



Brussels, 25 February 2019
(OR. en)

6791/19

ANTICI 1
INST 48
SOC 152
EMPL 119

NOTE

From: Presidency

To: Permanent Representatives Committee

Subject: Procedure for the selection of the seat of the European Labour Authority

I. INTRODUCTION

On 20 February, Coreper I confirmed the agreement reached on the proposal for establishing a European Labour Authority (ELA). The formal adoption of the Regulation is expected to take place in April. The provisions regarding the seat of the ELA were excluded from the Regulation, and the procedure for deciding on the seat should now be launched.

The Common Approach annexed to the 2012 Joint Statement by the EP, the Council and the Commission on decentralised agencies¹ acknowledges that the decision on the seat of an agency is to be taken by common accord of the representatives of the Governments of the Member States.²

¹ Doc 11450/12.

² This is also the view of the Council Legal Service (doc 9544/17).

II. PROPOSED PROCEDURE FOR DECIDING ON THE SEAT OF ELA

The decision on the seat of ELA requires common agreement among the Member States³. In the past, different procedures have been followed for deciding on the seat of agencies. The procedure for the relocation of the London agencies put great emphasis on transparency and the use of criteria in line with the Common Approach annexed to the 2012 Joint Statement.

This note contains the elements for reaching an agreement on a procedure for ELA, including a roadmap and a set of criteria, with the understanding that all Member States would engage to respect the result of that procedure.

As there is no standard procedure available, the Presidency suggests the way forward underneath for ELA:

1. Responsibilities

Given the general political nature of the attribution of seats of agencies, this is a matter for the representatives of Member States. It is proposed to address the issue in the margins of Coreper I. As customary, the Member State holding the Presidency of the Council will lead the process, supported by the GSC

2. Timing of the process

The aim is to allow the ELA to become operational as quickly as possible after the entry into force of the Regulation. The Presidency will submit the proposed procedure to Coreper I for discussion on 6 March and endorsement on 13 March.

³ "Common agreement" and "common accord" are terms having the equivalent effect of requiring that all Government Representatives are able to express themselves in favour of the solution retained (no abstention).

3. Criteria

The criteria for the seat of the Agency are based on point 6 of the Common Approach annexed to the 2012 Joint Statement.

Apart from the objective criteria, the Joint Statement also refers to the desirability of geographical spread and to the objective agreed by the leaders in 2003 and confirmed in 2008 to give priority to acceding States in the distribution of the seats of other agencies set up in the future. This has been taken into account in criterion 1.

The following criteria will be taken into account. For information purposes, a Commission factsheet on ELA is attached in Annex 1.

1. The number of agencies which already have their seat in that Member State:

Taking into account the leaders' objectives, priority shall be given to a Member State which acceded in or after 2004.

2. The date when the Agency can be set up on site upon the entry into force of its founding act:

This criterion concerns in particular the availability of appropriate office premises in time for the Agency to become operational pursuant to Article 45(1) of the draft ELA Regulation. This should include the necessary logistics and sufficient space for offices, meeting rooms and off-site archiving, high-performing telecommunication and data storage networks as well as appropriate physical and IT security standards.

3. Accessibility of the location:

This criterion concerns the availability, frequency and duration of flight and train connections from the capitals of all EU Member States to the airports close to the location, the availability, frequency and duration of public transportation connections from these airports to the location, as well as the quality and quantity of accommodation facilities. In particular, the criterion implies the capacity to allow for the expected meeting activities of the Agency.

4. Existence of adequate education facilities for the children of agency staff:

This criterion concerns the availability of multi-lingual, European-oriented schooling that can meet the needs for education facilities for the children of staff of the Agency.

5. Appropriate access to the labour market, social security and medical care for both children and spouses:

This criterion concerns the capacity to meet the needs of the children and spouses of staff for social security and medical care as well as the availability to offer job opportunities for them.

6. Business continuity:

This criterion is also relevant for ELA given that several bodies and services provided currently by the Commission will be transferred to the European Labour Authority (especially EURES). It needs therefore to be ensured that these tasks are continued without disruption. The criterion relates to the timeframe required to fulfil the criteria 2 to 5. It concerns amongst other things the ability to allow the Agency to maintain and attract highly qualified staff from the relevant sectors. Furthermore, it concerns the capacity to ensure a smooth transition to the new location and hence to guarantee the business continuity of the Agency.

