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Abstract

The European Labour Authority (ELA) was announced in September 2017 by President Juncker in his State of the Union speech. Less than 18 months later, on February 14, 2019, the Commission’s proposal was amended and negotiated between the European Parliament and the Council, and the ELA started its work on October 2019. The objectives of this new agency are to facilitate access to information for individuals and employers about their rights and obligations in the areas of labour mobility and social security coordination, to support cooperation between national authorities, and to provide mediation and facilitate solutions in cases of disputes between national authorities. While trade unions and some MEPs welcomed this new authority, employers’ associations and some Member States were far less supportive. At the same time, this new regulatory agency was established quite rapidly, and each actor seems to have come to peace with its role. How can we explain this? To answer this question, we will examine the decision-making process and focus on the introduction and dissemination of a new term – “fair mobility” – that is used by both administrative staff and social partners. This contribution tries to demonstrate that this notion succeeded in conciliating market objectives and the need for social integration. As a consequence, the ELA is less a tool of control and sanctioning for employers, and more a tool to make the market function by providing information and coordinating the national bodies in the different areas of labour mobility.

Keywords: European labour authority – agency – regulation – new administrative service

Running Head Right-hand: The European Labour Authority

Running Head Left-hand: H  l  ne Michel and S  bastien Michon

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The European Labour Authority and the shaping of “fair mobility”

The ambiguities of a regulatory agency in achieving the European labour market

H  l  ne Michel and S  bastien Michon

On September 13, 2017, Jean-Claude Juncker announced the creation of a European Labour Authority (ELA) in his State of the Union speech.¹ Just six months later, on March 13, 2018, the European Commission published its legislative proposal for a regulation creating an ELA.² Barely one year further on, the provisional agreement between the presidency of the Council and the Parliament, reached on February 14, 2019, was approved by a vote in the European Parliament on April 16, 2019. Bratislava in Slovakia was chosen as the location of the ELA on June 13, 2019 by Member State representatives, and the regulation establishing a European Labour Authority³ was adopted on June 20, 2019 by the European Parliament and the Council. The ELA started its activities on October 16, 2019.

The process was completed speedily: with European elections coming up, fast work was needed to turn Juncker’s announcement into a reality. As Marco Rocca recalls, it really was the “last minutes of the last chance”⁴ to establish an ELA. From this point of view, the members of the European Commission’s Directorate-General for Employment, Social Affairs, and Inclusion (DG EMPL) should be congratulated on having been able to create a legislative proposal in such a short time. This haste nevertheless raises questions. Firstly, it gives the impression that such an agency was expected and required. Certainly, for Liina Carr, Confederal Secretary of the European Trade Union Confederation (ETUC), “a European body strong enough to enforce

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European rules in the social field is a long-standing demand from the ETUC.”⁵ But others, like BusinessEurope, recalled that there were already many organisations in existence and that it would have been better to “streamline the relevant existing bodies without creating a new agency.”⁶ Secondly, the speed of the process might make people believe that all the actors were in agreement on the mission of such an agency. Yet it is known that there were deep divisions on employment and social affairs, not only between social partners, but also between political groups and Member States. The parliamentary debates on the revision of the Posted Workers Directive demonstrated this very clearly.⁷ There were very different conceptions of policies on Social Europe.⁸ How could an ELA match up to all these different conceptions, which ranged from a simple information platform to a policing body able to apply sanctions or an organisation to help coordinate national instruments?

Furthermore, how was it possible to achieve agreement between those calling for additional European monitoring to avoid social dumping and unfair competition in the European labour market, and those refusing more processes that they perceived as ways of limiting the (insufficient, in their view) movement of workers?

