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## Social Fairness Package of March 13 2018 on Access to Social Protection and a new European Labour Authority COM(2018) 130 final

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### Resolution of the Presidium<sup>1</sup>

The Presidium of the European Confederation of Independent Trade Unions (CESI) welcomes measures of the European Commission under a new Social Fairness Package. In the applicable social partner consultations of 2017 and 2018, CESI has already advocated agreement with the European Commission on possible added values of:

- an EU-level initiative on **social protection in all forms of employment** to ensure that gaps in formal, effective and adequate minimum levels of social protection that exist across Member States are closed for those that are currently not being covered, such as many people in self-employment or non-standard forms of employment.<sup>2</sup>
- a new **European Labour Authority** to achieve fairer voluntary labour mobility within the EU by addressing
  - fragmented cooperation between Member States on cross-border labour matters,
  - insufficient capacities of national authorities to cooperate and implement existing legislation,
  - a lacking forum for dispute settlement beyond social security coordination and procedures and support for the organisation of joint and cross-border labour inspections,
  - knowledge and information gaps within national authorities regarding cases of human trafficking, undeclared mobile work and fraud in social security and taxation in mobile work, and

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<sup>1</sup> The Social Fairness Package, including its component parts, is still subject to an in-depth assessment by the CESI General Secretariat. The Resolution applies under the reserve of this assessment and may be complemented and amended further, with the approval of the Presidium of CESI.

<sup>2</sup> More details available online at [http://www.cesi.org/wp-content/uploads/2014/03/CESI-Second-phase-social-partner-consultation\\_Access-to-social-protection\\_201801\\_final-1.pdf](http://www.cesi.org/wp-content/uploads/2014/03/CESI-Second-phase-social-partner-consultation_Access-to-social-protection_201801_final-1.pdf)

- insufficient access to (transparent) information for mobile workers and employers about rights and obligations in the field of employment and social security systems in cross-border situations.<sup>3</sup>

**Based on its previous resolutions on the White Paper on the Future of Europe,<sup>4</sup> a Social Dimension as the Key to a Successful EU<sup>5</sup> and the European Pillar of Social Rights<sup>6</sup> the Presidium of CESI notes the following priorities:**

### **Access to social protection for all**

The proposal for a Council Recommendation on access to social protection for workers and the self-employed<sup>7</sup> provides many useful propositions on how to ensure formal, effective and adequate social protection for all forms of employment, including bogus self-employment. Many of the suggestions of CESI -conveyed through a social partner consultation in 2017-2018<sup>8</sup>- have been taken on board.

The Presidium of CESI agrees in particular with:

- a **definition of the term ‘worker’**, based on existing case law of the Court of Justice of the EU, as a *“natural person who for a certain period of time performs services for and under the direction of another person in return for remuneration.”* This allows to grasp all those in de facto employment relationships, including in bogus self-employment, in the scope of the initiative (recital 25, article 7a);
- an **extension of basic aspects of access to social protection** to *“all workers, regardless of the type of their employment relationship”* in terms of mandatory formal coverage (article 8), effective coverage (article 10) and adequate coverage (articles 12 to 14);
- an **accumulation, preservation and transferability of social security entitlements** “across all types of employment statuses” and all economic sectors (article 11);
- **greater transparency towards workers** on the applicable conditions and rules of social security , including *“regularly updated, comprehensive, accessible, user-friendly, and clearly understandable information free of charge about their individual entitlements and obligations”*; and
- provisions to stress that the text should not prevent Member States from *“maintaining or establishing **more advanced provisions on social protection than the ones recommended**”* (recital 35) and that it should neither be used to *“reduce existing rights set out in existing Union legislation”*

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<sup>3</sup> More details available online at [http://www.cesi.org/wp-content/uploads/2014/03/CESI-Ad-hoc-social-partner-consultation\\_European-Labour-Authority\\_20180105\\_final.pdf](http://www.cesi.org/wp-content/uploads/2014/03/CESI-Ad-hoc-social-partner-consultation_European-Labour-Authority_20180105_final.pdf)

<sup>4</sup> Available online at [http://www.cesi.org/wp-content/uploads/2014/03/CESI-Position-Presidium-Future-of-Europe\\_EN\\_final-201712.pdf](http://www.cesi.org/wp-content/uploads/2014/03/CESI-Position-Presidium-Future-of-Europe_EN_final-201712.pdf)

<sup>5</sup> Available online at [http://www.cesi.org/wp-content/uploads/2017/03/CESI\\_Presidium\\_White-Paper-on-the-future-of-the-EU\\_Resolution-20170324\\_EN\\_ADOPTED.pdf](http://www.cesi.org/wp-content/uploads/2017/03/CESI_Presidium_White-Paper-on-the-future-of-the-EU_Resolution-20170324_EN_ADOPTED.pdf)

<sup>6</sup> Available online at [http://www.cesi.org/wp-content/uploads/2014/03/CESI\\_Messages-Social-pillar\\_EN\\_20161201\\_ADOPTED-1.pdf](http://www.cesi.org/wp-content/uploads/2014/03/CESI_Messages-Social-pillar_EN_20161201_ADOPTED-1.pdf)

<sup>7</sup> Available online at <http://ec.europa.eu/social/BlobServlet?docId=19158&langId=en>

<sup>8</sup> Available online at [http://www.cesi.org/wp-content/uploads/2014/03/CESI-Second-phase-social-partner-consultation\\_Access-to-social-protection\\_201801\\_final-1.pdf](http://www.cesi.org/wp-content/uploads/2014/03/CESI-Second-phase-social-partner-consultation_Access-to-social-protection_201801_final-1.pdf)

nor constitute “valid grounds for reducing the general level of protection [already] afforded to workers” (recital 32).

