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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 29 January 2014

To: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European  
Union

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Subject: SECOND STAGE CONSULTATION OF SOCIAL PARTNERS under  
Article 154 TFEU on enhancing EU cooperation in the prevention and  
deterrence of undeclared work

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Delegations will find attached document C(2014) 452 final.

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Brussels, 29.1.2014  
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**SECOND STAGE CONSULTATION OF SOCIAL PARTNERS**

**under Article 154 TFEU  
on enhancing EU cooperation in the prevention and deterrence  
of undeclared work**

The purpose of this document is to consult the Social Partners, in accordance with Article 154 (3) TFEU, to obtain their views on the content of the envisaged initiative on enhancing cooperation between Member States in the prevention and deterrence of undeclared work.

The first consultation<sup>1</sup> was carried out from 4 July 2013 to 4 October 2013. In this consultation the Commission identified the main problems related to prevention and deterrence of undeclared work, recalled the most recent activities taken by the Commission and introduced the objectives and possible content of the initiative. The aim of the consultation was to consult management and labour on the possible direction of the Union action.

### **Overview of the results of the first stage consultation**

The Commission received 15 replies from Social Partners: 2 joint replies (TUNED - EUPAE; UNI Europa - EuroCommerce); 3 replies from trade unions (ETUC, CESI, EPSU, ) and 10 replies from employers' organisations (BusinessEurope, UEAPME, CEEP, CER, CoESS, GEOPA-COPA, Eurociett, FIEC, EFCI, HOTREC).

The consultation provided the Commission with detailed positions of the Social Partners regarding several key aspects of the initiative.

Social Partners agreed with the overall problem description and they conveyed to the Commission their opinion that action at EU level is justified with the main objective of assisting national authorities, such as labour inspectorates, social security and tax authorities, to prevent and deter undeclared work. In general, Social Partners agreed that a European Platform could be an appropriate vehicle for enhancing cooperation between Member States.

The Social Partners considered that the main aim of EU level action should be to enhance cooperation between the responsible national authorities, such as labour inspectorates, social security and tax authorities in particular, by exchanging information and best practices, to prevent and deter undeclared work. They suggested additional aspects that could be covered by the Platform, such as enhancing national mechanisms and strengthening European and national tools to improve cross-border prevention, control, inspection and the enforcement of sanctions (ETUC), improving measurement and knowledge of the phenomenon (UEAPME, UNI Europa-EuroCommerce) and supporting more and better enforcement of existing labour standards (EPSU).

Most of the employers' representatives are of the opinion that the platform should be established, but there is no need for a separate new structure. Instead, options such as the creation of a subgroup to an existing group or better coordination of existing groups, could be considered (FIEC, BusinessEurope, CEEP, UNI Europa-EuroCommerce, HOTREC, Geopa-Copa). Amongst Social Partners who suggested better coordination, some also pointed out that Eurofound could be hosting the platform fighting against undeclared work as the agency has at its disposal relevant data both at sectoral and national levels (UNI Europa -

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<sup>1</sup> Consultation document of 4.7.2013 C(2013) 4145

<http://ec.europa.eu/social/main.jsp?catId=89&furtherNews=yes&langId=en&newsId=1936>

Eurocommerce) and if needed its scope could be extended (CER). TUNED-EUPAE encouraged close links between the Platform and Eurofound.

Most of the trade unions (ETUC, EPSU) and some employers representatives (UEAPME, EFCI, Eurociett) favoured the establishment of an independent new body. In addition, its work should be interlinked with the existing groups and committees at EU level to avoid duplication (Eurociett, ETUC, BusinessEurope, UEAPME). Trade unions supported the creation of a new body in order to avoid that only certain facets of the theme would be covered (ETUC, EPSU), which could happen if existing structures would be used. EFCI was of the opinion that the main scope and objectives of the action and the proposed composition of the platform, including all relevant actors, would clearly distinguish this new body from the existing working groups or committees and would bring added value.

Regarding the scope of the Platform, Social Partners considered that cross-border as well as national issues should be covered. Some preferred focussing on cross-border issues at first (EFCI, UEAPME, Geopa-Copa, HOTREC).

Most Social Partners agreed that there are links between undeclared work and bogus self-employment and the latter should therefore be included in the problem description and tackled at EU level (EFCI, FIEC, Geopa-Copa, ETUC, EPSU). CER suggested that also false trainees, false volunteers, false managers and false representatives might be covered. UNI Europa jointly with EuroCommerce and BusinessEurope are of the opinion that bogus self-employment should not be dealt together with undeclared work as they view it as a separate phenomenon and not an undeclared but a wrongly declared activity.

