

Administrative co-operation and the new European Labour Authority

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Abstract

In June 2019, with the adoption of Regulation (EU) n. 2019/1149 a European Labour Authority is formally established as a Union body with the scope of assisting Member States and the Commission in their application and enforcement of EU law related to labour mobility and the co-ordination of social security systems, in particular by fostering administrative co-operation and the exchange of the relevant information. Once again administrative co-operation is at the very core of the new European governance of the challenges and problems of the internal market integration. This article gives an outline of the new Authority indicating its role, functions and structure and putting it into the context of the previous initiatives launched by the European institutions and in particular by the Commission, over the past years, to foster compliance with EU law and which all revolve around the principle of administrative co-operation; finally, some conclusions are drawn.

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1. Preliminary remarks

Over the last few years, the aim of fostering the integration of the internal market with a strong focus on social fairness has been on the political agenda of the European institutions and has led to the adoption of new legislative initiatives to support cross-border mobility¹. Reference is made here to the revision of the posting of workers Directive² and of the Regulations on the co-ordination of social security systems³, which follow previous EU legislation aimed at facilitating the free movement of workers and job-seekers⁴, along with other initiatives, such as the setting-up of a European Platform to tackle undeclared work⁵.

¹ See, in this respect, the European Pillar of Social Rights, which was the subject of a joint proclamation by the European Parliament, the Council and the Commission, at the Social Summit for Fair Jobs and Growth, in Gothenburg on 17 November 2017. More information, at: https://ec.europa.eu/commission/sites/beta-political/files/social-summit-european-pillar-social-rights-booklet_en.pdf.

² Directive (EU) No 2018/957, of the European Parliament and of the Council, of 28 June 2018, (*“amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services”*), OJ L 173, 9.7.2018.

³ Proposal for a Regulation, of the European Parliament and of the Council, of 12 December 2016, (*“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.

⁴ Directive (EU) No 2014/54, of the European Parliament and of 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.

⁵ 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”*). The UDW Platform operates, first of all, at a national level, supporting Member States in promoting better working conditions and formal employment. It also operates at an EU-level, providing a forum for the exchange of information and best practices and fostering cross-border co-operation. More information available at: <https://ec.europa.eu/social/main.jsp?catId=1299&langId=en>.

Despite the fact that an extensive body of legislation regulating the free movement of workers and the co-ordination of social security regimes has been developed, and that a number of Committees and Networks⁶ have been set up to support the implementation and enforcement of those rules, still challenges undermine their effective compliance and cross-border labour mobility is consequently considered an untapped resource in Europe⁷.

Still, citizens and companies are not adequately and effectively informed of rights, obligations and procedures deriving from the relevant EU legislation; in addition, competent national authorities encounter great difficulty when co-operating on rule enforcement, both in terms of access to information and of the performance of joint cross-border activities⁸.

In this respect, the European Parliament and the Council have been stressing the need to reinforce controls and co-ordination between and by Member States, so as to promote standardisation and co-operation; also, they stressed the importance of clear and transparent information for service providers and workers and the need to improve administrative co-operation⁹.

⁶ Just as examples: the Administrative Commission for the Coordination of Social Security Systems - 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; the Technical Committee and the Advisory Committee on the Free Movement of Workers - Regulation (EU) No 492/2011, of the European Parliament and of the Council, of 5 April 2011, on (*“freedom of movement for worker, within the Union”*), OJ L 141, 27.5.2011); the Committee of Experts on Posting of Workers - 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, as amended; the EURES network - Regulation (EU) 2016/589, of the European Parliament and of 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 1296/20132”*), OJ L 107, 22.4.2016, etc..

⁷ See, Commission staff working document, of 13 March 2018, (*“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, 5-7.

⁸ *Ibid.*, 11-15.

⁹ European Parliament Resolution, of 14 September 2016, on (*“social dumping in the European Union”*), 2015/2255(INI). European Parliament Resolution, of 14 January 2014, on (*“effective labour inspections as a strategy to improve working conditions in Europe”*), 2013/2112(INI); European Council, General approach on the proposal for a Directive amending Directive 96/71/EC concerning the posting of workers, 13612/17, 24 October 2017.