These ideas should not be watered down during the adoption phase of the proposal by the Council.

**The major drawback of the document put forward by the European Commission is its legal nature - a proposal for non-binding recommendations.** The Presidium of CESI fails to relate to the European Commission’s choice of legal instrument (Choice of the instrument in the explanatory memorandum accompanying the proposal). A binding directive would have been preferred, and legally possible under the Treaties.

The Presidium of CESI questions whether proposed enforcement tools such as the European Semester and the Open Method of Coordination (articles 19 and 20) will be sufficiently strong to bring about changes in the Member States. To incentivise Member States to implement the Council recommendation, the Presidium of CESI calls on the European Commission to give flesh to its proposal to support the objectives of the text with EU funding (article 22).

Article 21 foresees an evaluation on the effectiveness of the adopted text by the European Commission after three years with the possibility for the European Commission to decide on “*making further proposals*”. The Presidium of CESI hopes that this backdoor for a Directive yet to come, together with financial incentives under article 22, will **push Member States to implement an ambitious Council recommendation.**

### **A new European Labour Authority**

The Presidium of CESI agrees with the objective of a new European Labour Authority, laid out in articles 2 and of the proposal for a Regulation establishing a European Labour Authority<sup>9</sup> to:

- **facilitate access for individuals and employers to information on their rights** and obligations as well as to relevant services;
- **support cooperation between Member States in the cross-border enforcement of relevant EU law and legislation**, including facilitating joint labour inspections; and
- **mediate and facilitate a solution in cases of cross-border disputes** between national authorities or labour market disruptions.

The Presidium of CESI also approves of the concrete tasks of the new authority to operationalise objectives as outlined in chapter II of the proposal, namely to provide:

- **information on cross-border labour mobility** and on rights and obligations in cross-border situations;
- access to **cross-border labour mobility services**;
- cooperation and **exchange of information between Member States to better enforce relevant EU law and legislation**;

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<sup>9</sup> Available online at <http://ec.europa.eu/social/BlobServlet?docId=19157&langId=en>

- coordination of concerted **joint cross-border labour inspections**;
- analyses and **risk assessments on matters of cross-border labour mobility**;
- support to Member States with **capacity-building on the effective enforcement of relevant EU law and legislation**; and
- **mediation in disputes between Member States' authorities** on the application of relevant EU law and legislation.

The Presidium of CESI welcomes that these tasks reflect many of the ideas supported by CESI during a social partner consultation in January 2018.<sup>10</sup> The Presidium of CESI stresses that, in line with CESI's response to the applicable social partner consultation,<sup>11</sup> the general **mission of the European Labour Authority should be clear and precise and avoid duplications with existing structures at the European and national levels**. The guiding principle should be that less and clear tasks are better than too many and vague ambitions. This means that a new European Labour Authority should focus strictly on fair and rule-based mobile and cross-border work in the EU, which could be translated into a structure around two distinct missions:

- First mission: A new European Labour Authority could be a **coordinative institution** to promote and manage possible European-level synergies among national labour inspectorates, without becoming involved in national-level competences. This means that it should neither replace nor become an administrative duplication of national labour inspectorates, but that it could facilitate and manage more effective joint labour inspections across borders and in different Member States.
- Second mission: The new authority could be a **supervisory authority** to manage and oversee fair and rule-based mobile and cross-border work in the EU, endowed with certain controlling powers in this regard. A new European Labour Authority should thus reflect the spirit of and implement directive 2014/54 which notes the importance of *"a better and more uniform application of the substantive rules governing the freedom of movement of workers under Article 45 TFEU and under Regulation (EU) No 492/2011."*

The Presidium of CESI emphasises that a new European Labour Authority should be adequately staffed and financed to carry out its mission. Where necessary, national labour authorities should step up their **personnel levels** to ensure a seamless cooperation with the European Labour Authority.

Article 24 provides for an **advisory stakeholder group** to the Management Board and Executive Director of the European Labour Authority, composed of *"six representatives of Union-level social partners"* equally representing trade unions and employer's organisations, and two representatives of the Commission. **The Presidium of CESI strongly urges that the stakeholder group is enlarged significantly to make space for an adequate representation of recognised EU sectoral social partners, including those that are not part of the cross-sector EU social partners. All workers count, all workers should be represented.**

<sup>10</sup> Available online at [http://www.cesi.org/wp-content/uploads/2014/03/CESI-Ad-hoc-social-partner-consultation\\_European-Labour-Authority\\_20180105\\_final.pdf](http://www.cesi.org/wp-content/uploads/2014/03/CESI-Ad-hoc-social-partner-consultation_European-Labour-Authority_20180105_final.pdf)

<sup>11</sup> Available online at More details available online at [http://www.cesi.org/wp-content/uploads/2014/03/CESI-Ad-hoc-social-partner-consultation\\_European-Labour-Authority\\_20180105\\_final.pdf](http://www.cesi.org/wp-content/uploads/2014/03/CESI-Ad-hoc-social-partner-consultation_European-Labour-Authority_20180105_final.pdf)