



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 11 June 2014**

**10887/14**

---

**Interinstitutional File:  
2014/0124 (COD)**

---

**SOC 515  
JAI 512  
MIGR 101  
ECOFIN 663  
COMPET 411  
CODEC 1479  
INST 284  
PARLNAT 178**

**COVER NOTE**

---

from: The House of Commons  
date of receipt : 9 June 2014  
to: President of the Council of the European Union

---

Subject: 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  
[doc. 9008/14 SOC 297 JAI 236 MIGR 50 ECOFIN 398 COMPET 243 CODEC 1120- COM(2014) 221 final]  
- *Opinion on the application of the Principles of Subsidiarity and Proportionality*<sup>1</sup>

---

Delegations will find attached the above mentioned opinion.

---

<sup>1</sup> For available translations of this opinion see the interparliamentary EU information exchange site (IPEX) at the following address: <http://www.ipex.eu/IPEXL-WEB/search.do>



## HOUSE OF COMMONS

President of the Council of the European Union  
Council of the European Union  
Rue de la Loi 175  
1048 Brussels  
Belgium

By email: [sj6.parlnat@consilium.europa.eu](mailto:sj6.parlnat@consilium.europa.eu)  
[dri.parlnat@consilium.europa.eu](mailto:dri.parlnat@consilium.europa.eu)

9 June 2014

*Dear Mr President,*

EUROPEAN UNION DOCUMENT NO. 9008/14, A DRAFT 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

On 9 June 2014, the House of Commons of the United Kingdom Parliament resolved as follows:

That this House considers that the draft Decision on establishing a European Platform to enhance cooperation in the prevention and deterrence of undeclared work (European Union Document No. 9008/14 and Addenda 1 and 2) does not comply with the principle of subsidiarity for the reasons set out in the annex to Chapter One of the Forty-ninth Report of the European Scrutiny Committee (HC 83-xliv); and, in accordance with Article 6 of Protocol (No.2) annexed to the EU Treaties on the application of the principles of subsidiarity and proportionality, instructs the Clerk of the House to forward this reasoned opinion to the Presidents of the European Institutions.

I enclose the relevant extract of the report.

*Yours sincerely,*  
*Robert Rogers*

Sir Robert Rogers KCB, Clerk of the House of Commons  
London SW1A 0AA T: 020 7219 1310/3758

## 1 Undeclared work

(35967) 9008/14 + ADDs 1–2 COM(14) 221	Draft Decision on establishing a European Platform to enhance cooperation in the prevention and deterrence of undeclared work
---	---

<i>Legal base</i>	Article 153(2)(a) TFEU; co-decision; QMV
<i>Document originated</i>	9 April 2014
<i>Deposited in Parliament</i>	17 April 2014
<i>Department</i>	Business, Innovation and Skills
<i>Basis of consideration</i>	EM of 30 April 2014
<i>Previous Committee Report</i>	None
<i>Discussion in Council</i>	No date set
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Not cleared; further information requested; for debate on the floor of the House on a Reasoned Opinion before 9 June 2014

### Background

1.1 The Commission defines undeclared work as “any paid activities that are lawful as regards their nature but not declared to public authorities, taking account of differences in the regulatory systems of Member States”.<sup>1</sup> Undeclared work forms part of the informal or “shadow” economy and encompasses a number of different situations, including:

- the procurement or provision of services or the supply of goods by individuals whose activities and income are not declared;
- under-declared work where only part of an individual’s wage or salary is paid officially, with the rest paid in the form of a “back hander”; and
- mis-use of the status of a self-employed worker in order to avoid or mitigate the application of labour laws or payment of taxes and social security contributions.

1.2 All forms of undeclared work reduce the tax base and diminish public revenue derived from income taxes and social security contributions. In addition, undeclared work is often equated with precarious forms of employment, poor or unsafe working conditions, and unfair competition. In some cases, undeclared work may be undertaken at the same time as claiming unemployment or social security benefits.