It is within this context that, on 13 September 2017, President Juncker, in his State of the European Union Address, announced that a European Labour Authority (“*a new European inspection and enforcement body*”) was going to be established, “*to make sure that all EU rules on labour mobility are enforced in a fair, simple and effective way*”. Following consultations and an impact assessment, a legislative Proposal¹⁰ was presented in March 2018 by the Commission. The European Labour Authority¹¹ (hereinafter ‘the Authority’) was then formally established in June 2019, with the adoption of Regulation (EU) n. 2019/1149¹² (‘Establishing Regulation’), as a Union body with legal personality, whose scope is to assist Member States and the Commission in their application and enforcement of EU law related to labour mobility across the Union and the co-ordination of social security systems, in particular by fostering administrative co-operation and the exchange of the relevant information. Once again administrative co-operation is at the very core of the European governance of the new challenges and problems of the internal market integration¹³. In line with other previous initiatives launched by the European institutions and in particular by the Commission over the past years¹⁴, the Authority is aimed at fostering effective compliance with EU law by facilitating access to information and improving the effectiveness of the administrative intervention especially at a national level. Interestingly, the Authority is also called upon to mediate disputes between Member States on the application of the relevant Union law.

¹⁰ Proposal for a Regulation (EU), of the European Parliament and of the Council, of 20 June 2019, (“*establishing a European Labour Authority*”), COM(2018) 131 final. The proposal was part of the roll-out of the European Pillar of Social Rights (EPSR) presented by the April 2017 and proclaimed by the EU leaders at the Social Summit in Gothenburg in November 2017. The EPSR sets out 20 key principles and rights to support fair and well-functioning labour markets and welfare systems. For more information, see, <https://ec.europa.eu/social/>.

¹¹ This initiative is adopted by the Commission as part of the Social Fairness Package, together with a proposal on Access to Social Protection, helping to ensure that workers’ and citizens’ rights to equal treatment and opportunities regarding employment and social protection are guaranteed in cross-border situations.

¹² Regulation (EU) 2019/1149, of the European Parliament and of the Council, of 20 June 2019, (“*establishing a European Labour Authority*”) OJ L 186, 11.7.2019.

¹³ M. LOTTINI, *From ‘Administrative Cooperation’ in the Application of European Union Law to ‘Administrative Cooperation’ in the Protection of European Rights and Liberties*, in *European public law*, 1, 2012, 127 at 147.

¹⁴ See, more in detail, next paragraph.

This article gives an outline of the new Authority indicating its role, functions and structure, put into the context of the new patterns of administrative governance developed over the last few years and which revolve around the principle of administrative co-operation; finally, some conclusions are drawn.

2. Administrative co-operation and the integration of the internal market

Over the past twenty years, the correct application of European Union law by national public administrations has become increasingly important in the debate on the future of the internal market¹⁵. On the one hand, it has been acknowledged that the adoption of an even detailed and comprehensive legal framework cannot lead to the actual integration of the internal market, if national public administrations (called upon to apply EU law) make unlawful decisions in their day-to-day activity¹⁶, as the correct application of EU law depends, among other things, “*on national authorities taking correct decisions*”¹⁷.

On the other hand, it has been pointed out that the activity of Member States’ administrations has undergone enormous changes because of the influence of EU law and its application. Furthermore, national public administrations are more and more called upon to make decisions affecting citizens of a different Member State or to

¹⁵ Communication from the Commission, (“*Better monitoring of the application of Community law*”), of 16 May 2003, COM(2002)725 final; Commission of the European Communities, White Paper on (“*European governance*”), of 25 July 2001, COM(2001) 428 final; Commission Recommendation on (“*Measures to improve the functioning of the single market*”), of 29 June 2009, C(2009) 4728 final, 1. More recently, Communication from the Commission, (“*EU law: better results through better application*”), of 19 January 2017, 2017/C 18/02, OJ C 18/10 and Commission staff working document, (“*Single market performance Report 2019*”), Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank Annual Sustainable Growth Strategy 2020, of 17 December 2019, COM(2019) 650 final, *passim*.

¹⁶ Communication from the Commission, of 4 June 1997, (“*Action Plan for the Single Market*”), CSE (97) 1 final, 6. See, also on this topic, P. NICOLAIDES, *Enlargement of the EU and effective implementation of community rules: an integration-based approach*, EIPA (1999), Working Paper 99/W/04, available at: <http://www.eipa.nl/index.asp>.

