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## **REPORT**

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from: Presidency

to: Council (EPSCO)

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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  
- *Progress report*

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### **I. INTRODUCTION**

On 10 April 2014, the Council received the Commission's proposal on establishing a European Platform to enhance cooperation in the prevention and deterrence of undeclared work. The Social Questions Working Party examined the text of the proposal in five meetings. On the basis of an amended Presidency proposal the Committee of Permanent Representatives discussed on 11 and 18 June whether the necessary requisites for a Council's general approach were met.

While the Council's preparatory bodies have been able to make substantial progress on the file, the Committee concluded that more work on a small number of issues is still required in order to agree on a general approach. Therefore, the Presidency has submitted this report to the Council (EPSCO) on 19 June for information.

The European Parliament has yet not started its work and its position can be expected at a later stage. The Council has also consulted the European Economic and Social Committee and the Committee of Regions, but neither opinion is yet available.

The state of play of the file at the end of the Hellenic Presidency, including the main issues under discussion, are explained in Section II. Section III outlines the amendments made to the text and Section IV lists specific comments and reservations of the delegations. The latest Presidency compromise text can be found in ADD 1 to this Report.

CZ and MT maintain general scrutiny reservations on the proposal. MT and UK maintain scrutiny reservations on the legal basis. In addition, UK has indicated that it is examining the JHA content of the proposal. FR, MT, PL and UK have entered parliamentary scrutiny reservations. In addition, HU maintains a linguistic scrutiny reservation.

## **II. STATE OF PLAY**

From the outset, all delegations shared the proposal's aim of enhancing cooperation in the prevention and deterrence of undeclared work. Delegations have also welcomed the Commission's proposal to establish a Platform for this purpose.

A number of delegations raised legal questions, including the legal basis as such. At the request of the Working Party, the Council Legal Service (CLS) provided its opinion in writing<sup>1</sup>. In particular, the Working Party has examined the appropriateness of the proposed legal basis (Article 153(2)(a) TFEU) and the different limitations on the legislator in using that Article, including the possibility of Member States' mandatory participation in the proposed Platform.

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<sup>1</sup> 10838/14.

In the relatively short time it was possible to converge on a balanced text that is broadly supported, and fully supported by a large number of delegations. On the whole, the Presidency considers that the amended text as set out in ADD1 is well balanced, taking on board most of the request submitted by delegations.

The text combines a solid legal framework for the Platform (based on Article 153 TFEU) with a certain flexibility within this framework. A large number of delegations supported this as a good negotiation position of the Council with the European Parliament. However, a certain number of delegations are still scrutinising the text or have maintained reservations on parts of it.

The two main issues discussed during the Hellenic Presidency related to the nature of the Member States' participation in the Platform and to the initiatives the Platform could take. The results reached on these important issues can be outlined as follows:

**(a) Member States' participation in the Platform (Article 1(2)(a))**

The Commission proposal envisages the mandatory participation of all Member States in the Platform. Delegations generally acknowledge that the widest possible participation would be useful. A large number of delegations either accept the Commission's proposal of making the participation mandatory or otherwise stress that in any case all Member States should participate. However, one delegation considers that the legal basis, Article 153(2)(a), cannot be used to oblige the Member States to participate in the Platform, and some delegations are still scrutinising this issue.

**(b) The Platform's mission and initiatives (Articles 3, 4(1) and 7(2))**

The words "*in particular*" in the chapeau of Article 4(1), as proposed by the Commission, imply a possibility to expand the list of initiatives set out in the article. The Presidency's compromise text for Article 4(1), chapeau, however, makes it clear that there is only limited flexibility in adding initiatives to the list included in the Decision and that any new initiative the Platform might undertake would have to be for the execution of its mission as set out in Article 3 and in accordance with the priorities set in the Platform's two-year work programme (Article 7(2)(b)).

While several delegations support this approach, some others have reservations on the words "*in particular*", considering that the list included in the Decision should be exhaustive. Some delegations maintain scrutiny reservations on this part of the text.

In this context, three delegations have indicated that they have particular reservations as to the possibility that the Platform could adopt new initiatives by a simple majority (Article 7(2), chapeau). One of these delegations has stressed that the extension of the list should require supervision of the co-legislators.

The latest Presidency compromise text takes into account the concerns of delegations and the contribution of the CLS regarding the initiatives the Platform could take. Articles 3 and 4(1), points (a) to (i), as well as recitals 10, 12 and 14, have been significantly redrafted. In particular, recital 10 states that Member States' participation in certain activities would be on a voluntary basis. The Member States will be able to decide on their participation in any joint cross-border operations (Articles 3(c) and 4(1)(e)) and in working parties set up by the Platform (Article 7(2)(c)).