To answer this question, we must take a close look at the decision-making process, and in particular the preparatory stages, such as the impact assessment and consultations, which worked to produce a census on the new labour authority. This work relied on the new concept of “fair mobility” that had emerged in European debate in the early 2010s and allowed market imperatives and economic growth to be reconciled with the social aspirations of those defending labour rights, in an ordoliberal approach. The case, we shall argue in this chapter, is that this rather vague notion allowed contradictory ideas and objectives to be reconciled. Most importantly, it helped turn worker mobility into an undeniable, even desirable, reality,⁹ which simply needed to be encouraged in accordance with the principles included in the core set of social rights. And if it is possible to imagine the ELA as a policing body, it would be in the sense that it “directs traffic.”

This chapter is divided into three sections. Firstly, we examine the preparatory documents of the regulation and describe how the issue of worker mobility was placed at the heart of the new agency. Secondly, we show how public consultation managed to direct the opinions collected and minimise divisions on this issue of mobility. Lastly, we return to the emergence and uses of the concept of “fair mobility” in the government of worker mobility.

1. The new ELA and the issue of labour mobility

For the majority of commentators in the media, Juncker’s announcement seemed to have been enough to justify creating an ELA. The parallel he drew with the European Banking Authority suggested that he wanted to establish a supervisory and monitoring authority. Given the stormy debates that took place in the European Parliament when the Posted Workers Directive was being revised, this idea of supervision could not fail to please those who were calling for a European labour inspectorate to prevent social dumping and enforce the law. The European Parliament had already published an own-initiative report on social dumping¹⁰ along these lines in September 2016.

However, on a closer reading of the preparatory documents, and in particular the impact assessment produced to support the proposal for a regulation,¹¹ it is not at all clear that the European Commission’s aim was to set up a body to supervise and sanction breaches of labour law. Firstly, there would have to be a legal basis for doing so, which is not the case, and Member States retain this competence. Secondly, the new authority would have to be a response to a clearly identified problem caused by a lack of sanctions or difficulties in enforcing European law. According to the current methodology, an impact assessment must first present the problem needing to be addressed, identify its causes, and then put forward the draft regulation as a means of solving the problem. It must also demonstrate the added value of the agency over and above what already exists, which implies carrying out, if not a critique of existing organisations, at least an assessment of what already exists, such as a European Platform to tackle undeclared work.¹²

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What is surprising about the impact assessment, however, as reiterated in the explanatory statement for the regulation, is that the problem identified is not one of breaches of existing law or difficulties in enforcing social laws, which might justify resorting to a European policing body or monitoring body. The problem it identifies is not just a level of worker mobility that is judged to be insufficient, but also the complications and difficulties this causes to workers and businesses. According to those drafting the explanatory statement, this insufficient level of worker mobility is due to workers and employers having information problems which can be linked to problems in cooperation between Member States and national institutions in charge of collecting information about offers of employment and help with mobility. The impact assessment identifies two major problems that the ELA must respond to. The first is “the inadequate information, support and guidance for individuals and employers in cross-border situations.”¹³ This assessment contains an implied criticism of the existing information organisations, such as the network of EURES (European Employment Services)¹⁴ or the SOLVIT service for businesses and individuals.¹⁵ The second problem is “the inadequate cooperation between national authorities on rule enforcement,”¹⁶ which contains a questioning of forms of cooperation. The issue is therefore not one of transferring competence for national labour inspections in order to have a Europe-wide agency, as with the centralised processes of the European Medicines Agency,¹⁷ but one of finding ways to improve the exchange of information and mutual support. However, the agency appears to leave to one side any challenges linked to the social security system, which is covered by a specific regulation: the Regulations on the Coordination of Social Security Systems,¹⁸ currently under discussion.

The impact assessment sets out a problem that is primarily one of worker mobility. Five “problem drivers”¹⁹ are listed in the “ELA problem tree” mentioned in Annex 5 of the impact assessment:

- (1) “weak or absent mechanisms for cross border enforcement to access/share information, to organise joint enforcement activities, to solve disputes;”

- (2) “insufficient capacity of authorities to organise cooperation with authorities across borders;”
- (3) “insufficient cooperation set up at EU level;”
- (4) “incomplete information for individuals and employers;” and
- (5) “incomplete guidance and assistance to address cross border issues.” **20**

Negative consequences are outlined for workers, businesses, competent authorities, and the economy and society at large. After setting out these drivers, the study can justify the proposal for an ELA that will take action on these mobility problems.