¹⁷ Communication from the Commission, of 5 September 2007, (“*A Europe of results – applying community law*”), COM(2007) 502 final, 6.

make decisions displaying their effects across State borders.

In order to face the emerging challenges posed by the material application of EU law by national administrations, European institutions and Member States have increasingly stressed the need to foster administrative co-operation¹⁸, which should lead to the adoption of decisions that are lawful and consistent throughout Europe, as well as, facilitate the activity of the administrations when dealing with ‘cross-border issues’¹⁹.

Co-operation obligations have been imposed on national administrations as a general principle (article 4.3 TEU²⁰ and article 197 TFEU²¹), by specific pieces of legislation²² and by the case-law of the Court of Justice of the European Union (CJEU)²³. Also, in accordance with article 6 of the Treaty on the European Union

¹⁸ See F. LAFARGE, *Administrative cooperation between member States and the implementation of EU law*, in *European public law*, 4, 2010, 597.

¹⁹ “Co-operation assumes importance as a legal tool that might ensure effectiveness of European Union law and of its national implementation, thus favouring integration between public administrations and their legal systems (...)”. R. CAVALLO PERIN and G. M. RACCA, *Administrative cooperation in the public contracts and service sectors for the progress of European integration*, in F. MERLONI and A. PIOGGIA (eds), *European democratic institutions and administrations*, Springer, 2018, 265, at 267.

²⁰ Specifies that: “pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties”.

²¹ “Effective implementation of Union law by the member States, which is essential for the proper functioning of the Union, shall be regarded as a matter of common interest”.

²² Just as examples: Directive 2006/123/EC, of 12 December 2006, on (“services in the internal market”), OJ L 376/06, of 27.12. 2006, *passim*; Directive 2013/55/EU, of 20 November 2013, (“amending Directive 2005/36/EC, on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System”), OJ L 354/132, 28.12.2013.

²³ The CJEU, called upon to rule on the application of article 10 TEC (now article 4.3 TEU), made it clear that the principle of sincere co-operation imposes mutual obligations on the ‘Home’ and the ‘Host’ State authorities. The former has to carry out a proper assessment of the facts relevant for the application of the rules in question, and they have to guarantee the correctness of the information on which they base their decision (e.g., the issuance of an authorisation). The ‘Host’ State authorities, on the other hand, have to ‘recognise’ this decision, and they have to consider themselves bound by it. Judgement of 10 February 2000, *FTS*, C-202/97, ECLI:EU:C:2000:75. See also, judgment of 20 September 2007, *Commission v. Netherlands*, C-297/05, ECLI:EU:C:2007:5031. On this topic see, D.U. GALETTA, *Amministrazione, reti di amministrazioni, Verwaltungsverbund: modelli organizzativi nuovi o alternative semantiche alla nozione di «cooperazione amministrativa» dell’art. 10 TCE, per definire il fenomeno dell’amministrazione intrecciata?*, in *Rivista italiana di diritto pubblico comunitario*, 2009, 6, 1689.

(TEU), the Union has the competence “to carry out actions to support, coordinate or supplement the actions of the Member States” in the area (among others) of administrative co-operation.

All in all, the concept of ‘co-operation’ is manifold. Public administrations co-operate in various ways: mutual recognition²⁴ of documents and certifications; general exchange of information; mutual administrative assistance (i.e., a requesting authority may ask an authority of a different Member State to carry out an administrative action on its behalf), and so on. As a result, national administrations increasingly have to interact with one another in many different ways. They form co-operation and co-ordination networks²⁵, in which they share information or provide mutual assistance and their decisions are adopted with the formal or informal contribution of authorities of other Member States²⁶. National public administrations also interact with the European Commission in that they co-operate or share competences in the application of EU law. Having recognised the importance of administrative co-operation to foster the integration of the internal market, different initiatives have been put forward to facilitate the correct application of EU law from an ‘administrative point of view’, and to support national administrations in fulfilling their co-operation obligations²⁷.

