

# STUDY

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# THE EUROPEAN LABOUR AUTHORITY IN PRACTICE

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## SUMMARY

In this study, we provide an overview of the recently established European Labour Authority (ELA), its goals and powers, before offering a preliminary analysis of ELA. In brief, ELA is an agency with the broad and important objective of improving the enforcement of mobile workers' rights in the EU, but with limited competences and resources. ELA essentially depends on the willingness of national authorities to cooperate through exchange of information and coordinated enforcement action. Nevertheless, our evidence collected from interviews with various stakeholders suggests that it can provide added value in particular by connecting members of national enforcement authorities.

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## List of abbreviations

ALDE	Alliance of Liberals and Democrats for Europe
BusinessEurope	Confederation of European Business
Cedefop	European Centre for the Development of Vocational Training
CJI	Concerted and joint inspection
COREPER	Committee of Permanent Representatives
DG-EMPL	Directorate-General for Employment, Social Affairs and Inclusion
EESSI	Electronic Exchange of Social Security Information
ELA	European Labour Authority
EMPACT	European Multidisciplinary Platform Against Criminal Threats
EMPL	Committee on Employment and Social Affairs
EPP	European People's Party
EPSCO	Employment, Social Policy, Health and Consumer Affairs Council
ETF	European Training Foundation
ETUC	European Trade Union Confederation
EU	European Union
EU-OSHA	European Agency for Safety and Health at Work
EURES	European Employment Services
Eurochambres	Association of European Chambers of Commerce and Industry
Eurofound	European Foundation for the Improvement of Living and Working Conditions
Eurojust	European Union Agency for Criminal Justice Cooperation
Europol	European Union Agency for Law Enforcement Cooperation
Greens/EFA	The Greens/European Free Alliance
IMI	Internal Market Information System
MEPs	Members of the European Parliament
NLO	National liaison officer
Roadpol	European Roads Policing Network
S&D	Progressive Alliance of Socialists and Democrats
SLIC	Senior Labour Inspectors Committee
SMEunited	European Association of Craft, Small and Medium-sized Enterprises
UEAPME	European Association of Craft, Small and Medium-sized Enterprises (abbreviation until 2018)

## 1 Introduction

Labour migration and (short-term) mobility within the European Union (EU) have steadily increased over the past decades. More and more EU citizens make use of the free movement of workers or the freedom to provide services and live or work in another member state than that of their own nationality (European Commission 2022, p. 20). Diverse EU legislation specifies conditions of these economic freedoms and also accords certain labour and social rights. For instance, the Posted Workers Directive (Directive 96/71) contains rules of remuneration for persons who are temporarily sent abroad for work by their employer.

In light of various rounds of EU enlargement, which have increased socio-economic heterogeneity and have led to greater labour mobility, political discussions about the revision of these rules have gained new momentum. As one consequence of these debates, the Posted Workers Directive was reformed (Directive 2018/957) after a long process, requiring a delicate balance – between the heterogeneous economic and social interests of EU member states and between enabling free movement and the protection of workers (Seikel 2022). Closely related, debates about social fraud were widespread (European Commission 2018, p.20). What is more, extensive research demonstrated that the labour and social rights of EU movers are de facto often violated and that there is in particular a lack of enforcement of rights, e. g. in the form of cross-border administrative cooperation (Arnholtz/Lillie 2020; Bernaciak 2015; Wagner 2018; Blauburger/Schmidt 2022).

In the context of these broader developments and debates, the quest for a European Labour Authority (ELA) emerged. In September 2017, Jean-Claude Juncker used his penultimate State of the Union speech as president of the European Commission to launch the idea of establishing a European Labour Authority as a cornerstone of the European Pillar of Social Rights:

“We should make sure that all EU rules on labour mobility are enforced in a fair, simple and effective way by a new European inspection and enforcement body. It is absurd to have a Banking Authority to police banking standards, but no common Labour Authority for ensuring fairness in our single market. We will create such an Authority.”<sup>1</sup>

The idea of creating ELA, thus, was as a spin-off of the negotiations of the revised Posted Workers Directive. In order not to further complicate and delay those negotiations, ELA was temporarily put aside and introduced as part of the “Social Fairness Package” (European Commission 2018).<sup>2</sup> The Regulation establishing ELA (Regulation 2019/1149) was adopted by the Council and the European Parliament in June 2019 and the new authority officially started its work in October 2019. ELA is supposed to be fully operational in 2024, when the first review process of the ELA Regulation is also scheduled to start.

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<sup>1</sup> [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_17\\_3165](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_17_3165)

<sup>2</sup> <https://eulawanalysis.blogspot.com/2019/06/the-european-labour-authority-brand-new.html>

The impact assessment which accompanied the Commission's proposal for the ELA Regulation specified the following problem drivers, which required the establishment of a new EU agency:

“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 competent national authorities to organise co-operation with authorities across borders [...]

Weak or absent mechanisms for joint cross-border enforcement activities [...]

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 [...]"  
(European Commission 2018, pp. 9-20)

ELA seeks to help the Commission and member states to overcome these weaknesses by facilitating information exchange, joint enforcement activities and dispute resolution in the field of cross-border labour mobility. Once fully operational, ELA will have 144 staff members, of which half are seconded national experts from member state administrations, including the 27 national liaison officers (NLOs) who act as a bridge between ELA and the member states. The governance structure of ELA consists of an executive director, a management board as well as a stakeholder group (Article 16 ELA Regulation). The executive director manages the daily work of ELA. Strategic decisions are taken within the management board, which consists mostly of representatives of member state governments and national administrations. Finally, the stakeholder group, bringing together representatives of European social partners, fulfils an advisory function.

In this study, we provide an overview of ELA's main goals as well as powers and offer a preliminary analysis of ELA in practice five years after Juncker's first proposal. It is, to our knowledge, the first empirical study analysing ELA's work in practice (important work is done by Jan Cremers (2020) who is also appointed as an independent expert to ELA's management board). This study asks: What were the main lines of conflict during the establishment of ELA? Given its limited mandate and resources as an EU agency, can ELA actually ensure “that EU rules on labour mobility and social security coordination are enforced in a fair and effective way” as is claimed on its website?<sup>3</sup> And even if one has to qualify this ambitious self-description, to what extent and by which means does ELA create an added value for the protection of EU mobile workers? Our analysis is based on 15 interviews between March and December 2022 and participation in one stakeholder workshop (ELA Conference), organized by the German Trade Union Confederation, in September 2022. Moreover, we attended a conference “on innovative

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<sup>3</sup> <https://www.ela.europa.eu/en>

technological tools and solutions supporting labour mobility”<sup>4</sup> (ELA Tech Conference) in November 2022 virtually. Interview partners included a broad spectrum of ELA stakeholders – regular staff members of ELA as well as seconded national experts, national liaison officers, members of ELA’s management board from national ministries and labour inspectorates, social partners from both sides participating in ELA’s stakeholder group, and stakeholders with different national backgrounds (Austria, France, Germany, Italy, the Netherlands, Poland). Furthermore, we retrieved information out of 19 additional interviews with e. g. labour inspectors in Austria and Germany in which ELA was not the sole focus but which were about labour mobility or posting of workers in the EU in general, comprising also questions about the interviewee’s perspective towards ELA.<sup>5</sup> These complementary interviews allow for a deeper understanding of the attitude towards and perception of ELA from member state level.

In brief, ELA can be described as an EU agency with broad and important functions in the field of mobile workers’ rights, but with very limited competences and resources. Its mandate resulted from a compromise between business and workers’ interests, old and new member states as well as EU and national levels. As a consequence, ELA essentially depends on the willingness of national enforcement authorities to cooperate through exchange of information and joint or concerted inspections. Nevertheless, our evidence collected so far suggests that it can provide added value by connecting members of national enforcement authorities and facilitating information exchange across borders. For example, ELA’s network of national liaison officers has the potential to promote to both of these goals. At the same time, we also see risks that could distract ELA from contributing to its objectives most effectively, e. g. by focusing its limited resources on symbolic measures with high visibility, by becoming too bureaucratic, or by over-stretching its already broad area of activity. After its first years of existence, ELA as well as national stakeholders sometimes still seem to be searching for the precise role of the new agency, and, therefore, our analysis has to remain somewhat preliminary.

The study is structured as follows: in the next section, we describe ELA’s legal basis and the political negotiations, which led to its establishment. Section three provides an overview of ELA’s main goals so far – enforcement and information – and discusses to what extent these goals are complementary or competing. Section four focuses in more detail on the enforcement goal and its main instrument: concerted and joint inspections (CJIs). The goal of improving access to and exchange of information is analysed with a particular emphasis on ELA’s network of national liaison officers (NLOs) in section five. ELA’s relation to and differences from other EU agencies and networks in the field of labour mobility are described in section six, thereby also including a brief discussion of ELA’s further goals: mediation and tackling undeclared work. The concluding section provides a preliminary assessment of ELA’s achievements so far and identifies a trade-off between delivering on “key performance indicators” and working on less tangible added value.

