director to report on the performance of his or her duties.
3. The Executive Director shall be the legal representative of the Agency.
4. The Executive Director shall be responsible for the implementation of the tasks assigned to the Agency by this Regulation, in particular:
  - (a) the day-to-day administration of the Agency;
  - (b) implementing decisions adopted by the Management Board;
  - (c) preparing the draft single programming document and submitting it to the Management Board for approval;
  - (d) implementing the single programming document and reporting to the Management Board on its implementation;
  - (e) preparing the draft consolidated annual report on the Agency's activities and presenting it to the Management Board for assessment and adoption;

- (f) preparing an action plan following up on the conclusions of internal or external audit reports and evaluations, as well as investigations by OLAF and reporting on progress twice a year to the Commission and regularly to the Management Board;
  - (g) protecting the financial interests of the Union by applying preventive measures against fraud, corruption and any other illegal activities, without prejudicing the investigative competence of OLAF by effective checks and, if irregularities are detected, by recovering amounts wrongly paid and, where appropriate, by imposing effective, proportionate and dissuasive administrative, including financial penalties;
  - (h) preparing an anti-fraud strategy for the Agency and presenting it to the Management Board for approval;
  - (i) preparing the draft financial rules applicable to the Agency and presenting them to the Management Board;
  - (j) preparing the Agency's draft statement of estimates of revenue and expenditure and implementing its budget;
  - (k) implementing measures established by the Management Board to comply with obligations on data protection imposed by Regulation (EC) No 45/2001.
5. The Executive Director shall decide whether it is necessary to locate one or more staff in one or more Member States. Before deciding to establish a local office, the Executive Director shall obtain the prior consent of the Management Board and the Member State where the local office is to be located. The decision shall specify the scope of the activities to be carried out at the local office in a manner that avoids unnecessary costs and the duplication of administrative functions of the Agency. A headquarters agreement with the Member State where the local office is to be located may be required.

## SECTION 3

### STAKEHOLDER GROUP

#### *Article 24*

#### *Creation and composition of the Stakeholder Group*

1. To facilitate consultation with relevant stakeholders and to benefit from their expertise in areas covered by this Regulation, a Stakeholder Group with advisory functions attached to the Agency shall be established.
2. The Stakeholder Group may, in particular, submit opinions and advice to the Management Board on issues related to the application and enforcement of Union law in the areas covered by this Regulation.
3. The Stakeholder Group shall be chaired by the Executive Director and shall meet at least twice a year on the initiative of the Executive Director or at the request of the Commission.
4. The Stakeholder Group shall be composed of six representatives of Union-level social partners equally representing trade unions and employer's organisations, and two representatives of the Commission.
5. The members of the Stakeholder Group shall be nominated by their respective organisations and appointed by the Management Board. The Management Board shall also appoint alternate members, in accordance with the same conditions as members, who shall automatically replace any members who are absent or indisposed. To the extent possible, an appropriate gender balance shall be respected, as well as adequate representation of SMEs.
6. The Agency shall provide the secretariat for the Stakeholder Group. The Stakeholder Group shall adopt its rules of procedure by a two-thirds majority of its members entitled to vote. The rules of procedure shall be subject to approval by the Management Board.
7. The Agency shall make public the opinions and advice of the Stakeholder Group and the results of its consultations, except in case of confidentiality requirements.

## Chapter IV

### Establishment and structure of the budget of the Agency

#### SECTION 1

#### SINGLE PROGRAMMING DOCUMENT OF THE AGENCY

##### *Article 25*

##### *Annual and multi-annual programming*

1. Each year, the Executive Director shall draw up a draft single programming document containing in particular multi-annual and annual programming in accordance with Commission Delegated Regulation (EU) No 1271/2013<sup>48</sup> and taking into account guidelines set by the Commission.
2. By 30 November each year, the Management Board shall adopt the draft single programming document referred to in paragraph 1. It shall forward it to the European Parliament, the Council and the Commission by 31 January of the following year, as well as any later updated version of that document.

The single programming document shall become definitive after the final adoption of the general budget of the Union, and if necessary shall be adjusted accordingly.

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<sup>48</sup> Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

3. The annual work programme shall set out detailed objectives and expected results including performance indicators. It shall also contain a description of the actions to be financed and an indication of the financial and human resources allocated to each action. The annual work programme shall be consistent with the multi-annual work programme referred to in paragraph 4. It shall clearly indicate tasks that have been added, changed or deleted in comparison with the previous financial year. The Management Board shall amend the adopted annual work programme when a new task is given to the Agency within the scope of this Regulation.

