



GMS Flash Alert

Employment Law

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European Union – Interview with Leader of the European Labour Authority

In this *GMS Flash Alert*, we feature a recent interview with Cosmin Boianiu,¹ the Executive Director of the European Labour Authority (ELA). ELA was established on 31 July 2019.²

ELA's objective is to strengthen fairness in the European Union's (EU) single market by supporting the EU member states in the consistent, efficient, and effective application and enforcement of Union law related to labour mobility and coordination of social security systems, including EU directives on posting of workers.

ELA's activities include facilitating information on rights and obligations and coordinating joint inspections and other initiatives expected to increase, for example, the focus on compliance with the rules for posted workers and social security in the EU labour market.

WHY THIS MATTERS

ELA aims to help national authorities enhance their activities and policies around compliance with relevant EU legislation on labour mobility, including the posting of workers and social security. It is important that employers familiarise themselves with the requirements and processes in each EU member state to help ensure proper compliance.

Compliance processes in these legal areas, and the penalties and sanctions for non-compliance, vary from country to country. Non-compliance with the rules on labour mobility, including the posting of workers and social security, can lead to sanctions and outcomes such as financial fines, suspension of working activities, litigation, and reputational damage, among others.

Interview with Cosmin Boiangiu (“CB”), Executive Director of the European Labour Authority (ELA)

1. Why is ELA necessary?

CB: Over the last decade, the number of mobile workers has doubled. Still, the potential of the EU internal market is largely untapped as the total share of mobile workers in the EU workforce is only slightly more than four percent. Furthermore, the free movement of workers in the EU has long been a sensitive issue. Persistent disparities in both working and social conditions among EU member states can lead some to perceive the free movement of workers and the free provision of services across borders as reasons to engage in social dumping and unfair competition. Cases of abuse or infringements of the applicable framework, the complicated patchwork of mobility rules, and the interaction with different national systems, not to mention the lack of clear and comprehensive information on applicable rules and obligations, impede the beneficial reaping of the opportunities offered by the internal market.

To tackle these issues, the Juncker Commission (2014-2019)³ started the extensive revision of labour mobility legislation. It mainly revised the rules on the posting of workers, social security coordination, and highly-mobile road transport workers. However, effectively applying and enforcing EU rules across the member states require structured cooperation and exchange between competent national authorities. Also required are resources for common activities, such as facilitating joint inspections or training national staff to deal with cross-border cases.

ELA originates from the intent to enforce EU rules more coherently and bring a positive impact to the real life of individuals and employers involved in European mobility.

ELA was established in 2019 with the purpose of facilitating fair and effective labour mobility across the EU and to assist EU countries and the European Commission in the coordination of social security systems within the EU, making it easier for both individuals and businesses to benefit from the advantages of the internal market.

2. What are the main objectives of ELA?

ELA’s work focuses on three fundamental pillars of fair and effective labour mobility: enhancing and supporting the enforcement of EU law on labour mobility; strengthening and ensuring cooperation between EU countries; and facilitating access to information and services by individuals and employers. A European labour mobility built around those pillars will help strengthen fairness and trust in the internal market, offer opportunities to individuals and employers alike, and enable authorities to tackle more effectively the abuse, fraud, and other conditions that put at risk the proper functioning of the free movement of workers and services.

ELA’s work, while geared towards support of national authorities and social partners, will directly contribute to citizens’ and employers’ possibilities to benefit from the full potential of the European internal market.

3. What is ELA doing concretely to reach these objectives?

ELA is now in its second year of activity. Though still in a phase of growth, with full capacity only expected in 2024, ELA is already proving its value, becoming a forum for cooperation across EU member states and with social partners on matters of EU labour mobility and social security coordination.

ELA’s motto for this growth period is “ambitious and realistic.” It means that we are aware of the high expectations resting on ELA’s shoulders, and it also means we are conscious of the need to have our national and EU counterparts, including social partners, on our side at every step. In 2020, ELA decided to focus on two operational areas, namely facilitating access to information by individuals and employers on labour mobility and coordinating and supporting concerted and joint inspections.

An example in the field of information is the development of a common methodology to provide transparent and accessible information concerning the remuneration of posted workers. This approach helps EU countries to comply with the revised Posting of Workers Directive whose provisions require member states to also publish information on the constituent elements of remuneration on a single official national website.

