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Delegations will find attached document SWD(2018) 69 final.

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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Proposal for a Regulation of the European Parliament and of the Council
establishing a European Labour Authority

{COM(2018) 131 final} - {SWD(2018) 68 final}

Executive Summary Sheet

Impact assessment on [Proposal for a Regulation establishing a European Labour Authority

A. Need for action

Why? What is the problem being addressed?

Free movement of workers and of services are key asset for the EU. Yet, they depend on clear, fair and effectively enforced rules on cross-border labour mobility and social security coordination. The EU has developed an extensive body of legislation regulating free movement of workers, posting of workers in the context of the provision of services and rules on social security coordination. The Juncker Commission has submitted several proposals to improve this regulatory framework, including the revision of the Posting of Workers Directive and of the Regulation on the Coordination of Social Security Systems, as well as the *lex specialis* on posting in the international road transport sector.

However, concerns remains regarding compliance with and effective enforcement of EU rules which risk jeopardising trust and fairness in the Internal Market. In particular two problems stand out: first, inadequate information, support and guidance function for individuals and employers in cross-border situations; second, inadequate cooperation between national authorities on rule enforcement.

This proposal aims at addressing the following specific challenges:

- Inadequate support and guidance for individuals and businesses in cross-border situations, including incomplete or sparse information available to the public concerning their rights and obligations;
- Insufficient access to and sharing of information between national authorities responsible for different domains of labour mobility and social security coordination;
- Insufficient capacity of national authorities to organise cooperation with authorities across borders;
- Weak or absent mechanisms for joint cross-border enforcement activities;
- The lack of a cross-border mediation mechanism between Member States across all domains of labour mobility and social security coordination;
- Insufficient cooperation set-up at EU level in this area.

EU labour mobility has shown an upward trend throughout the crisis. By 2017, 17 million citizens lived or worked in a Member State other than that of their nationality. The figures almost doubled compared to a decade ago. Postings have increased by 68% from 2010 to 2.3 million in 2016. 1.4 million EU citizens commute to go to work in another Member State. Facing this situation, there is a need for effective cooperation between national authorities and for concerted administrative action to manage the increasingly European labour market.

What is this initiative expected to achieve?

The general objective of the initiative is to help strengthen fairness and trust in the internal market and support the free movement of workers and services. The specific objectives of the initiative are respectively to:

- improving access to information by individuals and employers about their rights and obligations in the areas of labour mobility and social security coordination as well as access to relevant services;
- strengthening operational cooperation between authorities in the cross-border enforcement of relevant Union law, including facilitating joint inspections;
- mediating and facilitating solutions in cases of disputes between national authorities and cross-border labour market disruptions, such as a restructuring of companies affecting several Member States.

What is the value added of action at the EU level?

While the enforcement of EU law remains the competence of national authorities, the free movement of workers, the posting of workers, and the coordination of social security are by definition transnational matters that require action at EU level.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

Three policy options for the European Labour Authority, characterised by increasing levels of ambition, have been considered, (1) a support option, (2) an operational option, and (3) a supervisory option. Each option covers the following tasks that a European Labour Authority could carry out:

- Labour mobility services for individuals and businesses
- Cooperation and exchange of information between national authorities;
- Support to joint inspections;
- Labour market analyses and risk assessment;
- Support to capacity building
- Mediation between national authorities;
- Facilitation of cooperation between relevant stakeholders in the event of cross-border labour disruptions.

In terms of delivery, the following options have been considered:

- a European Network is established coordinating existing EU labour mobility bodies and the Commission takes on new operational tasks; (1)
- a new European Labour Authority is established performing operational tasks, which builds on existing labour mobility bodies;(2)
- a new European Labour Authority is established building on an existing EU Agency in the area of employment.(3)

The preferred option combines the operational policy option (2) to be delivered through a new European Labour Authority (2). This approach allows the Commission to keep the policy steer, together with the Member States as for today, and thus complies with the non-delegation doctrine.

The operational policy option achieves the best balance in meeting the objectives, ensuring positive impacts for national authorities, workers and businesses without significantly increasing costs, and has strong support with stakeholders. The delivery option of establishing a new European Labour Authority building on existing EU level mobility bodies combines effectiveness in delivering operational tasks with supporting the activities of existing EU bodies while rationalising them, in a proportionate manner and in respect of subsidiarity, both concerns raised by relevant stakeholders.

A legislative instrument (Regulation) is required to establish a new agency.

Who supports which option?

The level of support varies across stakeholders and across measures and options. There is broad support for better exchange of information and risk assessment, but there is strong reluctance of national authorities, as well as by employer organisations, towards imposed joint cross-border inspections, binding decisions, or binding dispute settlement mechanisms. In international road transport national enforcement authorities more strongly support an EU-level mechanism that would facilitate harmonised cross-border enforcement of rules. Trade unions support EU conciliation mechanisms. Both trade unions and citizens would support extending dispute settlement beyond national authorities to individual cross-border disputes.

With a few exceptions, support to the setting up of a new Authority is conditional on the scope and objectives conferred to it, as well as on its possible costs. Stakeholders tend to favour the option of rationalising and increasing the efficiency of existing networks and structures.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

The benefits for individuals, especially the mobile workers, will be better protection and reduced exposure to the risk of fraud and abuse, especially in the road transport sector. Further benefits come from improved possibilities to exercise their free movement rights.

Business, especially SMEs, will benefit from more fair competition and equal playing field and from reduced uncertainty about their situation, especially relevant in relation to posting of workers. That together with better information can facilitate their decisions to engage in cross-border activities.

Benefits for national authorities flow from their reinforced cooperation and control capacities for better rule enforcement. Benefits of structured cooperation are expected to increase over time as more national authorities decide to use the available framework.

Wider macro-economic benefits would generally ensue from the improved and fairer functioning of the internal market, contributing to overall fair competition and to restoring trust between administrations.

What are the costs of the preferred option (if any, otherwise main ones)?

Under the preferred combined option, the EU budgetary total costs of the European Labour Authority are estimated to be 50.9 million per year at cruising speed in 2023. There are no environmental impacts.

How will businesses, SMEs and micro-enterprises be affected?

Businesses, SMEs and micro-enterprises should be positively affected. They should benefit from improved administrative efficiency and a better functioning of the internal market, notably through a better enforced level-playing field. There are no costs for rule compliant businesses.

Will there be significant impacts on national budgets and administrations?

There will be minimum impacts on national budgets given the support for the proposal in the EU budget. It is not possible to exactly quantify the impacts on administrations, but on the basis of case studies the impact is anticipated to be positive as better rule enforcement will capture previously unpaid social contributions.

Will there be other significant impacts?

The proposal will trigger the rationalisation of some of the existing EU mobility bodies, namely: (i) the EURES European Coordination Office; (ii) the Conciliation Board from the Administrative Commission (AC) on social security coordination (iii) Audit Board and the (iv) Technical Commission of the AC; (v) the European Platform to tackle Undeclared Work; (vi) the Expert committee on the Posting of Workers; and (vii) the Technical Committee on the Free Movement of Workers. The tasks currently performed by these bodies would be carried out by the Authority. Instead, ELA would develop cooperation with the three remaining committees in the labour mobility and social security coordination field (the Administrative Commission and the Advisory Committee) and the Advisory Committee on the Free Movement of Workers. The Committee on Road Transport shall also remain unaltered.

D. Follow up

When will the policy be reviewed?

The Commission will review the application of the Regulation 5 years after it enters into force in line with the requirements of the Financial Regulation and the Better Regulation Guidelines.