For example, from 2007, the Internal Market Information System (IMI)²⁸, in specific sectors of the internal market, connects nation-

²⁴ K. ARMSTRONG, *Mutual recognition*, in C. BARNARD & J. SCOTT (eds), *The law of the single European market*, Oxford, Hart Publishing, 2002, 231. On mutual recognition, see the recent Regulation, of the European Parliament and of the Council, of 19 March 2019, on (“the mutual recognition of goods in the internal market, repealing Regulation (EC) No 764/2008”), OJ L 91, 29.3.2019.

²⁵ H.C.H. HOFFMAN, *Composite decision making procedures in EU administrative law*, in H.C.H. HOFMANN & A.H. TÜRK (eds), *Legal challenges in EU administrative law*, Cheltenham, Edward Elgar, 2009, 136.

²⁶ See, in this respect, P.P. CRAIG, *Shared administration, disbursement of Community funds and the regulatory State*, in H.C.H. HOFMANN & A.H. TÜRK (eds), *Legal challenges in EU administrative law, legal challenges in EU administrative law, cit.*, 34.

²⁷ C. E. KOOPS, *Compliance mechanisms compared. An analysis of the EU infringement procedures, SOLVIT, Pilot and IMS?*, in J.M. BENEITO - J. MAILLO (Directors) and J. CORTI and P. MILLA (Coordinators), *Fostering growth in Europe: reinforcing the internal market*, Madrid, CUE, 2014, 431, at 456.

²⁸ In this respect see, Regulation (EU) No. 1024/2012, of the European Parliament and of the Council, of 25 October 2012, on (“administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC”), OJ L 316, 14.11.2012. See, also, M. LOTTINI, *An instrument of intensified informal mutual assistance: the*

al, regional and local authorities across borders and enables them to communicate quickly and easily with their counterparts abroad. The European professional card (EPC)²⁹, an electronic document issued through IMI to professionals interested in working in another Member State, facilitates the mutual recognition of professional qualifications, etc.

Evidently, the principle of (administrative) co-operation is now considered crucial for the correct application of EU law, however, it is also the very principle around which other initiatives revolve, launched to provide an alternative to the Courts to guarantee effective protection to European citizens (and undertakings) against national administrations. Reference is made, here, in particular, to the SOLVIT³⁰ network³¹ set up in 2002, to resolve cross-border disputes³² between citizens and national administrations regarding the correct application of the rules ‘governing the internal market’³³. SOLVIT is designed to provide for a quick and cost-effective, although not binding, system for the settlement of disputes. Its operation is based on the ‘mutual co-operation’ between different levels of administration: the national Centres participating in the network, the national administration which allegedly infringed EU law and which ultimately takes the final decision. Interestingly enough, it is evident that a successful SOLVIT complaint benefits applicants who

Internal Market Information System (IMI) and the protection of personal data, in *European public law*, 1, 104. All the relevant information is available at: http://ec.europa.eu/internal_market/imi-net/index_en.html.

²⁹ In this respect, see, M. LOTTINI, *The European Professional Card: a new single market governance tool*, in *Rivista italiana di diritto pubblico comunitario*, 5, 2017, 1254.

³⁰ All the relevant information on SOLVIT is available at: https://ec.europa.eu/solvit/index_en.htm. On the network, see, also, M. LOTTINI, *Correct application of EU law by national public administrations and effective individual protection: the SOLVIT network*, in *Review of European administrative law*, 3, 2, 2010, 5.

³¹ Some legal scholars refer SOLVIT as a trans-governmental network. D. SINDBJERG MARTINSEN and M. HOBOLTH, *The effectiveness of trans-governmental networks: managing the practical application of European integration in the case of SOLVIT*, in S. DRAKE and M. Smith (eds), *New directions in the effective enforcement of EU Law and policy*, Cheltenham, Edward Elgar, 2016, 152, at 158.

³² On the problems regarding SOLVIT’s mandate see, D. U. GALETTA, *Informal information processing in dispute resolution networks: informality versus the protection of Individual’s Rights?*, in *European public law* 1, 2001, 71.

³³ Commission Recommendation, of 17.9.2013, on (“the principles governing SOLVIT”), C(2013) 5869 final, 3.

can avail themselves of their European rights and liberties, but in the longer term can also contribute to a “cultural change” in national administrations, inducing an overall improved compliance with EU law.