Any substantial amendment to the annual work programme shall be adopted by the same procedure as the initial annual work programme. The Management Board may delegate the power to make non-substantial amendments to the annual work programme to the Executive Director.

4. The multi-annual work programme shall set out the overall strategic programming including objectives, expected results and performance indicators. It shall also show, for each activity, the indicative financial and human resources considered necessary to attain the objectives set.

The strategic programming shall be updated where appropriate, and in particular to address the outcome of the evaluation referred to in Article 41.

## *Article 26*

### *Establishment of the budget*

1. Each year, the Executive Director shall draw up a provisional draft estimate of the Agency's revenue and expenditure for the following financial year, including the establishment plan, and send it to the Management Board.
2. The Management Board shall, on the basis of the provisional draft estimate referred to in paragraph 1, adopt a draft estimate of the Agency's revenue and expenditure for the following financial year.

3. The draft estimate of the Agency's revenue and expenditure shall be sent to the Commission by 31 January each year.
4. The Commission shall send the draft estimate to the budgetary authority together with the draft general budget of the Union.
5. On the basis of the draft estimate, the Commission shall enter in the draft general budget of the Union the estimates it considers necessary for the establishment plan and the amount of the contribution to be charged to the general budget, which it shall place before the budgetary authority in accordance with Articles 313 and 314 TFEU.
6. The budgetary authority shall authorise the appropriations for the contribution to the Agency.
7. The budgetary authority shall adopt the Agency's establishment plan.
8. The Management Board shall adopt the Agency's budget. It shall become final following the final adoption of the general budget of the Union. Where necessary, it shall be adjusted accordingly.
9. For any building project likely to have significant implications for the budget of the Agency the provisions of Delegated Regulation (EU) No 1271/2013 shall apply.

## SECTION 2

### PRESENTATION, IMPLEMENTATION AND CONTROL OF THE BUDGET OF THE AGENCY

#### *Article 27*

##### *Structure of the budget*

1. Estimates of all revenue and expenditure for the Agency shall be prepared each financial year, corresponding to the calendar year, and shall be shown in the Agency's budget.
2. The Agency's budget shall be balanced in terms of revenue and of expenditure.
3. Without prejudice to other resources, the Agency's revenue shall comprise:
  - (a) a contribution from the Union;
  - (b) any voluntary financial contribution from the Member States;
  - (c) any contribution from third countries participating in the work of the Agency, pursuant to Article 43;
  - (d) possible Union funding in the form of delegation agreements or ad hoc grants in accordance with the Agency's financial rules referred to in Article 30 and with the provisions of the relevant instruments supporting the policies of the Union;
  - (e) charges for publications and any service provided by the Agency.
4. The expenditure of the Agency shall include staff remuneration, administrative and infrastructure expenses and operational expenditure.

## *Article 28*

### *Implementation of the budget*

1. The Executive Director shall implement the Agency's budget.
2. Each year the Executive Director shall send to the budgetary authority all information relevant to the findings of evaluation procedures.

## *Article 29*

### *Presentation of accounts and discharge*

1. By 1 March of the following financial year, the Agency's accounting officer shall send the provisional accounts to the Commission's Accounting Officer and to the Court of Auditors.
2. By 1 March of the following financial year, the Agency's accounting officer shall also provide the required accounting information for consolidation purposes to the accounting officer of the Commission, in the manner and format required by the latter.
3. By 31 March of the following financial year, the Agency shall send the report on the budgetary and financial management to the European Parliament, the Council and the Court of Auditors.
4. On receipt of the Court of Auditor's observations on the Agency's provisional accounts, the Agency's accounting officer shall draw up the Agency's final accounts under his or her own responsibility. The Executive Director shall submit the final accounts to the Management Board for an opinion.
5. The Management Board shall deliver an opinion on the Agency's final accounts.

6. By 1 July following each financial year, the Executive Director shall send the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.
7. A link to the pages of the website containing the final accounts of the Agency shall be published in the *Official Journal of the European Union* by 15 November of the following financial year.
8. The Executive Director shall send to the Court of Auditors a reply to the observations made in its annual report by 30 September. The Executive Director shall also send this reply to the Management Board and to the Commission.
9. The Executive Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, in accordance with Article 165(3) of Financial Regulation.
10. On a recommendation from the Council acting by qualified majority, the European Parliament shall, before 15 May of year N + 2, give a discharge report to the Executive Director in respect of the implementation of the budget of year N.

### *Article 30*

#### *Financial rules*

The financial rules applicable to the Agency shall be adopted by the Management Board after consulting the Commission. They shall not depart from Delegated Regulation (EU) 1271/2013 unless such a departure is specifically required for the Agency's operation and the Commission has given its prior consent.