Some delegations having suggested adding the word "*voluntary*" in certain passages of Article 4(1) in order to stress this point, the Presidency however considers that using the term "*voluntary*" in the Article might give an impression that the participation in other initiatives would be obligatory. The Commission has explained that participation could be modulated, i.e. some activities would only be carried out on demand and according to Member States' needs. In this context, one delegation has suggested that rather than referring to the voluntary nature of certain initiatives, one should consider a horizontal approach for the whole article.

Recital 11a(new) stresses that the Member States remain competent to decide how they use the outcomes of the initiatives of the Platform.

A number of remaining reservations on Articles 3 and 4(1) are indicated in footnotes of doc. 10558/14 ADD 1 REV 1.

The Presidency considers that its latest compromise text strikes the correct balance between, on the one hand, setting out clearly the Platform's mission and its initiatives and, on the other, giving the Platform the necessary flexibility in the implementation of that mission.

### **III. AMENDMENTS MADE TO THE TEXT**

A number of amendments have been made in order to make the text clearer, in particular:

- the wordings related to the legal basis has been clarified in the chapeau of Article 2, in Article 3 and in recital 3. In addition, a reference to Article 153(1), points (b), (h) and (j), has been added to the legal basis;
- recital 5 and new 5a: amendments on the nature and definition of undeclared work;

- amendments to articles (especially Article 1(2)(a)) and recitals to take account both of the important role of enforcement authorities and of the necessary flexibility to be accorded to the Member States appointing relevant authorities to the Platform. The authorities listed in recital 13 are illustrative examples; certain examples (transport authorities, police and public prosecution) have been put into question by some delegations while being considered essential by others in order to reflect different national situations;
- clarifications on the appointment and duties of the single points of contact (Article 5 and recital 15). As the terms "*member*" and "*alternate member*" are no longer included in the text, Article 9 on reimbursement of expenses has also been amended;
- amendments concerning the working methods and the 2-year work programme and reports of the Platform (Article 7(2), recital 17);
- on cooperation with EU agencies, moving the last part of Article 4(2) to Article 8(2);
- on the review of the Decision (Article 11), a reference is made to possible amendments to the Decision.

#### **IV. OTHER COMMENTS AND RESERVATIONS BY DELEGATIONS**

Besides the two main issues outlined in Section II above, a number of specific (scrutiny) reservations and suggestions from five delegations remain under discussion:

- one delegation notes that there is no Union level definition on undeclared work and recital 5 should be amended accordingly;

- two delegations consider that bogus self-employment should not be covered (Article 2(a), recital 6). One of these delegations is also concerned that the term "*falsely declared work*" is not widely used and not clearly defined. However, the Presidency compromise to include bogus self-employment and other forms of falsely declared employment, if linked to undeclared work, within the scope of the Decision is largely supported by other delegations;
- two delegations have problems with the words "*and distorts the level playing field*" in recital 7;
- two delegations have reservations on recitals 10, 12, 13 and/or 14, related in particular to *operational coordination*;
- one delegation considers that a specific reference to enforcement authorities should be deleted from Article 1(2)(a) and from the relevant recitals. Another delegation has suggested an amendment to recital 13, so that the enforcement authorities listed in the first sentence would be considered only as examples. Cion and other delegations have stressed that the role of national authorities involved in the prevention and deterrence of undeclared work will be pivotal;
- one delegation suggests replacing the words "*contribute to better enforcement of ..... law*" by "*contribute to more effective ..... action*" in the chapeau of Article 2 (on the objectives). A number of delegations stress that the Decision should focus on the implementation of legislation;
- one delegation queried on the reference to "*all relevant sources*" in Article 4(2);

- three delegations maintained scrutiny reservations on the cooperation with the Administrative Cooperation Working Group in the field of Taxation (Article 8(1)). The Presidency has stressed that the aim of the draft Decision is to encourage and support cooperation between Member States and that the Decision would not require any changes to tax laws or any other laws of the Member States and would not prejudice Member States' competences in tax matters;
- one delegation suggests that the review referred to in Article 11 would pay particular attention to the list of initiatives in Article 4(1).

## V. CONCLUSION

While the latest Presidency compromise text has been largely supported by delegations, the discussions in the Committee of Permanent Representatives showed that the necessary majority for a general approach has not yet been reached.

The Presidency recommends that the forthcoming discussions on the file under the future Presidency should be based on this latest compromise text. In order to reach a general approach in due time to serve as the Council's mandate during the first reading negotiations with the European Parliament, it would be most helpful not to reopen the text that has already been agreed.

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