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<sup>4</sup> <https://www.ela.europa.eu/sites/default/files/2022-07/ela-call-for-papers-tech-conference-2022-new.pdf>

<sup>5</sup> We use a quote out of one of these interviews, which is hence listed as interview 16 in the Annex

## 2 Political and legal background: the negotiations on the ELA Regulation

Before we turn to analysing the first years of ELA in practice, this section maps the different political positions voiced by social partners during the Commission's initial stakeholder consultation (Section 2.1), traces the legislative negotiations between the European Parliament and EU member states in the Council (Section 2.2), and briefly summarizes the legal outcome, i.e. the scope and depth of ELA's mandate as laid down in the founding Regulation 2019/1149 (Section 2.3).

### 2.1 Commission proposal and stakeholder consultations

As usual, the Commission's legislative proposal for an ELA Regulation was prepared by external consultations as well as an internal impact assessment.<sup>6</sup> Public consultations were held from 27 November 2017 to 7 January 2018 and complemented by two targeted stakeholder consultations with member states, public authorities, social partners and practitioners regarding ELA in general and the transport sector in particular. The results from these consultations were summarized in a synopsis report accompanying the draft regulation.<sup>6F7</sup> The Commission's impact assessment was also published together with the legislative proposal on 13 March 2018 (European Commission 2018).

As regards ELA's potential *functions*, the Commission had to balance economic and social objectives, which were emphasized by different stakeholders, from the beginning. On the one hand, ELA was mainly regarded as a means to facilitate labour mobility in the EU. This position was held by employers' representatives such as BusinessEurope:

“BusinessEurope considers that it is important to remove barriers for labour mobility in Europe. It is key to ensure good cooperation between national authorities involved in mobility issues, easy access to information on mobility and that enforcement measures do not place excessive administrative burdens on mobile enterprises or workers or end up discouraging labour mobility.”<sup>8</sup>

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<sup>6</sup> [http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625101/EPRS\\_BRI\(2018\)625101\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625101/EPRS_BRI(2018)625101_EN.pdf)

<sup>7</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52018SC0080>

<sup>8</sup> <https://www.bussinesseurope.eu/publications/proposal-establishing-european-labour-authority-bussinesseurope-position-paper>

On the other hand, ELA's main function was rather seen in enhancing the enforcement of EU social standards, i.e. labour and welfare rights, in situations of cross-border mobility. The European Trade Union Confederation (ETUC) argued that ELA's main objective should be "better enforcement of EU labour and social security rights", thus rebalancing the current asymmetry between European free movement principles and nationally fragmented enforcement of social rights:

"Free movement of services is a fundamental pillar of the Union and EU initiatives to further boost companies' mobility are numerous. In contrast, enforcement of legal obligations in general, and of social norms in particular, primarily remains a national competence. EU intervention in this area essentially consists in coordination of national rules and exchange of information between Member States. Enforcement of social norms is therefore fragmented. There is also insufficient capacity of the competent national authorities to address highly mobile and complex business models. These insufficiencies are exploited by unscrupulous companies for the purpose of evading national and European social rules. The lack of efficient enforcement leads to severe exploitation of workers and increasing fraud to social security regimes."<sup>9</sup>

The Commission's proposal comprises these different objectives, but puts a stronger emphasis on the latter function of enforcement of labour and social rights. In its impact assessment, two major challenges to be addressed by ELA are identified, which correspond largely to the different views of employers' and workers' representatives: while effective cross-border labour mobility is undermined by "inadequate information, support and guidance function for individuals and employers in cross-border situations", compliance with EU rules suffers from "inadequate cooperation between national authorities on rule enforcement" (European Commission 2018, p. 8). When exploring these challenges in greater detail and deriving potential functions for ELA, however, the Commission's impact assessment clearly focuses on the enforcement of social rights. Out of six "problem drivers" under discussion, just one relates to the information deficit regarding free movement rights and obligations, whereas five mainly contribute to the cooperation deficit in cross-border enforcement. Moreover, the context of the Commission's proposal also underlines the social aspect. The ELA Regulation was presented as a cornerstone of the European Pillar of Social Rights and proposed as part of the "Social Fairness Package" (European Commission 2018, p. 6) together with a proposal for a Directive on transparent and predictable working conditions in the EU, a proposal for a Council Recommendation for access to social protection for workers and the self-employed and a Commission Communication on the monitoring on the implementation of the European Pillar of Social Rights.<sup>10</sup>

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<sup>9</sup> <https://www.etuc.org/en/document/etuc-position-strong-european-labour-authority>

<sup>10</sup> <https://eulawanalysis.blogspot.com/2019/06/the-european-labour-authority-brand-new.html>

As regards ELA's *competences*, stakeholders emphasizing the need to facilitate labour mobility in the EU advocated a rather limited mandate for ELA, whereas stronger competences for ELA were favoured by those focusing on the enforcement of social rights. For example, SMEunited (formerly UEAPME) representing the interests of small and medium-sized enterprises welcomed "efforts to further promote cross-border mobility", but wanted ELA's competences to be limited to the provision of information for EU citizens and business. According to UEAPME, ELA "should have no regulatory power, interpretation capacity or EU legislation competence", it should get involved in cross-border inspections "only if national authorities jointly request technical assistance", and it should facilitate cross-border cooperation and problem-solving only as a "discussion board ... on a voluntary basis and at the sole request of Member States".<sup>11</sup> Accordingly, various business representatives argued that ELA's name should be changed from "Authority" to "Agency" in order to reflect its limited mandate:

"EUROCHAMBRES [the Association of European Chambers of Commerce and Industry] would rather advocate improvements to existing tools and bodies in the form of a decentralised agency rather than naming it an authority, which is associated with strict enforcement."<sup>12</sup>

By contrast, trade unions generally called for a greater delegation of competences to ELA, albeit without challenging the autonomy of social partners involved in enforcement. This delicate balance of interests, representing different national systems of industrial relations, was reflected in ETUC's position on ELA competences:

"The ETUC welcomes the proposal for a European labour authority but we have set a red line that it must not interfere with social partners' autonomy and it must not undermine national systems that involve trade unions in enforcement and inspection ... The ELA must enjoy appropriate tools to carry out its tasks effectively, including obligations on member states to cooperate and provide assistance, share databases that combine the EU Social Security Number and company information, the possibility to trigger infringement proceedings and maximising possibilities for joined up enforcement from tax, company and state aid compliance."<sup>13</sup>

The German Trade Union Confederation went further and called for an empowerment of ELA, e. g. by initiating and coordinating joint inspections or by increasing member states' obligation to cooperate and providing for sanctions in cases of non-cooperation.<sup>14</sup> It cited EUROPOL, the European Union Agency for Law Enforcement Cooperation, as an example of a powerful EU body facilitating cross-border enforcement cooperation.

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<sup>11</sup> [https://ueapme.com/IMG/pdf/180605\\_UEAPME\\_position\\_on\\_the\\_proposal\\_for\\_a\\_European\\_Labour\\_Authority.pdf](https://ueapme.com/IMG/pdf/180605_UEAPME_position_on_the_proposal_for_a_European_Labour_Authority.pdf)

<sup>12</sup> <http://bit.ly/2NcQo5F>

<sup>13</sup> <https://www.etuc.org/en/document/etuc-position-strong-european-labour-authority>

<sup>14</sup> <https://www.dgb.de/downloadcenter/++co++4de29c18-67f1-11e8-8041-52540088cada>

As regards the Commission's legislative proposal, any transfer of new competences from the national to the EU level was discarded early in the process since "rule enforcement, information collection and treatment and inspection responsibilities are the competence of national authorities" (European Commission 2018, p. 25). In order to improve member state enforcement, therefore, three policy options for ELA were considered ranging from a mere "Support option" to a "Supervisory Option" (for a synoptic overview, see European Commission 2018, p. 27). Eventually, the Commission opted for an "Operational" ELA with a (pro-)active role in facilitating information exchange, concerted and joint inspections as well as dispute settlement between national authorities. In contrast to a "Supervisory" ELA, which was discarded as putting an excessive burden on individuals and businesses as well as constraining national discretion, this operational option did not provide for an ELA competence to launch inspections or to establish and enforce mandatory requirements for cross-border information exchange (European Commission 2018, p. 43f.). In sum, the Commission's proposal defined a broad spectrum of ELA functions related to the enforcement of EU social standards, but rather limited competences.

