



# European Commission Proposal for a Regulation on establishing a European Labour Authority

Comments from the German Social Insurance from 28 June 2018

The German Federal Pension Insurance (DRV Bund), the German Social Accident Insurance (DGUV), the National Association of Statutory Health Insurance Funds (GKV-Spitzenverband) and the national associations for statutory health and long-term care insurance have come together because of their common European policy interests to form the 'German Social Insurance – Working Group Europe e.V.'

The German Social Insurance represents its members in dealings with the bodies of the European Union and other European institutions. It also advises relevant stakeholders in the context of current legislative proposals and initiatives.

Health insurance, long-term care insurance, pension insurance and accident insurance are part of Germany's statutory insurance system, which provides effective protection against the consequences of major life risks.

## I. Preliminary remarks

The umbrella associations of Germany's social insurance system share the Commission's opinion that cross-border labour mobility, as an expression of free movement for EU citizens, benefits both workers and society as a whole.

The aim of the Commission's proposal for a Regulation establishing a European Labour Authority is to promote fair labour mobility. The Commission wants to provide citizens and employers with information on their rights and obligations relating to employment or business in another Member State. The Commission also wishes to assist Member States in cross-border enforcement of Union law and to mediate cross-border disputes between national authorities.

The German Social Security welcomes this intention. However, it doubts that the transfer of functions of existing bodies for coordinating social security systems to the European Labour Authority, as provided for in the proposed Regulation, will fully

meet this objective. There is a risk that the expertise previously brought to the committees by national experts will be lost, which will weaken rather than strengthen cooperation and trust between Member States.

The umbrella associations of Germany's social insurance system have taken a position on the proposed Regulation as follows:

## II. Detailed Comments on the Proposed Regulation

The European Commission wishes to establish a European Labour Authority (ELA) and entrust it with a number of operational tasks in cross-border situations.

### 1 Information on cross-border labour mobility

One of the tasks of the ELA, referred to in Article 5 of the proposed Regulation, shall be to facilitate access to information on rights and obligations in cross-border situations for individuals and employers. The ELA aims to improve the availability, quality and accessibility of this information and to assist Member States in improving the accuracy, completeness and user-friendliness of relevant national information services, taking into account the quality criteria for the Single Digital Gateway.

The German Social Insurance is of the opinion that it is essential that citizens and employers receive first-hand information from the competent authorities and social security institutions in the Member States. In issues relating to social security, it should be kept in mind that the Regulation on the coordination of social security systems alone does not confer any rights on individuals covered by the personal scope. The actual effects of the coordination of social security systems only occur when this interacts with the legislation of the applicable national social security legislation.

The provision of relevant information by the ELA could only be limited to basic, abstract information. This does not adequately meet the information needs of those concerned and is at odds with the initiative's aim of improving access for individuals and employers to information about their rights and obligations concerning labour mobility and the coordination of social security systems, as well as access to relevant services. If the provision of information goes beyond general information and meets the initiative's objective, it must be ensured that the ELA provides information



which always takes into account the current national circumstances. This requires the appropriate expertise of the Member States.

Furthermore, delegation of these tasks to the ELA could create disincentives that result in Member States reducing their own resources for providing information on European coordinating social legislation and relevant national law, again contradicting the intention of the proposed Regulation.

## 2 Facilitate cooperation between national authorities

The umbrella associations of Germany's social insurance system generally support the intention expressed in Article 8 of the proposed Regulation to facilitate cooperation between Member States and help them to meet their cooperation obligations under European law. However, the German Social Insurance does not consider it expedient to integrate existing structures and instruments for the coordination of social security systems into the ELA.

The European Commission wants to simplify the institutional landscape and promote synergies across the various areas of cross-border mobility. Although simplifying structures and developing synergies by pooling tasks is generally a good idea, simplification of structures should not undermine the mutual trust that has developed over time and lead to a loss of expertise that has been built up in the past. Furthermore, the pooling of tasks in the ELA should not shift competences from Member State to EU level.

### 2.1 Assumption of the Administrative Commission's structures

The core responsibility of the Administrative Commission for the Coordination of Social Security Systems is to strengthen cooperation between the Member States and the respective social security institutions, as well as administrative and interpretation issues of Regulation (EC) No 883/2004 (hereinafter 'Coordination Regulation') and Regulation (EC) No 987/2009 (hereinafter 'Implementing Regulation'). The Administrative Commission is supported by a Conciliation Board, an Audit Board and a Technical Commission for data processing.

Allocating the committees and forums, including operational tasks, to the Administrative Commission and the ELA is neither expedient nor understandable. The proposed Regulation foresees that both the tasks of the Conciliation Board set up by

the Administrative Commission for the Coordination of Social Security Systems and the associated sub-committees (Technical Commission for data processing and Audit Board) should be integrated into the ELA. However, other committees and forums, such as the 'Advisory Committee' and the 'European Platform to combat fraud and error within the framework of the Regulation on the coordination of social security systems' established by Administrative Commission Decision No H5, will remain with the Administrative Commission.

