



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 15 April 2014  
(OR. en)**

**9008/14  
ADD 2**

**SOC 297  
JAI 236  
MIGR 50  
ECOFIN 398  
COMPET 243  
CODEC 1120**

**COVER NOTE**

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

date of receipt: 10 April 2014

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

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No. Cion doc.: SWD(2014) 138 final

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Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE  
SUMMARY OF THE IMPACT ASSESSMENT Accompanying the  
document Proposal for a Decision of the European Parliament and of the  
Council on establishing a European Platform to enhance cooperation in the  
prevention and deterrence of undeclared work

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Delegations will find attached document SWD(2014) 138 final.

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Encl.: SWD(2014) 138 final



EUROPEAN  
COMMISSION

Brussels, 9.4.2014  
SWD(2014) 138 final

**COMMISSION STAFF WORKING DOCUMENT**

**EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT**

*Accompanying the document*

**Proposal for a Decision of the European Parliament and of the Council**

**on establishing a European Platform to enhance cooperation in the prevention and  
deterrence of undeclared work**

{ COM(2014) 221 final }

{ SWD(2014) 137 final }

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## 1. BACKGROUND

The concern with high levels of undeclared work is high on the EU policy agenda, especially in relation to job creation, job quality and fiscal consolidation.

The Europe 2020 Strategy for smart, sustainable and inclusive growth sets a target of 75% of 20-64-year olds in employment by 2020<sup>1</sup>. In order to catalyse progress towards the target, the Commission adopted the Flagship Initiative "An agenda for new skills and jobs"<sup>2</sup>, which stressed the need to move from informal or undeclared work to regular employment.

The Employment Package<sup>3</sup>, adopted in April 2012, the Commission additionally underlined that transformation of informal or undeclared work into regular employment could have a positive impact on productivity, working standards and, in the long term, skills development. It highlighted the need for improved cooperation among Member States and announced the launch of consultations on setting up an EU-level platform between labour inspectorates and other enforcement bodies to combat undeclared work, aimed at improving cooperation, sharing best practices and identifying common principles for inspections.

In 2012 and 2013, several Member States received Country Specific Recommendations concerning undeclared work, the shadow economy, tax evasion and/or tax compliance.

In the Employment Guideline<sup>4</sup> Nr 7 on "Increasing labour market participation of women and men, reducing structural unemployment and promoting job quality", Member States are urged to step up social dialogue and tackle labour market segmentation with measures addressing precarious employment, underemployment and undeclared work.

The Annual Growth Survey 2013<sup>5</sup> states that social partners have a key role to play alongside public authorities to fight undeclared work in order to prepare for a job rich recovery. In the context of tackling unemployment and the social consequences

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<sup>1</sup> Communication from the Commission Europe 2020 – A Strategy for smart, sustainable and inclusive growth, COM (2010)2020 of 3 March 2010  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF>

<sup>2</sup> Communication from the Commission "An agenda for new skills and jobs: A European contribution towards full employment" COM 2010(682) of 23 November 2010  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0682:EN:NOT>

<sup>3</sup> Communication from the Commission "Towards a job-rich recovery COM (2012)173 of 18 April 2012  
<http://ec.europa.eu/social/main.jsp?langId=en&catId=101&newsId=1270&furtherNews=yes>

<sup>4</sup> 2010/707/EU Council Decision of 21 October 2010 on guidelines for employment policies of the Member States" <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010D0707:EN:NOT>

<sup>5</sup> Communication from the Commission "Annual Growth Survey 2013" COM (2012)750 of 28 November 2012  
[http://ec.europa.eu/europe2020/making-it-happen/annual-growth-surveys/index\\_en.htm](http://ec.europa.eu/europe2020/making-it-happen/annual-growth-surveys/index_en.htm)

of the crisis, the Annual Growth Survey 2014<sup>6</sup>, highlights the need to reinforce the fight against undeclared work.

## 2. PROBLEM DEFINITION

In the 2007 Commission Communication<sup>7</sup>, undeclared work is defined as "any paid activities that are lawful as regards their nature but not declared to public authorities, taking account differences in the regulatory systems of the Member States".

Undeclared work is influenced by a wide range of economic, social, institutional and cultural factors. It is held responsible for obstructing growth-oriented economic, budgetary and social policies, and in particular lowering quality of work, putting at risk the financial sustainability of social protection systems and undermining the competitive environment for businesses<sup>8</sup>.

The fact that undeclared work is not observed or registered, and defined differently in national legislation, makes it difficult to obtain reliable estimates of how widespread it is across Member States. Different methods have been used to approach and measure undeclared work (they are explained in detail in Annex II).