The new authority still has to be positioned in relation to the existing organisations, however. On this point, the impact assessment puts forward several options to choose from. The first option is a minimalist proposal where the ELA would have a supporting role. It “would provide analytical and technical support to existing structures and tools in the field of labour mobility. Information to citizens and businesses, as well as capacity building for national administrations, would be provided in all areas under ELA’s remit,” according to the impact assessment. The second option is more operational: “ELA would promote common technical standards, increase cooperation between national authorities by taking over some technical tasks from the existing structures and further enriching them to address identified gaps and create synergies.” Lastly, the third – highly ambitious – option consists of “a mandatory role under which ELA would set standards and requirements in all areas under its remit, including in the provision of information and services. It could take binding decisions in case of disputes between Member States and instruct inspections.”

When presented in this way, the arguments point at the second option, which does not question the existence of current organisations, such as CEDEFOP and EUROFOUND, but rather proposes integrating certain dimensions of the EURES or reforming the system for the Coordination of Social Security Systems and its subcommittees. According to the explanatory

memorandum [COM \(2018\) 131 final](#), “the new setup will simplify the institutional landscape and foster synergies across the various aspects of cross-border mobility.”²¹

According to the impact assessment, the ELA therefore is part of a framing where worker mobility is the key concept that must be encouraged and the obstacles removed. Article 3 of the regulation itself thus has four main objectives:

“The Authority shall:

- (1) facilitate access to information on rights and obligations regarding labour mobility across the Union as well as to relevant services;
- (2) facilitate and enhance cooperation between Member States in the enforcement of relevant Union law across the Union, including facilitating concerted and joint inspections;
- (3) mediate and facilitate a solution in cases of cross-border disputes between Member States; and
- (4) support cooperation between Member States in tackling undeclared work.”²²

These objectives seem quite far-removed from the ambition for a policing organisation expressed in the press release and comments. A number of observers rapidly took a stance on the idea of an authority that would supervise or enforce the law, this being the aspect that aroused both hopes and fears. But within the European Commission, the drafters of the proposal stressed the second objective of encouraging mobility, as did the open consultation.

2. The open consultation on the ELA: a means of approval?

As Sofia Fernandes, Senior Research Fellow at Jacques Delors Institute, remarks in a preliminary policy paper,²³ there is an ambiguity in the initiative for setting up an ELA. In her view, “The future authority should not be reduced to a cooperation and information exchange platform.... At the same time, the new agency should not become a European super-inspectorate.” That is why she welcomes the Commission’s strategy “to mount a broad case for the establishment of ELA that goes beyond the sole issue of compliance.” For her, “providing ELA with a positive mission – to facilitate the activities of workers and businesses exercising their right of free movement – is important for both functional and political reasons. It will strengthen the role ELA can play to improve the functioning of the single labour market and to reinforce its dynamism. Also, this positive mission addresses the risk that the creation of ELA could be perceived by some countries as an instrument aimed at limiting intra-EU mobility – a perception that would undermine their support for this Commission initiative.”²⁴

However, the Commission had to get the stakeholders as a group to acknowledge this positive aspect; hence, our interest in examining the open public consultation (OPC) on the ELA. The consultation ran from November 27, 2017, to January 7, 2018, in parallel to the drafting of the impact assessment and the proposal for a regulation. Like all consultations, its aim was to gather opinions from the different stakeholders. However, because it used a closed questionnaire which limited the opinions that could be expressed, it laid emphasis on the idea of an ELA that would aim to facilitate worker mobility.