3. The European Labour Authority and its role

It is within this general context that, as already mentioned, the EU institutions launched in June 2019, a new initiative aimed at fostering the correct application and the effective compliance with the EU rules related to labour mobility across the Union and the co-ordination of social security systems, by assisting Member states and the Commission.

The European Labour Authority is a Union body with legal personality, based in Bratislava. Its scope of activities covers several Union acts³⁴ dealing with the free movement of workers³⁵, the integration of labour markets³⁶, the posting of workers³⁷, undeclared work, the co-ordination of social security systems³⁸ for all economic sectors including road transport³⁹.

In practical terms, the Authority is aimed at working at different levels.

³⁴ Including all future amendments.

³⁵ 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. Directive 2014/54/EU, of the European Parliament and of 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.

³⁶ Regulation (EU) 2016/589, *cit*.

³⁷ 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. And, 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*”), OJ L 159, 28.5.2014.

³⁸ *Inter alia*, 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; 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. Etc.

³⁹ *Inter alia*, 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.

Firstly, at an ‘individual’ level, to facilitate access for individuals and employers to information on their rights and obligations, as well as to relevant services in cross-border labour mobility situations.

Secondly, at an ‘administrative level’, to facilitate and enhance co-operation between the competent national authorities in the enforcement of the relevant Union law, including facilitating concerted and joint inspections. In addition, it should mediate and facilitate a solution in cases of cross-border disputes between Member States.

3.1 The European Labour Authority and access to relevant information

Evidently, having a prompt and easy access to the relevant information (about applicable wage levels or administrative requirements when posting workers, about the eligibility conditions of social security benefits in another Country and the national contact points providing assistance) is crucial to allow individuals to take up their free movement opportunities.

In order to provide such information, the EU has established various web-based portals and tools⁴⁰. However, even if steps have been taken to improve guidance and to streamline access to the existing services⁴¹, citizens and companies are still not adequately and effectively informed of rights, obligations and procedures deriving from the relevant EU legislation.

For example, workers are often unaware of their right to have access to unemployment benefits in another Member State or the wage level they are entitled to when being posted to another Member State. By the same token, companies are often not effectively informed of the administrative requirements or the exact wage level

⁴⁰ The EURES job mobility portal, at: <https://ec.europa.eu/eures/>; Your Europe, at: <https://europa.eu/youreurope/index.htm>; Europe Direct, at: <https://europa.eu/european-union/contact>; and the Single Digital Gateway (SDG) that will soon be available.

⁴¹ Regulation (EU) 2018/1724, of the European Parliament and of the Council, of 2 October 2018, (“*establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012*”), OJ L 295, 21.11.2018. The SDG is aimed at improving the ‘findability’ of on-line information and offering easy access to information, assistance, and problem-solving services needed by individuals and businesses when exercising their rights in the internal market.

that they need to comply with when posting workers to another Member State⁴².

In this respect, the Authority should play a role by improving the availability, quality and accessibility of information of a general nature offered to individuals, employers and social partner organisations regarding rights and obligations deriving from the relevant Union acts.

More in particular, it should contribute to the provision of the relevant information through the Single Digital Gateway (SDG), a Union-wide website acting as a single portal for accessing information sources and services at Union and national level in all official languages of the Union, established by Regulation (EU) 2018/1724⁴³ and to be operational soon. Also, the Authority should support Member States in the application of the relevant regulations and in the compliance with their obligations on the access to and dissemination of information.

Moreover, it is well known that, in order to facilitate the access to the relevant information on the rights conferred by Union law regarding labour mobility, Regulation (EU) 2016/589 (of 13 April 2016)⁴⁴ established EURES⁴⁵. The EURES network is a co-operation network of employment services aimed at facilitating the cross-border free movement of workers, providing information and recruitment services to workers and employers.

Each Country has appointed a National Coordination Office for EURES(NCO), responsible for streamlining the national network of members and partners. At European level, the network is co-ordinated by the European Coordination Office (ECO).

In accordance with article 6 of the ‘Establishing Regulation’, the European Labour Authority is going to be entrusted with the man-

⁴² Commission staff working document, of 13 March 2018, (*“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.