The European Commission's plan to integrate the functions of certain bodies into the ELA fails to recognise the need to incorporate specific national characteristics into these committees and the importance of the mutual trust that has developed as a result of continuous collaboration in these committees.

### 2.1.1 Conciliation Board

In order to fulfil its task of clarifying administrative and interpretative issues, the Administrative Commission, through Decision No A1 of June 2009, established a dialogue and conciliation procedure concerning the validity of documents, the determination of applicable legislation and the provision of benefits under the Coordination Regulation, and it also set up a Conciliation Board. The dialogue and conciliation procedure is used where there are doubts about the validity of a document or the correctness of evidence, or when there is discrepancy between the Member States concerning the determination of the applicable legislation.

The conciliation procedure following the dialogue procedure is a voluntary procedure whereby the competent national authorities ask the Administrative Commission to mediate. The success of the mediation depends significantly on the acceptance of, and the growing trust in, the decisions of the Administrative Commission.

The ELA is to act as a mediator in disputes between Member States concerning the application or interpretation of Union law in the areas covered by the Coordination Regulation. According to Article 13(2) of the proposed Regulation, the Authority shall, at the request of one of the Member States concerned, initiate a mediation procedure before a Mediation Board to be established pursuant to Article 17(2). It can also conduct mediation on its own initiative.

Up to now, the Government representatives from the Member States, as members of the Administrative Commission, have mediated disputes. Transferring this task to the ELA would mean a shift of competency from Member State level to EU level.

It is the view of the German Social Insurance that the main deficits are in the effective enforcement of coordination law and the corresponding sanction possibilities. In this respect, it is unclear what value is added by incorporating this committee and its tasks into the ELA, because the decisions of the Authority are not binding and there are no possibilities to impose sanctions.

Irrespective of the issue of the social security institutions participating in the mediation process, the German Social Insurance is of the opinion that the ELA should not have any powers to interpret. Like the mediation itself, interpretation should remain with the Administrative Commission to ensure consistency. Having the Administrative Commission exercise both functions allows for synergies that would be lost if the mediation function were to be transferred to the ELA.

### 2.1.2 Audit Board

An Audit Board is also attached to the Administrative Commission. Its composition and working methods were set out according to Decision No H4 from December 2009. The German Social Insurance is opposed to the integration of the Audit Board into the ELA, as it considers it to be an established, operational body. The added value of integrating the Board into the ELA is not apparent. It is more the case that the provisions in the proposed Regulation on the organisation of the Authority, in particular Article 17(2), could lead to a lack of involvement of the expertise of National Liaison Offices (see 2.2 below). This would be contrary to the Commission's own objective to promote consistent and effective application of Union law and to increase efficiency.

An example of the functioning of the Audit Board is the settlement procedure it introduced in 2013 in the field of cost accounting. The task of the Audit Board is to collate the data and to carry out the calculations necessary to determine the annual exposure level of each Member State. An effective arbitration mechanism was developed for the relatively low number of disputes that could not be resolved bilaterally. The procedure and decisions of the Conciliation Panel established within the Audit Board are accepted and implemented by the Member States.

Currently, the Audit Board has two members per Member State. The majority of the members of the Audit Board are experts from the National Liaison Offices. These

are experts thoroughly across the issues dealt with in the Committee from their day-to-day administrative practice, are very interested in solutions that can be put into practice and have the necessary expertise. The Member States or national social security institutions permanently bring this expertise to the Audit Board.

Under the proposed Regulation, the ELA will be given the opportunity to establish a dedicated group to deal with financial matters related to the Coordination Regulation and the Implementing Regulation. Whether such a group is actually formed and whether it includes the expertise of the Member States is at the discretion of the ELA.

In addition, the current Audit Board is assisted by independent external experts in accordance with Article 3(3) of Decision No H4 on the composition and working methods of the Audit Board of the Administrative Commission for the Coordination of Social Security Systems. Under the proposed Regulation, this would also be left to the discretion of the ELA in the future.

In recent years, the German Liaison Officers have seen significant improvements in the internal work processes of the Committee. This shows that simplification of structures and procedures can also be implemented within the institutional system of the Administrative Commission and its affiliated committees.

The German Social Insurance is of the opinion that the tasks of the Audit Board must continue to be carried out by experts from the Member States. It must be ensured that the expertise of the National Liaison Offices handling the cost accounting procedures is incorporated into the work of the group.

### 2.1.3 Technical Commission for data processing

One of the objectives of the Commission's proposed Regulation is to further enhance digitalisation of procedures. Existing initiatives, such as the electronic data exchange between national authorities in the field of social security coordination via the Electronic Exchange of Social Security Information (EESSI) system are to be promoted (Article 8(3) of the proposed Regulation). However, Article 46(3) of the proposed Regulation deletes the provision in the Coordination Regulation which governs the Technical Commission for data processing (Article 73 of the Coordination Regulation). Article 46(4) of the proposed Regulation states that, in the future, pursuant to the proposed amendment in Article 74(3) of the Coordination Regulation the ELA will perform the tasks of the Technical Commission.