I. A consultation with limited scope

The questionnaire used in the consultation²⁵ included questions about the labour force in the EU and the creation of an ELA and a European social security number. The questions asked matched the framework imposed by the Commission. The dialectic had three elements, identifying first an assessment (insufficient cooperation between national authorities), then a cause (the fragmentation of information networks is harmful to cooperation between national authorities),

and finally a solution (the role of the new authority). The questionnaire placed constraints upon respondents, who were unable to formulate the problem in different terms or from a different perspective. Most of the questions were closed. Respondents had to use a rating scale where the options available were “strongly disagree,” “disagree,” “neutral,” “agree,” “strongly agree,” and “don’t know/cannot answer.” Responses to the questions were therefore reactions (favourable, unfavourable, or neutral), rather than proposals or expressions of needs.

The consultation received 8,809 responses, but among these the European Commission rapidly identified 8,420 identical responses, which were the result of a campaign by ETUC. After removing not just these identical responses but also those that were incomplete or illogical, only 374 responses remained. They came from three types of respondents (see Figure 5.1): those responding on behalf of an organisation; those responding as individuals who wanted to remain anonymous; and those responding as individuals who did not want anonymity. There were 113 responses made on behalf of an organisation, which is the Commission’s normal target group for consultations. **26**

[Insert 15032-5573-005_Figure_001 Here]

Figure 5.1 Respondent profile after removal of duplicates and illogical responses

Source: European Commission (February 2018) based on responses to the OPC on the creation of a European Labour Authority and a European Social Security Number.

Base: N = 374

Guide to reading the chart: 188 of the respondents responded as individuals and did not want their names to be included in the results

The level of participation seems unusually low compared with other consultations. For example, the 2001 consultation on the White Paper on European Governance did not use an online questionnaire and required more effort from organisations in terms of preparing and drafting responses, but it received 260 written contributions from states, regions, businesses,

NGOs, professional, cultural, and religious associations, and individuals.²⁷ The 2003 open consultation on a very different topic, the Proposal for a Regulation concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), received 6,398 responses.²⁸ This consultation on the ELA was therefore not one that aroused many strong feelings, even among those who are traditionally put forward as representatives of civil society. Many privileged partners of the institutions did not respond. This was the case with ETUC, for example, which preferred to concentrate its efforts on a campaign to support the creation of an ELA via its activist networks by asking its members to respond to the consultation en masse.

The organisations that responded to the consultation were not very diverse. They came from the European Union: most often, they were headquartered in Belgium, Germany, and Northern European countries in general (see Figure 5.2). Southern nations were less well-represented in the responses, while some nationalities were completely absent: Bulgaria, Cyprus, Greece, Luxembourg, Malta, and Romania. Yet nationality is a particularly critical variable in consultations of this kind because it relates to different legislations and different working conditions and living standards. Several questions referred to respondents’ national experience, asking about the “lack of assistance and/or guidance by the competent authorities in my own country,” “insufficiency of resources of national authorities to cooperate effectively,” and “lack of access to information on EU or national rules in my language.” It is likely that respondents’ situations would differ depending on their country of origin.

[Insert 15032-5573-005_Figure_002 Here]

Figure 5.2 Country of residence of EU organisations that responded to the questionnaire

It is difficult to characterise these organisations, given the indicators used. It is slightly easier to do this with the organisations included in the Commission’s Transparency Register (62 out of 113, or slightly over half of the total), but the information contained in the register is self-declared, and it can be difficult to dissociate organisations from each other when one knows how much overlap there is between certain structures in the field of interest groups.²⁹

II. A favourable response to an ELA that facilitates mobility

The questions were asked in such a way as to identify the drivers of obstacles to mobility (without that assessment ever being discussed) and then put forward solutions to deal with them.