1.3 The prevalence of undeclared work is difficult to measure, not least because Member States define and tackle the problem differently and there is a lack of reliable and comparable data. The sectors most frequently associated with undeclared work include

---

<sup>1</sup> (29042) 14369/07; Commission Communication on *Stepping up the fight against undeclared work*.

construction, domestic or industrial cleaning services, childcare and care of the elderly, personal services, private security, agriculture, and the catering industry.<sup>2</sup> The larger the shadow economy, the less likely the EU and Member States are to achieve the target of a 75% employment rate for those aged between 20-64 set out in the EU's Europe 2020 Strategy. The Commission believes that high levels of undeclared work will also affect other EU policy priorities, notably the drive towards fiscal consolidation, the creation of good quality and sustainable jobs, and the proper application of EU and national employment, labour, health and safety, and social security laws. Moreover, the Commission suggests that:

“Fighting undeclared work related to cross-border mobility is essential to maintain the credibility of the fundamental right to free movement.”<sup>3</sup>

1.4 The Commission's 2012 Communication, *Towards a job-rich recovery*, highlighted the need to transform undeclared work into regular employment and called for improved cooperation between Member States. It said it would initiate a consultation on establishing “an EU-level platform between labour inspectorates and other enforcement bodies to combat undeclared work” which would share best practice and identify common principles for inspections.<sup>4</sup> In addition, the EU's Employment Guidelines (which are intended to guide Member States' employment policies) urge Member States to “tackle labour market segmentation with measures addressing precarious employment, underemployment and undeclared work”.<sup>5</sup> The Commission's Annual Growth Survey for 2014 similarly views action to combat undeclared work as an important component of job creation measures.<sup>6</sup>

### The draft Council Decision

1.5 Following consultation of Member States, EU social partners (representatives of business and trade unions), as well as the publication of various studies and Eurobarometer opinion surveys, the Commission has proposed a draft Decision establishing an EU “Platform” to enhance cooperation in preventing and deterring undeclared work. The Commission recognises that Member States have the primary responsibility for tackling undeclared work, but considers that more structured cooperation would reduce incentives for employers to use, and workers to engage in, undeclared work. It suggests that existing cooperation between national authorities operates on a piecemeal basis, with a variety of EU committees — such as the Senior Labour Inspectors Committee, the Administrative Commission on social security coordination, the Committee of Experts on the Posting of Workers, and the Employment and Social Protection Committees — dealing with aspects of undeclared work on an *ad hoc* basis.

1.6 The draft Decision would provide a formal mechanism at EU level dedicated to strengthening cross-border cooperation on undeclared work. The proposed EU Platform would comprise national enforcement authorities designated by each Member State, the

2 See p.4 of the Commission's explanatory memorandum accompanying the draft Decision.

3 See p.24 of ADD 1.

4 9309/12, (33856); HC 86-vi (2012–13), chapter 13 (27 June 2012).

5 See Council Decision 2010/707/EU establishing Guidelines for the employment policies of the Member States, OJ No. L 308, 24.11.2010.

6 15803/13 (35532); HC 83-xxiv (2013–14), chapter 3 (11 December 2013).

Commission, and observers representing EU social partners, the European Foundation for the Improvement of Living and Working Conditions, the European Agency for Safety and Health at Work, the International Labour Organisation, and EEA States (Iceland, Norway and Liechtenstein).

1.7 The EU Platform would have three objectives:

- improving cooperation between Member States' different enforcement authorities at EU level to prevent and deter undeclared work more effectively and efficiently;
- strengthening the technical capacity of Member States' enforcement authorities to tackle cross-border aspects of undeclared work; and
- increasing public awareness of the need for action and encouraging Member States to intensify their efforts to tackle undeclared work.

