



## **Joint statement by the Swedish Trade Union Confederation (LO), the Confederation of Professional Employees (TCO) and the Swedish Confederation of Professional Associations (Saco) on the Proposal for a Regulation of the European Parliament and of the Council establishing a European Labour Authority COM(2018)131**

The Swedish Trade Union Confederation (LO), the Confederation of Professional Employees (TCO) and the Swedish Confederation of Professional Associations (Saco) have been asked to express an opinion in response to the Commission's proposal to establish a European Labour Authority ("the Authority"). The legal basis for the proposal is the provisions of the Treaty on free movement of workers and services as well as transport.

The overall task of the Authority is to assist the Member States and the Commission concerning cross-border work and coordination of social insurance systems. The Authority's objective is to contribute to fair movement of labour in the internal market. The purpose is to be achieved by the Authority making it easier for businesses and individuals to access information on the rights and obligations that apply to them. The Authority is also to support cooperation between Member States in cross-border enforcement of EU rules and mediate and facilitate solutions in cross-border disputes.

LO, TCO and Saco welcome the intentions of the proposal. Increased protection and promotion of free movement of workers in Europe are important. It is desirable for national authorities to act together, with the support of the Authority, for the purpose of preventing underbidding competition and opposing social dumping. Strengthened coordination in the area of social insurance may be significant in the fight against underbidding competition.

LO, TCO and Saco are mainly in favour of the proposal. However, at the same time the Commission's proposal gives rise to a number of questions and is unclear in important respects. The on-going legislative process will require clarifications and changes.

Already in this context LO, TCO and Saco would like to highlight two questions that are crucial to a continued positive approach on the proposal. Both questions fundamentally concern safeguarding the Swedish collective agreement model.

Firstly, the Authority should not have a mediation function under Articles 13 and 14. Mediation in labour market disputes by a European Authority is not compatible with the collective agreement model and the traditions of the Swedish labour market.

Secondly, the Authority should not be given the right to exercise public authority. In Sweden, interaction between national agencies and trade union organisations in the control and monitoring of labour market conditions requires a special understanding of the collective agreement model. It is crucial that no exercise of public authority be transferred to the Authority. The remit should be to coordinate and advise, and be based on a voluntary approach among the parties involved.

LO, TCO and Saco also consider it important that the Authority is based in a Member State with a strong industrial relations system. Interaction between employee and employer organisations is essential for the proper functioning of the Authority. LO, TCO and Saco consider that the Government should work to ensure that the Authority be based in Sweden or another Nordic country.

### **No mediation function for the Labour Authority**

Article 2 of the proposal states that the Authority's mediation tasks concern "cross-border disputes" or "labour market disruptions". Article 13 of the proposal establishes that the Authority can launch a mediation procedure on its own initiative. LO, TCO and Saco consider that this part of the Authority's responsibilities is highly problematic. The proposal does not set out fully the legal consequences a mediation process may entail.

The Swedish collective agreement model is based on trade union organisations, ultimately supported by industrial action, being able to force foreign companies to make an agreement. This is the Swedish model for achieving competitive neutrality and regulating labour market conditions. In a highly economically integrated Europe there are few situations that do not have any cross-border dimension. If any situation where the signing of a collective agreement may trigger mediation by a European Authority, there is an imminent risk that our model will be affected and will not function as it should. The risk of lengthy mediation processes may completely prevent the possibility of collective agreements being signed – particularly in connection with short-term activities such as posting. There is also a risk that the material terms of collective agreements will be subject to mediation by the Authority. Nor can it be ruled out that a dispute under mediation may be brought before the European Court of Justice.

Article 14 of the proposal also shows that the Commission envisages mediation in connection with cross-border "labour market disruptions". This is very worrying. One could imagine a scenario corresponding to the Gothenburg port dispute. The operation of Gothenburg's container port was handled by a Danish-owned company. Thus it is conceivable that the Authority, after a request for intervention by the Danish authorities, would initiate mediation.

LO, TCO and Saco consider that the proposal is badly thought through. Many disputes that are in practice national risk being subject to a more supranational legal framework. European mediation is not feasible in the Swedish labour market model, since regulation of conditions of work in Sweden is based on collective agreements, the applicability of which ultimately rests on the possibility of taking industrial action. In theory more or less all application agreements are subject to European mediation. In an economically integrated Europe there is almost always a cross-border element that might arise in a labour dispute.

LO, TCO and Saco consider that it is essential that the Authority is not given any mediation function under Articles 13 and 14. The mediation functions necessary for dealing with disputes on the Swedish labour market are performed by the National Mediation Office. A further level of mediation by a European Authority is not compatible with the collective agreement model and the traditions of the Swedish labour market. LO, TCO and Saco consider that Articles 13 and 14 should be deleted.

## **No exercise of public authority by the Authority**

In Sweden, interaction between public agencies and trade union organisations in the control and monitoring of labour market conditions requires a special understanding of the collective agreement model. LO, TCO and Saco consider that Articles 9 and 10 can be further clarified as regards the exercise of public authority. For LO, TCO and Saco it is essential that the European Authority is not empowered to exercise public authority in connection with workplace inspections. There is great variation between the national inspection systems, and also as regards the role and autonomy of the parties. It is important that national traditions and systems are respected. The function of the Authority should be mainly to coordinate and support the national agencies.

