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**FIEC position on the proposed revision
of the « Social Security » Regulations 883/2004 and 987/2009**

FIEC supports the free movement of services and workers within the Internal Market and welcomes any initiative aiming at ensuring that the appropriate policies and rules are in place at European and national level and that they are properly enforced and implemented, in order to ensure a level playing field for companies and the social protection of their workers.

Although the legislative frameworks for “Posting of workers” and for “Social Security” address different topics, there are clear links and complementarity between them and FIEC regrets that the two legislative processes have not been undertaken in parallel, which would have provided a better overall coherence and legal clarity.

As pointed out in previous position papers, cases of frauds observed in the area of “Posting” can be hindered also with some adaptations to the existing rules on “Social Security” and the following messages aim precisely at this objective.

Main messages

1) Need to strengthen the cooperation and the exchange of information between national administrations

The difficulties in controls in cross-border operations are often due to a lack of or to inefficient systems of cooperation and exchange of information between national administrations. This situation facilitates frauds and abuses.

FIEC welcomes any initiative undertaken so far aiming at addressing these problems, such as the introduction of the Electronic Exchange of Social Security Information (EESSI), which constitutes a step in the right direction by introducing the use of a common secure infrastructure for cross-border data exchange between social security institutions. Further efforts will however be needed at national level in order to ensure the efficiency of the system.

In this respect, FIEC also welcomes the complementary provisions proposed by the European Commission, in particular the new Art. 75a (of Regulation 883/2004) and the amended Art. 19 (of Regulation 987/2009), as well as the Amendments 47 and 48 proposed by MEP G. Balas, Rapporteur of the European Parliament.



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2) Need to reinforce the reliability of the A1 forms

The temporary cross-border service provision and the difficulties in undertaking efficient controls in a highly complex and mobile sector such as construction imply that these controls are even more important in order to avoid social fraud and abuses, which have a significant negative impact amongst others on the national social security systems.

In this framework, the correct use of the A1 forms is a key factor. At European level, it is absolutely vital to introduce a watertight monitoring system to prove that social security contributions for the workers concerned are being correctly and fully paid in their “country of origin”.

The current A1 forms are inadequate and facilitate fraudulent practices. In addition, according to the case law of the European Court of Justice, the legal validity of an A1 declaration cannot be questioned by the “receiving country” and this is highly problematic.

FIEC therefore welcomes the proposal for a mandatory control of the validity of the relevant information by the “sending country” before issuing an A1 form, the possibility of direct exchange of information between the competent national authorities and the acceleration of the procedure for verification and possible withdrawal of the A1 form in case of fraud and error.

FIEC considers however that the proposal should however have gone further as regards :

- The automatic suspension/invalidity of the A1 form in case of a fraud observed by the competent authorities of the “receiving country”.
- Defining a list of important elements for a reinforced reliability of the A1 forms such as, for ex. : an electronic unfalsifiable format; a unique identification of the worker; the identity of the employer; link to national database(s) for an up-to date information in “real time”; EU database of A1 forms,...

3) Need to strengthen the provisions regarding the pursuit of activities in two or more Member States

The efficiency of the current provisions regarding persons who normally pursue an activity in two or more Member States (i.e. pluriactivity) (Art. 13 of Regulation 883/2004 and Art. 14 and 16 of Regulation 987/2009) is questionable, as increasing cases of frauds within this framework are observed. They allow for example persons to switch between different statuses (“posted worker”, self-employed, pluriactivity), in order to



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circumvent existing rules, as for example the 24 months duration foreseen in the “Social security” Regulations, as well as the ones on “posting”.

It is therefore important to reinforce the provisions and procedures for monitoring the cases of “pluriactivity”, in order to determine the appropriate applicable legislation, without affecting the general principle of mobility within the Internal Market.

4) Need to align some of the proposed changes to the Regulations on “Social Security” with the “Posting” (96/71/EC) and “Enforcement” (2014/067/EC) Directives

Companies, workers, labour inspectorates and public authorities need a clear and coherent legal framework, in order to be able to comply with it and to enforce it. Although the above mentioned pieces of legislation are separate instruments and address different situations, there are evident links between them and it is therefore important that the same notions are defined and applied in the same manner, in particular as regards :

- The term “posted worker”, which should be aligned with meaning given in the “Posting” Directive (96/71/EC). In this respect, the term “*sended worker*” doesn’t provide any added value and should therefore be removed, in order not to create legal uncertainty.
- The notion of “substantial activity” (proposed new Art.14 (5a) of Regulation 987/2009) should make an explicit reference to the criteria defined in Art. 4.2 of the “Enforcement” Directive (2014/67/EC).

5) Involvement of the Social Partners in the Administrative Commission

Finally FIEC welcomes the proposal of the Rapporteur of the EP (Amendment 34) aiming at ensuring the involvement of the Social Partners in the Administrative Commission. Their sectoral expertise can provide an important added value in particular as regards all administrative questions and questions of interpretation, the introduction and use of new technologies, the elaboration of proposals aiming at improving and modernising the Community *acquis*.