1.8 It would seek to achieve these objectives through the exchange of information and best practice, the development of expertise and analysis, and the coordination of cross-border operational action. The draft Decision identifies a series of tasks to be undertaken by the Platform. These include:

- the development of common concepts and measurement tools;
- the creation of a “knowledge bank” of different practices used to deter and prevent undeclared work;
- the adoption of non-binding guidelines for inspectors, the publication of good practice handbooks, and the development of common principles for inspections;
- the enhancement of Member States' technical capacity to tackle cross-border aspects of undeclared work and the adoption of a common framework for joint inspection operations and for the exchange of staff;
- improved data sharing;
- the development of a permanent training capacity for enforcement authorities and the adoption of a common framework for joint training;
- the introduction of a system of peer review and support for the implementation of country-specific recommendations (issued as part of the European Semester) concerning undeclared work; and
- the adoption of EU-wide or regional strategies (including at sectoral level) and campaigns to raise awareness of the problems associated with undeclared work.

1.9 Participation in the EU Platform would be mandatory for all Member States. Each would be required to designate a single point of contact to participate in the Platform who would liaise with all national enforcement authorities responsible for tackling undeclared work (for example, labour inspectorates, social security or tax authorities, employment services and migration authorities). The Platform would adopt two-year work programmes and cooperate with other relevant EU level expert groups and committees. It would be

funded by the EU Programme for Employment and Social Innovation, with the Commission anticipating commitments of around €10.6 million for the period 2014–20.

### *The legal base for EU action*

1.10 The main objectives of the EU Platform are to promote employment and improve working conditions by supporting Member States' efforts to prevent and deter undeclared work.<sup>7</sup> These goals are reflected in Article 151 of the Treaty on the Functioning of the European Union (TFEU), which describes the EU's social policy objectives, and in Article 153(1), which sets out the areas of activity in which the EU has competence to “support and complement” action taken by Member States. The Commission highlights, in particular, EU competence in relation to working conditions, the integration of individuals excluded from the labour market, and measures to combat social exclusion.

1.11 The legal base for the draft Decision is Article 153(2)(a) TFEU. It provides for the adoption of measures “designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States”. Action based on Article 153(2)(a) must concern the social policy objectives described in Article 151 TFEU as well as one or more of the specific fields of activity set out in Article 153(1) TFEU.

### *The justification for EU action and compliance with the subsidiarity principle*

1.12 The Commission describes existing cooperation at EU level as “patchy” as there is no mechanism to require Member States to take part in multilateral cooperation projects to tackle undeclared work. It considers that the creation of an EU Platform requiring the mandatory participation of all relevant national enforcement authorities would make existing enforcement efforts more effective and efficient and add “significant value over and above what Member States would be able to achieve on their own”.<sup>8</sup> In particular:

“As the challenges are common to Member States, and as undeclared work often has a cross-border dimension, EU level action can play an important role by reinforcing cooperation between enforcement authorities within and between different Member States in the prevention and deterrence of undeclared work.”<sup>9</sup>

1.13 The Commission suggests that national enforcement bodies in many Member States encounter difficulties when seeking to identify or sanction cases of undeclared work which have a cross-border dimension, not least because some (for example, labour inspectorates or tax authorities) have no forum in which to meet and exchange information at EU level. The creation of an EU Platform would not only facilitate communication and cooperation in a cross-border context, but would also demonstrate a shared political commitment to tackling undeclared work.

---

7 See p.8 of the Commission's explanatory memorandum accompanying the draft Decision.

8 See p.24 of ADD 1.

9 See p.4 of the Commission's explanatory memorandum accompanying the draft Decision.

1.14 The Commission considers that the draft Decision complies with the principle of proportionality on the grounds that it is “designed to encourage cooperation between Member States without any harmonisation” of their laws.<sup>10</sup>

### The Government’s view

1.15 The Minister for Employment Relations and Consumer Affairs (Jenny Willott) says that the Government takes seriously the issue of undeclared work, particularly in relation to tax evasion and benefit fraud, and outlines the following measures it has put in place to tackle the problem:

