



Record of proceedings

11th meeting of the Management Board of the European Labour Authority (ELA)

23-24 November 2022, Bratislava, Slovakia (with limited online participation)

1. INTRODUCTION BY THE CHAIR – DAY ONE

The Chair opened the proceedings and welcomed the Members of the ELA Management Board (MB).

The Chair informed Members that, in line with the Cooperation Agreement between the Administrative Commission for the coordination of social security systems (AC) and the European Labour Authority (ELA), the AC representative will be present at the 11th ELA MB meeting for the agenda items 11 to 18.

2. ADOPTION OF THE AGENDA

The Chair presented the draft agenda of the 11th MB meeting. Members did not present any comments.

Conclusion: **The Chair** concluded that the agenda of the meeting was adopted without any changes.

3. ADOPTION OF THE MINUTES OF THE 10th MANAGEMENT BOARD MEETING

Conclusion: The Management Board adopted the minutes of the 10th ELA Management Board meeting, which was organised on 15 June 2022 in Bratislava, as a joint meeting with the ELA Stakeholder Group.

4. FOLLOW-UP ON PREVIOUS MEETINGS AND WRITTEN PROCEDURES

The Chair informed the Management Board Members that no written procedures were launched since the last meeting and that all MB decisions adopted at the last meeting are published on ELA's website.

Conclusion: The Management Board took note that no written procedure started since the last meeting.

5. ELECTIONS OF THE CHAIR AND VICE-CHAIR

The current Chair Tom Bevers and the current Vice-Chair Agnieszka Wołoszyn expressed their intention to be re-elected. They were the only candidates for each position. The election of the ELA Management Board Chair took place first, followed by the election of the ELA Management Board Vice-Chair. The voting took place on-site by secret ballot. Out of the 29 Members with voting rights, 28 Members casted their vote (three Members delegated the vote

to another Member). The Chair Tom Bevers was re-elected by a two-thirds majority of votes, with 26 votes in favour and three abstentions. The Vice-Chair Agnieszka Wołoszyn was re-elected by a two-thirds majority of votes, with 26 votes in favour and three abstentions.

Conclusion: Tom Bevers was re-elected Chair of the ELA Management Board for a three-year term. Agnieszka Wołoszyn was re-elected Vice-Chair of the ELA Management Board for a three-year term.

6. ADOPTION OF THE FINAL DRAFT OF THE SPD 2023-2025

The Chair and the Executive Director (ED) introduced the final draft of the ELA Single Programming Document 2023-2035 (SPD 2023-2025), built around ten operational and six horizontal activities. They clarified how the comments provided by Members were addressed and, where relevant, incorporated in the final version of the document, including comments received on short notice on the text about the possibility of building a virtual network/pool of nominated labour/social security inspectors. A Member intervened to underscore the need of including closer cooperation with other relevant institutions, bodies and/or entities, including the Senior Labour Inspectors' Committee (SLIC), and asked for clarifications on the role of the Social Partner Liaison Function. A Member intervened to stress the need to address the demands of Members States on posting of workers and referred to the new programme "Posting 360".

In his reply, **the ED** reiterated ELA's continuous commitment to enhance the cooperation with EU level and national social partners, as part of its mandate, explaining that the Social Partner Liaison Function does not intervene with established procedures on concerted and joint inspections (CJIs), including the role of NLOs. It is a central and the first contact point for channelling the cases to ELA (an intermediary), while all the cases are considered in line with the workflow for social partners adopted by the MB in 2020.

Conclusion: The Management Board adopted the final draft of the SPD 2023-2025, by consensus. The Chair committed to devote time to clarify the Social Partner Liaison Function's role at the next meeting.

7. INITIAL DRAFT OF THE SPD 2024 – 2026

The Chair introduced the discussion on the initial draft of the ELA Single Programming Document 2024-2026 (SPD 2024-2026), reminding that a general orientation discussion on this point already took place at the 10th ELA MB meeting in June 2022. While this initial discussion was centred on the scope and the scale of activities to be included, the focus of this discussion was on the full document containing the initial draft, including the multiannual programme until 2026 and the annual work programme for 2024.

The ED introduced the initial draft of the SPD 2024-2026, structured around 16 activities. He mentioned that in this period ELA will be fully operational, with planned full human and financial resources capacity. He explained that ELA would like to receive feedback and a first set of comments and suggestions on the initial draft by 7 December 2022 – to prepare this initial draft for a first adoption in early January 2023 via written procedure. He added that Members will have the opportunity to submit new comments on the document also before the final version is presented for adoption at the MB meeting of November 2023.

A Member noted that the budget reserved for enforcement and inspections is lower compared to the one for Information and the European cooperation network of employment services (EURES) and stressed that ELA should consider broadening its sectoral activities, e.g., in the

area of transport, focusing not only on road transport, but expanding to aviation and inland waterways.