⁴³ Regulation (EU) No 2018/1724, of the European Parliament and of the Council, of 2 October 2018, (*“establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012”*), OJ L 295/01 21.11.2018.

⁴⁴ Regulation (EU) No 2016/589, of the European Parliament and of 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, 22.4.2016.

⁴⁵ For more information see: <https://ec.europa.eu/eures/>.

agement of the ECO, except for the technical operation and development of the portal and related IT service which will still be managed by the Commission.

3.2 The European Labour Authority and administrative co-operation

From the ‘administrative’ standpoint, the Authority is aimed at fostering co-operation between the EU Countries in the cross-border enforcement of relevant Union law. More in particular, it shall provide national authorities with operational and technical support to exchange information, develop day-to-day routines or carry out joint inspections.

As a matter of fact, the European Commission, with its Impact Assessment on the Proposal for a Regulation establishing the European Labour Authority⁴⁶, pointed out that the capacity of national authorities to enforce EU and national rules in the field of labour mobility is highly dependent on their mutual co-operation. Public authorities in one Country might need to exchange data with another Member State concerning the social security rights and current residence of a worker in order to assess his/her eligibility to local social benefits⁴⁷. A national authority might need to contact a competent social security institution of another Member State in order to verify whether a posted worker is socially insured in that Country. Similarly, the sharing of registration details of a company may serve the purpose of verifying the genuine establishment of a company in a Member State, etc.

The analysis carried out with the Impact Assessment showed that co-operation routines have not been entirely effective, due to lack of appropriate and timely data sharing, of formalised procedures, gaps in co-ordination⁴⁸, but also due to different administrative capacities of national enforcement authorities, such as labour inspectorates, social security institutions or public employment services.

⁴⁶ Commission staff working document, of 13 March 2018, (*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.

⁴⁷ For example, a worker work for a period in Country and apply for social security benefits in another.

⁴⁸ In some cases, the first difficulty is the identification of the relevant counterpart in another Member State.

Currently, EU and national authorities dispose of a range of tools for the sharing of administrative documents and information, such as the Internal Market Information System (IMI)⁴⁹ or the European Register of Road Transport Undertakings (ERRU)⁵⁰. These information-sharing tools have different scope, operational functions and maintenance management, because of the specificity of their respective policy areas and legislative basis. As they were not originally conceived to interact with each other, the degree of their inter-operability is very low.

That being said, in accordance with the ‘Establishing Regulation’, the Authority has to carry out various activities to foster administrative co-operation, in particular, upon request of one or more Member States, it can: support national authorities in identifying the relevant contact points of national authorities in other Member States; facilitate the follow-up to requests and information exchanges between national authorities by providing translation and interpretation services, and through exchanges on the status of cases; where relevant, facilitate and support cross-border enforcement procedures relating to penalties and fines; provide information at its disposal to support the Member State concerned in the effective application of the Union and promote the use of electronic tools and procedures for message exchange between national authorities, including the IMI system.

3.3. The European Labour Authority as a cross-border mediation mechanism

In accordance with article 13 of the ‘Establishing Regulation’, the Authority is attributed a ‘dispute resolution function’; more in particular, it shall provide mediation in cases of disputes between national authorities of different Member States on the correct application of the rules regarding labour mobility and social security co-ordination. A typical example being that of contested information in A1 portable documents for posted workers⁵¹. This certificate

⁴⁹ On IMI see, *supra*, par. 2.

⁵⁰ The relevant information is available at: https://ec.europa.eu/transport/modes/road/rules-governing-access-profession/european-register-road-transport-undertakings-erru_en.

⁵¹ 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

issued by the home Country concerns the social security legislation which applies to an individual and confirms that the individual in question has no obligation to pay contributions in the host Member State. It establishes a presumption that the holder is properly affiliated to the social security system of the Member State which has issued the certificate.

The purpose of the Authority's mediation is to provide an alternative to a Court action⁵² and try to reconcile the divergent points of the Member States

The mediation procedure can be launched by the Authority upon request of one or more of the Member States concerned, but also on its own initiative; however, it can be conducted only with the agreement of all Member States that are party to the dispute.