- action to enforce the statutory rights of all workers who are legally entitled to work in the UK, including through enforcement of the national minimum wage and support for the role of the Gangmasters Licensing Authority in preventing the exploitation of workers in the agricultural and horticultural sector;
- the creation of specialist teams within Her Majesty’s Revenue and Customs (HMRC) to identify and tackle those operating within the hidden economy, including through collaborative work with other enforcement agencies;
- the implementation of the Government’s strategy to tackle fraud and error in the tax credit and benefits systems and the creation of the Fraud, Error and Debt Taskforce to provide strategic oversight and direction of cross-government fraud, error, debt and grant initiatives; and
- the strengthening of sanctions for employers who take on illegal workers and the entry into force, in May 2014, of measures to “prevent illegal migrants from accessing and abusing public services and [to] reform the removals and appeals system — making it simpler to remove those with no right to be in the UK; and [to] end the abuse of Article 8 — the right to respect for private and family life. Parallel changes to secondary legislation will also double the maximum penalty for employing an illegal worker to £20,000 and strengthen the civil penalty scheme as a whole, including by simplifying the checks employers must perform.”<sup>11</sup>

1.16 The Minister adds that the Government is already involved in collaborative measures on benefit fraud and is willing to share its expertise and analysis, but questions what benefits would accrue to the UK from its participation in the proposed EU Platform or what the UK would be required to contribute. She explains that the Government:

“is not yet persuaded that Article 153 provides a sound legal basis for a mandatory requirement for Member States to participate in a Platform.”<sup>12</sup>

1.17 Nor is the Government persuaded that the draft Decision respects the principle of subsidiarity on the grounds that participation should be on a voluntary rather than a

<sup>10</sup> See p.9 of the Commission’s explanatory memorandum accompanying the draft Decision.

<sup>11</sup> See para 16 of the Minister’s Explanatory Memorandum.

<sup>12</sup> See para 10 of the Minister’s Explanatory Memorandum.

mandatory basis. The Minister notes that the UK already takes part in a number of voluntary initiatives involving Member States, including:

“the Mutual Learning Programme, ICENUW (Implementing Cooperation in a European Network against Undeclared Work), and CIBELES (Convergence of Inspectorates building a European Level Enforcement System). The H5NCP project, a working party of the Administrative Commission for the Coordination of Social Security Systems, made up of anti-fraud policy specialists from Member States, provides an electronic forum to exchange information and good practice on combating social security fraud between Member States.”<sup>13</sup>

1.18 The Minister intends to raise the Government’s competence and subsidiarity concerns during the course of negotiations. She also questions the proportionality of the approach proposed by the Commission in light of the OECD’s Employment Outlook 2005 which estimated that the informal economy within the UK only accounts for 1.7% of GDP, one of the lowest levels amongst the countries sampled.

1.19 The Minister refers us to the document accompanying the draft Decision (ADD 2) which summarises the Commission’s Impact Assessment and includes the following observations:

“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 socioeconomic perspective.”<sup>14</sup>

1.20 The Minister concludes from this that the Commission’s proposals:

“lack the empirical evidence base or analysis of structural failure at Member State or Union level which would support a case for intervention.”<sup>15</sup>

## Conclusion

1.21 The Minister’s Explanatory Memorandum raises three concerns:

- whether the EU is competent to act on the basis of Article 153 TFEU;

---

13 See para 13 of the Minister’s Explanatory Memorandum.

14 See p.9 of ADD 2. ADD 2 is a summary of the Commission’s full Impact Assessment (ADD 1). A fuller explanation of the Commission’s analysis can be found on p.32 of ADD 1.

15 See para 23 of the Minister’s Explanatory Memorandum.



- whether the action proposed is consistent with the principle of subsidiarity; and
- whether the action proposed is proportionate to the objectives which the draft Decision seeks to achieve.