## **2.2 Legislative negotiations between the European Parliament and EU member states**

The Commission's proposal was discussed throughout the year 2018 at several preparatory meetings of the Working Party on Social Questions and the Committee of Permanent Representatives I (COREPER I) for the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) as well as in the European Parliament under the responsibility of the Committee on Employment and Social Affairs (EMPL). Jeroen Lenaers, a Dutch member of the European People's Party (EPP), was the European Parliament rapporteur, preparing a report on a legislative proposal for the file; his report was adopted by the EMPL committee in November 2018 and confirmed by the plenary in December 2018.<sup>15</sup> A provisional agreement between the European Parliament and the Council was reached after trilogue negotiations in February 2019<sup>16</sup> and the ELA Regulation was finally adopted in June 2019. Interestingly, some of the earliest staff members and national liaison officers at ELA were involved in these legislative negotiations of the ELA Regulation on behalf of different EU institutions and member states before, e. g. as social attachés in member state permanent representations. In parallel to the legislative negotiations, the Commission set up an advisory group on the European Labour Authority to speed up the establishment of ELA and collect recommendations on its functioning.<sup>17</sup> The advisory group was chaired by the Commission and composed of representatives from member states, social partners and other EU agencies in the field; it met five times and issued its final recommendations in May 2019.<sup>18</sup> Several members of this Commission advisory group were later appointed to ELA's management board.

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<sup>15</sup> [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2018/0064\(COD\)#tab-0](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2018/0064(COD)#tab-0)

<sup>16</sup> [http://www.europarl.europa.eu/RegData/commissions/empl/cag/2019/02-20/EMPL\\_LA\(2019\)001640\\_EN.pdf](http://www.europarl.europa.eu/RegData/commissions/empl/cag/2019/02-20/EMPL_LA(2019)001640_EN.pdf)

<sup>17</sup> <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3596&news=1>

<sup>18</sup> <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=31411>

*Council* negotiations largely mirrored the conflict between capital and labour about ELA functions and competences described above as well as (related) country positions during the negotiations on the revised Posted Workers Directive. By and large, most Western European countries and labour representatives supported the establishment of ELA more strongly, whereas Central and Eastern European countries and business representatives showed less enthusiasm for a new EU agency in this field.

“Some of the member states expected (and still do) the Authority to adopt a more aggressive policy towards fraudulent employers in cross-border situations. They await strict and numerous controls to be carried out when (and where) suspected abuses have taken place. Underlying these expectations is their desire to protect local labour markets against erosion of high social standards. Other member states see the ELA as ‘a champion of labour mobility’ and perceive its role as facilitating fair movement in the Single Market – by providing relevant information and support. In other words, they want to see the removal of unnecessary barriers to free movement, while protecting those who make use of it.”<sup>19</sup>

The Council documents allow identifying the most contested issues, but they are largely silent about the positions of individual member states. A majority of member states wanted to change the name to “agency” in order to signal that “ELA's role would be limited to supporting the Member States”; the Council presidency clarified that participation in concerted and joint inspections would remain voluntary for member states; and some delegations – unsuccessfully – sought to exclude EU legislation on road transport from the scope of ELA activities.<sup>20</sup> Nevertheless, the conclusion seems warranted that critical voices against the establishment and a broader mandate for ELA mainly came from Central and Eastern European representatives. The Polish parliament submitted a subsidiarity concern and the Polish government abstained in the final Council vote. Another abstention came from Czech Republic, which was justified in an explanatory statement: ELA should have been named “agency” in line with its limited mandate and the provisions on joint inspections and mediation, while not imposing any obligations on member states, were still considered too ambiguous.<sup>21</sup> Hungary voted against the ELA regulation, whereas Bulgaria, which held the Council presidency when the Regulation was adopted, voted in favour, however, after having upheld reservations against the inclusion of road transport for a long time. The decision to base ELA in Bratislava was meant to help overcome some of the initial reservations held by EU Central and Eastern European countries (Interview 8).

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<sup>19</sup> <https://www.euractiv.com/section/middle-ground-politics/opinion/the-european-labour-authority-is-here-time-to-tackle-abuse-and-promote-fair-labour-mobility/>

<sup>20</sup> <https://data.consilium.europa.eu/doc/document/ST-14583-2018-INIT/en/pdf>

<sup>21</sup> <https://data.consilium.europa.eu/doc/document/ST-9400-2019-ADD-2/en/pdf>. The Czech delegate had also voiced several critical remarks on joint inspections and the limitations imposed by national legislation within the Advisory Group of the Commission, see: <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=26850>

Yet also Austria voted against the establishment of ELA, which was heavily criticized domestically, but was justified by the conservative-right government with reference to final changes to the Council position reached under the Austrian presidency in late 2018 that would threaten national sovereignty.<sup>22</sup>

The *European Parliament* had already called for greater EU engagement concerning joint labour inspections and measures against social dumping at several previous occasions<sup>23</sup> and sought to push the Commission's proposal more in the direction of ELA as a powerful enforcement authority. According to the report of the EMPL committee explaining the position of the European Parliament, ELA's focus should have been less on information provision and primarily on enforcement:

“In the rapporteur's opinion there is need for an Authority that has an operational mandate, a clear focus on enforcement and sufficient competences and power to achieve its goals. Two specific issues are of major importance. First, the need for an Authority with a clear defined role and a limited number of tasks. It is crucial that the means available are used as efficiently as possible in areas where the Authority can provide the greatest added value. This added value of the Authority should be mostly in the field of enforcement. Therefore, the rapporteur has doubts about the necessity and desirability of bringing other tasks such as information provision or employment services within the scope of the Authority.”<sup>24</sup>

Moreover, the European Parliament called for greater ELA powers and making joint inspections less voluntary for member states:

“Second, the Authority must have the means to make an actual difference in practice. It should not become a toothless tiger; the voluntary nature of Member states' authorities participation - as proposed by the Commission - is not enough to achieve this ... That means that Member States authorities should participate in proposed concerted or cross-border inspections, and can only decline to participate in exceptional and duly justified situations.”<sup>25</sup>

The position of the European Parliament was supported by a broad majority of Members of the European Parliament (MEPs) from the European People's Party (EPP), the Progressive Alliance of Socialists and Democrats (S&D), the Alliance of Liberals and Democrats for Europe (ALDE) and The Greens/European Free Alliance (Greens/EFA) with 459 positive votes (160 negative, 41 abstentions) for the report as the basis for trilogue negotiations and 472 positive votes (142 negative, 39 abstentions) on the final agreement. Interestingly, a significant minority of MEPs from the EPP deviated from the party group line and rejected the committee report (35 negative EPP votes and 5 abstentions, of which 29 negative votes and 4 abstentions from Central and Eastern European MEPs). Eventually, the European Parliament was able to insist on “authority” rather than “agency” in ELA's name, but this

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<sup>22</sup> <https://www.diepresse.com/5582939/osterreich-stimmt-gegen-eu-arbeitsbehorde-mehrheit-aber-dafur>

<sup>23</sup> [http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625101/EPRS\\_BRI\(2018\)625101\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625101/EPRS_BRI(2018)625101_EN.pdf), p. 3

<sup>24</sup> [https://www.europarl.europa.eu/doceo/document/A-8-2018-0391\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/A-8-2018-0391_EN.pdf), p. 67

<sup>25</sup> [https://www.europarl.europa.eu/doceo/document/A-8-2018-0391\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/A-8-2018-0391_EN.pdf), p. 68

legislative victory is largely symbolic and gets lost in translations to other EU languages (such as “*Europäische Arbeitsbehörde*” in German). More substantively, amendments aiming at increasing ELA’s enforcement powers were weakened by the compromise with the Council. In our interviews, stakeholders still expressed different opinions on whether ELA should become a stronger enforcement authority in the future, but fully agreed that “agency” would capture the current mandate more realistically (Interviews 3, 7, 8). For example, ELA can perform most of its functions regarding the exchange of information only “upon request of one or more Member states” (Article 7 ELA Regulation). Following the European Parliament’s position, ELA may suggest joint or concerted inspections of national authorities “on its own initiative”, but national authorities may decline to participate and “inform the Authority (...) of the reasons for its decision” without stricter standards of justification or follow-up action by ELA in these cases of non-participation (Article 8 ELA regulation).

### 2.3 The ELA Regulation

The final compromise between the Council and the European Parliament, thus, largely follows the lines of the Commission’s original proposal, i.e. establishing ELA with a broad mandate including information provision and enforcement functions, but with rather limited competences. The scope of ELA’s activities has been clarified by the two co-legislators with a comprehensive list of EU legal acts related to cross-border labour mobility in the EU to be covered. According to Article 1(4) of the Regulation, ELA activities shall contribute to the effective application and enforcement of the following EU legal acts:

- Posted Workers Directive (2018/957)
- Social Security Coordination Regulation (883/2004 and 987/2009)
- Free Movement of Workers Regulation (492/2011) and Directive (2014/54)
- European Employment Services (EURES) Regulation (2016/589)
- Social Aspects of International Road Transport Regulation (2020/1055)

ELA’s functions have remained largely unchanged compared to the Commission’s original proposal, according to Article 4 of the ELA Regulation (with the only substantive change concerning point (f)):

- (a) facilitate access to information and coordinate EURES;
- (b) facilitate cooperation and the exchange of information between Member States with a view to the consistent, efficient and effective application and enforcement of relevant Union law;
- (c) coordinate and support concerted and joint inspections;
- (d) carry out analyses and risk assessment on issues of cross-border labour mobility;
- (e) support Member States with capacity building regarding the effective application and enforcement of relevant Union law;

- (f) support Member States in tackling undeclared work;
- (g) mediate disputes between Member States on the application of relevant Union law.