## Chapter V

### Staff

#### *Article 31*

##### *General provision*

The Staff Regulations and the Conditions of Employment of Other Servants<sup>49</sup> and the rules adopted by agreement between the institutions of the Union for giving effect to those Staff Regulations and the Conditions of Employment of Other Servants shall apply to the staff of the Agency.

#### *Article 32*

##### *Executive Director*

1. The Executive Director shall be engaged as a temporary agent of the Agency in accordance with Article 2(a) of the Conditions of Employment of Other Servants.
2. The Management Board shall appoint the Executive Director from a list of candidates proposed by the Commission, following an open and transparent selection procedure.
3. For the purpose of concluding the contract with the Executive Director, the Agency shall be represented by the Chairperson of the Management Board.
4. The term of office of the Executive Director shall be five years. Before the end of that period, the Management Board shall request the Commission to undertake an assessment that takes into account an evaluation of the Executive Director's performance and the Agency's future tasks and challenges.
5. The Management Board, taking into account the assessment referred to in paragraph 4, may extend the term of office of the Executive Director once and for no more than five years.

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<sup>49</sup> OJ L 56, 4.3.1968, p. 1.

6. An Executive Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the cumulative period.
7. The Executive Director may be removed from office only upon a decision of the Management Board acting on a proposal from the Commission.
8. The Management Board shall reach decisions on the appointment, extension of the term of office or removal from office of the Executive Director on the basis of a two-thirds majority of its members entitled to vote.

### *Article 33*

#### *National Liaison Officers*

1. Each Member State shall designate one National Liaison Officer as a seconded national expert to the Agency and work at its seat, pursuant to Article 34.
2. National Liaison Officers shall contribute to executing the tasks of the Agency, including by facilitating the cooperation and exchange of information set out in Article 8 and the support of inspections set out in Article 9. They shall also 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.
3. National Liaison Officers shall be entitled to request information from their Member States, as provided for by this Regulation, while fully respecting the national law of their Member States, in particular as regards data protection and the rules on confidentiality.

### *Article 34*

#### *Seconded national experts and other staff*

1. In addition to the National Liaison Officers, the Agency may make use in any areas of its work of other seconded national experts or other staff not employed by the Agency.
2. The Management Board shall adopt the necessary implementing arrangements for seconded national experts, including National Liaison Officers.

## Chapter VI

### General and final provisions

#### *Article 35*

##### *Privileges and immunities*

The Protocol on the Privileges and Immunities of the European Union shall apply to the Agency and its staff.

#### *Article 36*

##### *Language arrangements*

1. The provisions laid down in Council Regulation No 1<sup>50</sup> shall apply to the Agency.
2. The translation services required for the functioning of the Agency shall be provided by the Translation Centre of the Bodies of the European Union.

#### *Article 37*

##### *Transparency, protection of personal data and communication*

1. Regulation (EC) No 1049/2001 shall apply to documents held by the Agency. The Management Board shall, within six months of the date of its first meeting, adopt the detailed rules for applying Regulation (EC) No 1049/2001.
2. The Management Board shall establish measures to comply with the obligations laid down in Regulation (EC) No 45/2001, in particular those concerning the appointment of a Data Protection Officer of the Agency and those relating to the lawfulness of the processing of data, the security of the processing activities, the provision of information and the rights of data subjects.

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<sup>50</sup> Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

3. The Agency may engage in communication activities on its own initiative within its field of competence. The allocation of resources to communication activities shall not be detrimental to the effective exercise of the tasks referred to in Article 5. Communication activities shall be carried out in accordance with the relevant communication and dissemination plans adopted by the Management Board.

### *Article 38*

#### *Combating fraud*

1. In order to facilitate the combating of fraud, corruption and other unlawful activities in accordance with Regulation (EC) No 883/2013, within six months from the day that the Agency becomes operational, it shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by OLAF and adopt appropriate provisions applicable to all employees of the Agency using the template set out in the Annex to that Agreement.
2. The Court of Auditors shall have the power of audit, on the basis of documents and on-the-spot checks, over all grant beneficiaries, contractors and subcontractors who have received Union funds from the Agency.
3. OLAF may carry out investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant or a contract funded by the Agency, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Regulation (Euratom, EC) No 2185/96.
4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and international organisations, contracts, grant agreements and grant decisions of the Agency shall contain provisions expressly empowering the European Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

## *Article 39*

### *Security rules on the protection of classified and sensitive non-classified information*

The Agency shall adopt its own security rules equivalent to the Commission's security rules for protecting European Union Classified Information (EUCI) and sensitive non-classified information, inter alia, provisions for the exchange, processing and storage of such information, in accordance with Commission Decisions (EU, Euratom) 2015/443<sup>51</sup> and 2015/444<sup>52</sup>.

