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From: General Secretariat of the Council  
To: Delegations

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Subject: Improving cooperation in cross-border labour mobility to fight fraud and abuse  
- Presidency steering note

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Delegations will find attached the Presidency note on the above subject, with a view to the lunch discussion at the EPSCO Council on 23 October 2017.

# Improving cooperation in cross-border labour mobility to fight fraud and abuse

EPSCO Lunch debate

23 October 2017

## Context

Being one of the four freedoms on which the internal market is based, labour mobility is a fundamental asset of the European Union. It creates opportunities for workers and benefits the EU at large. In 2015, around 8.5 million EU citizens were residing and employed or looking for work in another Member State than their country of citizenship, comprising 3,6% of the total active population across the EU-28<sup>1</sup>. In the same year, there were an estimated number of 1.9 million posted workers.

## Workers' mobility and ensuring the implementation of European labour standards

More and more discussions about mobility and its benefits focus on the notion of fairness, as well as on compliance with existing rules, enforcing the rule of law and avoiding cases of abuses. At the same time, it means promoting and facilitating the free movement of workers as a fundamental right of the European Union.

In the public domain, there are on-going debates about the impact of mobility both on sending and on receiving countries including potential cases of fraudulent practices. Cases of bogus self-employment, letterbox companies, incorrect posting of workers, undeclared work, etc. are undermining the trust in the EU's capacity to put in place proper legislation, and enforce existing rules. Abuse of and non-compliance with the rules does not end at borders.

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<sup>1</sup> 2016 Annual Report on intra-EU Labour Mobility - <http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=7981&furtherPubs=yes>

On a political level, this has prompted a re-assessment of the balance between economic interests, opportunities and freedoms, on the one hand, and the need to protect social rights, values and principles on the other.

From improving cooperation to the development of a European labour authority.

Instruments have been set up to improve cooperation between Member States and support their actions in tackling transnational fraudulent activities. The main initiatives to combat fraud, in particular in cross-border situations are the 'Enforcement Directive on Posting of Workers' and the 'European Platform to enhance cooperation in tackling Undeclared Work' (UDW).

The '**Enforcement Directive on Posting of Workers**' introduces better measures to prevent and sanction any abuse and circumvention of EU rules on posting. The Directive provides legal and administrative instruments to enable national authorities to identify genuine posting situations. It also allows to exchange relevant information between competent authorities about the identity and situation of workers and undertakings, to carry out inspections and mutually recognise penalties and fines issued.

In the area of 'Posting of Workers' the administrative cooperation between the national authorities involved, in particular through the digital platform (the Internal Market Information system, IMI) for the exchange of documents and proceeding of requests is steadily increasing.

The '**European Platform on Undeclared Work**' aims to encourage closer co-operation between Member States, improve the capacity of different relevant authorities and actors to tackle undeclared work, and increase awareness of issues relating to undeclared work. The Platform started its work in October 2016 and it is beginning to have identifiable impacts. In its work program 2017-2018, the Platform has identified three priority axes, namely: cooperation and joint action, mutual learning, increasing knowledge. In addition to these axes, the Platform has identified two sectors heavily affected by undeclared work (construction and transport) for which specific activities are being developed.

Nevertheless, the scale and complexity of fraudulent activities call for a stronger cooperation in order to restore trust between Member States and in the European Union's capacity to act and remedy these situations damaging the protection of workers' rights.

In the State of the Union address on 13 September 2017 Commission President Mr Juncker announced a proposal for a **European Labour Authority** in 2018. The European Labour Authority (ELA) could become a permanent organisation tasked with the enforcement of rules by coordinating national authorities on cross-border employment issues, including labour inspectorates, social security institutions, employment services, and equality bodies.

Enforcement of labour and social legislation as well as the organisation of cross-border control activities is planned to be included in the scope of the ELA competences to fight against fraud and abuse.

Against this background, Ministers are invited to address the following questions:

1. *With the existing tools and legislation, what needs to be done to make cooperation among Member States more effective in fighting cross-border fraud and abuse?*
  
2. *What could be the added value and scope of activities of a European labour authority?*