The governance structure of ELA consists of an executive director, a management board as well as a stakeholder group (Article 16 ELA Regulation). The first executive director of ELA, Cosmin Boianiu – a Romanian diplomat with previous experience as a deputy permanent representative to the EU – took office in December 2020 and manages the daily work of ELA. Strategic decisions are taken by ELA’s management board, which meets at least twice a year and consists mostly of representatives of member state governments and national administrations. Among other decisions, the management board adopts a so-called “Single Programming Document”, which comprises a more detailed ELA work programme for the next year and broad guidelines for the following 2-3 years. Our interview partners described the discussions in the management board as not very conflictual, but exhibited partly different visions about the precise role of the board and its relation to ELA – between supervising ELA more closely or assisting it in broader strategic questions. The latter perspective was advocated by one interview partner, who criticized other members of the management board as trying to “micro-manage” ELA, showing “latent mistrust” and having a somewhat defensive national attitude similar to Council working groups (Interview 8). In addition to the management board, ELA has a stakeholder group, which brings together representatives of European social partners and fulfils an advisory function. Generally, social partners acknowledge that ELA is receptive to their input, but deplore being underrepresented in the management board (with only two seats for each side) and limited to an advisory role (Interviews 10, 11; ELA Conference).

Depending on their own background, experts in the field have welcomed<sup>26</sup> or deplored ELA’s limited enforcement competences. According to the labour lawyer Jan Cremers, who was also appointed as an independent expert to ELA’s management board, the Regulation acknowledges the most pressing enforcement problems, but “stops halfway” (Cremers 2020, p. 11f.) in creating the appropriate competences for ELA: joint inspections shall be facilitated by ELA, but the obligation for member states to act jointly has not increased; a lack of effective and dissuasive sanctions in cases of unlawful cross-border activities persists; and ELA’s role in mediation may be hampered by limited access for individual stakeholders as well as the unclear legal status of its dispute solutions. The outbreak of the Covid-19 pandemic shortly after the establishment of ELA was particularly challenging for such a new institution, which had just begun to recruit staff and could only move to its premises in Bratislava in September 2021. ELA staff grew continuously during these first years from a very small team in 2019 to 43 in 2020, 84 in 2021 and almost approaching the target of 144 staff members in 2022. Almost half of the staff are seconded national experts from member state administrations, including the 27 national liaison officers (NLOs), who are described in further detail in Section 5. Although ELA does not e. g. undertake inspections itself, but “only”

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<sup>26</sup> <https://www.mobilelabour.eu/13063/european-labour-authoritys-home-run-high-time-to-tackle-abuse-and-promote-fair-labour-mobility/>

coordinates and supports member state practices, the number of staff is low compared to that of national authorities. For instance, the German Financial Control of Undeclared Work Unit of the Customs Administration ("*Finanzkontrolle Schwarzarbeit*"), which enforces the German minimum wage and which is often seen as understaffed itself, has around 8000 staff members<sup>27</sup>; the Austrian Financial Police ("*Finanzpolizei*") which is also competent for e. g. wages, has more than 400 "full employment equivalents".<sup>28</sup> The size of ELA's staff is also low when keeping in mind the number of around 13.5 million EU movers, who live or work in another member state<sup>29</sup>, and millions of businesses who operate across borders<sup>30</sup> for whom ELA is basically competent.

In the following sections, we analyse in greater detail how ELA manages in practice to contribute to its various objectives despite limited competences and resources.

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<sup>27</sup> [https://www.zoll.de/SharedDocs/Pressemitteilungen/DE/Jahresbilanzen/2022/z99\\_jahresstatistik\\_fks\\_2021.html](https://www.zoll.de/SharedDocs/Pressemitteilungen/DE/Jahresbilanzen/2022/z99_jahresstatistik_fks_2021.html)

<sup>28</sup> [https://www.parlament.gv.at/PAKT/VHG/XXVII/III/III\\_00362/fnameorig\\_986719.html](https://www.parlament.gv.at/PAKT/VHG/XXVII/III/III_00362/fnameorig_986719.html)

<sup>29</sup> <https://www.ela.europa.eu/en/elas-mission>

<sup>30</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_19\\_6063](https://ec.europa.eu/commission/presscorner/detail/en/ip_19_6063)

### 3 ELA's main goals so far: enforcement and information

ELA's functions listed above can be clustered around four main objectives according to Article 2 of the ELA Regulation<sup>31</sup>:

- enforcement cooperation, including concerted and joint inspections
- exchange of information
- mediation in disputes between member states
- tackling undeclared work

Whereas ELA has set up working groups – comprising representatives of each member state, EU institutions and social partners – for the objectives 1 to 3 (information, inspections, mediation), the fourth goal relates to the integration of the pre-existing European Platform tackling undeclared work into the new agency structure. During ELA's "start-up phase", both information and enforcement were defined to be *the* top priorities (Interview 3; 1<sup>st</sup> meeting of the management board<sup>32</sup>). This prioritization was also mirrored in ELA's working programme for 2020: "the two tasks of "Facilitating access to information on labour mobility" and "Coordination and support of concerted and joint inspections" were priorities of action for the Authority and resources were allocated accordingly".<sup>33</sup>

How are the two goals related to each other? At first sight, it is a common-sense position that both goals are needed and mutually reinforcing. Yet, the two goals imply different priorities and are even partly conflicting. While diverse interview partners highlight that information and enforcement complement each other (Interviews 3, 5, 8), we identified several controversial issues in practice which can be traced back to the broad mandate (see Section 2), to the different logics and goals within ELA as well as to those of the actors involved (Interviews 3, 15). ELA's current mandate can be seen as a "compromise", which should "please everyone" by covering a broad mandate ranging from information to enforcement (Interviews 3, 4). As we will demonstrate hereafter, the current practice is (still) characterized by differences among social partners as well as among member states.

The position that information and enforcement are "two sides of the same coin" or that information is a pre-condition for enforcement is typically held by employer organizations. Employers stress the importance of information, since most companies wanted to comply, but the rules were too complex. Moreover, it is argued, knowing their rights and duties was also in the interest of workers (Interview 10). ELA's main added value, therefore, is seen in the provision of information, e. g. through a website with detailed information in various languages and by serving as a "helpdesk" that can be contacted in case of questions. While not objecting cross-border inspections in general, employer organizations qualify the extent of actual abuse, emphasize that

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<sup>31</sup> We orientate ourselves on the objectives as stipulated in Article 2 rather than on ELA's internal structure which deviates to some extent, by for instance subsuming NLOs und mediation under "cooperation" (<https://www.ela.europa.eu/en/governance#bcl-in-page-item-223>)

<sup>32</sup> [https://www.ela.europa.eu/sites/default/files/2020-12/2019-10-16-17\\_Record-of-proceedings-first-Management-Board-meeting.pdf](https://www.ela.europa.eu/sites/default/files/2020-12/2019-10-16-17_Record-of-proceedings-first-Management-Board-meeting.pdf)

<sup>33</sup> [https://www.ela.europa.eu/sites/default/files/2020-12/ELA\\_Work\\_Programme\\_2020\\_-\\_revised.docx](https://www.ela.europa.eu/sites/default/files/2020-12/ELA_Work_Programme_2020_-_revised.docx)

they are against “naming and shaming” of firms, and that information comes first as it was “not proportionate” to start with inspections (interview 10). They hence prioritize the information goal and push ELA to extend its information and create a separate website, next to the Commission’s website “YourEurope”.

From a workers’ perspective, this emphasis on information is problematic in at least two respects. First, prioritizing information blocks already limited capacities of ELA, which further reduces its ability to focus on other goals such as enforcement. Second, such a one-sided emphasis on information is based on a rather benign interpretation of rule violations mainly occurring by accident (rather than intentional) and a questionable attribution of responsibility. Is it the responsibility of workers to know their rights or rather the duty of firms to respect these rights, regardless of individual workers’ awareness? Arguably, if non-compliance with EU rules for cross-border workers is a structural phenomenon, it is “not the job of workers to inform themselves about the rights” (ELA Conference). Rather, companies need to comply with the rules and apply rights, and enforcement authorities need to make sure that this is the case. As a consequence, trade unionists demand a priority of broad and effective enforcement (Interviews 4, 11). Yet, also from a worker perspective, opinions on the mutual dependence or a trade-off between information and enforcement partly differ. Several employee representatives stress information, too, and urge ELA to also support individual advice such as the “Fair Mobility” (*Faire Mobilität*) centres across Germany next to general information websites. Other employee representatives counter that the problem of exploitation cannot be tackled at the individual level and that such an approach would again individualize a structural phenomenon (ELA Conference).