ELA also launched its Translation Facility, which has already supported the translation of over 100 relevant documents of national websites on labour mobility. This improves the provision of information in the languages of individuals and businesses.

Another example is the practical guidelines for national enforcement bodies on how to carry out an effective cross-border inspection. These guidelines make cooperation among EU member states easier and help them overcome the many obstacles present when carrying out concerted and joint inspections. Furthermore, ELA and volunteering member states also already organised a number of pilot on-site inspections targeting the construction, agriculture, and transport sectors. These inspections took place despite the challenging context of the COVID-19 pandemic, which is remarkable.

In 2021, ELA has been able to start engaging all operational activities, including the preparations to put in place its mediation procedure to facilitate the resolution of disputes between member states. ELA has also slowly started to build its labour mobility analyses and risk assessment capacities to help make sure that ELA's work is in line with the trends in the European labour market. We also responded to the European Parliament, Commission, and Council calls for action by delivering an Action Plan on Seasonal Work, addressing challenges for seasonal workers and employers on the ground with a view to promoting fair work conditions. The initiatives put forward in ELA's Action Plan, carried out together with the Commission, other EU agencies, EU member states, and social partners, respond to the demands around the vulnerability of seasonal workers – the pandemic having amplified their risks, e. g., in terms of health and safety. The information campaign "Rights for all seasons" is ongoing as part of this Action Plan, and I am happy that it also clearly illustrates the added value of the Authority, centralising the various aspects of labour mobility and social security coordination for the benefit of individuals and employers across the EU.

In the first half of 2021, we carried out a mapping exercise of the pandemic's consequences on labour mobility in Europe, using the expertise of the Authority's National Liaison Officers – national officials seconded to ELA by every member state to contribute to ELA's task and to be contact points of member states. Now, we have published a report on the impact of teleworking during the COVID-19 pandemic on the applicable social security.⁴

Next, operational priorities will be high-risk areas such as international transport and logistics and posted workers in the construction sector.

In all of its activities, ELA pursues a cooperative approach, bringing together experts from EU countries, social partners, the European Commission, and independent experts, facilitating joint action, exchanges, sharing of good practices, and agreeing on shared approaches.

The priorities of ELA translated into concrete activities that seek to address demands from both workers and employers; west and east; south and north. I believe that this is not to be underestimated, since for a new body like ELA it has been – and still is – important to prove from the beginning that it is capable of delivering, and that it delivers for everyone.

4. What is on ELA's agenda for the next year, what are the goals you want realised?

ELA plans to continue with the ambitious course set during the previous years, building on the experience gained so far. In 2022, we will continue with a sectorial approach, focusing on international road transport. The road transport sector is not only cross-border in nature, but it also relies heavily on highly-mobile workers. Furthermore, the new reformed rules need to be transposed by the EU member states in 2022. Therefore, ELA will commence its dedicated actions focused on the road transport sector in late 2021 and continue in 2022.

ELA is the first EU body with the competence to mediate cross-border disputes between member states across all

areas of labour mobility. This is rather unique, as prior to the establishment of ELA, a conciliation procedure only existed in the area of social security coordination within the framework of the Administrative Commission for the coordination of social security systems.

I am confident that the preparatory work will be completed at the end of 2021 with a view to making the mediation procedure fully operational from the beginning of 2022.

As a result, EU countries and other stakeholders will be able to refer to ELA their cases in relation to relevant Union law. In my eyes, mediation should be the *last resort* for EU countries — the accent should be on mutual cooperation between the countries. Therefore, in 2022, we will also focus on the development of instruments to make cooperation easier and more structured, fully using the experience and skills of ELA's 27 National Liaison Officers.

The cooperation as well as joint actions, such as concerted and joint inspections, will be expanded in regard to scope and geographical spread. This is linked with the objective to make ELA's support easily accessible for national authorities and all other stakeholders.

I am aware of the need to strengthen mutual understanding and mutual learning, especially in the labour mobility field, where national systems very closely interact with the EU legal framework. In 2022, we will step up our capacity-building activities by starting ELA's own mutual learning and understanding programme. Via this programme we will have a clear overview of the most relevant issues from the member states' perspectives and be able to propose approaches based on a common understanding.