In the opinion of the German Social Insurance, the know-how of the national experts should be retained in the Technical Commission for data processing. Even more so, because the diversity of the national data exchange procedures is represented in the Technical Commission and is properly supported by the responsible IT project managers as well as employees of the National Liaison Offices. Transferring the tasks of the Technical Commission to the ELA without an obligation to set up a group of experts involving the Member States jeopardises the progress made so far on the introduction of the EESSI system and seems to be counterproductive given the experience gained in setting up the EESSI Infrastructure. For example, the needs and concerns of the Member States were not sufficiently taken into account at the beginning, which meant that the project had to be restarted after a period of reflection. The representatives of the Member States can more accurately assess the scope, the content and the technical requirements needed to design a data exchange. The German Social Insurance is therefore convinced that such projects can only succeed if it is mandatory for the technical expertise and know-how of the Member States and the national social security institutions to be incorporated into an appropriate body.

## 2.2 Organisation of the European Labour Authority

The German Social Insurance believes that the provisions in the proposed Regulation for the organisation and composition of new institutional structures under the roof of the ELA are neither clear nor sufficient.

Article 17(2) of the proposed Regulation states that the ELA may set up working groups or expert panels with representatives from the Member States and/or the European Commission or external experts in order to carry out its tasks. In this context, it has the power to set up a Mediation Board and a dedicated group to deal with financial matters related to the Coordination Regulation and the Implementing Regulation. For issues related to social security coordination, the Administrative Commission shall also be consulted.

However, these regulations are not binding. It is clear from the proposed Regulation which tasks are to be transferred from the Administrative Commission to the ELA. However, the proposal does not contain any binding rules as to which working groups or expert bodies will be specifically set up to carry out the tasks and to what extent the Member States will be involved. This is left to the ELA to decide. Unlike the Mediation Board and the dedicated group for financial matters, a group of technical experts to assist the ELA in performing its tasks is not even explicitly mentioned in Article 17(2) of the proposed Regulation.



Irrespective of the issue of whether, and to what extent, it is necessary to integrate existing institutional structures into the ELA, the German Social Insurance is of the opinion that the following must be ensured: if tasks were to be transferred from the existing bodies to the ELA, the Regulation would have to contain a non-exhaustive list of bodies which are to be established by the ELA and which correspond to the institutional framework of existing bodies. It must also be ensured that the Member States are equally involved in these new bodies and that the respective social security institutions have the opportunity to contribute their expertise on national social security legislation.

This also applies to specifying rules of procedures for the working groups and panels to be set up in accordance with Article 19(1)(i) of the proposed Regulation. Although one representative from each Member State is involved in deciding the rules of procedure as part of their membership of the Management Board, it is unclear whether, and to what extent, the expertise of the national social security institutions will be incorporated into the decisions on the rules of procedure for the groups and panels.

In the view of the German Social Insurance, the need for expert knowledge of national social security law and technical know-how cannot be covered by a National Liaison Officer as provided for in Article 33 of the proposed Regulation.

It may well be true that National Liaison Officers facilitate communication, but they cannot fully replace the extensive, hands-on expertise and technical know-how of staff from the National Liaison Offices.

### 3 Support to capacity building

Insofar as Article 12 of the proposed Regulation states that Member States shall receive support with capacity building to ensure consistent enforcement of Union law, the question arises as to what this support might consist of, given the diversity of national social security systems. ELA activities, such as the development of common guidelines as well as sector-specific and cross-sector training, do not appear to be helpful in the light of the diversity of systems. The exchange of good practices, as well as information exchange and the secondment of staff between national authorities, seems more conducive to this and respects the basic principle of coordination of social security systems, taking into account national specificities.



### III. Summary

The umbrella associations of Germany's social insurance system support the European Commission's intention to support fair labour mobility. However, as far as the institutional structures of social security coordination are concerned, the German Social Insurance believes that the planned reorganisation and transfer of tasks to the ELA do not meet this objective. In the existing system of social security coordination, well-functioning structures that are capable of evolving are being abandoned and transferred to a new Authority, without any apparent improvement in relation to the binding nature and enforceability of the Authority's decisions compared to existing institutional structures.

The proposed Regulation does not take into account interrelations between the various tasks of the Administrative Commission in the framework of the coordination of social security systems and the synergies arising from the consistent and uniform execution of tasks. Increased acceptance of the committees and their decisions is being called into question without any apparent added value from transferring tasks to the ELA.

In the opinion of the German Social Insurance, the European Labour Authority in its proposed form could result in a loss of expertise, know-how and the trusting cooperation that exists between Member States. To prevent this loss, irrespective of the question of added value or necessity, if the aforementioned tasks are to be transferred 'under one roof' to the bodies of the ELA, it must be ensured that the competences of the Member States are maintained as they are now. The expertise of the National Liaison Offices entrusted with the daily coordination of the social security systems must continue to feed into the decisions of the new bodies.