The different priorities and motivations of social partners become also visible when considering their opinions on the language ELA should use in public. Employer organizations demand that one “should talk about labour mobility in a positive way”, stressing the advantages of work abroad. Otherwise, it is argued, people may no longer want to move for work, which would have negative consequences given the labour shortages in certain states (Interview 10). Trade unions, however, criticize ELA for not displaying the – exploitative – reality when e. g. depicting workers in agriculture as “models in vegetable beds” in brochures and on websites (Interviews 4, 11).

Conflicting logics and aims can further be identified with regard to the selection and timing of ELA’s sectoral campaigns. Beginning in 2021, ELA has sought to increase its visibility and its activities by sectoral campaigns, combining awareness raising and information with coordinated and joint inspections (see Section 4). So far, seasonal work, road transport and constructions have been chosen for these campaigns. The selection of the sector can be more or less driven by or correspond to the interests of the information side or the enforcement side. For instance, the road transport campaign took place in 2022, since the Commission wanted to bring attention to the Mobility Package and the related Directive 2020/1057 on Rules relating to Posting Drivers in the Road Transport Sector, which should have been incorporated into national legislation by then. The campaign was hence conceived of as “public relations” and made sense from an information side. In contrast, the timing of the campaign was not considered optimal from an enforcement side: it was too early to undertake controls, as many member states had not yet transposed the Directive, and guidelines on how inspectors at street level should apply the rules were lacking (Interviews 3, 5, 7). The upcoming campaign on construction in 2023 finally addresses a sector considered as crucial and timely by all actors involved. This sector is traditionally characterized by a high level of undeclared work and illegal structures, rendering enforcement highly necessary (Interview 5). Moreover, many employers acknowledge and seek to tackle such phenomena given high competition and liability (Interview 11).

Furthermore, while campaigns such as the one on transport combine aspects of both enforcement and information, interviewees held that, in practice, information campaigns and inspections may not always be compatible. In the road transport campaign, ELA partly opted for distribution of information without the involvement of enforcement actors at rest areas in order not to scare off truck drivers and to ensure that workers had an environment where they could simply inform themselves (interview 5). From a worker perspective, information and enforcement may not go well together; a person may be reluctant and afraid if information is accompanied by inspection action.

In short, the initial phase of ELA was characterized by ongoing discussions about the partly complementing, partly competing objectives of information and enforcement. In the following two sections, we will delve deeper into ELA’s action regarding enforcement (section 4) and information exchange (section 5).

## 4 Enforcement: concerted and joint inspections

In this section, we focus in more detail on the enforcement goal and its main instrument: concerted and joint inspections (CJIs). In particular, we lay down how ELA balances high hopes in theory and a limited mandate in practice. We thereby map how CJIs look like in practice, what the added value of ELA is or can be and which obstacles arise in practice.

The expectations towards ELA are particularly high in the area of enforcement. According to the Commission's description and ELA's self-description, ELA makes sure that cross-border labour and social security rules are both applied and enforced properly.<sup>34</sup> One important way to do so is via the coordination and support of concerted and joint inspections (CJIs). Inspections are called "concerted", when the authorities in two or more member states undertake simultaneous controls with regard to a related case, with the support of ELA. Joint inspections, for their part, are inspections taking place in one member state, with the participation of authorities of two or more other member states, and with the support of ELA. For both forms of inspections, specific, detailed workflow documents were created which are available in the EU's official languages.<sup>35</sup> ELA supports CJIs via coordination, financial support, e. g. in relation to costs for travelling or translation, or other operational support such as technical devices.<sup>36</sup> In addition, ELA e. g. organizes diverse training activities for capacity building.<sup>37</sup>

In contrast to high expectations, ELA was equipped with a limited enforcement mandate. Most importantly, given the "operational" nature of ELA, it does not have enforcement powers itself but relies upon the commitment of member states. Informally, member states are expected to take part in at least one inspection per year (Interview 3), but they cannot be obliged to do so, as there was no political majority during the negotiation process on the ELA Regulation. ELA can only suggest CJIs; member states can request them. Moreover, social partners can bring cases to the attention of ELA.

Cross-border inspections can be proactive or reactive: they can be part of a general check on compliance, e. g. in a risk sector, or they can be initiated due to a specific case and hence be targeted e. g. when trade unions or the media draw attention to a particular topic.<sup>38</sup> While the former are so far rather initiated by ELA and serve to get an overview of the situation or to draw public attention to the topic, the latter rather come from the side of member states (Interview 5).

The first concerted inspection supported by ELA took place in September 2020, with controls of construction firms in Belgium, Lithuania and Portugal<sup>39</sup>, and since 2021, CJIs mostly take place in the context of sectoral campaigns (see Section 3). Initially, the choice of sectors followed a reactive approach. The importance of seasonal workers and their working conditions received

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<sup>34</sup> [https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/institutions-and-bodies-profiles\\_en](https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/institutions-and-bodies-profiles_en);  
<https://www.ela.europa.eu/en>

<sup>35</sup> [https://www.ela.europa.eu/sites/default/files/2021-02/Item01\\_Guidelines-for-concerted-and-joint-inspections.pdf](https://www.ela.europa.eu/sites/default/files/2021-02/Item01_Guidelines-for-concerted-and-joint-inspections.pdf)

<sup>36</sup> [https://www.ela.europa.eu/sites/default/files/2021-12/ELA\\_Support\\_CJI\\_v2.pdf](https://www.ela.europa.eu/sites/default/files/2021-12/ELA_Support_CJI_v2.pdf)

<sup>37</sup> <https://www.ela.europa.eu/en/concerted-and-joint-inspections#ecl-inpage-217>

<sup>38</sup> [https://www.ela.europa.eu/sites/default/files/2021-02/Item01\\_Guidelines-for-concerted-and-joint-inspections.pdf](https://www.ela.europa.eu/sites/default/files/2021-02/Item01_Guidelines-for-concerted-and-joint-inspections.pdf)

<sup>39</sup> <https://www.ela.europa.eu/en/news/european-labour-authority-coordinates-its-very-first-concerted-inspection>

heightened attention after the outbreak of the Covid-19 pandemic. The pandemic, thus, confronted ELA with a “perfect storm” (Interview 3) in this sector and provided an opportunity to respond to stakeholders’ calls, e. g. by the European Parliament<sup>40</sup>, for ELA action. The second focus on road transport in 2022 was mainly motivated in the context of the EU’s Mobility Package, which had to be transposed by EU member states by February 2022.<sup>41</sup> ELA’s next sectoral campaign, which was chosen more pro-actively, will focus on the construction sector, which is traditionally characterized by a high share of posted workers and widespread exploitative practices.

Data from CJIs give an idea about their limited scope so far. ELA officials are aware that their performance will partly be “judged politically by the number of inspections” (Interview 3) and ELA press releases on CJIs try to portray them as successfully as possible. For instance, during the “Truck&Bus” action week in February 2022, “184 vehicles were checked, >120 suspected irregularities discovered, almost 200 inspectors involved”.<sup>42</sup> The inspections took place in Belgium, Croatia, Germany and Portugal (Bulgaria, Lithuania and the Netherlands organized national inspections during this action week), and involved the competent national enforcement authorities as well as NLOs, translators, and observers from Cyprus, Greece, Italy, Lithuania, Malta, Spain and Slovakia. And yet, not everybody is impressed by these numbers (Interviews 11, 14). To better contextualize these numbers, we compare them to selected inspections in the context of Roadpol, the European Roads Policing Network, and to purely national inspections: For instance, during the control action week of Roadpol in February 2021, more than 240,000 trucks in 16 countries were controlled;<sup>43</sup> and during a two-day-inspection in April 2020, 42 inspectors of the German Financial Control of Undeclared Work Unit of the Customs Administration verified the employment relationship and employers’ compliance with wage as well as social security rules of 52 truck drivers<sup>44</sup>. The probability to be subject to a CJI is hence very low (Interview 14). The CJIs therefore have a strong “symbolic dimension” (Interview 3). Data from another action week in July 2022 shows again that the number of involved staff is high compared to vehicles that are checked (more than 226 control officers compared to more than 260 controlled vehicles).<sup>45</sup>

Still, while wishing for more enforcement activities, our interview partners highlight the added value of CJIs and of the involvement of ELA. First, the existence of cross-border work, complex settings and “spill-over effects” from one country to another make transnational enforcement necessary and ELA can be supportive by e. g. coordinating inspections or offering financial resources for travel or translation. For instance, letterbox companies often involve several member states.<sup>46</sup> While diverse member states already have bilateral cooperation, the support of ELA enables multilateral cooperation. For instance, the Netherlands and Germany had already cooperated in