The provision of clear information remains a priority, also for the years to come. ELA aims to be the main hub for the creation of content relating to information and services concerning labour mobility in Europe. By 2024, we will contribute to the single digital gateway by systematising information on the *Your Europe* and EURES⁵ websites in a coherent and user-friendly manner.

The Authority will work extensively with EU countries to review the information on their websites and foster the exchange of best practices to make individuals and employers aware of their rights and obligations. We aim to develop tailor-made information addressing specific sectors and their challenges. In this sense, the EURES network will play a significant role. By 2024, the EURES network and portal will be fully integrated into ELA, also in terms of complementarity of information and services provided within the wider framework of ELA activities.

5. What are the greatest challenges in your work right now?

The greatest challenge lies in consolidating ELA's position as a natural "hub" for labour mobility for all relevant stakeholders involved, while building the Authority, using available and growing resources. This challenge is currently even more complicated, as the pandemic makes the development of labour mobility more difficult to get one's arms around.

I do believe that ELA already has successfully established itself in the labour mobility landscape clearly showing its added value, but the effort cannot stop here. We will invest considerable resources to fulfil the mandate to secure fair and effective labour mobility, which would not be possible without the rapid and smooth cooperation with the member states and social partners.

We will seek to constantly facilitate cooperation with structured tools, digitalisation, and the expertise of National Liaison Officers. All these instruments need to be used and applied in practice by EU countries.

ELA's work will be instrumental in securing the increased trust and more rapid cooperation of the member states. This will also feed into the expanding cooperation between social partners and national administrations in cross-border cases, where ELA can play a liaison role through its competences.

The second challenge is to transform the complicated and fragmented information resources into easily accessible information tools, be it at the national or European level. These can then be used by individuals and employers in order to profit from the potential of the internal market, and to comply with the legislative requirements.

Behind the cooperation and information efforts lies the understanding of the rules. We will invest more effort in capacity-building activities to support the uniform understanding of EU labour mobility rules by the national administrations.

The identification of the greatest challenges clearly shows the synergies ELA can offer for the benefit of its stakeholders. It is not coincidental that ELA's [organigram](#) is a circle since all of its tasks are equally important and interconnected.

The year 2021 marks a transition year for the Authority. Despite the pandemic, we will soon be able to complete ELA's relocation to its permanent premises in Bratislava. Moreover, the Authority is still in its growing and consolidation stage and it is expected it should reach full capacity by 2024, incorporating new people into the Authority's structure and work-flows seamlessly.

6. How will cross-border employers and employees benefit from ELA's work, specifically; how can employers and employees use ELA's work in their cross-border activities?

We fully realise at ELA that the provision of accurate, transparent, and user-friendly information is key for both employers and workers. That is why we are working together with EU countries, social partners, and experts within ELA's Working Group on Information to improve the information regarding posting on national websites. This group has established itself as the strategic forum for exchange between EU member states and social partners on the subject of information provision to individuals and employers. This forum is crucial for developing and implementing the specific information strategy encompassing all forms of labour mobility mentioned above. The Working Group on Information's exchanges have brought already the following fruitful outcomes: Firstly, the production of an approach to presenting universally-applicable collective agreements on single national posting websites. The approach constitutes a methodology for the provision of information concerning the remuneration that is applicable to posted workers and the components of such remuneration in a transparent and accessible manner. It should serve as a non-binding source of inspiration for EU member states when complying with their legislative obligations on the provision of information deriving from the revised Posting of Workers Directive 2018/957/EU.

Secondly, we have also produced similar tools with the same objective covering other aspects of national posting websites such as approaches on the notification obligation, postings exceeding 12 (or where appropriate 18) months, and penalties. Those documents aim at further improving the information to be found on single national websites on posting. Together with EU countries, we will work closely to further operationalise these approaches so that provision of information on posting happens in a more coherent way across all applicable 27 national websites. Furthermore, as I mentioned earlier, ELA launched the Translation Facility to support the translation of relevant content of national websites on labour mobility into other EU and non-EU languages. Since its launch in July 2020, the Facility has supported the translation of more than 100 documents, mainly into English, the vast majority of which deal with information on the posting of workers. This contributes to enhanced availability and dissemination of information for individuals and businesses in their languages.