1.22 These concerns relate to the justification for the Commission’s proposal and, in particular, the *mandatory* participation of all Member States in the EU Platform.

1.23 Turning first to the legal base proposed by the Commission, we consider that there is a sufficient connection between the action proposed to prevent and deter undeclared work and the objectives and activities set out in Articles 151 and 153(1) relating to employment, working conditions, the integration of individuals excluded from the labour market, and measures to combat social exclusion. We note, however, that the specific legal base proposed by the Commission — Article 153(2)(a) — provides for the adoption of measures “*designed to encourage cooperation between Member States*”. We ask the Minister for a more detailed legal analysis of the scope of this provision and the extent to which it may be used to require, rather than merely to encourage or promote, certain forms of cooperation.

1.24 We share the Government’s concern that a mandatory requirement to participate in the proposed EU Platform would breach the principle of subsidiarity. In its explanatory memorandum accompanying the draft Decision, the Commission describes existing cooperation at EU level as “patchy both in terms of the Member States involved and the issues covered”.<sup>16</sup> It suggests that limited participation by Member States in existing voluntary multilateral projects to tackle undeclared work reflects differing degrees of political commitment to addressing the problem and results in “less efficient and effective interventions”.<sup>17</sup>

1.25 In our view, the evidence provided by the Commission does not make a compelling case for an EU Platform. In particular, we consider that there are insufficient quantitative data to establish that the Platform would achieve the objectives set out in Article 2 of the draft Decision, which are to contribute to:

“better enforcement of EU and national law, to the reduction of undeclared work and the emergence of formal jobs, hence avoiding the deterioration of quality of work, and to promote integration in the labour market and social inclusion.”

1.26 Indeed, the Commission itself acknowledges the absence of a clear “incidence chain” linking the establishment of the Platform to a reduction in undeclared work, greater social well-being and better economic outcomes.<sup>18</sup> It also recognises that an approach based on compulsion may not be the most effective way of securing effective cooperation and may constrain the type of activities that Member States are willing to undertake.<sup>19</sup> In light of these concerns, it is difficult to see how an EU Platform requiring mandatory participation can be considered a necessary means of tackling

---

<sup>16</sup> See p.4 of the Commission’s explanatory memorandum.

<sup>17</sup> See pp.20-22 of ADD 1.

<sup>18</sup> See p.32 of ADD 1.

<sup>19</sup> See pp.38 and 39 of ADD 1 which sets out the Commission’s overall assessment of establishing a Platform with mandatory membership.

undeclared work, or how it would produce more efficient and effective interventions than existing forms of cross-border cooperation. It is not surprising that Member States have expressed a clear preference for a voluntary approach.<sup>20</sup> Accordingly, we recommend that the House send a Reasoned Opinion to the Presidents of the EU Institutions before 9 June 2014, following a debate on the floor of the House.

1.27 Furthermore, we note that the Commission’s explanatory memorandum accompanying the draft Decision envisages EU action playing an important role in “reinforcing cooperation between enforcement authorities *within and between* different Member States in the prevention and deterrence of undeclared work” (our emphasis).<sup>21</sup> It says that, in some cases, cooperation between different enforcement bodies within a single Member State “is not as structured or effective as necessary”.<sup>22</sup> The Commission’s Impact Assessment also makes clear that governance structures within some Member States are a significant source of concern:

“Even though social and employment policy and therefore the issue of undeclared work are primarily a competence of each Member State, an integrated Europe with some Member States not having a well-functioning governance system is not desirable.”<sup>23</sup>

1.28 Article 2(a) of the draft Decision refers only to improving cooperation “between Member States’ different enforcement authorities at EU level”. If, however, internal coordination structures *within* Member States were to be included within the scope of the draft Decision, we consider that this would be a further reason to object to the draft Decision on subsidiarity grounds. We invite the Commission to explain whether the scope of the draft Decision, as defined in Article 2, is sufficiently precise to preclude a broader interpretation encompassing internal governance structures.