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<sup>40</sup> [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0176\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0176_EN.html)

<sup>41</sup> <https://www.ela.europa.eu/en/campaign/road-fair-transport>

<sup>42</sup> <https://www.ela.europa.eu/en/news/action-week-inspections-european-roads>

<sup>43</sup> <https://trans.info/de/roadpol-verstoss-bei-fast-jedem-dritten-kontrollierten-lkw-festgestellt-manipulationen-an-fahrtenschreibern-nehmen-besonders-stark-zu-228206>

<sup>44</sup> <https://www.trucker.de/nachrichten/transport/zoll-in-hessen-kontrolliert-im-speditions-und-logistikgewerbe-2618016>

<sup>45</sup> <https://www.ela.europa.eu/en/news/truck-bus-action-week-inspections-european-roads>

<sup>46</sup> [https://www.ela.europa.eu/sites/default/files/2021-02/Item01\\_Guidelines-for-concerted-and-joint-inspections.pdf](https://www.ela.europa.eu/sites/default/files/2021-02/Item01_Guidelines-for-concerted-and-joint-inspections.pdf)

enforcement in the meat sector without ELA support, but ELA made the involvement of Romanian inspectors possible.<sup>47</sup> This was considered particularly helpful for Romanian citizens whose working and housing conditions were checked, reassuring them that these inspectors were their own nationals who spoke their language (Interview 12).

Second, while there are diverse channels of communication, such as the Internal Market Information System (IMI) for inspections or the Electronic Exchange of Social Security Information (EESSI) for social security, CJIs bring persons together, enhance trust and allow for establishing personal transnational networks which could facilitate future communication (Interviews 3, 5, 7, 8, 15). Joint inspections provide the advantage that inspectors spend several days together. When reflecting upon the inspection afterwards, they may identify further problems and plan further cooperation or measures targeting concrete companies. For instance, when finding that a transport company, which was suspected of violating rules such as truck workers' driving times, always had their workers driving from state A to state B, they could arrange a first control in state A once the truck left, and another control some hours later in state B. This allowed overcoming the "snapshot" of single controls in just one member state (Interview 5). Still, some member states only want to take part in CJIs "once it's worth it" (Interview 3), e. g. in clear transnational constellations.

Once accomplished, CJIs were described as very useful throughout interviews, but the process of organizing them in the first place involves several obstacles. To begin with, since member states can abstain from any involvement in CJIs, their voluntary nature may require considerable persuasive efforts on part of ELA. If national authorities decline to take part in CJIs, they need to inform ELA about the reasons of non-participation and about other measures they will adopt to tackle the case (Article 8(4) ELA Regulation). In practice, this justification requirement seems easy to fulfil for member state authorities, e. g. by referring to heavy workload and limited capacities, and the strategy of ELA relies on persuasion rather than trying to pressure national authorities into CJI participation (Interview 5), suggesting that ELA pursues a management instead of an enforcement approach (Chayes/Chayes 1993; Downs et al. 1996). So far, there are indeed differences as to which member states are involved in CJIs. Several countries such as Belgium or the Netherlands are very active, while others, such as Germany and Austria, are rather reluctant so far (Interview 3). The willingness of inspectorates is hence crucial. Member state inspectorates can understand themselves as "very national authorities" (Interview 6). Some inspectors mentioned that they also needed to meet certain national goals and questioned the added value of ELA (Interviews 1, 6), holding also that they were no "travel agency" (Interview 15). Such a sceptical behaviour is also displayed within the meetings of the working group on inspections where the role of some member state representatives is described as immediately objecting any proposals to initiate joint inspections (Interview 14).

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<sup>47</sup> <https://www.ela.europa.eu/en/news/labour-exploitation-meat-industry-revealed-cross-border-inspections>

In Germany, institutional factors were, amongst others, highlighted to explain the reluctance towards CJIs (Interview 3): the federal system and dispersed competences would make the process more cumbersome. For instance, already at the ministerial level, three different authorities may potentially be involved: the Ministry of Labour when it comes to occupational health and safety, the Ministry of Finance which is head of the Financial Control of Undeclared Work Unit of the Customs Administration ("*Finanzkontrolle Schwarzarbeit*"), the inspectorate checking e. g. minimum wages, and the Ministry of Transport, when it comes to driving times etc. in the road transport sector. It can, thus, be very difficult to reach the inspectors at street level and convince them of participation in ELA activities (Interview 9).

Moreover, even if member states are willing to take part, CJIs are time-consuming, involve a high bureaucratic workload and the "outcome is uncertain" (Interview 8). For example, ELA has developed various workflow guides and templates to initiate and document CJIs, which are described as overly bureaucratic and complicated by stakeholders (Interviews 1, 7).<sup>48</sup> To dispel these fears and lower the obstacles for enforcement cooperation, ELA offers to national bureaucrats to do most of the ELA-related paperwork for them (Interview 5). Still, CJIs require a certain preparation time and are hence inadequate to tackle situations that require immediate action such as letterbox companies with quickly changing seats (ELA Conference).

Finally, some instances of, so far, weak member state cooperation are described as a result of limited domestic capacities rather than of principled opposition (Interviews 3, 5, 7, 8). Here, ELA could, according to one interview partner, potentially play a role in capacity building (Interview 14).

In sum, ELA's enforcement record so far reveals a mixed picture. In terms of the sheer quantity of inspections, in particular trade unions expect "much more" (ELA Conference), whereas ELA officials try to temper expectations and voice cautious optimism about the future development (Interview 3). Once national authorities take part in a CJI, they experience the advantages of it. Interview partners from ELA and trade unions alike, thus, hope that, with a process of learning, member states see the positive effects of CJIs (Interviews 3, 4, 8). Especially the campaign on construction is expected to be beneficial for the willingness to engage in transnational enforcement via CJIs (Interview 11), but also a litmus test for whether ELA can make a real difference (Interview 14). Even though trade unionists and some member state representatives would still welcome a stronger mandate for ELA, they admit that major changes do not seem realistic for the review in 2024 and that they will not undertake "Don Quijotian" fights (Interviews 8, 11). At the same time, some member states with reservations during ELA negotiations do not fundamentally oppose ELA today, but are described as cooperative and pragmatic by different stakeholders (Interviews 3, 6, 7, 9). This suggests that there may also be a difference between conflict between member states at a political level, and cooperation between national authorities at the administrative level.

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<sup>48</sup> <https://www.ela.europa.eu/en/concerted-and-joint-inspections#bcl-inpage-item-215>

## 5 Information exchange: national liaison officers

In this section, we deal in particular with one aspect of ELA which was not controversial and did not attract much attention during the negotiations of ELA's mandate, but turns out to be very important in practice: the national liaison officers (NLOs). We present the role of NLOs as a bridge between ELA and the member states and emphasize how, de facto, their contribution goes beyond information exchange. We also address further aspects of information exchange such as the diffusion of best practices.

The position of NLOs and their network is described as one of the most innovative and promising features of ELA throughout our interviews. During the negotiations, the legal provisions on NLOs did not raise much attention or even controversy and the rules finally adopted are short and vague. According to Article 32 of the ELA regulation, NLOs "shall contribute to executing the tasks of the Authority, including by facilitating the cooperation and exchange of information set out in Article 7 and the support and coordination of inspections set out in Article 8". These vague legal provisions open room for creative interpretation of the role of NLOs, in particular during the early phase of ELA establishment.

Since NLOs are designated by member states and have been seconded to ELA early in the process of its establishment, NLOs constituted the largest group of staff members and played a major role in the initial phase of ELA. During this phase, nascent ELA and in particular the circle of NLOs are referred to as a "start-up" (Interviews 3, 9). NLOs "built up" ELA (Interview 9). One interviewee described it to be "clearly the interesting part of the phase", to reflect upon what one can do with the resources and the mandate, and to create tools (Interview 3). Depending on their previous positions and personal qualifications, NLOs brought in their expertise in different areas during ELA's establishment (Interview 7). To some extent, the position of NLOs was inspired by a similar system at Europol, but in many respects their role is described as without precedent, less nationally-oriented and, therefore, open to creative interpretation (Interviews 3, 8). Arguably, the rule of one NLO per member state ignores certain imbalances in terms of workload between larger and smaller member states. In practice, NLOs from large member states may therefore benefit from the assistance of other seconded national experts at ELA and colleagues in their domestic administration (Interviews 7, 8). In light of the positive experiences with NLOs and responding to calls from social partners, who also wanted to participate in the network of liaison officers, ELA recently decided to create an additional liaison office for stakeholders in Brussels.<sup>49</sup>

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<sup>49</sup> <https://www.ela.europa.eu/sites/default/files/2022-04/decision-01-2022-brussels-liaison-office.pdf>

The role of NLOs has somewhat “normalized” (Interview 7) as ELA staff increased and labour is divided among different units. One task falling under the competence of NLOs was the peer review of national information websites regarding the posting of workers, which are obligatory according to Article 5 of Directive 2014/67 on enforcement of the Posted Workers Directive.<sup>50</sup> As part of their role in improving information exchange, NLOs had to assess whether the website offered adequate information for workers and companies. Still, NLOs’ job description ranges from “letterbox to ambassador” and they partly decide themselves whether they rather want to be more of a letterbox or more of an ambassador, e. g. also contributing policy-advice. The 27 NLOs, thus, continue to interpret their role in different ways and do quite different things in their daily work (Interview 9). Here, the background of NLOs seems decisive. NLOs typically have a background in one or two of the topics that ELA covers, being e. g. lawyers of the Labour Ministry, labour inspectors, or social security experts. None of them was described to be a complete generalist (Interview 3). While some hence have deep knowledge of legal issues, others are rather practically-oriented, e. g. with a background as labour inspectors, and have an extensive network within the state (Interviews 5, 7, 9).