Another Member referred to the need for stronger cooperation and an integrated approach in view of potential overlaps and highlighting the need to cooperate in a transnational context. Two Members stressed that the trends related to skills shortages should be addressed in the introduction of the SPD 2024-2026, which is discussing labour market trends. Another idea that emerged was related to the mapping exercise in view of the inspections' outcomes. A Member asked to pay particular attention while referring to the activity related to the System of Electronic Exchange of Social Security Information (EESSI) in the draft SPD 2024-2026, given the competences of the Administrative Commission.

The European Commission representative stressed that the structure of the new SPD document should be clearly linked with the objectives set in ELA's founding regulation and the role of social partners must be well-defined. While congratulating ELA for its work and highlighting that the European Commission sees very positively ELA's activities over the past months and their impact, the added value of ELA lies in its capacity to act on the ground, e.g., via inspections. This aspect should be highlighted in the SPD because when the evaluation of ELA will be done, this could be one of the main elements to be examined.

A Member asked to reflect in the SPD the need to work with intelligence and information from digital tools already in place (e.g., IMI) to find ways how to reduce the administrative burden on the Member States. Three members then emphasized the need for ELA to develop its own risk assessment tools, one stressing its importance in providing a basis for concerted and joint inspections (CJIs), another highlighting a need for risk analysis in the construction sector, and the third arguing for the need of risk analysis informing ELA's choices of areas of focus for its operational activities. A Member then suggested that ELA can become a hub to help collect and process workers' complaints.

Another Member suggested that ELA can become a hub to help collect and process workers' complaints. One suggestion would be that the complaint is forwarded to the appropriate NLO, who could help identify the right procedure to be followed and the national authority to be contacted to address that complaint. Two Members proposed to improve the cooperation between the Senior Labour Inspectors' Committee (SLIC) and ELA, explaining that the issues on which both bodies are working have a lot of commonalities. A reference to foster collaboration between ELA and SLIC could be included in the draft SPD 2024-2026. A Member highlighted that the most important aspects in ELA's work are providing information, engaging in cooperation, perform inspections, preventing fraud, and combating unfair and illegal labour mobility.

The ED reassured the Members that all suggestions will be considered in the draft SPD 2024-2026 and stressed that ELA is committed to be a very operational agency. Should there be significant interest, an enhanced cooperation between ELA and SLIC could be envisaged. The work of the ELA Working Group on Inspections could serve as starting point. As for the noted budget differences, Information and EURES has a larger budget since the costs for their activities (related to EURES portal and the EURES activities) are higher as for instance the costs for conducting a CJI, therefore the budget is proportional to the costs. Moreover, the budget for enforcement activities will reflect the demand for CJIs and can be adjusted to match the demand. In any case, this does not imply any judgement on the importance of these activities.

As concerns capacity building, ELA is considering creating a new cooperation programme on transport to nourish the framework on mutual learning and understanding and to improve the cooperation in an operational transnational framework. Another key direction could be to focus further on solving skills shortages via EURES, given that matching skills with opportunities is fundamental. As for the follow-up on inspections, ELA could focus more on the impacts and the outcomes since this can potentially lead to putting in place further inspections. As for the collection of information on labour mobility, DG GROW and EUROSTAT have shown interest in working with ELA. On complaints, bringing them to the attention of national authorities is in NLOs' remit and they are already the main contact point to facilitate this process.

Concluding the point, **the Chair** reiterated that written comments can be received until 7 December 2022. After addressing the written comments, the draft SPD 2024-2026 will be submitted for adoption via written procedure in January 2023 to comply with the legal requirement to submit the draft by 31 January 2023.

Conclusion: The Management Board held a discussion on the initial draft of the SPD 2024-2026.

8. FINAL DRAFT OF 2023 BUDGET

The ED presented the final draft of the 2023 budget which was submitted for adoption at the 11th ELA MB meeting. The budget is of EUR 39.9 million, with EUR 13.9 million allocated to staff expenditure, EUR 5.6 million to operating costs and EUR 20.4 million to operational expenditure, allocated across operational activities of ELA. It was explained that some discrepancies between the final budget 2023 and the expenditure numbers presented in the SPD 2023-2025 can be observed. The SPD 2023-2025 contains allocation of expenditures per activity in line with the new structure of 16 ELA activities. While the differences are not substantial, the MB will be asked to approve an amendment of the ELA budget for 2023 via written procedure (in early 2023) to align the ELA 2023 budget with the SPD 2023-2025,

A Member asked clarifications on the amendment. **The Chair** explained that it will be a minor change in the distribution of the budget allocated to different activities to align the budget with the SPD 2023-2025.

Conclusion: The Management Board approved the final draft of the 2023 budget, by consensus.

9. DRAFT OF 2024 BUDGET

The ED presented the draft estimate of revenue and expenditure for 2024. The overall increase compared to the 2023 budget is estimated at 24%, from EUR 40 million to EUR 49.5 million. A major part comes from the objectives for the recruitment of staff to be completed by 2024 to reach full operational capacity. A Member stressed that the maximum of the budget should be allocated to perform operational activities.

Conclusion: The Management Board approved the draft of the 2024 budget, by consensus.

10. UPDATE ON ACTIVITIES

The ED mentioned that since the last meeting, ELA continued to deliver in all the areas of its mandate. The ED passed the floor to the Head of Units for highlights from the updates of activities in their units.