Regarding the tasks of the Platform, many replies stressed that EU level cooperation should be mostly about sharing best practices and mutual learning. The development of specific expertise or a more operational coordination of actions could follow at a later stage. Some Social Partners were of the opinion that the platform should not go further than sharing information and best practices (Geopa-Copa, BusinessEurope).

Regarding the participation in the Platform, a majority of Social Partners stressed that participation in this EU level cooperation should be mandatory for all Member States and that all relevant bodies should be included. BusinessEurope, HOTREC and Geopa-Copa favored voluntary participation of Member States. It was stressed that European cross-sectoral level social partners should be involved in the platform. One organization stated that also social partners representing the sectors particularly affected, should be associated (EPSU).

All Social Partners replied that as undeclared work is mainly the responsibility of the public authorities, social partners could not address the issues raised by the consultation through negotiations.

### **Content of the planned Union initiative**

After analysing the replies of the social partners, the Commission considers that Union action would be advisable.

Different options were considered, such as retaining the status quo, better coordination of the work of the different existing working groups/committees at EU level and the establishment of a European Platform to enhance EU cooperation in the prevention and deterrence of undeclared work. The analysis concluded that the preferred option would be the establishment of a European Platform. The Platform would provide for the participation of all Member States' relevant authorities in the EU level activities and enable regular and operational cooperation on the subject. Other options would not guarantee the participation of all the relevant authorities of all Member States, would limit the cooperation to exchanges of best practices or would not allow for enforcement issues to be addressed appropriately and thereby would not support the holistic approach needed to tackle the problem. In addition, other options would contribute to a lesser degree to the visibility and prioritisation of the problem at EU level.

The in-depth analysis identified two problems where EU level action would provide added value: insufficient cooperation between enforcement authorities of different Member States and difficulties in tackling the cross-border dimension of undeclared work.

To address these problems, the aim of the EU Platform would be to:

- 1) improve cooperation between Member States' different enforcement authorities at EU level to prevent and deter undeclared work more efficiently and effectively,
- 2) improve Member States' different enforcement authorities' technical capacity to tackle cross-border aspects of undeclared work,
- 3) increase Member States' awareness on the urgency of the action and encourage the efforts in the fight against undeclared work.

To achieve these objectives, the main tasks of the Platform would be to share information and best practices between national authorities with a responsibility in the prevention and deterrence of undeclared work, to develop expertise and to carry out an operational coordination of actions. Going beyond sharing information and best practices would contribute especially to tackling cross-border forms of undeclared work.

The platform could, in particular, carry out the following initiatives:

- organise exchange of best practices and information,
- improve the knowledge and measurement of undeclared work, including through establishing a common understanding of the phenomenon as well as through exploring links between undeclared work and bogus self-employment,
- create a knowledge bank and carry out evaluations of different measures used in the Member States,
- develop guidelines for inspectors and guides of good practice,
- adopt common principles and/or standards for inspections,
- identify solutions for data sharing, which would enable the authorities involved to exchange information in a secure and data protection friendly way,

- adopt a common framework for carrying out joint trainings
- adopt regional or EU-wide strategies,
- organise EU wide awareness raising campaigns,
- carry out peer reviews to follow Member States' progress in preventing and fighting undeclared work,
- adopt a common framework for joint operations for inspections and exchange of staff.

The Platform would be chaired by the Commission and would comprise representatives of national public authorities, as well as observers of the ILO, relevant EU agencies, such as Eurofound, and EU level Social Partners, both cross-sectoral and in sectors with high incidence of undeclared work. Member States when appointing their representatives should ensure that these would coordinate all main public authorities which are active at national level in the prevention or deterrence of undeclared work, such as labour inspectorates, social security authorities, tax authorities, employment services and migration authorities. Member States may also, in accordance with national law and/or practice, involve national Social Partners.

The Platform would, when appropriate, cooperate with other EU level relevant bodies and committees, which have a closer link with undeclared work, such as SLIC, EMCO, the Expert Committee on the Posting of Workers and the Administrative Commission on the Coordination for social security systems. It should establish some form of cooperation with Eurofound. The Platform could create working parties for the analysis of specific issues or the development of specific action projects.

### **Request to the Social Partners**

The Commission takes note that the Social Partners have indicated during the 1<sup>st</sup> stage consultation no wish to initiate the negotiation procedure, in accordance with Articles 154 (4) and 155 of TFEU, because the main responsibility for tackling undeclared work lies with national public authorities and that this EU initiative is about cooperation between national enforcement authorities.

In the light of the above, the Commission requests the Social Partners:

- To forward to it an opinion or, where appropriate, a recommendation concerning the objectives and content of the envisaged initiative, in accordance with Article 154 (3) of TFEU.