NLOs are also described to be “sales managers”, who reach out to member state authorities, especially at local levels, and try to persuade them to cooperate in enforcement. Here, some have very good contacts, others face difficulties in reaching the street level or are less active (Interview 3). Hence depending also on the NLO, member states are more or less active when it comes to CJIs, and give priority to either enforcement or information. At the same time, in their daily work, NLOs are more or less constrained by member states’ pre-existing institutional structures and their willingness – as the example of Germany’s handling of CJIs above demonstrated. All in all, NLOs do not only have a highly important role in information exchange but also in enforcement, being the “grease oil” for concerted and joint inspections according to one interview partner (Interview 12).

Next to NLOs, ELA offers further room for exchange of information and of best practices. One way to do so is via conferences. For instance, in November 2022, ELA hosted a Tech Conference in which individuals or companies could present their digital tools in the area of labour mobility and which could hence “enable knowledge sharing”.<sup>51</sup> Labour inspectorates informed about their digital tools which should – via an algorithm – be able to find companies with a higher probability of worker exploitation (ELA Tech Conference). Another example lies in the discussion about individual advice for workers. In particular, projects like the German “Fair Mobility” (“*Faire Mobilität*”) with centres offering advice in diverse languages across Germany could be diffused as “best practice” all over Europe, and ELA could play a coordinating role here (Interview 4; ELA Conference).

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<sup>50</sup> For instance, in Germany: [https://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/foreign-domiciled-employers-posting\\_node.html](https://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/foreign-domiciled-employers-posting_node.html); in Austria: [https://www.entsendeplattform.at/cms/Z04/Z04\\_10/home](https://www.entsendeplattform.at/cms/Z04/Z04_10/home)

<sup>51</sup> <https://www.ela.europa.eu/sites/default/files/2022-07/ela-call-for-papers-tech-conference-2022-new.pdf>

## 6 ELA's relation to other agencies and networks

Whereas NLOs could interpret their new roles creatively and repeatedly compared the atmosphere during the initial phase of ELA to a start-up, ELA was not established in a vacuum. To the contrary, it was planted into a field with manifold pre-existing EU agencies, networks and path-dependencies, which becomes especially apparent for the two goals of mediation and tackling undeclared work. In fact, the risk of an inefficient duplication of existing structures had been one of the core arguments of ELA sceptics such as the employers' organization BusinessEurope during the negotiation phase:

“Our doubts on the need to create a new EU authority remain. We regret that the alternative to streamline the relevant existing bodies without creating a new agency was not given sufficient consideration.”<sup>52</sup>

This concern is partly reflected in the preamble (Recitals 41ff.) and Article 14 of the ELA Regulation:

“The Authority shall aim in all its activities at ensuring cooperation, avoiding overlaps, promoting synergies and complementarity with other decentralised Union agencies and specialised bodies, such as the Administrative Commission. To that end, the Authority may conclude cooperation agreements with relevant Union agencies, such as Cedefop [European Centre for the Development of Vocational Training], Eurofound [European Foundation for the Improvement of Living and Working Conditions], EU- OSHA [European Agency for Safety and Health at Work], ETF [European Training Foundation], Europol [European Union Agency for Law Enforcement Cooperation] and Eurojust [European Union Agency for Criminal Justice Cooperation].”

In practice, ELA has developed a range of different relationships with these pre-existing bodies. At one end of the spectrum, the European cooperation network of employment services (EURES) and the European Platform tackling undeclared work have been largely integrated into ELA. The EURES internet portal<sup>53</sup>, which provides information and serves to bring together jobseekers and employers, is still operated by the European Commission, but the management of the network by the European Coordination Office of EURES has been transferred to ELA in 2021. The Platform tackling undeclared work has kept its name, but has been formally transformed into a permanent working group of ELA in 2021. The Platform had just been created in 2016 and, therefore, ensuring some form of continuity rather than simply replacing it was the politically preferred option (Interview 3). Whereas EURES clearly belongs to the information pillar of ELA, supporting member state cooperation to tackle undeclared work is formally a separate objective of ELA (Article 2(d) ELA Regulation) and closely linked to the broader enforcement goal. Tackling undeclared work has also become the main justification for ELA to devote significant attention to the (working) conditions of Ukrainian refugees – a challenge which was not foreseen at the time when ELA was founded and which is obviously not captured by its mandate in

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<sup>52</sup> <https://www.buinessurope.eu/publications/proposal-establishing-european-labour-authority-buinessurope-position-paper>

<sup>53</sup> [https://eures.ec.europa.eu/index\\_en](https://eures.ec.europa.eu/index_en)

terms of EU legal acts applicable. Since March 2022, a subgroup of the Platform, including also representatives of the Commission, other EU agencies, social partners and member states deals with the issue of Ukrainian refugees.

At the other end of the spectrum regarding ELA's relationships with pre-existing bodies, the Administrative Commission for the Coordination of Social Security Systems continues to work independently and outside ELA structures. The Administrative Commission consists of member state experts and a Commission representative, who deal with questions of interpretation of EU rules on social security coordination for mobile workers. From an ELA perspective, integrating also this task of the Administrative Commission would have been welcomed since ELA's functions also touch upon issues of social security coordination, but the Administrative Commission kept its independence. It was already established in 1958, has its own secretariat and the reputation for being a very close and active network (Martinsen et al. 2021, p. 1637), which is sometimes described as a "bubble" from outside (Interview 9). As required by Article 13(11) of the ELA Regulation, ELA and the Administrative Commission concluded a Cooperation Agreement<sup>54</sup> in December 2021, which, however, still needs to be tested in practice. The crucial question will be who is responsible in cases of conflict between member states about the application of relevant EU rules – the Administrative Commission with its dispute settlement procedure or ELA with its newly established mediation mechanism, both supposed to deliver non-binding recommendations for member states. The goal of the cooperation agreement is to avoid conflicts about the applicable procedure. The general thrust of the agreement is that conflicts involving a new interpretation of EU law on social coordination are exclusively dealt with by the Administrative Commission, whereas ELA mediation is meant to settle issues of law application concerning social coordination or other areas such as posting of workers or road transport. As possible examples of mediation cases, ELA's website mentions "disputes related to minimum wage and working time in cross-border situations" or, in the field of road transport "disputes concerning the misapplication of rules on driving times, breaks and rest periods".<sup>55</sup> Still, it remains to be seen whether there will be conflicts about competing claims of responsibility once ELA's mediation processes are fully running (Interview 9). Closely related, albeit with less potential for conflicts, ELA has also concluded a cooperation agreement with the SOLVIT network which seeks to settle conflicts between member states through direct and informal contacts.<sup>56</sup> Here, the general idea is that SOLVIT may refer unresolved cases to ELA for mediation.