The first stage of the mediation is conducted between the Member States that are party to the dispute and a mediator; if no solution is found, the Authority can launch a second stage⁵³ before its Mediation Board (composed of experts from Member States other than those that are party), seeking to reconcile the points of view of the Member States that are party to the dispute and ultimately agreeing on a non-binding opinion.

Within three months of the adoption of the non-binding opinion, the Member States that are party to the dispute must report to the Authority with regard to the measures that they have taken for the purpose of following up on the opinion or, where they have not taken measures, with regard to the reasons why they have not done so.

It has to be borne in mind that, having regard to the area of social security, the Administrative Commission for the Coordination of Social Security Systems (AC), established by Regulations No 883/2004⁵⁴ and No 987/2009⁵⁵, *inter alia*, provides a conciliation mechanism through one of its subgroups - the Conciliation Board. Hence, when a dispute relates, fully or in part, to matters of social security, the Authority is under the obligation to inform the Admin-

⁵² As a matter of fact, cases already the object of ongoing Court proceedings at national or Union level are not admissible for mediation, also, if Court proceedings are initiated during the mediation the latter must be suspended.

⁵³ Subject to the agreement of all Member States that are party to the dispute.

⁵⁴ Regulation (EC) No 883/2004, of the European Parliament and of the Council, of 29 April 2004, on (*the coordination of social security systems*), *cit.*

⁵⁵ 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 284/1, 30.10.2009.

istrative Commission. Also, in order to ensure full co-operation, to co-ordinate the activities in mutual agreement and to avoid any duplication in cases of mediation which concern both issues of social security and labour law, the Administrative Commission and the Authority must establish a co-operation agreement.

4. Structure and organisation of the European Labour Authority

In accordance with its 'Establishing Regulation', the ELA is a Union body with legal personality⁵⁶ and a permanent structure, made up of approximately 140 staff members.

The Authority is steered by a Management Board (MB), with representatives from each EU Country and the European Commission; the MB is also composed of one independent expert appointed by the European Parliament and four members representing cross-industry social partners organisations⁵⁷.

All the Members of the Management Board are appointed on the basis of their knowledge in the relevant fields, taking into account their managerial, administrative and budgetary skills. The term of office is four years.

The MB is headed by an Executive Director who is responsible for the management of the Authority and is accountable to the Management Board. The Executive Director is engaged as a temporary agent of the Authority and appointed by the MB from a list of candidates proposed by the Commission, following an open and transparent selection procedure, for a period of five years.

The organisation of the Authority also includes a Stakeholder Group aimed at providing further expertise and exercising an advisory role. The Stakeholder Group is composed of two representatives of the Commission and ten representatives of the Union-level social partners. In addition, the Authority may set up 'working groups' or 'expert panels', comprising representatives from Member States, the Commission or external experts, for the fulfilment of its specific tasks or for specific policy areas. In particular, it shall set up the 'European Platform to enhance co-operation in tackling undeclared work' (the 'Platform') as a permanent working group and the Mediation Board.

⁵⁶ Art. 3.

⁵⁷ Trade unions and employment organisations.

In addition, each Member State has to designate one National Liaison Office (NLO). NLOs shall *contribute to executing the tasks of the Authority and 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* (art. 31, 2 of the ‘Establishing Regulation’).

The Authority is bound to become fully operational by the year 2021, meanwhile the Commission is responsible for its establishment and initial operation and to designate an official to act as interim Executive Director.

5. The implementation of the activities of the European Labour Authority for the year 2020

The Management Board of the Authority, with its Decision n. 6/2019, of 3 December 2019, laid down the annual work programme for the implementation of the activities of the European Labour Authority for the year 2020, indicating several operational and preparatory actions spanning across the full range of the Authority’s tasks.

First, as facilitating access to information on labour mobility is a priority, a working group on information is going to be set up, to exercise a review activity and to indicate information gaps, inconsistencies and the actions needed; the group is also aimed at advising the Authority regarding the support to Member States in meeting their obligations on the access to and dissemination of information and at undertaking targeted actions to improve EU sources of information on labour mobility, in the framework of the Single Digital Gateway.

Secondly, the Authority will set up the necessary arrangements to carry out concerted or joint inspections, with the aim of supporting at least one pilot inspection during the year 2020 to test the adequacy and effectiveness of the procedures and tools developed for common initiatives. At the same time, it will start providing learning and training opportunities for national inspectorates.