## *Article 40*

### *Liability*

1. The Agency's contractual liability shall be governed by the law applicable to the contract in question.
2. The Court of Justice of the European Union shall have jurisdiction to give judgement pursuant to any arbitration clause contained in a contract concluded by the Agency.
3. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its staff in the performance of their duties.
4. The Court of Justice of the European Union shall have jurisdiction in disputes over compensation for damages referred to in paragraph 3.
5. The personal liability of its staff towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment applicable to them.

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<sup>51</sup> Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security on the Commission (OJ L 72, 17.3.2015, p.41).

<sup>52</sup> Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p.53).

## *Article 41*

### *Evaluation*

1. No later than five years after the date referred to in Article 51, and every five years thereafter, the Commission shall assess the Agency'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 taking into consideration the conciliation procedure applied by the Administrative Commission for the Coordination of Social Security Systems. It shall also address the possible need to modify the mandate of the Agency, and the financial implications of any such modification, including by further synergies and streamlining with Agencies active in the area of employment and social policy.
2. Where the Commission considers that the continuation of the Agency is no longer justified with regard to its assigned objectives, mandate and tasks, it may propose that this Regulation be amended accordingly or repealed.
3. The Commission shall report to the European Parliament, the Council and the Management Board on the evaluation findings. The findings of the evaluation shall be made public.

## *Article 42*

### *Administrative inquiries*

The activities of the Agency shall be subject to the inquiries of the European Ombudsman in accordance with Article 228 TFEU.

## *Article 43*

### *Cooperation with third countries*

1. In so far as is necessary to achieve the objectives set out in this Regulation, and without prejudice to the respective competences of the Member States and the institutions of the Union, the Agency may cooperate with the national authorities of third countries to which the relevant Union law on labour mobility and social security coordination applies.

To that end, the Agency may, subject to prior approval by the Commission, establish working arrangements with the authorities of third countries. Those arrangements shall not create legal obligations incumbent on the Union and its Member States.

2. The Agency shall be open to the participation of third countries that have entered into agreements with the Union to this effect.

Under the relevant provisions of the agreements referred to in the first subparagraph, arrangements shall be developed specifying, in particular, the nature, extent and manner in which the third countries concerned shall participate in the work of the Agency, including provisions relating to participation in the initiatives undertaken by the Agency, financial contributions and staff. As regards staff matters, those arrangements shall, in any event, comply with the Staff Regulations. They may also provide for representation of those countries, as an observer, on the Management Board.

3. The Commission shall ensure that the Agency operates within its mandate and the existing institutional framework by concluding an appropriate working arrangement with the Agency's Executive Director.

## *Article 44*

### *Headquarters agreement and operating conditions*

1. The necessary arrangements concerning the accommodation to be provided for the Agency in the host Member State, together with the specific rules applicable in the host Member State to the Executive Director, members of the Management Board, Agency staff and members of their families, shall be laid down in a Headquarters agreement between the Agency and the Member State where the seat is located, concluded after obtaining the approval of the Management Board and no later than two years after the entry into force of this Regulation.
2. The Agency's host Member State shall provide the best possible conditions to ensure the smooth and efficient functioning of the Agency, including multilingual European-oriented schooling and appropriate transport connections.

## *Article 45*

### *Commencement of the Agency's activities*

1. The Agency shall become fully operational at the latest two years after the entry into force of this Regulation. In agreement with the Commission, the Management Board can set an earlier date for the Agency to become fully operational under the condition that the Agency has the operational capacity to implement its own budget.
2. The Commission shall be responsible for the establishment and initial operation of the Agency until the Agency becomes fully operational. For this purpose:
  - (a) until the Executive Director takes up his or her duties following his or her appointment by the Management Board in accordance with Article 32, the Commission may designate a Commission official to act as interim Executive Director and exercise the duties assigned to the Executive Director;

- (b) by derogation from point (j) of Article 19(1) and until the adoption of a decision as referred to in Article 19(2), the interim Executive Director shall exercise the appointing authority power;
- (c) the Commission may offer assistance to the Agency, in particular by seconding Commission officials to carry out the activities of the Agency under the responsibility of the interim Executive Director or the Executive Director;
- (d) the interim Executive Director may authorise all payments covered by appropriations entered in the Agency's budget after approval by the Management Board and may conclude contracts, including staff contracts, following the adoption of the Agency's establishment plan.