4. Offers to host

In order to ensure a fair and transparent process, the following rules and requirements shall apply to the offers:

General rules

Each Member State can make one offer to host **the Agency**.

The Member State should in the offer **address the criteria** mentioned above and, for each of the criteria, specify the conditions that are offered.

All offers should indicate the Member State's commitment to confirming these conditions in a **headquarters agreement⁴** with the Agency in question. That agreement should be signed before the Agency takes up its seat at the new location.

All offers to host the Agency should be made in writing to the Secretary-General of the Council and copied to the Secretary-General of the Commission. **The deadline for submitting offers is 10 May 2019 (cob).**

⁴ Cf. COM guidelines with standard provisions for headquarters agreements of EU decentralised agencies: https://europa.eu/european-union/sites/europaeu/files/docs/body/2013-12-10_guidelines_hq_agreements_en.pdf

All offers from Member States received within the deadline will be **published** on the website of the Council, with the exclusion of business secrets and other confidential information following consultation with the Member States concerned.

Member States may, together with their offer, submit a **recorded short video presentation** in the form of a link to a Member State website. Such links will be published on the website of the Council alongside the offers.

Publication would take place on 13 May.

Specific issues to be addressed in the offer

The offers should indicate in detail how the six criteria are addressed and should specify the offered conditions.

In particular, the offer should indicate:

The premises that would be offered to be rented or put at the disposal of the Agency and how these premises would meet the specific needs of the Agency as indicated in the Commission factsheet (*see Annex 1*);

The financial terms for the Agency's use of these premises, specifying in particular if the Member State would pay the rent for a given period of time or indefinitely;

The terms concerning maintenance of the building including upgrading and future extensions if needed;

Any special conditions offered with regard to all costs and dedicated infrastructures; and

Any benefits that would be granted to the Agency and/or its staff in addition to those following from Protocol No 7 on the privileges and immunities of the European Union.

5. Commission examination of the offers

The Commission will carry out an examination of all the offers received within the deadline on the basis of the criteria mentioned under point 4. The Commission will analyse the extent to which each offer meets the criteria and how it addresses the stipulated specific issues. By 1 June 2019 at the latest, the Commission will submit its assessment of the offers to the Secretary-General of the Council for distribution to the Member States and will also make it publicly available.

6. Decision-making and voting process

The decision-making process is informed by the assessment referred to in point 5. It will be preceded by a political discussion organised among the representatives of the Member States on the basis of the Commission's assessment. It will be held in the margins of Coreper I on 5 June. The Commission will make an oral presentation of its assessment of the offers. Member States which have submitted an offer to host will be given the occasion to make a short presentation of their offer (maximum 3 minutes).

The voting process will take place in the margins of the EPSCO Council on 13 June (in Luxembourg). The voting process should consist of successive voting rounds. The votes are cast by secret ballot and each Member State has one vote. All offers, except for any withdrawn by the Member States concerned, will be submitted to the vote. The voting process on the seat shall not involve the drawing of lots.

1st voting round

In this round, each Member State has one vote which should be allocated to the preferred offer.

If within the first voting round an offer receives more than half of the votes counted, hence representing the majority, this offer will be considered the selected offer.

If no offer receives more than half of the votes counted, the two offers having received the highest number of votes will be subject to the second voting round. If three or more offers have received the highest number of votes these offers will participate in the next vote pursuant to the following subparagraph. Similarly, in case that there is one offer having received the highest number of votes, but two or more offers have received the second highest number of votes, all these offers will participate in the next vote pursuant to the following subparagraph.

This first voting round process shall be repeated until either one offer has received more than half of the votes counted and is thus considered the selected offer or only two offers have received the highest number of votes. In the latter case, these two offers will participate in the second voting round.

2nd voting round

In the second voting round, each Member State has one vote that it can give to one of the two offers which have been chosen for the second voting round.

If an offer receives more than half of the votes counted, hence representing the majority, this offer will be considered the selected offer.

In case of a tie, new vote(s) will take place after a cooling off period. Its length is determined by the Presidency. Votes will take place until an offer has received the majority of votes.