Thus, we find the following responses to the various drivers put forward (Table 5.1):

Table 5.1 Proportion of responses agreeing with the consultation questions on suggested drivers
(*N* = 113)

	In agreement (%)
Fragmentation of networks of cooperation in different areas (e.g., posting, free movement of workers, social security coordination)	71
Insufficiency of resources of national authorities to cooperate effectively	80
Difficulty in accessing relevant documentation from other Member States	61
Difficulties in addressing complex cases of fraud and/or abuse that have a cross-border dimension	61
Lack of access to information on EU or national rules in my language	69
Lack of easily understandable explanations of rights and obligations to comply with when working abroad	73
Lack of easily understandable explanation of rights and obligations to comply with when sending people to work abroad (posting of workers)	78
Difficulty to identify and/or contact the competent authority to solve my problems	53
Lack of assistance and/or guidance by the competent authorities in my own country	47
Information on rights and obligations in the field of labor mobility is fragmented across different platforms	67

This body of responses helps produce a kind of consensus on the obstacles to mobility. It also points to simple solutions that the ELA could provide (Table 5.2). The questions about the possible functions of the ELA all relate to the role of a facilitator bringing down the barriers of lack of information and ignorance about processes and rules. An ELA which would gather information centrally and disseminate it would therefore permit efficiency to be improved,

reduce the risks of abuse or fraud, strengthen administrations’ trust in each other, and ultimately facilitate mobility.

Table 5.2 Proportion of responses agreeing with the consultation questions on the benefits of an ELA (*N* = 113)

	In agreement (%)
Support the exchange of information of businesses, workers and citizens	76
Coordination of systematic cooperation and information exchange between national authorities	88
Support the rationalization and streamlining of administrative practices for cross-border cases	71
Provision of technical assistance and capacity building to national authorities	69
Provision of analytical support and intelligence on labor mobility issues	82
Coordination of joint inspections by national administrations in cross-border employment and social security matters	65
Facilitating efficiency gains, in particular, by simplifying existing processes and structures	80
Reducing the risk of abuse and/or fraud, due to non-compliance with EU and/or national rules	86
Increasing the level of trust between administrations	67

The ELA proposed by the European Commission was manifestly more of a facilitating body than a monitoring one. The questionnaire does not really refer to the monitoring role that the ELA could take.

Respondents to the questionnaire appeared to vindicate the Commission’s vision. We may observe a relative consensus among respondents on the importance of transparency, access to information, and the need to simplify procedures, but the position is less clear when it comes to the new authority having a possible coordinating role, in accordance with the principle of subsidiarity. There was little consensus among respondents regarding a “lack or insufficiency of for a for dispute settlement,” for which the ELA could compensate (41 percent of respondents

agreed that there was such a lack). Similarly, just under half of respondents responded favourably to the idea of an ELA that could resolve disputes in cross-border employment and social security matters (47 percent).

III. Differing stances on the role of the ELA

The analysis of the responses to this consultation can be clarified by constructing a space to represent respondent organisations’ stances on the ELA, based on an analysis of the respondent organisations’ characteristics through Multiple Correspondence Analysis (MCA), a statistical technique that allows the data to be summarised on factorial axes and provides a structural perspective.³⁰

The MCA described here focuses on 49 respondents. This reduction in the number of respondents was based on two levels of screening. The first level of screening related to whether respondents’ characteristics could be identified. Given the variety of organisations and how difficult it was to identify the characteristics of some of them, the analysis only includes organisations listed in the Commission’s Transparency Register,³¹ which is based in the EU. This register makes available some relatively standardised data about the organisations listed, which allows some comparisons to be made, although it should be borne in mind that the data were provided by the organisations themselves. The second level of screening relates to the quality of the responses. Only respondents who answered at least 75 percent of the section about the creation of an ELA were retained in the data set.

The MCA carried out³² for this research was based on the main questions about the creation of an ELA: the assessment that there is insufficient cooperation, the main cause put forward (fragmentation of information networks), and the role of the new authority (resolving conflict, coordinating cross-border inspections, collecting information) (see Table 5.3). Responses were structured in a specific way and organised hierarchically along the first two axes of the MCA, which form a good summary (Figure 5.3). We can distinguish three configurations

of modalities that follow the trajectory of a parabola. The “agree” modalities are in the southwestern quadrant, while the “disagree” modalities are in the eastern sector of the map, and the “neutral” modalities in the northern sector of the map. The “agree” modalities are both more concentrated and closer to the origin than the other modalities are: they contribute less to the creation of the factorial map.