*Article 46*

*Amendments to Regulation (EC) 883/2004*

Regulation (EC) No 883/2004 is amended as follows:

- (1) in Article 1, the following point is inserted:

“(na) ‘European Labour Agency’ means the body established by [Regulation Establishing the Agency] and referred to in Article 74a;”;

[...]

- (4) After Article 74 the following Article is inserted:

*“Article 74a*

The European Labour Agency

Without prejudice to the tasks and activities of the Administrative Commission the European Labour Agency shall support the application of this Regulation in accordance with its tasks set out in [*Regulation establishing the Agency*]. The Administrative Commission shall cooperate with the European Labour Agency to synchronize the activities in mutual agreement and avoid any overlap.

[...]

*Article 48*

*Amendments to Regulation (EU) No 492/2011*

Regulation (EU) No 492/2011 is amended as follows:

- (1) in Article 26 the following paragraph is added:

"The European Labour Agency, established by [*Regulation establishing a European Labour Agency*]" shall participate in the meetings of the Advisory Committee as an observer, providing technical input and expertise as relevant.";

- (2) Articles 29 to 34 are deleted with effect on the date when the Agency shall become fully operational in accordance with Article 45(1);

- (3) Article 35 is replaced by the following:

"Article 35

The rules of procedure of the Advisory Committee in force on 8 November 1968 shall continue to apply.";

(4) Article 39 is replaced by the following:

"Article 39

The administrative expenditure of the Advisory Committee shall be included in the general budget of the European Union in the section relating to the Commission."

*Article 49*

*Amendments to Regulation (EU) 2016/589*

Regulation (EU) 2016/589 is amended as follows:

(1) Article 1 is amended as follows:

(a) point (a) is replaced by the following:

"(a) the organisation of the EURES network between the Commission, the European Labour Agency and the Member States;"

(b) point (b) is replaced by the following:

"(b) cooperation between the Commission, the European Labour Agency and the Member States on sharing relevant available data on job vacancies, job applications and CVs;"

(c) point (f) is replaced by the following:

"(f) promotion of the EURES network at Union level through effective communication measures taken by the Commission, the European Labour Agency and the Member States;"

(2) in Article 3, the following point is added:

"(8) 'European Labour Agency' means the body established pursuant to [*Regulation establishing a European Labour Agency*]";

(3) in Article 4(2), the second sentence is replaced by the following:

"The Commission, the European Labour Agency and the EURES Members and Partners shall determine the means to ensure this with regard to their respective obligations.";

(4) Article 7(1) is amended as follows:

(a) point (a) is replaced by the following:

"(a) a European Coordination Office which shall be established within the European Labour Agency and which shall be responsible for assisting the EURES network in carrying out its activities;"

(b) the following point is added:

"(e) the Commission.";

(5) Article 8 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the introductory phrase is replaced by the following:

"The European Coordination Office shall assist the EURES network in carrying out its activities, in particular by developing and conducting, in close cooperation with the NCOs and the Commission, the following activities:"

(ii) in point (a), point (i) is replaced by the following:

"(i) as the system owner for the EURES portal, and related IT services, the definition of user needs and business requirements to be transmitted to the Commission for the operation and development of the portal, including its systems and procedures for the exchange of job vacancies, job applications, CVs and supporting documents and other information, in cooperation with other relevant Union information and advisory services or networks, and initiatives;"

(b) paragraph 2 is replaced by the following:

"2. The European Coordination Office shall be managed by the European Labour Agency. The European Coordination Office shall establish a regular dialogue with the representatives of the social partners at Union level.";

(c) paragraph 3 is replaced by the following:

"3. The European Coordination Office shall, in consultation with the Coordination Group referred to in Article 14 and with the Commission, draw up its multiannual work programmes.";

(6) in Article 9(2), point (b) is replaced by the following:

"(b) cooperation with the Commission, the European Labour Agency and the Member States on the clearance within the framework set in Chapter III;"

(7) in Article 14, paragraph 1 is replaced by the following:

"1. The Coordination Group shall be composed of representatives at the appropriate level of the European Coordination Office, the Commission and the NCOs.";

(8) Article 29 is replaced by the following:

"Article 29

Exchange of information on flows and patterns

The Commission and the Member States shall monitor and make public labour-mobility flows and patterns in the Union on the basis of reports by the European Labour Agency, using Eurostat statistics and available national data."

*Article 50*

*Repeal*

Decision (EU) 2016/344 is repealed with effect on the date when the Agency shall become fully operational in accordance with Article 45(1).

References to Decision (EU) 2016/344 shall be construed as references to this Regulation.

*Article 51*

*Entry into force*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States.

Done at Brussels,

*For the European Parliament*

*For the Council*

*The President*

*The President*

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