Generally three types of undeclared work can be defined. The first category is that of undeclared work in a formal enterprise, including so called "underdeclared work" in form of "envelope wages" (where only a part of the salary is paid officially, while the rest is given to the employee in an envelope) and situations where the employee is declared to work part-time, but works in reality full-time. Secondly, there exists undeclared own account or self-employed work, providing services either to a formal enterprise or other clients, such as households. A third type of undeclared work is providing goods and services to neighbours, family, friends or acquaintances, which can involve construction or repair works, cleaning, provision of childcare or care for the elderly, sometimes provided as a sort of mutual aid. This third category is not at the heart of this initiative.

The abuse of the status of self-employed, either at national level or in cross-border situations, is frequently associated with undeclared work. Bogus self-employment occurs when a person is classified as self-employed instead of employed, in order to avoid certain obligations arising from laws and practices applicable to employees, such as labour regulations and the payment of taxes or social security contributions. It could be argued that bogus self-employment is misdeclared activity and as such cannot be seen as undeclared work. However, bogus self-employment can have negative consequences, in terms of health and safety and social security coverage of

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<sup>6</sup> Communication from the Commission "Annual growth survey 2014" COM(2013)800 [http://ec.europa.eu/europe2020/pdf/2014/ags2014\\_en.pdf](http://ec.europa.eu/europe2020/pdf/2014/ags2014_en.pdf)

See also Draft Joint Employment Report accompanying the Communication from the Commission on Annual Growth Survey 2014 [http://ec.europa.eu/europe2020/pdf/2014/jer2014\\_en.pdf](http://ec.europa.eu/europe2020/pdf/2014/jer2014_en.pdf)

<sup>7</sup>"Stepping up the fight against undeclared work" COM(2007)628, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007DC0628:EN:HTML>

<sup>8</sup> Regioplan, 2010

the workers concerned, as well as on tax revenue, although normally less harmful than undeclared work.

The growth of the informal economy is often seen as a reaction to imperfections in the formal labour market<sup>9</sup>. Circumstances that lead to these imperfections can be the high cost of labour, the shortage of labour (quantity and quality), the shortage of jobs, or the inflexibility of the labour market. In addition, when looking at the causes of undeclared work, the degree of trust people have in government and government agencies and the degree of inclusion people experience in the society, is of great importance. When there is very little identification with government or society at large, people will more easily act against common rules<sup>10</sup>. Other influential factors are the transparency of legislation and its enforcement. If control mechanisms are unclear, inefficient or absent, people will be more prone to evade taxes by performing undeclared work.

The consequences of undeclared work are often poorer working conditions. Employment rights, such as annual leave and working time, health and safety obligations are not respected. The training needs of undeclared workers are not taken into account. They have less employment security, they might not have the right for redundancy payments and unemployment benefits, as well as to other benefits due to the fact that no social security or healthcare contributions have been paid for them/by them. In addition, as no pension contributions are paid, their pension rights are decreased. Due to the reason of not having a legitimate income, their access to loans might be limited.

Employers who are not declaring the work done by their workers are creating unfair competition between them and companies respecting the rules. Such distortion can also have a cross-border dimension in cases where in one country undeclared work is systematically fought, while in a neighbouring country public authorities do not prioritise this problem. These negative consequences are not only borne by competitors and employees, potentially also the enterprise as such might – in the long run – be faced with disadvantages. Its ability to access credit, which is needed to develop the business further, can be more limited.

## **2.1. Governance – the problem requiring action**

The main responsibility when tackling undeclared work lies with the Member States. However, EU level action can play a complementary role and help Member States by addressing the following aspects:

- (1) Insufficient cooperation between enforcement authorities of different Member States in the prevention and deterrence of undeclared work.

Fight against undeclared work relies mostly on three types of enforcement bodies: a) labour inspectorates to address abusive behaviour regarding working conditions

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<sup>9</sup> Undeclared labour in Europe: Towards an integrated approach of combatting undeclared labour, Regioplan 2001 [http://www.lex.unict.it/eurolabor/ricerca/dossier/dossier7/cap6/mateman\\_renooy2001.pdf](http://www.lex.unict.it/eurolabor/ricerca/dossier/dossier7/cap6/mateman_renooy2001.pdf)

<sup>10</sup> Regioplan 2001

and/or health and safety norms, b) social security inspectorates fighting fraud on social insurance contributions, and c) tax authorities to deal with tax evasion. In some cases, social partners<sup>11</sup> are also involved in these tasks. In addition, in some Member States, customs authorities, migration bodies, the police and the public prosecutor's office are involved (See Annex III). In some cases new authorities, inter-ministerial agencies, national steering groups and tripartite committees have been created<sup>12</sup>.

Member States do not sufficiently use the experience collected in other Member States. They do not learn from each other how to avoid or to reduce undeclared work.

(2) Difficulties in tackling the international (cross-border) dimension of undeclared work.