The Information and EURES Head of Unit presented a brief update on the latest activities in the field of information focused on setting up a 'toolbox' for information activities, i.e., the exploration of different tools and mechanisms that ELA could offer to help EU and national actors to improve further information provision. The update on EURES showed that ELA is moving from a business continuity priority to a future-oriented approach and is exploring areas to improve the portal and the services of the human network. ELA is also taking steps to create additional synergies between EURES and other ELA activities.

The Concerted and Joint Inspections Head of Sector (replacing the Enforcement and Analysis Head of Unit) informed that in 2022 inspections focused on road transport, agriculture, seasonal work, and meat industry, while in 2023 they will focus on the construction sector, agriculture (EMPACT) and will continue in the field of transport, covering mainly road transport. ELA will also look into inland waterways and aviation. ELA will continue undertaking CJIs with ROADPOL and encourage Joint Action Days with EMPACT. A framework of cooperation with AQUAPOL is also being considered. Training activities for inspectors and initiatives to facilitate cross-border inspections were mentioned as well. In addition, a reference was made to recent developments on analysis and risk assessment (notably, the establishment of the analytical function to support CJIs), and latest activities on tackling undeclared work, e.g., updating the mapping of national measures adopted to face the influx of displaced persons from Ukraine.

The Cooperation Support Head of Unit informed that in the area of cooperation, ELA continued with the implementation of ELA's Framework for Action in the Road Transport Sector and launched a new report on cooperation challenges and practices in road transport. The launch of the IMI-PROVE mutual learning and understanding programme and the finalisation of the report on cooperation practices and challenges on posting of Third Country Nationals were presented. The launch of the ELA mediation procedure was announced, followed by a short outline on the outcome of the joint meeting to discuss cooperation on social security with the Administrative Commission. In the area of capacity building, the Training Programme on EU Labour Mobility, and the launch of the call for good practices were presented.

The Governance and Coordination Head of Unit informed Members about the success and the targeted approach of the ELA information and awareness raising campaign on Road 2 Fair Transport. Initiatives for facilitating the use of innovative digital tools were also highlighted. These include the mapping of digital solutions used by national authorities, prepared by ELA, and presented at the workshop for national authorities and the organisation of the ELA TECH Conference in November 2022. The progress on the Service Delivery Project aimed at defining the delivery model for ELA was also presented.

The Resources Head of Unit presented the latest developments on HR, finance, budget, procurement, ICT, and facilities. On HR, the key aspects were the recruitment of 116 out of 132 new staff members, the successful setup of the ELA Staff Committee in July 2022 and the development of an informal anti-harassment procedure. A successful implementation of the new HR rules on hybrid working was noted. On finance, new financial circuits were developed. On procurement, ELA is creating a set of framework contracts. A high-level ICT strategy was adopted to respond better to strategic objectives.

Members made the following comments and observations:

- On inspections, several sectors were mentioned.
- On trainings, ELA's work in this field should be much more linked with national training authorities. Compliments were expressed for the training in Madrid, that was of great added value for ELA to help build trust among inspectors. ELA was encouraged to organise trainings with similar impact.

- A Member expressed a view that the ELA TECH Conference could have been perceived to an extent as an event allowing companies sharing business ideas rather than developing solutions.

In their remarks, **the Head of Units** highlighted that inspections in specific areas need to be planned properly because they require sectoral preparation. They also explained that bilateral meetings with national authorities should be organised to discuss practicalities. **The ED** also explained that ELA wants to make the European Platform tackling undeclared work (UDW platform) and the ELA Working Group on Inspections more practical and more relevant. Concerning the new fields for concerted and inspections (CJIs), ELA is preparing the ground for joint inspections, but it is the Members States who decide on the fields and the issues for inspections. As regards the ELA TECH Conference of November 2022 and how it could be perceived, the event proved successful, since it positioned ELA as future hub for technologies and innovative solutions, in close cooperation with the Member States, private sector and social partners.

Conclusion: The Management Board took note of the Update on Activities from June to November 2022.

11. ELA's ACTIONS TO PROMOTE CROSS-BORDER COOPERATION IN AND WITH MEMBER STATES

The ED introduced the next agenda item and passed the floor to the Cooperation Support Head of Unit to present ELA's actions to promote the cross-border cooperation in and with the Member States.

The Cooperation Support Head of Unit gave an overview of the objectives of the actions included in the note, i.e.: to raise awareness of ELA's mandate and activities with national authorities and social partners, to engage in discussions on national priorities for action on labour mobility and to support cooperation between the Member States. During 2022, ELA undertook different forms of action to promote cross-border cooperation: national events, visits to the Member States, cooperation support events and staff exchanges. Eight national events in eight Member States were held in 2022 (Belgium, Italy, Finland, Sweden, Slovakia, Latvia, and Croatia). The last event of the year will be held in France in December 2022. The events had a bilateral focus, while several multilateral events focused more on improving or discussing cooperation issues affecting a particular region or neighbouring countries.