The Management Board Decision acknowledges also the importance of the National Liaison Officers (NLO) to enhance the co-operation, as they provide a physical contact point between the EU level, the home administration and the authorities of other Member States. Therefore, with a view on facilitating the identi-

fication of the relevant contact points for national authorities and National Liaison Officers, the Authority will develop a directory of contact points (“who-is-who”) to all relevant national institutions in the labour mobility areas covered by its scope.

As above mentioned, mediating and facilitating a solution in case of administrative disputes between Member States is one of the objectives of the Authority. In order to develop the related task, the Authority will establish the procedure for mediation and a co-operation agreement with the Administrative Commission for the coordination of social security systems.

The Authority will integrate the EURES European Coordination Office and the European Platform tackling undeclared work, by August 2021, in the meantime the Commission will continue to manage both bodies in 2020. In this respect, the Authority is going to organise preparatory actions to ensure knowledge transfer, and business continuity.

6. Conclusive remarks

The activities of the ELA started in mid-October 2019 (with the first meeting of the Management Board) and the Authority is expected to be fully operational by the year 2024.

Therefore, evidently, it is too soon to draw any conclusions on the effectiveness of the mechanism; nonetheless, a few general considerations can be expressed on the role of the Authority for the integration of the internal market.

As it is well known, in accordance with article 197 TFEU, the effective implementation of Union law by the Member States is considered “*essential for the proper functioning of the Union*” and has to be “*regarded as a matter of common interest*”. In this respect, “*the Union may support the efforts of Member States to improve their administrative capacity to implement Union law. Such action may include facilitating the exchange of information and of civil servants, as well as supporting training schemes*”. All in all, Member States are not obliged to avail themselves of such support.

Hence, art. 197, under the heading of “*administrative cooperation*”, acknowledges (at a ‘Constitutional level’) the importance of the correct application of EU law by national administrations for the integration of the internal market and its correct functioning, as well as the role that the co-operation between administrations (especially at a national level) can play in that respect.

The Union can support and assist Member States in facilitating administrative co-operation; and, as a matter of fact, it has been doing so for over two decades now, *inter alia*, by way of the use of on-line tools in specific sectors of the internal market.

The ELA seems to be yet another instrument made available by the European institutions to both individuals and administrations aimed at fostering the correct application of EU law.

Its scope is to help citizens and undertakings to get right and timely information on their European rights and the relevant procedures, but it is also aimed at helping Member States and Members States' public administrations (normally on a voluntary basis) to overcome difficulties in cross-border co-operation; furthermore, it should act as a *trait d'union* with the Commission with a view to suggest developments and improvements⁵⁸ and should co-operate with relevant union agencies and specialised bodies to avoid overlaps promoting synergies and complementarity⁵⁹.

As it is evident, administrative co-operation at different levels is the very principle around which this new initiative revolves. Facilitating and supporting co-operation between the competent national authorities is one of the primary objectives of the Authority; even when it is called to act as a mediator is *de facto* contributing to the correct application of EU law by fostering co-operation. The Authority is also subject to co-operation obligations with the other EU bodies and ultimately with the Commission. In this respect the authority is setting up an-online system (directory) to put directly in contact all the relevant authorities.

The use of on-line tools to facilitate administrative co-operation is the strategy already put in place with other initiatives, such as IMI or SOLVIT and as a matter of fact, in accordance with the Commission's evaluation documents, has proved itself successful⁶⁰.

In conclusion, this author is confident that the new Authority can and will effectively serve the purpose of facilitating access to information at many different levels and facilitating administrative co-operation which, in accordance with legal scholars, is now considered *the backbone of the EU's unique system of government and governance*⁶¹.

⁵⁸ Art. 7, n. 4.

⁵⁹ Art. 14.

⁶⁰ See, the documents and reports available at: https://ec.europa.eu/solvit/documents/index_en.htm.

⁶¹ A.H. TÜRK & H.C.H. HOFMANN, *An introduction to EU administrative governance*,

Hence, the author is confident that in this respect the Authority will play a relevant role to foster the integration of the internal market in relation to the specific sectors which fall within its mandate.