The mobility of workers across Member States constitutes a fundamental freedom within the Union. Several initiatives are on-going to support the exercise of this right. Using cross-border situations to disguise undeclared work, threatens discrediting this fundamental right. Identifying the employment status of a person from another Member State, verifying the rights and obligations applicable to that worker, is a very difficult task for the authorities. In order to detect undeclared work in cross-border situations, there is an increased need for cooperation between Member States.

### **3. THE EU RIGHT TO ACT AND SUBSIDIARITY**

Preventing and deterring undeclared work contributes to a better enforcement of EU and national law, especially in the areas of employment, labour law, health and safety and coordination of social security. Fighting undeclared work related to cross-border mobility is essential to maintain the credibility of the fundamental right to free movement.

It would contribute to the creation of formal jobs, increase the quality of working conditions, and help to increase inclusion to the labour market and overall social inclusion.

The EU has the right to act in the field of undeclared work based on Social Policy articles in the TFEU, in particular Article 153 allows for the adoption of an EU initiative with the main objective to promote employment and improve working conditions by supporting Member States efforts in the prevention and deterrence of undeclared work. It will allow for the cooperation between Member States by exchanging information and best practices, developing expertise and more

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<sup>11</sup> In Germany agreements between Federal Ministri of Finace and social partners in construction, painters and industrial textile services sectors, in Bulgaria the establishment of the national "Rules for business" centre and in Luxembourg introduction of an ID card for every worker on the construction site.

<sup>12</sup> National Employment Rights Agency (NERA) in Ireland, Inspectorate SZW (reorganised in 2012) in Netherlands, Social Information and Investigation Service in Belgium, Inter-administrative unit to fight illegal work (CIALTI) in Luxembourg, Inter-ministerial delegation for fight against illegal work DLNF in France. ILO/LABADMIN, 2013

operational coordination of actions involving the enforcement authorities covering all the pillars of undeclared work, in particular: labour, social and tax.

The EU competences lie in addressing the cross-border aspects of distortion and destabilisation linked to high levels of undeclared work, the benefits of mutual learning and the need for cooperation across borders to fight some forms of undeclared work.

The challenges of tackling undeclared work, such as detection of undeclared work and lack of cooperation between different enforcement authorities, are common to all Member States. Action at the EU level has the potential to improve effectiveness and efficiency of Member States' actions when tackling undeclared work. The EU can support exchange of good practices as well as more advanced coordination of actions.

The EU action would support the efforts of Member States by enhancing cooperation in the deterrence and prevention of undeclared work at EU level, making it more effective and efficient and thereby adding value to Member States' actions.

#### **4. OBJECTIVES**

##### **4.1. General objectives**

The general policy objective is to support Member States in their efforts to prevent and deter undeclared work.

##### **4.2. Specific objectives**

Within this general framework, the specific objectives of this initiative are:

- (1) To improve cooperation between Member States different enforcement authorities at EU level to prevent and deter undeclared work more efficiently and effectively.
- (2) To improve Member States' different enforcement authorities technical capacity to tackle cross-border aspects of undeclared work.
- (3) To increase Member States' awareness of the urgency of the problem and to encourage Member States to step up their efforts to fight undeclared work.

##### **4.3. Operational objectives**

On the operational level the initiative aims at the following:

- (1) Providing a forum for experts of different Member States to make contacts, share information and best practices. The deliverables which the forum would strive to achieve could be: creation of a "knowledge bank" of different practices used in order to prevent and/or deter undeclared work; development of guidelines for inspectors or of guides of good practice e.g. on how to



conduct inspections to detect undeclared work; adoption of common principles and/or standards for inspections.

- (2) Providing a framework to develop expertise with the possible objective of adopting a common framework and carrying out joint trainings; establishing a research facility for conducting evaluations of different policy measures identified in the "knowledge bank".
- (3) Developing a mechanism for a more operational coordination of actions. The functioning of the mechanism could lead to: identifying solutions for data sharing; adopting regional or EU wide strategies; organising EU wide awareness raising campaigns; organising peer reviews to follow Member States progress when fighting undeclared work and agreeing on a common framework for joint operations for inspections and exchange of staff.

## **5. POLICY OPTIONS**

Five policy options have been analysed during the Impact Assessment:

Policy option 1: No new action. No action would be taken beyond the existing working groups and initiatives.

Policy option 2: Better coordination of the work of the different existing working groups/committees at EU level. Several EU level groups discuss topics linked to undeclared work. DG EMPL would nominate a coordinator for the discussion and activities of the different groupings in respect to undeclared work.

Policy option 3: A European Platform as an individual body with voluntary membership. The Commission sets up a platform which comprises of representatives of Member States' enforcement bodies and other stakeholders, such as social partners. Member States have to decide whether they participate or not in the platform.