Concerning visits by ELA's Senior Management to Member States, four visits were organised in Spain, Cyprus, the Netherlands, and Ireland, which proved to be successful tools to strengthen the cooperation with relevant authorities and stakeholders across labour mobility areas, and promote an exchange of views, information, challenges, and good practices. ELA also supported the organisation of several cooperation events in the Member States, by providing translation, financial, logistical, and organisational support. NLOs had a significant role to identify opportunities for cooperation. Throughout 2022, five cooperation events were organised with the support of ELA. Finally, 15 staff exchanges supported by ELA took place, aiming at exchanging know-how and promoting peer learning opportunities on labour inspections. Among main outcomes, the mutual understanding of laws in various Member States was improved, unsolved cases were discussed and the possibility to hold future inspections was addressed.

The Cooperation Support Head of Unit concluded that all these actions were successful, and very positive feedback was received from the stakeholders involved, so ELA will continue these actions also in 2023.

The Chair opened the floor for comments and remarks. A Member highlighted the importance of these actions referring to one successful event organised in close cooperation with another Member State.

Conclusion: The Management Board took note on cross-border cooperation in and with Member States.

12. UPDATE ON ELA'S WORK ON ROAD TRANSPORT

The Chair opened the topic and invited the ED for an update on the ELA Framework for Action on Road Transport. **The ED** underscored that ELA is becoming a recognised partner in the field and gave the floor to the Governance and Coordination Head of Unit, who is leading the ELA Task Force on Road Transport.

The Governance and Coordination Head of Unit presented key highlights of the ELA campaign on road transport, developed around four topics: posting of drivers, driving, and resting times, enforcement activities, and tachograph. Information road shows which are already taking place or are being planned were briefly introduced. Two leaflets on driving and resting rules and on posted drivers, prepared, and translated in all EU languages and main non-EU languages spoken by drivers were also presented. A particular reference was made on three successful Weeks of Actions organised across several Member States, which had many inspectors involved, vehicles inspected, and infringements identified.

Conclusion: The Management Board took note on the update on ELA's work on Road Transport.

13. ELA'S FOCUS IN 2023 ON THE CONSTRUCTION SECTOR

The Chair introduced the discussion and gave the floor to **the ED** who stressed the importance of the sector, not only the EU biggest employer, but also the sector with the highest number of posted workers.

The Governance and Coordination Head of Unit explained that the Governance and Coordination Unit will steer the specific activities of ELA in this sector, following the preparatory work already conducted. A workshop with social partners from 14 Member States was organised to understand the main challenges, namely subcontracting, employment agencies practices, and cross-border social fraud. Among other preparatory activities, ELA is preparing an analytical report with background analysis on the construction sector (an interim report could be ready in February 2023). A seminar in the context of the Undeclared Work Platform took place to explore existing practices, tools and approaches related to supply chains in construction and services Targeted inspections will be organised on large scale, along with an information and awareness raising campaign. ELA would like to ask the MB if the topic of posting should be the core of the campaign and what are the most pressing issues in the sector and posting-related issues.

Three Members intervened in the discussion to agree on posting being chosen as the most relevant topic. Indeed, posted workers in the construction sector are a particularly vulnerable category, since often the status of workers is unknown and only after an incident occurs the status of the worker is acknowledged. Moreover, posted workers are in general more vulnerable because of the level of subcontracting in construction and the difficulty to detect the employer responsible for posted workers. It has been noticed that the longer a subcontracting chain is, the more incidents can be registered. Also, in the construction sector employments status shifts very quickly and often it is undeclared. The cooperation with EU-OSHA will be fundamental. The Members also reiterated that the construction sector is a

relevant target in which coordinated and joint actions are essential to solve subcontracting chains problems. As a result, a more collaborative approach on social security and a higher number of inspections could prove very helpful. Several Members agreed that fair mobility in the construction sector is an essential topic given the high level of posted workers. The need to include sectoral social partners with field knowledge was highlighted.

A Member indicated that posting needs a pluri-disciplinary approach and a more operational cooperation between Member States and ELA. There are numerous subcontractors. There is the case of independent workers. Also, third country nationals often do not have the right status and accept any type of working conditions, without proper compensation or social rights. Moreover, companies which respect and apply the rules face unjust competition against those that do not apply them or apply them only selectively. If Member States cannot cooperate on this because of GDPR issues, not allowing a smooth cooperation, then ELA should help Member States find a solution and ensure that cooperation will be made possible.

A Member raised the question if ELA will focus only on the overall sector or also on specific subsectors since construction is a not homogenous sector. A Member explained that since the sector includes diverse topics, especially in view of long subcontracting chains, ELA needs to develop a multidisciplinary approach. In addition, the variety of stakeholders requests not only an EU, but also a national perspective.

Another question was raised in relation to the complexity and diversity of the topics involved. Several Members suggested that ELA creates a new Framework for Action for the construction sector (Roadmap) to clearly specify the objectives, solutions, tools, and actions which need to be adopted. Several Members also stressed the importance of posting of third country nationals, given that this is a practice that has increased a lot over the past years, and it has made more difficult supervising employment conditions. A few Members also underlined the importance of information campaigns, which should focus not only on the workers, but also on the employers – to make them aware of existing regulations and legal obligations.