Although I am aware that access to information is more prominent for employers and workers, I can assure you that other activities of ELA are also for their benefit from. Allow me to give you few examples...

The capacity-building activities of ELA as well as the mediation procedure have the potential to result in a reinforced common understanding of the EU *acquis* by the national administrations and thus increase legal clarity for workers and employers.

The concerted and joint inspections are an effective instrument for dealing with labour mobility cases on a cross-border

basis. They will protect workers, recognise employers taking their responsibility, while also enabling the detection and tackling of irregularities or violations by which non-compliant employers can obtain unfair competitive advantage. Cross-border enforcement action is taking place more regularly and covering more and more sectors, which will help to build trust in the internal market between all partners and it will enable better protection of the labour and social rights of mobile workers. We support mobile workers who feel that their rights are not respected, companies that face unfair practices and turn to national authorities, and national social partner organisations, so that cases necessitating cross-border action then are submitted to ELA for further action.

7. What we sometimes hear from people and what we can recognise from our own experience is that the local authorities enforce the rules on social security and posted workers very differently. It can be very difficult to know what one is supposed to do in each country and the level of enforcement of the rules varies a lot from country to country. Is this something ELA will address in its work, and if so how?

National enforcement practices depend on national legislation regulating certain legal areas, structures, and competences of national enforcement authorities as well as enforcement priorities. Needless to say, that national legislation must comply with the EU *acquis* that it transposes. It is for the European Commission to ensure correspondence between national legislation and EU law. The Commission also provides guides on the application of EU law, for instance, the recent "[Practical guide on posting](#)." If need be, ELA will provide information to support EU countries in the effective application of Union acts that fall under ELA's competence, for instance by developing common non-binding guidelines, shared definitions, and common concepts.

ELA also plans to launch next year its own mutual learning and understanding programme, specific to the Authority's operational areas. This programme will focus on the exploration of "good practice" examples and the identification of common challenges and policy solutions with concerned and interested member states. It will also be instrumental in bringing national authorities closer in their understanding of the uniform application of EU legislation within ELA's legal scope. Once a common understanding is reached, ELA will help to diffuse this understanding among the member states, building on good practices already available at the member-state level.

KPMG NOTE

Companies should review their risk levels for compliance with social security and posted workers rules and should prioritise putting into place the necessary processes to achieve compliance in due time and correctly.

Irrespective of the fact that such compliance processes are executed internally in a company or are outsourced partially or entirely to a third party, it is important for companies to communicate the compliance issues around social security and posted workers with their mobile employees.

A level of transparency and information that explains the importance and relevance of compliance with social security and posted workers can positively impact employee satisfaction and make such compliance processes run smoothly as it can diminish questions employees present to their management and HR.

FOOTNOTES:

- 1 Executive Director for ELA is Ambassador Cosmin Boianiu who has a rich international career and who, before joining ELA, served as Romania's Deputy Permanent Representative to the EU. Mr Boianiu shared with us insights into ELA's mission. European Labour Authority: [Cosmin Boianiu appointed as next Executive Director of the European Labour Authority](#) (8 October 2020); [Cosmin Boianiu, Short professional bio](#) (2021).
- 2 EU Regulation on Establishing a European Labour Authority no [2019/1149](#), (20 June 2019). Official site for the European Labour Authority: www.ela.europa.eu.
- 3 For more about Jean-Claude Juncker and his tenure as European Commission president, see: European Parliament, "[The Juncker Commission's Ten Priorities: An End-of-Term Assessment](#)," (May 2019). Also see, A. Koronakis, "The Jean-Claude Juncker era: The European Commission President opens up to New Europe in tell-all interview," *New Europe* (online), 20 May 2019: at: <https://www.neweurope.eu/article/the-jean-claude-juncker-era-the-european-commission-president-opens-up-to-new-europe-in-tell-all-interview/>. *Please note that by clicking on this link, you are leaving the KPMG website for an external site that KPMG is not affiliated with nor is KPMG endorsing its content. The use of the external site and its content may be subject to the terms of use and/or privacy policies of its owner or operator.*
- 4 European Labour Authority, "[Draft Single Programming Document 2022-2024](#)," (December 2020).
- 5 EURES is [the European Job Mobility Portal](#) that helps job-seekers to find jobs and employers to recruit from Europe.

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Contact us

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