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**FIEC position on the proposed Regulations establishing a
«European Labour Authority » - COM(2018)131**

FIEC supports the free movement of services and workers within the Internal Market and therefore welcomes any initiative aiming at ensuring a better and a fair mobility. Geographic mobility within the EU provides new market opportunities for companies, employment opportunities for job seekers and can provide answers to the growing skills shortages and mismatches that can be observed in various Member States.

FIEC is actively involved and fully supports policy initiatives aiming at fighting against any form of fraudulent practice and thereby ensuring that the appropriate 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 adequate protection of their workers' rights. This is particularly true in the field of "posting of workers", more than 43% of which takes place in the construction sector¹.

The tasks and competences foreseen for the ELA in the proposed Regulation are extremely wide ranging and some doubts can be raised regarding the added value of such a new structure. We therefore consider that its scope should be narrowed to a smaller number of operational tasks (such as, for example, facilitating possible overall synergies among Member States for a better cooperation; providing logistic support to national authorities in case of joint inspections; etc.) that will need to be prioritised in order to be able to effectively provide a real added value. We also question the costs that such a new structure may imply. In a context where more efficient public spending is being required we wonder if this initiative is really the most-effective way for achieving the objectives pursued.

Finally, the term "Authority" can create legal confusion as regards the effective powers and competences of the ELA towards national authorities. We therefore consider that the term "Agency" would be more appropriate.

Main messages

1) Streamlining the scope of existing EU bodies

The proposal of the Commission highlights the various existing bodies at the EU level that are tackling issues related to mobility (EURES Coordination Office, Technical and Advisory Committee on the Free Movement of Workers, Administrative Commission for the Coordination of Social Security,...) and suggest to integrate several of them into the ELA.

Some similar issues are addressed by different bodies (for ex. "Posting of workers") and a better coordination and streamlining of their activities is certainly welcome. However, this could also have been achieved by a modification of the scope of the concerned bodies and without necessarily establishing a new structure.

¹ *Commission Staff Working Document - Impact Assessment - Accompanying the document Proposal for a Directive amending Directive 96/71/EC concerning the posting of workers - SWD(2016) 52 final*



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It will therefore be extremely important to ensure that the merger of these bodies into the ELA will be done in such a way that it will effectively bring more coherence without losing their specificities, expertise and knowledge.

2) Improving and facilitating access to information (Art. 6)

In the framework of mobility it is extremely important for citizens, companies and workers to know beforehand their obligations and rights, in order to be able to manage possible risks and to comply with requirements and rules.

In this respect the ELA could provide an important added value by giving access to comprehensive, clear and up-to-date information on the applicable legislation.

However, FIEC would like to point out that in the context of “Posting” both the “Enforcement” 2014/67 and the revised “Posting of workers” Directives already foresee an obligation for the Member States to provide a single source of information on the applicable terms and conditions of employment related to cross-border operations. Therefore the role that the ELA could play in improving and facilitating the access to information should not undermine or deprive the Member States from such responsibility.

Currently such single sources of information in several Member States are either lacking or incomplete or unclear. We are therefore extremely worried about how the concerned authorities will effectively be able to comply with the foreseen provisions and objectives, which, according to the proposal of the Commission will need to cover labour rules, living and working conditions.

It is therefore important to clearly define the scope of the role of the ELA as regards the provision of such complementary information, in order to avoid loopholes, duplications or missing elements.

3) Improving cooperation between administrations (Art. 8)

Many of the current forms of frauds observed in the field of cross-border mobility are due to a lack of or to inefficient cooperation between administrations of different countries. Moreover, the existing tools, such for example IMI (Internal Market Information system), have shown their limits.

It is important to underline that in this respect several new provisions have been introduced (including binding deadlines for information provision) in the “Enforcement” Directive (2014/067), in the recently modified “Posting of Workers” Directive and others are currently discussed in the framework of the revision of the “Social Security Coordination” Regulations. Furthermore, several Member States have signed bilateral cooperation agreements.

The ELA could therefore play an active role in facilitating possible overall synergies among Member States for a better cooperation.



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The ELA should also foster the implementation of the EESSI system, which aims at improving the exchange of information on social security between national authorities.

4) Joint inspections (Art. 9 and 10)

Labour inspections are and should remain the competence of national authorities/bodies and the role of the ELA should remain a supporting role (logistic, interpretation, coordinating the contacts, etc.). Furthermore, given the differences of responsibilities, rules and practices as regards the competent national authorities/bodies in the various Member States, it is important to underline that the organisation of a concerted or joint inspection shall be subject to the prior agreement of all participating Member States.

5) Capacity building (Art. 12)

The various Member States are facing different situations in terms of resources and administrative capacities for ensuring the enforcement of existing legislation, in particular in the framework of cross-border activities. Some of them have stronger needs than others and FIEC therefore welcomes the role that the ELA could play in facilitating the exchanges of best practices and in providing support to the regulatory and supervisory authorities of such countries.

6) Mediation (Art. 13)

In its proposal the Commission foresees that the ELA could serve as a platform for mediation for resolving disputes between Member States regarding the application or interpretation of Union law in areas covered by the proposed Regulation.

Such a mediation role at the request of the Member States concerned could be considered as positive. However, it should not replace existing dispute resolution procedures and bodies and it should not interfere with national authorities' competences and responsibilities.

FIEC therefore considers that such a mediation procedure should remain voluntary and that its functioning, including the proposed Mediation Board, must be clarified in the Regulation (appointment of Mediator(s), composition, settlement procedures, time limits, etc.).

7) Cooperation in case of cross-border labour market disruptions (Art. 14)

FIEC considers that the ELA should not get involved in cases of labour market disruptions such as, for example, large-scale restructurings, which should remain a matter for decision by businesses and which can already be addressed by means of other legislations such as the "European Works Councils" Directive (2009/38/EC) for example.



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8) « Stakeholder Group » (Art. 24) : need to ensure the presence of the concerned EU sectoral Social Partners

As EU Social Partner, representing employers, in the EU sectoral Social Dialogue for the construction industry FIEC is sitting in the “Committee of Experts on Posting” and in the “EU Platform for tackling Undeclared Work”, because of the importance for our sector of these issues.

However, the proposal of the Commission foresees that the two above mentioned bodies will be integrated in the ELA. The added value provided by these two bodies has been very positive and it is of high importance for FIEC to be able to continue contributing actively with its expertise on these two topics.

FIEC therefore asks that those EU sectoral Social Partners that are currently sitting in bodies that will be integrated in the ELA can formally also have a seat in the “Stakeholder Group”, in order, on the one hand to provide a continuity to the work done so far in these bodies and, on the other hand, to provide an operational input to the discussions.

9) Setting-up of an « Advisory Group » (AG)

Finally, FIEC welcomes the setting-up of an “Advisory Group” (AG) in which the concerned stakeholders (EU Institutions, EU Agencies, Member States and Social Partners) can discuss and exchange views on the various concerns raised by the proposal, in order to try and ensure a swift establishment and an efficient and effective functioning of a possible future European Labour Authority (ELA).

During its first meeting on 16/5/2018 it was clarified that the AG will not interfere with the ongoing legislative procedure and that it is not an alternative to the co-legislator.