1.29 Finally, we note that the Minister cites in her Explanatory Memorandum estimates contained in the OECD’s Employment Outlook for 2005 which indicate that the informal or shadow economy in the UK is relatively small. These estimates precede the economic and financial crisis and, if accurate in 2005, are unlikely to be so now. More recent data reproduced in the Commission’s Impact Assessment, while hedged with numerous caveats, reveal a different picture in the UK and across the EU as a whole.<sup>24</sup> We ask the Minister to provide a more up-to-date assessment of the size of the UK’s shadow economy, as well as her view on the accuracy of the Commission’s data concerning the scale of undeclared work across the EU, and the significance of any cross-border aspects, as this, too, will be a key factor in determining the need for, and proportionality of, EU action. Meanwhile, the draft Decision remains under scrutiny.

---

20 See pp.6 and 35-39 of ADD 1.

21 See p.4 of the Commission’s explanatory memorandum accompanying the draft Decision.

22 See p.3 of the Commission’s explanatory memorandum accompanying the draft Decision.

23 See p.10 of ADD 1.

24 See Annex II of ADD 1, pp.47-50.

## Reasoned Opinion of the House of Commons

Submitted to the Presidents of the European Parliament, the Council and the Commission, pursuant to Article 6 of Protocol (No. 2) on the Application of the Principles of Subsidiarity and Proportionality

concerning

**a Draft Decision establishing a European Platform to enhance cooperation in the prevention and deterrence of undeclared work <sup>1</sup>**

**Treaty framework for appraising compliance with subsidiarity**

1. In previous Reasoned Opinions, the House of Commons has set out what it considers to be the correct context in which national parliaments should assess a proposal's compliance with subsidiarity. The House of Commons continues to rely on that context without restating it.

**The Proposed legislation**

2. The purpose of the draft legislation is to address the negative consequences of “undeclared work” i.e. employment not declared to the public authorities, or bogus self-employment. These negative consequences are the avoidance of employment rights and benefits for the person concerned and serious budgetary implications for the tax and social protection systems of the Member State concerned.

3. The proposal would pursue this purpose by establishing an EU Platform for (a) better co-ordination between Member States' enforcement authorities, (b) improving their technical capacity to tackle cross-border aspects of undeclared work, and (c) increasing public awareness of the importance of action and encouraging Member States to step up their efforts in dealing with undeclared work.<sup>2</sup>

---

<sup>1</sup> COM(14) 221.

<sup>2</sup> Article 2.

4. The missions of the Platform would be (a) to exchange best practices and information, (b) to develop expertise and analysis, and (c) to co-ordinate cross border operational action.<sup>3</sup> It would be given 9 specific tasks.<sup>4</sup>

5. The participation of Member States and their enforcement authorities is mandatory — to be guaranteed by the single point of contact nominated by each Member State, whilst that of representatives of social partners as observers is voluntary.<sup>5</sup>

#### **Compliance with the principle of subsidiarity**

6. The House of Commons considers that the Commission has not demonstrated that the proposed action at EU level is necessary or effective to achieve the objective of tackling undeclared work and furthermore it has not justified the requirement for mandatory participation in any EU Platform.

7. In reaching this conclusion the House takes into account the following matters:

- The Commission itself acknowledges that the effectiveness of the Platform is questionable in that “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”.<sup>6</sup>
- As the Commission also rightly acknowledges in its explanatory memorandum, “The main responsibility for tackling undeclared work lies with the Member States”.<sup>7</sup> One reason for this is the differences in the nature of undeclared work and the legitimate differences in Member States approach to tackling it. Requiring participation in the Platform interferes with this responsibility, for uncertain benefit. Such interference is

---

<sup>3</sup> Article 3.

<sup>4</sup> Article 4.

<sup>5</sup> Articles 5 and 6.

<sup>6</sup> Section 6 of the Commission’s impact assessment. The uncertainty is attributed to the difficulty of measuring undeclared work.