Decision

The decision on the seat of the Agency reflecting the outcome of the voting process will be confirmed by common agreement of the Member States' representatives at the same meeting.

7. Information of the European Parliament and the public

The Presidency will inform the European Parliament about the fact that the procedure has been launched, about the offers received and about the final decision taken.

Commission Factsheet on the European Labour Authority (ELA)

ELA's mission

ELA will support fair labour mobility within the EU, allowing citizens and businesses to seize the opportunities offered by the single market, while at the same time preventing and tackling social fraud and abuse. The complexity of regulating the European labour market and of effectively enforcing social rules calls for a structured approach encompassing different but interrelated aspects: the scope of ELA covers cross-border labour mobility and the coordination of social security systems. The objectives of ELA are to:

- Provide tools for effective and swift cross-border enforcement of EU rules, such as joint and concerted inspections by Member States;
- Mediate in cases of cross-border disputes between Member States;
- Act as a hub for the exchange and provision of information that is so far scattered and compartmentalized.

The Authority will be entrusted with a number of operational tasks, including the provision of information and services to individuals and employers, support to Member States in cooperation, information exchange, concerted and joint inspections, risk assessment, capacity building, mediation, and cooperation in the event of cross-border labour market disruptions.

In fulfilling its tasks, ELA will build on existing structures and existing legislation. ELA will integrate existing expert bodies, and it will foster synergies by cooperating on areas of common concern with other agencies in the employment domain and beyond.

ELA does not change the division of competences between the EU and the Member States and is not about extending the remit of EU law. It will provide operational support, resources for common activities and a forum for the exchange of information and the creation of mutual trust and a closer administrative culture across the Member States, in full respect of the national competences and of the role of the social partners, taking into account different labour market models.

Objective criteria set out in the Common Approach⁵

The below criteria are to be taken into account when Member States put forward their offers without prejudice to the desirability for geographical spread and the objective to give priority to new Member States without agencies.

1. Capability of having the agency set up upon entry into force of the founding Regulation

During the first year of its activities, the number of ELA staff is estimated to reach 38, out of which 7 contract staff, 16 temporary staff (administrators (AD) and assistants (AST)), and 15 seconded national experts.

At full capacity, expected to be reached within 5 years of its establishment, the ELA staff is estimated to comprise 144 members, out of which 60 experts seconded by their Member States.

At the future seat of ELA the necessary logistics and sufficient office space will need to be ensured to accommodate its staff, along with the necessary telecommunication and data storage networks in line with physical and IT security standards.

A sufficient number of meeting rooms will be needed to accommodate meetings of ELA's Management Board, Stakeholder Group, as well as meetings bringing together Member States for joint activities (e.g. organisation of joint and concerted inspections, capacity building), and meetings of working groups which are decided to be created by the ELA Management Board.

2. The accessibility of the location

ELA will organise regular meetings of its Management Board and Stakeholder Group, and other meetings bringing together experts and representatives who will travel from all EU Member States, as well as from the European Economic Area and Switzerland. It is expected that such meetings can last several days, requiring overnight stays and therefore sufficient capacity for adequate accommodation/hotel.

ELA is expected to organise regular missions for its staff within Europe (e.g. participation of ELA staff in joint or concerted inspections), requiring easy access to air and rail transport linking with European capitals.

⁵ https://europa.eu/european-union/about-eu/agencies/overhaul_en

3. Existence of adequate education facilities for the children of staff members

ELA staff will amount to approximately 144 members of staff, out of which about 60 seconded national experts, representing nationalities from all EU Member States, as well as the European Economic Area and Switzerland. Therefore the availability of multi-lingual, European-oriented schooling is crucial to meet the needs for education facilities for the children of ELA staff.

4. Existence of adequate social and labour facilities for spouses and/or children of staff members

Access to medical care/other social security will be needed for approximately 144 ELA staff and their family members, as well as access to labour market for the family members of staff.

5. Business continuity

In addition to the criteria set out above which is applicable for the selection of the seat of newly established agencies, given that ELA will be established by pooling expertise and work of several committees and structures currently in place and under the coordination of the European Commission, it will be important to ensure that such work can continue without disruption, that ELA will be able to attract the necessary staff from the relevant sectors and that its setting up can follow a smooth transition to ELA's location.