Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 (Text with relevance for the EEA and for Switzerland)

REGULATION (EU) 2019/1149 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 June 2019

establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344

(Text with relevance for the EEA and for Switzerland)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 46 and 48 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) The freedom of movement for workers, the freedom of establishment and the freedom to provide services are fundamental principles of the internal market of the Union, enshrined in the Treaty on the Functioning of the European Union (TFEU).

(2) Pursuant to Article 3 of the Treaty on European Union (TEU), the Union is to work for a highly competitive social market economy, aiming at full employment and social progress, and to promote social justice and protection, equality between women and men, solidarity between generations and combatting discrimination. Pursuant to Article 9 TFEU, the Union, in defining and implementing its policies and activities, is to take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and the promotion of a high level of education, training and the protection of human health.

(3) The European Pillar of Social Rights was the subject of a joint proclamation by the European Parliament, the Council and the Commission at the Social Summit for Fair Jobs and Growth, in Gothenburg on 17 November 2017. That Summit emphasised the need to put people first in order to further develop the social dimension of the Union, and to promote convergence through efforts at all levels, as confirmed in the conclusions of the European Council following its meeting on 14 and 15 December 2017.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2019/1149 of the European Parliament and of the Council. (See end of Document for details)*

(4) In their Joint Declaration on the EU's legislative priorities for 2018 to 2019, the European Parliament, the Council and the Commission 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.

(5) 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.

(6) A European Labour Authority (the 'Authority') should be established in order to help strengthen fairness and trust in the internal market. The Authority's objectives should be clearly defined, with a strong focus on a limited number of tasks, in order to ensure that the means available are used as efficiently as possible in areas where the Authority can provide the greatest added value. To that end, the Authority should assist the Member States and the Commission in strengthening the access to information, should support compliance and cooperation between the Member States in the consistent, efficient and effective application and enforcement of the Union law related to labour mobility across the Union, and the coordination of social security systems within the Union, and should mediate and facilitate solutions in the case of disputes.

(7) Improving access to information for individuals and employers, in particular SMEs, about their rights and obligations in the areas of labour mobility, the free movement of services and social security coordination, is essential to allowing them to benefit from the full potential of the internal market.

(8) The Authority should carry out its activities in the areas of labour mobility across the Union and social security coordination, including the freedom of movement for workers, the posting of workers, and highly mobile services. It should also enhance cooperation between Member States in tackling undeclared work, and other situations that put at risk the proper functioning of the internal market, such as letter-box entities and bogus self-employment, without prejudice to the competence of Member States to decide on national measures. Where the Authority, in the course of carrying out its activities, becomes aware of suspected irregularities in areas of Union law, such as breaches of working conditions or health and safety rules, or labour exploitation, it should be able to report them to, and cooperate on those matters with, the national authorities of the Member States concerned and, where appropriate, the Commission and other competent Union bodies.

(9) The scope of activities of the Authority should cover specific Union legal acts listed in this Regulation, including amendments thereto. That list should be extended in the case of further Union legal acts being adopted in the field of labour mobility across the Union.

(10) The Authority should proactively contribute to Union and national efforts in the area of labour mobility across the Union and social security coordination, by carrying out its tasks in full cooperation with the Union institutions and bodies and the Member States, while avoiding any duplication of work and promoting synergy and complementarity.

(11) The Authority should contribute to facilitating the application and enforcement of Union law within the scope of this Regulation, and to supporting the enforcement of those provisions implemented through universally applicable collective agreements in accordance with the practices of Member States. To that end, the Authority should set up a single Union website for the purpose of accessing all relevant Union websites, and national websites established in accordance with Directive 2014/67/EU of the European Parliament and of the Council[(4)] and Directive 2014/54/EU of the European Parliament and of the Council[(5)]. Without prejudice to the tasks and activities of the Administrative Commission for the Coordination of Social Security Systems established by Regulation (EC) No 883/2004 of the European Parliament and of the Council[(6)] (the 'Administrative Commission'), the Authority should also assist in the coordination of social security systems.

(12) In certain instances, sector-specific Union law has been adopted in order to respond to specific needs in particular sectors, such as in the area of international transport, including road, rail, maritime transport, inland waterways and aviation. Within the scope of this Regulation, the Authority should also deal with the cross-border labour mobility and social security aspects of the application of such sector-specific Union law. The scope of the Authority's activities, in particular whether its activities should be extended to further Union legal acts that cover sector-specific needs in the area of international transport, should be subject to periodic evaluation and, if appropriate, review.

(13) The Authority's activities should cover individuals who are subject to the Union law within the scope of this Regulation, including workers, self-employed persons and jobseekers. Such individuals should include citizens of the Union and third-country nationals who are legally resident in the Union, such as posted workers, intra-corporate transferees or long-term residents, as well as their family members, in accordance with Union law regulating their mobility within the Union.

(14) The establishment of the Authority should not create new rights or obligations for individuals or employers, including economic operators or not-for-profit organisations as the activities of the Authority should envisage such individuals and employers to the extent that they are covered by the Union law within the scope of this Regulation. Increased cooperation in the area of enforcement should neither place an excessive administrative burden on mobile workers or employers, in particular SMEs, nor discourage labour mobility.