<sup>7</sup> Section 1 of the Commission’s explanatory memorandum, p.3.

particularly objectionable to the extent that the proposal would apply to the relations between the national authorities within an individual Member State.<sup>8</sup>

- Whilst we accept that there must be some cross-border dimension to undeclared work, the Commission does not substantiate the extent to which it arises or hinders action by Member States against undeclared work. The essential problems are the serious budgetary implications and the negative impacts for individuals of undeclared work, which can arise irrespective of the existence of any cross-border dimension. Most cases are not likely to involve a cross-border dimension, or require cross-border co-operation or co-ordination.
- The fact that undeclared work has serious budgetary implications for individual Member States is sufficient motivation in itself for Member States to take action against undeclared work. To the extent that this is not sufficient, EU action is available in the form of country specific recommendations.<sup>9</sup> Participation in an EU Platform is unlikely to give Member States significant additional awareness of the problem, as the Commission claim.<sup>10</sup>
- Member States can and do co-operate and co-ordinate with each other to a significant degree through voluntary participation in existing EU fora.<sup>11</sup> Whilst such co-operation is not comprehensive, it has not been demonstrated that comprehensive mandatory co-operation and co-ordination would be effective in addressing the core objective, as indicated above.
- Whilst the Commission invokes the fact that the nature of undeclared work varies from one country to another depending on the economic, social and political context

---

<sup>8</sup> Section 2, p.4, of the Commission's explanatory memorandum envisages EU level action playing an important role "by reinforcing co-operation between enforcement authorities within and between different Member States".

<sup>9</sup> Recital (2) to the proposal.

<sup>10</sup> Section 3.3 of the Commission's Impact Assessment.

<sup>11</sup> See the information provided at section 3.2.2. of the Commission's impact assessment.

as a reason to tailor the proposal,<sup>12</sup> the same reason also sets a limitation on the benefit of cross border co-operation and co-ordination.

- The fact that the Commission anticipate that voluntary participation will be high<sup>13</sup> minimises any problems which the Commission perceives in participation in the Platform not being comprehensive.
- The output from the tasks given to the Platform<sup>14</sup> would be better, and therefore more effective, if developed by volunteer participants suitably engaged in those tasks. As the Commission acknowledge finding a consensus might be more difficult with mandatory rather than voluntary participation and some Member States could be less committed to engage in more operational actions or to develop expertise.<sup>15</sup>

8. The House of Commons consider that these factors outweigh the reasons given by the Commission for rejecting voluntary participation in the Platform. Consistent with the views expressed above, it considers that better co-ordination between national enforcement entities within a Member State is a matter better left to that Member State; that the build-up of trust is likely to be more effective between willing participants; and that mandatory participation by leading authorities on undeclared work in meetings with other national administrations is not necessary to raise their profile or increase awareness of the urgency of action in the national context.

9. For these reasons the House of Commons considers that the proposal does not comply with the principle of subsidiarity.

---

<sup>12</sup> Section 3.2.1 of the Commission's Impact Assessment.

<sup>13</sup> Section 6.3.5. of the Commission's impact assessment.

<sup>14</sup> Those tasks are: (a) improving knowledge by developing common concepts and joint comparative analysis (b) developing the analysis of effectiveness of different policy measures (c) establishing tools such as a knowledge bank of different practices/measures including bilateral agreements (d) adopting non-binding guidelines and handbooks of different practices (e) developing forms of co-operation increasing the technical capacity to tackle cross-border aspects of undeclared work (f) examining ways to improve data sharing (g) developing permanent training capacity and a framework for joint training (h) organising peer reviews (i) increasing awareness of the problem by carrying out common activities.

<sup>15</sup> Section 6.4.5 of the Commission's impact assessment.

10. In responding to this Reasoned Opinion we invite the Commission to clarify the extent to which the proposal applies to the relations between the national authorities of an individual Member State.