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<sup>54</sup> <https://www.ela.europa.eu/sites/default/files/2022-03/ELA-AC-signed-agreement.pdf>

<sup>55</sup> <https://www.ela.europa.eu/en/mediation>

<sup>56</sup> [https://www.ela.europa.eu/sites/default/files/2022-03/ELA-SOLVIT-agreement\\_signed.pdf](https://www.ela.europa.eu/sites/default/files/2022-03/ELA-SOLVIT-agreement_signed.pdf)

The work of ELA intersects with several other EU agencies and networks. Short memoranda of understanding have been concluded between ELA and the European Foundation for the Improvement of Living and Working Conditions (Eurofound)<sup>57</sup>, the European Agency for Safety and Health at Work (EU-OSHA)<sup>58</sup> as well as the European Centre for the Development of Vocational Training (Cedefop).<sup>59</sup> The agreements are largely similar and mainly require both sides to appoint contact persons and to explore possibilities for cooperation during the development of their respective programming documents. ELA has concluded a more comprehensive memorandum of understanding with the European Commission.<sup>60</sup> Again, the agreement defines various contact points between ELA and the Commission, such as the Directorate-General for Employment, Social Affairs and Inclusion (DG-EMPL), and requires regular exchange of information and consultation on all ELA activities. It also mentions ELA's role in promoting digital solutions for cross-border cooperation such as the existing Internal Market Information (IMI)<sup>61</sup> and Electronic Exchange of Social Security Information (EESSI)<sup>62</sup> systems managed by the Commission. Other EU agencies and networks without such cooperation agreements, but nevertheless relating to the work of ELA comprise the Senior Labour Inspectors Committee (SLIC), the European Training Foundation (ETF) or the European Union Agency for Law Enforcement Cooperation (Europol). For example, ELA co-organized an event focusing on the working conditions of young people with several other EU agencies<sup>63</sup> and collaborated with Europol in the framework of EMPACT, the European Multidisciplinary Platform Against Criminal Threats in the EU.<sup>64</sup>

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<sup>57</sup> <https://www.ela.europa.eu/sites/default/files/2022-04/decision-04-2022-moU-eurofound-ela.pdf>

<sup>58</sup> <https://www.ela.europa.eu/sites/default/files/2022-11/Decision%2018%20ELA%20EU-OSHA%20Framework%20Cooperation.pdf>

<sup>59</sup> <https://www.ela.europa.eu/sites/default/files/2022-11/Decision%2017%20ELA%20MoU%20with%20Cedefop.pdf>

<sup>60</sup> <https://www.ela.europa.eu/sites/default/files/2022-04/decision-03-2022-mou-com.pdf>

<sup>61</sup> [https://ec.europa.eu/internal\\_market/imi-net/index\\_en.htm](https://ec.europa.eu/internal_market/imi-net/index_en.htm)

<sup>62</sup> <https://ec.europa.eu/social/main.jsp?catId=1544&langId=en>

<sup>63</sup> <https://www.ela.europa.eu/en/events/youth-first-employment-skills-and-social-policies-work-young-europeans-times-uncertainty>

<sup>64</sup> <https://www.ela.europa.eu/en/news/european-labour-authority-europol-and-member-states-join-forces-fight-against-labour>

## 7 Conclusion: a preliminary assessment and outlook

In this study, we sought to provide a first analysis of ELA – about five years after its initial proposal and a bit more than a year before its first review by the EU legislator. We summarized the political and legal background underlying the establishment of this new EU agency and described ELA’s work in practice with respect to its main proclaimed goals so far – enforcement and information – and in relation to other EU agencies and networks in the field with regard to its two further goals – mediation and tackling undeclared work. In this concluding part, we try to provide a preliminary assessment of ELA’s achievements so far and a tentative outlook to emerging fields of ELA activity.

From the beginning, ELA was faced with high expectations and entrusted with manifold tasks, but equipped with rather limited resources and powers. The tension was already visible during the negotiations on ELA’s original mandate and a recurrent topic in our interviews. Even though most stakeholders we interviewed saw ELA’s potential far from fully exploited, they largely refrained from criticism and expressed hopes for its future development. The unexpected challenge of setting up a new institution during the pandemic and the argument that improving information exchange and joint inspections were long-term goals, were repeatedly mentioned to put ELA’s early performance in context.

Any assessment of ELA, however, does not only need to take into account its short existence, but also start from realistic benchmarks. Clearly, the profile on the Commission’s overview of EU agencies, according to which ELA “makes sure cross-border labour and social security rules are applied properly in the EU” is an overstatement.<sup>65</sup> Too limited are ELA’s capabilities and too dependent on member state cooperation is ELA to fulfil this promise by itself. According to the ELA Regulation, the Commission shall evaluate the first five years of the agency in August 2024 and may propose changes to the Regulation. As a preparation and to guide its internal evaluation, ELA is currently developing a system of “key performance indicators”. These indicators are largely quantitative and meant to allow measuring ELA’s achievements in a simple and objective way. For example, with respect to the enforcement goal, the number of joint and concerted inspections, the number of participants as well as the number of companies and workers affected by these inspections are among the key performance indicators.<sup>66</sup> While it is too early to speculate on the prospects of this evaluation, we already see a potential tension between such quantitative indicators and – much harder to grasp – ELA’s potential to improve informal links and mutual trust between member state administrations. As a consequence, some interview partners expressed fears that ELA might be incentivized to focus on highly symbolic measures and to “jump on the bandwagon” of already existing cooperation, such as inspections under the European Roads Policing Network in the transport sector, in order to claim easy successes (Interviews 7, 8). At the same time, counting CJIs will neither capture the quality

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<sup>65</sup> [https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/institutions-and-bodies-profiles\\_en](https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/institutions-and-bodies-profiles_en)

<sup>66</sup> <https://www.ela.europa.eu/sites/default/files/2022-09/List%20of%20ELA%20KPIs.pdf>

and depth of such inspections nor do justice to ELA's more informal contributions, for example if participants of a joint inspection remain in contact and discover further potential for cross-border cooperation, which does not necessarily have to take place under the formal umbrella of ELA (Interview 13). In our view, one of ELA's greatest potentials lies precisely in providing a platform for identifying and connecting with cooperation partners abroad, which – once new links are established – partly renders formal ELA involvement less important in follow-up cooperation activities. In these cases, ELA will not be able to claim “ensuring” the proper application of EU rules by itself, it may not even be able to claim any quantifiable credit, and nevertheless will have laid essential ground for the long-term realization of its main goal. All in all, ELA and its aim to promote transnational enforcement is indeed overdue in light of a transnational labour market in which both capital and labour increasingly move across borders.

Finally, despite limited mandate and capabilities, ELA is also moving into fields of activities that were unanticipated during the legislative process establishing ELA. For example, in response to the Covid-19 pandemic and the increasing importance of telework, ELA prepared a report on the implications of telework for social security – an activity that was covered by ELA's mandate regarding the coordination of social security.<sup>67</sup> Equally topical, but less clearly an issue within ELA's mandate are the employment conditions of third-country nationals on the European labour market. While Article 1(4) of the ELA Regulation does not list any specific rules on third-country nationals, it tasks ELA with tackling undeclared work and enforcing EU rules on posted workers. Some member states consider undeclared work of third-country nationals as well as the working conditions of posted third-country nationals, which should be dealt with at the level of ELA as particular problems and push for greater activity in this field (Interview 7).<sup>68</sup> By contrast, others argue that domestic controls do not distinguish between exploitation of EU foreigners or third-country nationals and, therefore, do not need to be complemented by specific ELA activities on third-country nationals (Interview 8). Meanwhile, Russia's war against Ukraine has further increased the relevance of the topic of third-country nationals and ELA intensified its activities, for example by creating a new sub-group on tackling undeclared work among displaced persons.<sup>69</sup> Notably, a significant share of Ukrainian refugees has fled to countries such as Poland, Czechia or Bulgaria, which are typically considered emigration countries within the EU. Thus, even if ELA's mandate is unlikely to undergo fundamental changes after the first review in 2024, it will remain interesting to follow the development of ELA activities, also with respect to the potential tension between responding to new challenges and concentrating limited resources on ELA's core objectives.

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<sup>67</sup> <https://www.ela.europa.eu/en/analyses-and-risk-assessment>

<sup>68</sup> <https://www.ela.europa.eu/en/news/ela-and-slovakia-promote-discussion-posting-workers-together-poland-hungary-czech-republic>

<sup>69</sup> <https://www.ela.europa.eu/en/support-people-fleeing-ukraine>

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## Annex

Interview 1: Member of national ministerial bureaucracy & ELA working group inspections, 10 Mar 2022.

Interview 2: Member of national enforcement authorities, 9 May 2022.

Interview 3: ELA staff, 7 Jul 2022.

Interview 4: National trade union representative, 27 Jul 2022.

Interview 5: ELA staff, seconded national expert from national enforcement authorities, 1 Aug 2022.

Interview 6: Member of national ministerial bureaucracy & ELA management board, 2 Aug 2022.

Interview 7: ELA staff, national liaison officer, 30 Aug 2022.

Interview 8: Member of national enforcement authority & ELA management board, 7 Sep 2022.

Interview 9: ELA staff, national liaison officer, 8 Sep 2022.

Interview 10: Business representative & member of ELA stakeholder group, 8 Sep 2022.

Interview 11: Trade union representative & member of ELA stakeholder group, 9 Sep 2022.

Interview 12: Independent ELA expert, 14 Sep 2022.

Interview 13: Member of national ministerial bureaucracy & ELA management board, 10 Nov 2022.

Interview 14: Trade union representative & member of ELA working group inspections, 19 Dec 2022.

Interview 15: National labour inspector, 22 Dec 2022.

Interview 16: Member of national enforcement authority, 20 Feb 2020.

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