The first axis (32.6 percent of total inertia) is specifically structured around the lack of cooperation between national authorities. The “agree” modality is opposed to the “neutral” and “disagree” modalities. This axis also summarises responses regarding the mandate to be given to an ELA, more specifically the question of an authority that would coordinate inspections and involve itself in resolving conflicts between parties. In the opinion of a proportion of respondents, an ELA should resolve conflicts, while for another group of respondents, its role ought to be limited to coordinating cross-border inspections. The second axis (23.9 percent of total inertia) differentiates between the “neutral” and “disagree” modalities on three groups of questions: cooperation, the role the ELA could take, and the fragmentation of networks as the cause of a lack of cooperation between the national authorities of Member States.

Projecting supplementary variables into the factorial map allows organisations’ stances to be related to their characteristics. Views on the creation of an ELA are highly differentiated by type of organisation, between employer organisations that want the status quo to continue, and workers’ organisations concerned about working conditions and social protections. The three stances on the ELA relate to three types of organisation.

Firstly, in the northern sector of the map, we find a relatively neutral group of respondents. This group is mainly made up of public authorities and associations.

Secondly, in the eastern sector of the map, we find the organisations that are most wary of the creation of an ELA. They are among the respondents with the greatest financial resources and also tend to be based in Northern Europe. These employer organisations, which often have an office in Brussels, favour the status quo. Without necessarily being opposed to an ELA, they are not happy for it to have a supervisory and monitoring role. They are the most strongly

opposed to a monitoring role for the ELA, which would ultimately lead to the EU having greater powers in this domain. Thus BusinessEurope, in its position paper, defends retaining the fight against fraud as a competence that should stay with individual Member States: “It is essential that labour inspections remain the competence of national authorities, in accordance with enforcement and industrial relations practices. Therefore, it is not appropriate that one Member State can request a joint inspection on its own. We also do not support the proposed Authority’s role in suggesting a concerted or joint inspection of its own initiative to the authorities of the Member States concerned.”³³ Similarly, the European Association of Craft, Small and Medium-sized Enterprises (UEAPME) writes, “The (European Labour) Authority should not take-up the role of national authorities.”³⁴

Thirdly, in the southwestern sector of the map, we find the organisations that are the most enthusiastic about the creation of a regulatory body. They are also the ones with the lowest financial resources, and trades unions are among this group. They are the most strongly in favour of a monitoring role for the ELA, like ETUC: “To enable better prevention, detection and monitoring of cross border social fraud, and undeclared work.”³⁵

<p>Table 5.3 Characteristics of the MCA on the space of the organisations participating in the ELA consultation (<i>N</i> = 49)</p>	
<p>Active variables (Figure 5.3)</p>	<p>The initial assessment</p> <ul style="list-style-type: none"> - insufficient cooperation between national authorities: “agree” (35); “neutral” (8); “disagree” (6). <p>Main cause suggested</p> <ul style="list-style-type: none"> - fragmentation of information networks is harmful to cooperation between national authorities: “agree” (39); “neutral” (7); “disagree” (3). <p>The role of the new authority</p> <ul style="list-style-type: none"> - an ELA will permit conflicts to be resolved: “agree” (23); “neutral” (8); “disagree” (16). - an ELA will permit cross-border inspections to be coordinated: “agree” (32); “neutral” (6); “disagree” (8).

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	<ul style="list-style-type: none"> - an ELA will allow information to be provided to workers: “agree” (46); “neutral” (3); “disagree” (3).
Supplementary variables (Figure 5.4)	<ul style="list-style-type: none"> - Organisation typology: consultants (1); public authorities (3); associations (7); worker trade unions (16); employer representative bodies (22). - Organisations’ financial resources (empty triangle): Lower (16); higher (26); unknown (7).