The ED replied to the main questions raised and reassured the Members that their suggestions will be considered. On risk assessment, ELA is developing its own analytical instruments. On subcontracting chains and third country nationals' aspects, there will be a thematic focus. Since several Members asked for a Framework for Action or Roadmap in the construction sector, ELA will develop this for the next Management Board meeting. This will be coordinated by the Governance and Coordination Unit, based on inputs from all units. On Occupational Safety and Health, to avoid the risk of duplicating the work of EU-OSHA during inspections, a future cooperation could be built, e.g., on the information campaign or joint actions on inspections. On the conditions of employment and social security, posting is not the only focus. ELA needs a holistic approach to posting and other issues in the sector. Finally, engagement with social partners will be crucial in designing the campaign, but also for operations and risk assessment.

Conclusion: The Management Board discussed about ELA's focus in 2023 on the construction sector.

14. PRESENTATION OF POSTING 360 - ELA'S NEW COOPERATION PROGRAMME ON POSTING OF WORKERS

The Chair introduced the presentation and discussion on ELA's new cooperation programme on posting of workers. **The ED** presented "Posting 360", as a proposal for a mutual learning and understanding programme, which can replace some of the functions of the former Expert Committee on the Posting of Workers. It was also highlighted that it is not ELA's role to re-

create a committee that co-legislators have decided to abolish but carry out its tasks. Posting has already been an important part of the work of ELA so far and several instruments have been already developed, e.g., peer reviews of national websites to promote better information on rights and obligations of posted workers and their employers. Similarly, most of the cross-border inspections concerned posting situations in road transport, HORECA, seasonal work, construction etc. The name of the programme reveals ELA's ambition to serve as an instrument for cross-border cooperation at large.

The ED gave the floor to the Head of the Cooperation Support Unit, and the Head of the Cooperation and NLOs Office to provide further details. **The Head of the Cooperation Support Unit** introduced the objectives of "Posting 360", namely: improving the exchange of information and mutual understanding, enhancing administrative cooperation between national authorities, increasing knowledge and expertise among the Member States, the European Commission, ELA, and social partners. The greatest value-added of the programme consists in facilitating the exploration of all aspects related to posting of workers legislation – by bringing experts and practitioners from different backgrounds to discuss common issues.

The Head of the Cooperation and NLOs Office introduced the operational approach of the programme, whose aim is to address problems in cooperation with the Member States. It was explained that the programme is placed within a set of initiatives inside ELA. The Working Group on Information has worked a lot on the review of single posting websites. IMI-PROVE is another successful programme aiming at improving the use of the IMI tool. "Posting 360" will complement what is missing from these activities and will contain various instruments, e.g., dedicated mutual learning workshops, staff exchanges, training programmes, good practice calls, support to bilateral and multilateral cooperation projects, analytical reports on cooperation ways, challenges, and possibilities.

The ELA Forum on Posting of Workers constitutes an element of the programme, aimed at increasing common knowledge and expertise and discuss the issues and actions which will be put forward in the coming months. The members of the Forum will include the European Commission, the Member States, the European Parliament, and social partners' representatives. Representatives of the Administrative Commission on the coordination of social security systems (AC) will be also invited to bring the social security expertise to the Forum. The frequency of meetings will be up to two times per year. On legislation aspects, the cooperation between ELA and the European Commission is planned and the Forum may host discussions on the interpretation of legislation or consultation on new initiatives, under the leadership of the European Commission. "Posting 360" is in line with ELA's mandate and the next step will be to hold the first meeting of the Forum in the first quarter of 2023 (tentatively on 14-15 March).

A Member explained that the Administrative Commission has developed over the years a substantial expertise in the field of posting (e. g. the report on posting drawn up by an ad-hoc group of AC a few years ago). The program can thus benefit from the synergies between AC and ELA.

The Chair opened the floor for comments and suggestions. Most Members welcomed the initiative to create stronger cooperation and expressed hope that the presence of the European Commission in the Forum to interpret the legislation will constitute a fundamental guarantee of objectivity. The issue about the lack of time to manage so many meetings and events has been raised by one Member. Another Member stated that the Forum could replace the working groups that are difficult to recreate in the limits of ELA's mandate. Another Member

underlined that self-employment is missing in the presentation of “Posting 360” and should be integrated in the Forum. A question was raised on the practical aspects of the Forum. Social partners representatives welcomed the Forum and highlighted that the presence of the European Commission in it is fundamental. Another question was raised on the composition of the Forum. Social partners representatives asked for the same representation in this Forum as the former committee. A Member raised questions in relation to the scope and the role of the Forum regarding law interpretation.

The ED reiterated that “Posting 360” is a cooperation-focused instrument and the Forum is only a part of it. Concerning the body that will manage the Forum, it was explained that the Cooperation and NLOs’ Office will coordinate the Forum and the programme. It was stressed that meetings will not be multiplied as there is a risk of fatigue in the Member States on the frequency of Working Groups. Thus, institutional meetings will be reduced, while operational ones maintained. A paper will be shared with Members next year, offering more information on the composition of the Forum and other key aspects of the programme.