Through Articles 9 and 10 the European Labour Authority is given a coordinating role regarding inspections. Article 9.1 states that the Authority is to coordinate inspections under the scope of the Authority's competences. The competence of the Authority is potentially very broad. The English version uses the terminology "cross-border labour mobility" that can also be regarded as including free movement for businesses. From the proposal in other respects, not least the legal basis, the intention seems to be that the inspections should also include free movement of services. LO, TCO and Saco consider that ambiguity on such a crucial question must be clarified. Not least in view of the fact that the proposal is for a Regulation.

Article 10.2 states that the concerted and joint inspections shall be carried out in accordance with the national law of the Member States concerned. This is a sound principle. LO, TCO and Saco assume that the implication of the proposal is that inspections are to be carried out in accordance with the national law where the inspection takes place. Article 10.4 also states that the staff of the Authority may participate in concerted or joint inspections. In this context LO, TCO and Saco wish to emphasise that it is important that any exercise of public authority within the framework of the inspections should be on the basis of the competence of the national authorities. Article 10.4 should set out more clearly that the staff of the European Authority are not entitled to any exercise of public authority at inspections. LO, TCO and Saco consider that "be present" is a better term than "participate".

LO, TCO and Saco consider that Articles 10 and 11 can be used to increase control of the companies that post workers and welcome the initiative. The proposal is a step in the direction of enhanced control of companies that post workers, as well as strengthened multi-agency cooperation in the field of social insurance. The regulatory structure is designed in such a way that national authorities can block joint controls. LO, TCO and Saco agree that controls and inspections must be based on a voluntary approach.

LO, TCO and Saco consider that Article 11 reinforces the cross-border mobility of workers, but at the same time wish to express some concern that it would seem that risk assessments can be made at individual level. Reading Article 11.1 and 11.3 together, it seems that the Authority could propose measures even in individual cases. LO, TCO and Saco consider that the implication of these provisions needs clarification.

Finally, in response to the Authority's information, LO, TCO and Saco wish to challenge parts of the proposed Article 12 on capacity-building in the Member States. The Article states that the Authority shall aim to "promote the consistent enforcement of the Union law in *all* areas covered by this Regulation" (our italics). The intentions concerning increased capacity-building in the Member States are good. However, as the proposal is worded we see a risk that the area for the Authority's capacity-building will be too broad in scope. In particular, the texts on developing "common guidelines for use by the Member States" and shared "definitions and common concepts" (Article 12.1.a) are worrying.

LO, TCO and Saco welcome that the Authority can assist individuals and businesses with information, but the texts on “awareness-raising campaigns” directed at individuals and employers (Article 12.1.e) are problematic. We take the view that some of the formulations in Article 12 risk drawing the Authority in a direction away from a supporting and coordinating function towards a more independent role. The Authority’s direct contact with employees and employers in the Member States should primarily focus on providing information. A supranational authority should not engage in advocacy and campaigns.

### **Other comments on the proposal**

LO, TCO and Saco consider it important that the Authority should be based in a Member State with a strong industrial relations system. Interaction with employee and employer organisations is essential for the proper functioning of the Authority. LO, TCO and Saco consider that the Government should work to ensure that the Authority is based in Sweden or another Nordic country.

LO, TCO and Saco refrain at this stage from commenting on the elements governing the Authority’s organisation, with a Management Board, Executive Director and Stakeholder Group (Articles 17-24). Of particular interest from a trade union perspective, however, is the “Stakeholder Group” that is to have an advisory function. We welcome the social partners being represented in the Stakeholder Group. However, LO, TCO and Saco would like to stress the importance of providing the social partners, at both European and national level, with the opportunity to exercise a real influence on the day-to-day activities of the Authority.

LO, TCO and Saco will refrain for the time being from commenting on the rules for the Authority’s budget (Articles 25-39) and how the Authority is to be staffed (Articles 31-34). LO, TCO and Saco note, however, in this context that the rules on staff do not impose any requirements for special knowledge of the labour market or experience of working with the social partners, which is a weakness.

In this context LO, TCO and Saco wish to highlight the question of what applies to transport. Recital 8 makes it clear that the Authority is to deal with cross-border aspects of the sector-specific Union law. One such example mentioned in recital 8 is international road transport. What this responsibility for international road transport means in practice is not apparent from the Articles of the Regulation. Here LO, TCO and Saco consider that the proposal should be further clarified. What are the Authority’s exact functions in the various sectors, in particular the area of road transport?

LO, TCO and Saco also wish to stress that the function and role of the Authority as regards coordination in the area of social insurance should be further emphasised. Not least in the context of A1 certificates there is great potential for improvement. The ongoing revision of Regulation 883/2004 is of significance in this context. The Government should request clarification of the functions of the Authority in relation to Regulation 883/2004.

LO, TCO and Saco welcome recital 35, which highlights respect for the diversity of national industrial relations systems and the autonomy of social partners. We consider that corresponding regulation should also appear as an Article in the Regulation.

LO, TCO and Saco note that in addition to the issues raised above there are several issues that will require clarification. For example, what is the meaning of exchange of information in Article 16 in practice and are the provisions on interoperability frameworks in the same Article compatible with the Swedish collective agreement model? LO, TCO and Saco would also like clarification on how third-country nationals are covered by the proposal.

LO, TCO and Saco assume that the Government will promote the Swedish collective agreement model in the negotiations in the Council. It should also be mentioned that LO, TCO and Saco may supplement their statement with additional opinions, comments and proposals to the Government, the Commission and the European Parliament in the continued legislative process.

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