[Insert 15032-5573-005_Figure_003 Here]

Figure 5.3 MCA on the space of the organisations taking part in the OPC ($N = 49$): projection of active modalities onto the map formed by axes 1 and 2

Source: European Commission (February 2018) based on responses to the OPC on the creation of a European Labour Authority and a European Social Security Number.

[Insert 15032-5573-005_Figure_004 Here]

Figure 5.4 MCA on the space of the organisations taking part in the OPC ($N = 49$): projection of supplementary modalities onto the map formed by axes 1 and 2

Source: European Commission (February 2018) based on responses to the OPC on the creation of a European Labour Authority and a European Social Security Number.

Our analysis of the public consultation accounts for respondents’ differences of opinion on the ELA. The Commission’s report on responses to the consultation, ³⁶ in contrast, emphasises consensus and the views of the majority of respondents (“A vast majority of the respondents agreed that insufficient access to information and transparency on cross-border mobility rules is a problem for individuals and businesses,” or “All the potential functions for the ELA proposed in the OPC received strong support overall, in particular supporting information exchange for businesses, individuals and between national authorities”). However, an analysis of the data brings some nuances to light. One is the difference between the worker representatives and the employer representatives: the former were more strongly in favour of a monitoring ELA than were the latter, who were very happy with an ELA that provided a platform for exchanging

information and assistance with finding it. That being said, the closed questionnaire used in the consultation did not permit trade unions to express that point of view. That is why other preparatory studies also had to be consulted, such as the discussions among the expert group and the position papers published by the main stakeholders and many European think tanks.

3. From “fair market” to “fair mobility”

The proposal for a regulation aroused hopes among the trade unions and Members of European Parliament who wanted an organisation to be set up that would be capable of monitoring compliance with employment law through a labour inspectorate. At the same time, though, it encountered criticism from employers who complained of a lack of available labour and obstacles to mobility and who thought that the role of the ELA should not be to add further difficulties by imposing monitoring and sanctions. The two sides appeared to take opposing stances. However, they appeared to agree on one essential point: worker mobility is an essential objective of European construction and must be encouraged. For employers, mobility allows them to recruit workers from across the whole of the EU and thus find takers for the jobs they are offering in the market. For the trade unions representing workers, intra-European mobility is a chance to obtain a job if a worker cannot do so in their home country, or to obtain a more appealing or better-paid job if a worker already has one. It is from this agreement, which makes mobility a key element of growth and of the proper functioning of the European labour market, that the concept of “fair mobility” emerged.

This expression did not give rise to much comment – not even to point out the obvious parallel with “fair competition.” It even seemed as though it might have gone unnoticed. Yet in the text of the regulation, it appears twice in the recitals (numbers 22 and 47) and as an objective in Article 2: “The objectives of the Authority shall be to contribute to ensuring fair labour mobility across the Union.”³⁷ This objective of mobility did not seem to attract any criticism, and the adjective “fair” seemed to provide all necessary guarantees regarding its good intentions

towards both workers and employers. The regulation recalls the importance of the European Pillar of Social Rights, proclaimed jointly by the European Parliament, the Council, and the Commission at the Social Summit for Fair Jobs and Growth, in Gothenburg on November 17, 2017. In their declaration, they committed themselves to:

taking action to reinforce the social dimension of the Union, by working on improving the coordination of social security systems, by protecting workers from health risks in the workplace, by ensuring fair treatment for all in the Union labour market through modernised rules on posting of workers, and by further improving cross-border enforcement of Union law. In order to protect the rights of mobile workers and to foster fair competition between companies, in particular small and medium-sized enterprises (SMEs), it is crucial to improve the cross-border enforcement of Union law in the area of labour mobility and to tackle abuse.³⁸

This is the context for “fair mobility,” meaning a mobility that ensures all European workers will have their social rights respected.