Conclusion: The Management Board was informed and discussed about “Posting 360” – ELA’s new cooperation programme on posting of workers, including the ELA Forum on Posting of Workers.

15. INTRODUCTORY REMARKS BY THE CHAIR – DAY TWO

The Chair opened the proceedings for the second day of the Management Board meeting, highlighting the spirit of collaboration, efficiency, and transparency, which marked the meeting during the first day.

16. STRATEGIC DISCUSSION ON THE LONG-TERM IMPACT OF REFUGEES FROM UKRAINE ON THE EU LABOUR MARKET – KEY TAKES FOR ELA

The Chair introduced the discussion aimed at sharing the experiences of the most affected countries to understand how to prepare for the future. Before opening the floor to other Members, the Chair gave the floor to the Member from Poland for the presentation on the experience and perspectives from Poland and the Member from Germany for the presentation on the experience and perspectives from Germany.

The Member from Poland presented the key data from Poland. Since the beginning of the war, over 7.78 million people fleeing the war crossed the border to Poland. About 1.7 million of them stayed in Poland. Currently, unemployed Ukrainian citizens in Poland are approximately 20,000 people. The Polish government adopted several measures for Ukrainian people. One of the most important is the identification number “PESEL UA,” allowing access to education, medical services, and starting a company. As of November 2022, almost 1.5 million Ukrainian citizens obtained the identification number. One of the other relevant national measures adopted is the free access to the labour market without work permit, the possibility to register as job seeker, the access to vocational trainings and Polish language trainings, the right to social benefits, access to public health services and free psychological assistance. As for measures for employers of Ukrainian nationals, a helpline and a dedicated email were created to enable employers to obtain information on the notification of job offers and the rules. A programme for foreigners called “Together We Can Do More,” was created. It is focused on vocational activation and social integration and carried out by NGOs, local authorities, and labour market institutions. The National Labour Inspectorate adopted a strategy to help people from Ukraine, translating information campaigns and leaflets into Ukrainian to avoid illegal

work and allow refugees file a complaint to Polish authorities. The challenges which Poland is facing are inflows' unpredictability, the circulation of workers, the shortages on the labour market, the lack of Polish language and the lengthy recognition of qualifications.

The Member from Germany introduced the key figures about Ukrainian refugees present in Germany. In total 1,025,100 Ukrainians refugees registered by 19 November 2022, out of them 109,000 registered as employed and over 600,000 registered to receive social security benefits. Most employment seekers are aged between 25 and 55 years old. Germany implemented the directive 2001/55/EC, so that Ukrainian refugees have full access to the German employment market and receive support for finding a job. Since 1 June 2022, people that have fled the war have access to social benefits as German nationals, if they meet the legal requirements. The main goal is to provide protection and facilitate their integration since the lack of recognition of the qualifications and the lack of knowledge of the German language remain the greatest hurdles for labour market integration. Job centres are providing support measures to refugees, via language courses and vocational trainings, psychosocial support, and childcare. A set of specific measures were implemented to prevent and tackle undeclared work: early access to the labour markets, providing incentives for regular work and help to integrate quickly into the job market via the recognition of foreign qualifications and degrees; access to easily understandable information translated into Ukrainian language; as well as enforcement measures, including specialised labour inspections.

The Chair opened the floor for discussion. A Member State representative intervened to introduce the need to draw conclusions from the application of the Directive on Temporary Protection to understand how to be better prepared and more efficient in the coordination among institutions for future challenges.

Most Members intervened to underline that the most significant challenges are the language barrier (not allowing a real integration of Ukrainians into society), and the lack of recognition for studies diplomas and working qualifications. Some other common problems experienced by several Member States include: the mismatch between workers' skills and job offers, and irregularities about working conditions including salaries which are typical for the hospitality industry, where most of the Ukrainian refugees are employed. Another uncertainty for many Member States is related to the labour market integration of Ukrainian refugees since many still have the perspective to return home. Furthermore, housing and accommodation related problems have been experienced by many Member States, especially after the harvest season ended, since refugees lose the accommodation provided by the employer and need relocation services.

The ED thanked Members from Poland and Germany for providing comprehensive data and speaking about the main challenges. In view of this, ELA will continue to conduct analysis, risk assessment exercises, and provide fiches on national situations. In the field of prevention of undeclared work, abuse, discrimination and exploitation, ELA stands ready to conduct concerted and joint inspections, especially in countries with the highest numbers of Ukrainian refugees. ELA is also supporting the Member States in facilitating the integration of refugees in the labour markets by providing translation services and information campaigns. ELA's active participation in the EU Talent Pool Pilot initiative is also in place, even if it is only a complementary tool rather than the main instrument to find a job for Ukrainian refugees.

Conclusion: The Management Board held a strategic discussion about the long-term impact of Ukrainian refugees (displaced persons) on the EU labour market and the key takeaways for ELA.

