

***Proposal for a Regulation on
Establishing a European Labour Authority
COM (2018) 131 final***

**Position Paper of the
European Social Insurance Platform (ESIP)**

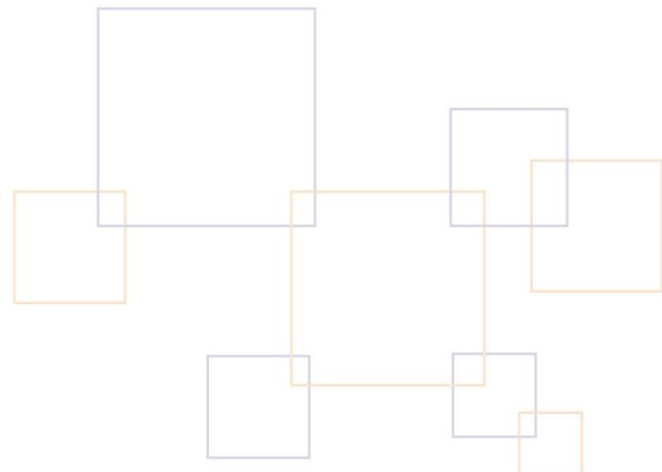
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About the European Social Insurance Platform (ESIP)

The *European Social Insurance Platform (ESIP)* represents over **50 national statutory social insurance organisations** (covering approximately **250 million citizens**) in **16 EU Member States and Switzerland**, active in the field of health insurance, pensions, occupational disease and accident insurance, disability and rehabilitation, family benefits and unemployment insurance. The aims of ESIP and its members are to preserve high profile social security for Europe, to reinforce solidarity-based social insurance systems and to maintain European social protection quality. ESIP builds strategic alliances for developing common positions to influence the European debate and is a consultation forum for the European institutions and other multinational bodies active in the field of social security.

Statement regarding positions submitted by ESIP: *ESIP members support this position in so far as the subject matter lies within their field of competence.*

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General Remarks

On 13 March 2018, the European Commission published a proposal for a Regulation to establish a European Labour Authority (ELA).¹ The proposed authority aims to:

- improve access to information by individuals and employers about their rights and obligations in the areas of labour mobility and social security coordination as well as access to relevant services;
- strengthen operational cooperation between authorities in the cross-border enforcement of relevant Union law, including facilitating joint inspections;
- provide mediation and facilitating solutions in cases of disputes between national authorities and cross-border labour market disruptions, such as a restructuring of companies affecting several Member States.

ESIP has always encouraged the ongoing efforts to deliver on the European Pillar of Social Rights and to prevent social dumping and fraud. Therefore, ESIP welcomes the initiative to ensure fair labour mobility in the internal market. Due to the fact that our members' field of competence is limited to the area of social security **ESIP is not in a position to assess the overall added value of the proposed ELA** especially where its tasks are mainly focused on the area of labour law and labour inspections. Nevertheless, some of our members consider that the envisaged authority could provide operational support (e.g. in the area of cross-border joint inspections) benefiting not only labour inspections but also the area of social security. There are, however, a number of common concerns that we would like to raise with regard to the proposal's possible impact on the area social security coordination.

ELA and its impact on the coordination of social security systems

In its current form, the Commission's proposal is going to significantly change some aspects of the institutional and organisational structure of European social security coordination. Currently governed by the Regulations (EC) 883/2004 and 987/2009, this policy area has a well-established history of 60 years of cross-border administrative cooperation in all branches of social security enabling free movement within the Union and beyond by providing the required social security framework. For decades, this system has relied on the Administrative Commission for the Coordination of Social Security Systems² and its delegated bodies, gathering delegations from all Member States as well as the EEC and Switzerland on a regular basis and providing a reliable forum to resolve all matters related to cross-border social security in 32 European countries. In practice, the working method under the umbrella of the Administrative Commission is largely consensus-based and only in rare cases is majority voting required, contributing to a high level of universal interpretation and implementation of the Regulations in the Member States.

According to Articles 46 and 47 of the proposal **three fundamental working areas of the Administrative Commission** (namely the cross-border settlement of claims between social security institutions, the development of cross-border data processing services and

¹ COM(2018) 131 final.

² Articles 72, 72 Regulation (EC) 883/2004.

mediation between Member States) shall be transferred to the ELA, with only limited explanation as to what extent these changes could possibly contribute to the ELA's objectives. ESIP would therefore like to express its concerns for two main reasons. Firstly, the ongoing cooperation within the Administrative Commission in all three areas is well-established, reliable and well-functioning. This is largely due to the high level of technical, administrative and legal expertise provided by experts from the Member States. The proposed transfer to the ELA could **jeopardise business continuity without guaranteeing a similar level of expertise in the future**. Secondly, it has to be stressed that the current cooperation within those areas is Member State driven, with the European Commission providing organisational and administrative support. This reflects the fundamental working method under the umbrella of the Administrative Commission and the sensitive balance between coordinating national social security systems and respecting national competences in the area of social security. Thus, the proposed shift of competences to the ELA would alter the established governance framework of European social security coordination. Shifting the respective responsibilities and tasks **from Member States driven bodies to a newly established EU agency** is an unprecedented organisational overhaul that **cannot be supported**. Those concerns can be further exemplified by looking at the respective tasks of the Administrative Commission in more detail below.