This was the first time the term “fair mobility” had been mentioned in a European legislative text. A first sighting of it can be found in a European Commission communication from 2007, titled “Mobility, an Instrument for More and Better Jobs: The European Job Mobility Action Plan (2007–2010)”³⁹ in which the European Commission “encourage[s] authorities at regional and local levels, and other relevant stakeholders, to remove remaining practical obstacles to mobility and to promote the concept of ‘fair mobility,’ namely by fighting undeclared work and social dumping.” This sentence would go on to be included in the EURES Charter in 2010. According to the EURES Charter, “Mobility should be promoted whilst ensuring the concept of ‘fair mobility,’ particularly fighting undeclared work and social dumping, which is to ensure that labour standards and legal requirements are always fully respected.”⁴⁰ In spite of being new at the time, it seems to have passed unnoticed. It came up in European debate only when the question of posted workers was raised. In the European

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Parliament resolution of June 14, 2012 on “Towards a job-rich recovery,” MEPs “urged the European Commission to strengthen fair mobility and combat any misuse of posted workers, both in host and home countries.”⁴¹ It is therefore not surprising that “fair mobility” should have returned to centre stage with the discussions on an ELA that took place after the revision of the Posted Workers Directive and in close connection with the European Pillar of Social Rights. Marianne Thyssen, the European Commissioner for Employment and Social Affairs, gave a speech in Dublin on November 13, 2015 on Europe’s vision for fair labour mobility. Her predecessor, László Andor, had already used the expression in a speech at the University of Ghent on labour mobility in the EU on September 24, 2014,⁴² before publishing a paper titled “Fair Mobility in Europe.”⁴³ Other think tanks took up this expression; for example, the CEPS “Labour Mobility in the EU: Addressing Challenges and Ensuring ‘Fair Mobility’”⁴⁴ in July 2016, and the DG EMPL’s *Social Agenda* magazine, issue 51, in which the creation of the ELA was announced, had the words “fair mobility” on its cover.⁴⁵

It was based on this agreement that the members of the European Advisory Group for the ELA met between May 16, 2018, and May 21, 2019. Over five meetings, the members (drawn from worker and employer organisations and also from Member State ministries) worked together to make recommendations on the creation of the ELA. In view of the consensus on “fair mobility,” the work was directed from the outset not at monitoring and sanctioning, but at information flow and cooperation between existing organisations. In this context, it was unimportant whether the future body would be called an “authority” or an “agency.” When the proposal was being examined by the rapporteur Jeroen Lenaers at the meeting of the Employment and Social Affairs Committee, discussion on this issue was quickly closed down as being a technical question of no particular importance, when it could have led to a debate between supporters of a monitoring and sanctioning body and supporters of a liaison body along the lines of Eurojust.

The ELA’s success lies, therefore, not so much in the speed with which it was created as in its ability to reconcile two opposing views through the concept of “fair mobility.” This

expression not only linked a vision of a market involving free movement with a more interventionist vision of monitoring and sanctions, but it also institutionalised mobility at the heart of the European labour market. Here, as in other domains, European construction was carried out by means of “the market,” a broad palette of ideas⁴⁶ from which others such as “fair mobility” are created so that they in turn can champion different options and allow a European space for public policy to develop greater depth.

Notes

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- 9** The same applies in the education sector, where mobility is encouraged as a way of achieving success. There has been little discussion of this normative perspective, however. For a reflective point of view on mobility, see Guillaume Courty, *La mobilité dans le système scolaire. Une solution pour la réussite et la démocratisation?* (Villeneuve-d’Ascq: Presses du Septentrion, 2015).
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31 This is a database of self-declared and publicly available data on interest groups that intercede with European institutions. Updated daily, the register includes 47 variables relating to the structure and operation of these organisations. We were able carry out the necessary cross-matching between the Transparency Register and the consultation results because of the identification number used in both.

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