17.DECISION ON DRAFT TO ENSURE APPROPRIATE FOLLOW-UP WHERE A MEMBER STATE DECIDES NOT TO PARTICIPATE IN A CONCERTED OR JOINT INSPECTION

The ED explained that the aim of the document is to implement article 8.4 of the ELA founding regulation, which tasks ELA to establish and adopt the Modalities to ensure appropriate follow-up where a Member State decides not to participate in a concerted or joint inspection. In view of this, the Member States is obliged to inform ELA and the other Member State concerned without undue delay of the reasons for its decision and possibly the measures to resolve the case. In close dialogue with Member States, ELA will analyse the information and may suggest actions for the Member State that does not participate, which may include, among others, the suggestion to undertake its own inspection on a completely voluntary basis. ELA and the participating Member States may also inform about the outcomes of the inspection.

The Chair opened the floor for discussion. One Member States intervened to express its full support to the proposed document since it helps responsible authorities to solve the problem in a holistic way. Another Member State intervened to communicate that they will not support the document especially because the wording used in the Annex can undermine the independency of the national labour inspectorate as being an independent body, supervised by the parliament. A few Members underlined the usefulness of the document which will help build further trust among institutions.

The ED reiterated that the document was discussed in-depth and agreed at the Working Group on Inspections, reminding that the comments and remarks received from Member States were considered. The Modalities fully respect the voluntary nature of concerted and/or joint inspections. They should help find reasons which prevent Member States from taking part and, if possible, find ways to overcome this.

Conclusion: The Management Board adopted the decision on the Modalities to ensure proper follow-up where a Member State decides not to take part in a concerted or joint inspection, noting the abstention of one Member and ELA's commitment to respect the independency of national labour inspectorates.

18.APROVAL OF MEDIATION GUIDELINES

The Chair and the ED presented the topic and gave the floor to the Cooperation, Support Head of Unit.

The Cooperation Support Head of Unit explained that the Rules of Procedure for ELA's mediation, the Cooperation Agreement between ELA and SOLVIT, and the Cooperation Agreement between ELA and the Administrative Commission are the necessary pillars upon which ELA's mediation procedure can become fully operational. An additional set of documents was developed, namely the General Guidelines and Workflows for the mediation procedure, the Guidance for the Member States on the ELA mediation procedure, the Guidance for the Mediators and Mediation Board on the ELA mediation procedure, and the Workflow Guidance for the interaction between ELA and the Administrative Commission. For each one of these, several accompanying templates were developed for ELA and relevant stakeholders.

The approval of the final Mediation Guidelines is a last step for ELA to be fully ready to start its mediation function. They do not add anything extra besides what already exists in the Rules of Procedure and in the Cooperation Agreement, they just transpose those rules in a more accessible format. It was stressed that the principles behind the development of the Mediation

Guidelines respects regulatory framework of the mediation, and the legal bases. The guidelines and the workflows, including the templates were presented and well received by the Working Group on Mediation of 25 October 2022, and the documents were amended following the suggestions received from the Working Group experts.

The Chair opened the floor for discussion. A Member intervened to emphasise the Members States' willingness to promote this procedure but asked for a much smoother procedure and increased flexibility. Another Member asked for the list of mediators to be publicly available to which the Cooperation Support Head of Unit explained that the Management Board decision containing the full list of appointed mediators and Mediation board experts has been published on the website of ELA. Another Member stressed the importance to have mediation cases and invited the Member States to raise awareness or present cases.

Conclusion: The Management Board adopted the Mediation Guidelines, by consensus.

19. MEMORANDUM OF UNDERSTANDING WITH CEDEFOP – AND

20. FRAMEWORK OF COOPERATION BETWEEN EU-OSHA AND ELA

The Chair presented the intention to present points 18 and 19 on the agenda together and invited the representatives of CEDEFOP and EU-OSHA, who were attending the meeting online, to intervene.

The ED underlined that ELA is planning to formalise the very close cooperation with all the “sister EU agencies” which have a similar vocation such as CEDEFOP, EU-OSHA, EUROFOUND, and ELA. With the European Centre for the Development of Vocational Training (CEDEFOP), a Draft Memorandum of Understanding was developed and presented to the MB for approval. The main aim is to engage closely, learn from each other, find synergies, and avoid duplications. With the European Agency for Safety and Health at Work (EU-OSHA), a Draft Framework for Cooperation was also developed and presented to the MB for adoption. It provides the principles of cooperation and already foresees concrete activities.

The Chair gave the floor to the CEDEFOP and EU-OSHA representatives, who were connected online.

The CEDEFOP representative presented the draft Memorandum of Understanding (MoU) as an integral part of their SPD 2023-2025 (annex approved by CEDEFOP's Management Board of CEDEFOP). While the text of has a general and strategic focus, CEDEFOP wants to foster the cooperation on an operational level, e.g., online job vacancies, collection, and analysis, where CEDEFOP has developed a system to gather online job advertisements, and ELA represents a key complementary source of information.

The EU-OSHA representative welcomed the good cooperation between ELA and EU-OSHA, explaining that the draft text of the cooperation agreement sets out the exchange of planning document at the draft phase, the right to have an MB Observer and annual meetings to look for areas of potential cooperation.

Conclusion: The Management Board adopted by consensus the Memorandum of Understanding of ELA and the European Centre for the Development of Vocational Training (CEDEFOP) and the Framework for cooperation between ELA and the European Agency for Safety and Health at Work (EU-OSHA).

21. CONFLICT OF INTEREST POLICY

The ED presented the point in brief, explaining that the Article 18 of the ELA Regulation provides that the Management Board shall adopt rules for preventing and managing conflicts of interest for the members of the Management Board, the Stakeholder Group, for ELA's Working Groups and Panels, and SNEs. In addition, he reiterated that ELA's Anti-Fraud Strategy adopted in 2021 by the MB requires ELA to adopt rules on conflict of interest by the end of 2022 and that for this reason the draft policy has been proposed.

Conclusion: The Management Board adopted the ELA Conflict of Interest Policy – by consensus.

22. ELA PERSONAL DATA PROTECTION PLAN 2022-2023

The Chair opened the item and gave the floor to ED. **The ED** indicated that ELA needs to give special attention to the processing of personal data and apply the Regulation (EU) 2018/1725. In March 2022, to align the activities of ELA with the Regulation, ELA has appointed a Data Protection Officer (ELA DPO). The ED gave the floor to the ELA Data Protection Officer who made a short presentation on the subject.

The ELA Data Protection Officer explained the 10 objectives set in the ELA Personal Data Protection Plan for 2022-2023: monitoring processing operations with personal data and follow up, doing a risk assessment and mapping exercise website, implementing data protection clauses in existing contractual relations, setting up a procedure to handle data subject's request, setting up a procedure to deal with personal data breaches, setting up a procedure to deal with the right to access in whistleblowing procedures, setting up a procedure for restricting data subjects rights, ensuring a proper record keeping and a risk based approach, and increasing awareness on personal data protection among ELA staff.

The European Commission welcomed the ELA Personal Data Protection Plan 2022-2023, suggesting that ELA reports on the implementation of this plan at least once a year for proper follow-up.

Conclusion: The Management Board approved the ELA Personal Data Plan 2022-2023 – by consensus.

23. DECISION ON RESTRICTIONS ON CERTAIN DATA SUBJECT RIGHTS IN RELATION TO THE PROCESSING OF PERSONAL DATA

The Chair briefly introduced the draft decision on the restrictions on data subject rights on the processing of personal data, which provides for exceptional circumstances under which the rights of those whose data are processed by ELA can be restricted. Subsequently, the Chair opened the floor for discussion.

A Member referred to the existing privacy issue on the exchange of information collected in different Member States and underlined the need of a clearer view on what sort of information can be shared and in which way this will be done.

The ED agreed about the sensitivity of the subject and highlighted that it is a sensitive subject that concerns everyone. In view of that, ELA is committed to treat this with caution.

Conclusion: The Management Board adopted the decision on the restrictions on data subject rights on the processing of personal data – by consensus.

24.HR DECISIONS: PROVISIONS ON THE CONDUCT OF ADMINISTRATIVE INQUIRIES AND DISCIPLINARY PROCEEDINGS AND FRAMEWORK FOR LEARNING AND DEVELOPMENT

The Chair introduced the last item of the agenda presenting two decisions related to HR implementing rules to the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants (CEOS), related to the conduct of administrative inquiries and disciplinary proceedings, as well as to the Framework for Learning and Development. Both decisions are based on a template for the EU institutions. As these decisions are suitable to apply to ELA, the MB was invited to adopt them.

Conclusion: The Management Board adopted by consensus the decisions on Provisions on the Conduct of Administrative Inquiries and Disciplinary Proceedings and Framework for Learning and Development.

25.NEXT MANAGEMENT BOARD MEETING

The Chair informed that the next meetings of the ELA Management Board in 2023 will be organised on:

- 22 March 2023 (1-day meeting);
- 21-22 June 2023 (1.5-day meeting);
- 14-15 November 2023 (1.5-day meeting).

The Joint ELA Management Board and Stakeholder Group meeting is due to take place on 21-22 June 2023. This meeting could be preceded by the ELA Conference 2023 (the tentative date: 20 June 2022).

The preliminary agenda for the 12th ELA Management Board meeting of 22 March 2023 could include:

- the Consolidated Annual Activity Report for 2022;
- the Action Plan/Roadmap on the Construction Sector;
- Follow up on the discussion on the Social Partner Liaison Function;
- the biannual Report on Concerted and Joint Inspections;
- Follow up on Data Protection Rules;
- new/additional HR Implementing Rules.

Conclusion: The Management Board took note of the planning and tentative agenda of the next meeting.

26.AOB

Conclusion: There were no AOB from the Members.

CONCLUDING REMARKS

The Chair closed the meeting at 12:00 pm, thanking all the participants to the 11th ELA MB meeting, the organizers, the interpreters, the technical team, as well as the ELA Management Board Secretariat.