Cross border settlement of claims and the Audit Board

According to Article 46 (4) of the proposal the Audit Board shall be completely replaced by the ELA. To date the Audit Board represents a well-functioning committee that supervises the proper and speedy settlement of claims between national social security institutions. Its tasks include calculating the annual average costs for some Member States, supervising the claims situation and speeding up the reimbursement of costs as well as submitting proposals to the Administrative Commission for improvement of procedures.³ The members of the Audit Board are national experts from liaison bodies, who have detailed expertise concerning the issues of administrative practice and have direct interest in finding practical solutions. The ongoing efforts within this body have succeeded in significantly reducing arrears between Member States and in improving procedures within the Administrative Commission. Therefore, we believe there is no reason to intervene in these practices. In addition, the tasks carried out by the Audit Board require direct interaction between Member States and therefore should not be transferred to an EU Agency.

Cross border data processing and the Technical Commission

Article 46 (3) of the proposal dismantles the so-called Technical Commission for Data Processing⁴ and shifts the competence for promoting the use of electronic tools between national authorities to the ELA (Article 8 (3) of the proposal). Currently, the Technical Commission develops and prepares common architectural rules for the operation of data-processing services in the field of cross-border social security, in particular as regards data security and the use of standards. The project EESSI (Electronic Exchange of Social Security Information), foresees that all paper-based exchanges between European social security institutions will be replaced by electronic ones supported by a common European

³ Article 74 Regulation (EC) 883/2004.

⁴ Article 73 Regulation (EC) 883/2004.

infrastructure and in line with this All Members States have to make sure that their national IT systems can be connected to the EESSI system by July 2019. Together with the Administrative Commission a sophisticated governance structure based on knowledge and collaboration has been established, mainly based on expert input from the Member States. Transferring the governance structure for the electronic exchange to ELA during this crucial implementation period jeopardises the success of EESSI and cannot be supported. Furthermore, the Commission's proposal doesn't indicate if and how EESSI would be supported by an ELA or how the ELA would be capable of delivering the necessary updates and changes required following the ongoing review of the Coordination Regulations.⁵ Lastly, we recall that these profound technical changes would have a direct impact on the national systems and their finances. The added value of an ELA in this context is unclear to us. Strong guarantees and detailed specifications are needed that will ensure that the current level of expertise provided by Member States within the Technical Commission can be maintained and that the expertise of Member States and their national Liaison Bodies can still be fed into the process.

Mediation and dispute settlement in the area of social security

According to Articles 13, 46 (4)-(5) of the proposal the ELA shall take over the role of mediator in the event of disputes between institutions or authorities regarding the application of Regulation (EC) 883/2004 and Regulation (EC) 987/2009 (). Currently, the concerned Member States can call on the Administrative Commission to intervene if a solution cannot be found within a reasonable period.⁶ Over the last decade the Administrative Commission and its subcommittees have established specialised procedures and committees for particular areas, e.g. the Dialogue and Conciliation Procedure for conflicts relating to applicable legislation in cross-border cases⁷ or the Audit Board's Conciliation Board for mediating disputes with regard to the cross-border settlement of reimbursement claims. In general, conflicts are rare, which is reflective of the overall smooth functioning of cross-border dispute settlement under the umbrella of the Administrative Commission. Dispute settlement in this context requires a fundamental knowledge of the relevant European and national regulatory framework, including bilateral agreements, decisions of the Administrative Commission, European case-law etc. Opinions of the different conciliation boards are discussed by delegations in the Administration Commission and the Audit Board which contributes to a universally accepted understanding and implementation. Sometimes these discussions also result in further decisions of the Administrative Commission and therefore inform and inspire the ongoing evolution of the coordination system. Transferring this task to the ELA would only be acceptable if it provided significant added value to the status quo, e.g. regarding the timeliness and effectiveness of the current conciliation procedures while preserving the Member States-driven character of the Administrative Commission.

⁵ 2016/0397 (COD).

⁶ Article 76 (6) Regulation (EC) 883/2004.

⁷ Decision No A1 of 12 June 2009 concerning the establishment of a dialogue and conciliation procedure concerning the validity of documents, the determination of the applicable legislation and the provision of benefits under Regulation (EC) No 883/2004 of the European Parliament and of the Council (Text of relevance to the EEA and to the EC/Switzerland Agreement), OJ C 106, 24.4.2010, p. 1-4.

Conclusion

ESIP welcomes and supports the objective of the proposal to promote fair labour mobility. **With regard to the area of social security coordination**, however, as it stands the current proposal which foresees an organisational transfer of already well-established Member States-driven cooperation to a European authority in the areas of cross-border settlement of claims, cross-border data processing and mediation or dispute settlement **cannot be supported**.