(15) To ensure that individuals and employers are able to reap the benefits of a fair and effective internal market, the Authority should support Member States in promoting opportunities for labour mobility or the provision of services and recruitment anywhere within the Union, including opportunities for access to cross-border mobility services, such as the cross-border matching of jobs, traineeships and apprenticeships and mobility

schemes such as 'Your first EURES job' or ErasmusPRO. The Authority should also contribute to improving transparency of information, including on rights and obligations provided for in Union law, and access to services to individuals and employers, in cooperation with other Union information services, such as Your Europe Advice, and taking full advantage and ensuring consistency with the Your Europe portal, which is to form the backbone of the single digital gateway established by Regulation (EU) 2018/1724 of the European Parliament and of the Council[(7)].

(16) To that end, the Authority should cooperate in other relevant Union initiatives and networks, in particular in the European Network of Public Employment Services, the European Enterprise Network, the Border Focal Point SOLVIT, and the Senior Labour Inspectors' Committee, as well as in relevant national services such as the bodies to promote equal treatment and to support Union workers and members of their family that are designated by Member States pursuant to Directive 2014/54/EU. The Authority should replace the Commission in managing the European Coordination Office of the European network of employment services (EURES), established by Regulation (EU) 2016/589 of the European Parliament and of the Council[(8)], including establishing user needs and business requirements for the effectiveness of the EURES portal and related information technology (IT) services, but excluding the provision of IT and the operation and development of IT infrastructure, which will continue to be ensured by the Commission.

(17) With a view to ensuring the fair, simple and effective application and enforcement of Union law, the Authority should support cooperation and the timely exchange of information between Member States. Together with other staff, National Liaison Officers working within the Authority should support Member States' compliance with cooperation obligations, speed up exchanges between them through procedures dedicated to reducing delays, and ensure links with other national liaison offices, bodies, and contact points established under Union law. The Authority should encourage the use of innovative approaches to effective and efficient cross-border cooperation, including electronic data exchange tools such as the Electronic Exchange of Social Security Information (EESSI) system and the Internal Market Information (IMI) system, and should contribute to further digitalising procedures and improving IT tools used for message exchange between national authorities.

(18) To increase Member States' capacity to ensure protection of persons exercising their right to free movement and tackle irregularities with a cross-border dimension in relation to Union law within the scope of this Regulation, the Authority should support the national authorities in carrying out concerted and joint inspections, including by facilitating the implementation of inspections in accordance with Article 10 of Directive 2014/67/EU. Those inspections should take place at the request of Member States or upon their agreement to the Authority's suggestion. The Authority should provide strategic, logistical, and technical support to Member States participating in the concerted or joint inspections in full respect of the confidentiality requirements. Inspections should be carried out in agreement with the Member States concerned and should take place within the legal framework of national law or practice of the Member

States in which they take place. Member States should follow up on the outcomes of the concerted and joint inspections according to national law or practice.

(19) Concerted and joint inspections should not replace or undermine national competences. National authorities should also be fully associated in the process of such inspections and should have full authority. Where trade unions are in charge of inspections at national level, concerted and joint inspections should take place following the agreement of, and in cooperation with, the relevant social partners.

(20) In order to keep track of emerging trends, challenges, or loopholes in the areas of labour mobility and social security coordination, the Authority should develop, in cooperation with Member States and, where appropriate, the social partners, an analytical and risk assessment capacity. This should involve carrying out labour market analyses and studies, as well as peer reviews. The Authority should monitor potential imbalances in terms of skills and cross-border labour flows, including their possible impact on territorial cohesion. The Authority should also support the risk assessment referred to in Article 10 of Directive 2014/67/EU. The Authority should ensure synergies and complementarity with Union agencies, services or networks. This should include seeking input from SOLVIT and similar services on sector-specific challenges and recurring problems concerning labour mobility within the scope of this Regulation. The Authority should also facilitate and streamline data collection activities provided for by Union law within the scope of this Regulation. This does not entail the creation of new reporting obligations for Member States.

(21) To strengthen the capacity of national authorities in the areas of labour mobility and social security coordination and improve consistency in the application of Union law within the scope of this Regulation, the Authority should provide operational assistance to national authorities, including developing practical guidelines, establishing training and peer learning programmes, including for labour inspectorates to address challenges such as bogus self-employment and abuses of posting, promoting mutual assistance projects, facilitating staff exchanges such as those referred to in Article 8 of Directive 2014/67/EU, and supporting Member States in organising awareness-raising campaigns informing individuals and employers of their rights and obligations. The Authority should promote the exchange, dissemination and uptake of good practices and knowledge, and promote mutual understanding of different national systems and practices.

(22) The Authority should develop synergies between its task to ensure fair labour mobility and tackling undeclared work. For the purposes of this Regulation, ‘tackling’ undeclared work means preventing, deterring and combating undeclared work as well as promoting the declaration thereof. Building on the knowledge and the working methods of the European Platform to enhance cooperation in tackling undeclared work, established by Decision (EU) 2016/344 of the European Parliament and the Council[9], the Authority should set up, with the involvement of the social partners, a permanent working group also named Platform to enhance cooperation in tackling undeclared work. The Authority should ensure a smooth transition of the existing activities of