

Mr Jordi Curell
ELA Interim Executive Director
European Labour Authority

Mr Nicolas Schmit
Commissioner for Jobs and Social Rights
European Commission

[Letter sent by e-mail]

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Trade union assessment of ELA operability and follow-up to social partner cases

Dear Mr Curell,
Dear Commissioner Schmit,

On behalf of the ETUC together with the European Trade Union Federations EFBWW, EFFAT, ETF, EPSU, IndustriAll and UNI Europa, we would like to mark the one-year anniversary of the European Labour Authority by taking stock of the progress during its first year since establishment. With this letter, we wish to express some of our concerns and demands with regard to the operability of the Authority and its follow-up to social partner cases.

The European trade union movement fully supports the ELA objective of improving the enforcement of workers' rights and employers' obligations for the purpose of ensuring fair labour mobility. Social dumping has no place in the EU internal market. In order to win the trust of workers and citizens, however, the Authority must urgently become fully operational as a matter of priority.

The COVID-19 crisis has put the credibility of the ELA to test, as the outbreak not only exposed but also exacerbated the precarious conditions of millions of mobile and cross-border workers across Europe. In this regard, the reluctance of the Authority to not address concerns linked to occupational health and safety is regrettable, especially in light of the past months' innumerable testimonies of deplorable working and living conditions, persistent abuses and lack of enforcement of applicable rules. The ELA must use all its competences and the full toolbox to ensure mobility is not only free, but also fair and safe.

Above all, the pandemic highlights the inherent link between public health and free movement. The Posting of Workers Directive guarantees workers protection under applicable health and safety legislation in the host Member State. Seasonal workers exercise their fundamental freedom of movement on the basis of their EU citizenship and the principle of equal treatment, including equal access to occupational health and

safety. The protection of workers must be put on equal footing with the aim to ensure a functioning internal market and the provision of safe services for consumers. Workers cannot be left behind as a result of having exercised their freedom of movement or because of being subject to EU rules on the free provision of services to the benefit of employers.

Looking forward, we welcome the recent pilot exercises undertaken by the ELA to test the shared draft methodology for cross-border inspections. However, we would like still to reiterate the need to appropriately involve social partners, not only for the purpose of respecting national law and practice, but also to ensure common understanding and shared ownership for improved cross-border enforcement. The role of the Authority's National Liaison Officers is crucial in this regard. Information sharing and follow-up with social partners will be important to build trust in the ELA, demonstrate its ability to achieve tangible results and pave the way for fruitful cooperation.

Similarly, we would like to underline the duty to ensure adequate and non-discriminatory procedures for national social partners to submit cases to the attention of the Authority, as set out by Article 8 of the ELA founding Regulation alongside the right of Member States. These procedures must be accessible and transparent, ensuring legal certainty for applicants without introducing disproportionate requirements. The Authority is an enforcement body, and not a recourse of last resort. The ELA must ensure all social partner cases are effectively followed up on. In line with the principles of good administration under EU law, any decision by the ELA on such cases must be motivated and preceded by a consultation of the applicant. Social partners must be duly informed of any action taken with regard to their cases as well as of their outcomes.

Bearing these considerations in mind, we would like to express our disappointment with how the ELA has handled the nine pending social partner cases submitted by the EFBWW on behalf of national affiliates on 16 October 2019. The trade union representatives in the ELA Management Board have repeatedly requested information on how the ELA intends to follow up on these cases. The information that the Authority so far has merely addressed the cases in a letter to the Member States concerned is not satisfactory, in particular as the individual applicants have been left for a whole year without any information or follow-up from the side of the ELA.

In view of this inadequate response, the EFBWW hereby formally resubmits its nine cases to urgently be addressed. To recall, these cases in the construction industry concern abuses and frauds relating to issues such as bogus posting, non-payment of social security contributions, withholding of holiday and sick pay as well as wage discrimination. Given the consistent failures to deal with these cases at national level, workers cannot wait any longer.

With this letter, EFFAT and ETF also take the opportunity to formally submit an additional two new social partner cases to the attention of the ELA. These cases address abuses linked to the working conditions of agriculture seasonal workers and social security entitlements for maritime transport workers. In addition, we wish to draw to the attention of the ELA the developing abuse of the recently adopted EU regulation on driving and rest time in road transport. Since its entry into force on 20 August 2020, we already observe how transport operators organise ways to circumvent these new rules, notably by forcing drivers to declare in writing that they relinquish their newly acquired rights. We therefore call on the ELA to ensure full compliance by the industry. We are closely monitoring the practical application of this regulation, and intend submit additional cases of abuse to the ELA in this regard.

With reference to the eleven submissions attached to this letter, we count on the renewed efforts and increased capacities of the ELA to properly and effectively follow up on these cases without further delay. The EU legislation on labour mobility and the protection it affords to workers is only as strong as its enforcement.

We thank you for your consideration and count on your support to ensure the ELA earns the trust of workers and trade unions, the respect of employers and is able to make a difference on the ground.

Yours sincerely,



Luca Visentini
General Secretary
European Trade Union Confederation



Per Hilmersson
Member of the ELA Management Board
ETUC Deputy General Secretary



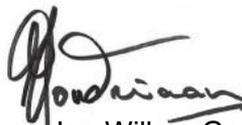
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Attachment: Submissions of eleven (11) social partner cases to the attention of the ELA