Policy option 4: A European Platform as an individual body with mandatory membership. The Commission sets up a platform which comprises of representatives of Member States' enforcement bodies and other stakeholders, such as social partners. Member States are automatically members of the platform.

Policy option 5: Attaching the platform to an existing body. A possible way forward could be to entrust the European Foundation for the Improvement of Living and Working Conditions (EURFOUND) in Dublin with this task.

Other options such as the creation of a new decentralised agency responsible for the enforcement of EU law and fight against undeclared work were looked at, but discarded as not realistic at this point in time.

## **6. ANALYSIS OF IMPACTS**

The initiative under discussion concerns governance issues. Overall good governance is expected to have an impact on the social situation and the economic performance. However, the incidence chain from the establishment of a platform against undeclared work to reduced undeclared work is rather long. It was impossible to establish a sufficiently direct link between the functioning of a platform, the reduction of undeclared work and economic performance or social wellbeing. The difficult measurability of undeclared work makes this particularly difficult. Therefore, the analysis limits itself to the question to what extent the different options achieve the specific objectives. Furthermore, the costs directly linked to the establishment of such a platform are described. As the objectives were defined in such a way as to support socio-economic wellbeing, the most effective and economic achievement of the objectives is considered as the best alternative from a socio-economic perspective.

### **6.1. Option 1: No new action**

Keeping the status quo suggests that although the Commission has identified the seriousness of the problem, it does not really intervene on the subject, which could be equalised with not being serious about tackling the phenomenon.

### **6.2. Option 2: Better coordination of the different existing working groups/committees at EU level**

Overall a very limited impact is to be expected. The problems related to visibility and hesitation to prioritise might be addressed to some extent because of the high level political support. The objectives of interdisciplinary and cross-border learning and coordination will hardly be achieved. It will be very difficult to get a holistic picture of the problem.

### **6.3. Option 3: Individual body with voluntary membership**

The improvements linked to this option depend very much on the question how many Member States will decide to participate in this group. Before setting up the group it should be ensured that a broad majority of Member States (if not all) participate. As Member States have in discussions expressed a preference for this option and are obliged to show activity against undeclared work, it is realistic to assume that participation would be high even in a voluntary group. However, the uncertainty whether all Member States would participate or not, remains and as such presents a major shortcoming of this option. If – in a very positive scenario – all Member States participate, there is only one difference as compared to a mandatory membership: Member States will have decided to participate voluntarily, i.e. they have committed themselves.

#### **6.4. Option 4: Individual body with mandatory membership**

The strength of this option lies in including all Member States from the start. Since it does not involve a decision on whether to join or not, some Member States could be less committed to engage in more operational coordination of actions or developing expertise. They might want to limit the cooperation to the exchange of information and best practices without proceeding to substantial cross-border cooperation.

#### **6.5. Option 5: Integrating the fight against undeclared work into Eurofound**

As Eurofound's tasks are limited to research and development of projects to provide knowledge and support to EU policies, it can be expected that this might become the limits for the activities of the Platform. Its activities would be mainly related to exchange of best practices and information and contribute to the development of expertise.

### **7. COMPARISON OF THE OPTIONS**

The comparison was done based on the analysis of impacts in Chapter 6. According to this while Option 1 is the baseline, meaning that there are no significant changes introduced, options 2 and 5 bring about some, but very limited, improvements at very low costs.

Options 3 and 4 generate almost similar costs (costs for Option 3 have been calculated assuming that all Member States take part of the Platform): yearly costs for the Commission staff, organising the work of Platform and the meetings would not exceed EUR 600 000 and yearly operational costs related to different tasks carried out by the Platform would not exceed 2,1 million EUR. In addition, the effectiveness of options 3 and 4 would be similar if one assumes that all Member States take part of the voluntary cooperation foreseen with Option 3.

Hence, clear advantage of option 4 as compared to option 3 is that the success of the voluntary platform depends very much on the willingness of Member States to become a member in the first place. Thus, there is an additional element of uncertainty as compared to option 4. The clear advantage of option 4 as compared to option 3 is the mandatory participation. It is considered to be a necessary element of the Platform, because cooperation to tackle cross-border aspects of undeclared work, which is one of the essential objectives of the initiative, could not be fully achieved if some Member States were in and others out.

Therefore Option 4 is considered as overall preferable. It can be realised by adopting a Decision of the European Parliament and the Council based on Art 153 (2) (a) TFEU.

### **8. MONITORING AND EVALUATION**

The Commission would regularly report to the Council and the European Parliament on the work of the Platform. These reports would inform about the detailed work

programmes of the platform, the deliverables and the frequency of meetings.

Four years after the Decision establishing the Platform entered into force it will be evaluated. The evaluation will, based on the regular reporting plus further research, assess to what extent the Platform has contributed to the achievement of the specific objectives and whether there has been progress towards the general objective. This report will be submitted to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions.