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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 - <i>General approach</i>

Delegations will find attached the text of the draft Decision as it results from the work of the Permanent Representatives Committee.

The Report can be found in doc. 13667/14.

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**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 153(2)(a), in conjunction with Article 153(1), points (b), (h) and (j), thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national *parliaments*,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

After consulting the European Data Protection Supervisor,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

² OJ C , , p. .

- (1) In its Communication of 18 April 2012 entitled Towards a job rich recovery, the Commission highlighted the need for improved cooperation among Member States and announced the launch of consultations on setting up a platform at Union level between labour inspectorates and other enforcement authorities to combat undeclared work, aimed at improving cooperation, sharing best practices and identifying common principles for inspections.
- (2) In accordance with Article 148(4) of the Treaty on the Functioning of the European Union, the Council by its Decision 2010/707/EU³ adopted guidelines⁴ for the employment policies of the Member States. These integrated guidelines give orientations to the Member States on defining their national reform programmes and on implementing reforms. The employment guidelines form the basis for country-specific recommendations that the Council addresses to the Member States under that Article. In recent years, those country-specific recommendations have included recommendations on the fight against undeclared work.
- (3) Article 151 of the Treaty on the Functioning of the European Union sets out as the objectives in the field of social policy the promotion of employment and improved living and working conditions. With a view to achieving these objectives, the Union can support and complement the activities of Member States in the fields of working conditions, the integration of persons excluded from the labour market, and combating social exclusion. The Union may adopt measures to encourage cooperation between Member States, excluding any harmonisation of the laws and regulations of the Member States.

³ Council Decision 2010/707/EU of 21 October 2010 on guidelines for the employment policies of the Member States (OJ L 308, 24.11.2010, p. 46)

⁴ The guidelines have been maintained for 2011, 2012 and 2013.

- (4) The European Parliament in its resolution on "Effective labour inspections as a strategy to improve working conditions in Europe" welcomed the Commission's initiative to create a European Platform ("the Platform") and called for enhanced cooperation at Union level to fight undeclared work⁵.
- (5) Undeclared work has been defined in the Commission Communication of 24 October 2007 entitled "Stepping up the fight against undeclared work", as "any paid activities that are lawful as regards their nature but not declared to public authorities, taking into account differences in the regulatory systems of the Member States", thus excluding all illegal activities.
- (5a) The nature of undeclared work may vary from one country to the other, depending on the economic and social context. Also, national legislation as regards undeclared work and the definitions used at national level are diverse. Therefore, the development of measures to tackle undeclared work should be tailored accordingly.
- (6) Abusing, either at national level or in cross-border situations, the status of self-employed, as defined by national law, is a form of falsely declared work that is frequently associated with undeclared work. Bogus self-employment occurs when a person is declared as self-employed while fulfilling the conditions characteristic of an employment relationship, in order to avoid certain legal or fiscal obligations. The Platform should also deal with falsely declared work associated with undeclared work, including bogus self-employment.

⁵ European Parliament resolution of 14 January 2014 on effective labour inspections as a strategy to improve working conditions in Europe (2013/2112/INI)
[http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2013/2112\(INI\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2013/2112(INI))

- (7) While the Platform is aimed at improving working conditions, promoting integration in the labour market and social inclusion, the negative effects of undeclared work take various forms. Undeclared work has serious budgetary implications through decreased tax and social security revenues. It has negative impacts on employment, productivity, compliance with working conditions' standards, skills development and life-long learning and distorts the level playing field. It undermines the financial sustainability of social protection systems, deprives workers of adequate social benefits and results in lower pension rights and less access to healthcare.
- (8) A wide range of policy approaches and measures to tackle various forms of undeclared work have been introduced across the Member States. Member States have also concluded bilateral agreements and carried out multilateral projects on certain aspects of undeclared work. The Platform should not prevent the application of bilateral and multilateral agreements or arrangements concerning administrative cooperation.
- (9) Cooperation between Member States at Union level remains far from comprehensive, both in terms of the Member States involved and the issues covered. There is no formal mechanism in place for cross-border cooperation between Member States' relevant authorities to address in a comprehensive way issues related to undeclared work.
- (10) Encouraging cooperation among Member States at Union level is necessary to help Member States to prevent and deter undeclared work more efficiently and effectively. In this context, the Platform should aim to facilitate and support the exchange of best practices and information, to provide a framework at Union level aiming to develop common understanding, expertise and analysis on undeclared work. The Platform should also encourage cooperation between the different enforcement authorities of Member States participating in such cross-border actions on a voluntary basis.⁶

⁶ Recitals 10 and 11 have been merged.

- (11a) Member States remain competent to decide on their level of involvement in the initiatives approved at plenary level by the Platform.⁷
- (11b) Member States remain competent to decide what measures to take at national level to give effect to the outcomes of the initiatives of the Platform.
- (12) The Platform should make use of all relevant sources of information, in particular studies, bilateral agreements concluded between Member States and multilateral cooperation projects and create synergies between existing instruments and structures at Union level to maximise the deterrent or preventive effect of these measures. The actions of the Platform could take the form of a framework for joint trainings, peer reviews and solutions for data sharing. European campaigns or common strategies could increase the awareness of undeclared work. The Platform should facilitate cooperation between the Member States by promoting and facilitating innovative approaches of cross-border cooperation and evaluating their experiences of such cooperation.
- (13) Three different national enforcement authorities are mainly involved with undeclared work: labour inspectorates, social security inspectorates and tax authorities. In some cases, for example, migration authorities and employment services as well as customs authorities and authorities in charge of implementation of the common transport policy, the police, the public prosecutor's office and the social partners may also be involved.
- (14) In order to address undeclared work comprehensively and successfully, a policy mix needs to be implemented in the Member States; this should be facilitated by encouraging structured cooperation between relevant authorities. The Platform should include all relevant national authorities, in particular enforcement authorities, which are leading and/or active in the prevention and/or deterrence of undeclared work. Member States remain competent to decide which authorities represent them in the different initiatives of the Platform. Cooperation between national authorities of the Member States should respect applicable national and Union legislation.

⁷ See Report, Section II.

- (15) To achieve its objectives, the Platform should be supported by a 'Single point of contact' in each Member State who should coordinate and liaise with national authorities dealing with the multifaceted aspects of undeclared work, and where applicable with the social partners.
- (16) The Platform should involve the social partners at Union level, both cross-industry and in those sectors more severely affected by undeclared work, and cooperate with relevant international organisations, such as the International Labour Organisation (ILO), and Union decentralised agencies, in particular the European Foundation for the Improvement of Living and Working Conditions (Eurofound) and the European Agency for Safety and Health at Work (EU-OSHA). The involvement of Eurofound and EU-OSHA in the work of the Platform as observers may not extend their existing mandates.
- (17) The Platform should adopt its rules of procedure, work programmes and regular reports. The working and decision-making arrangements of the Platform should be specified in the rules of procedure.
- (18) Directive 95/46/EC of the European Parliament and of the Council⁸ as well as the relevant national implementing measures apply to the processing of personal data carried out by the Member States within the framework of this Decision. As the Commission is part of the Platform, Regulation (EC) No 45/2001 of the European Parliament and of the Council⁹ equally applies to the processing of personal data carried out within the framework of this Decision.

⁸ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31)

⁹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.01.2001, p. 1)

- (19) The Platform should be able to establish working groups to examine specific issues and should be able to rely on the expertise of professionals with specific competences.
- (20) The Platform should cooperate with the relevant expert groups and committees at Union level whose work has links with undeclared work.
- (21) The Platform and its initiatives should be funded through the PROGRESS axis of the programme for Employment and Social Innovation (EaSI) within the appropriations set by the budgetary authority.
- (22) The Commission should take the necessary administrative steps to set up the Platform,

HAVE ADOPTED THIS DECISION:

Article 1

Establishment of the Platform

- (1) A Platform to enhance cooperation between Member States at Union level in the prevention and deterrence of undeclared work, hereinafter referred to as "the Platform", is hereby established.
- (2) The Platform shall be composed of:
 - (a) relevant authorities, in particular enforcement authorities, as nominated by all the Member States,
 - (b) the Commission.
- (3) The following observers may attend the meetings of the Platform under the conditions set in its rules of procedure:
 - (a) representatives of the cross-industry social partners at Union level, as well as social partners in sectors with a high incidence of undeclared work;
 - (b) a representative of the European Foundation for the Improvement of Living and Working Conditions (Eurofound) and a representative of the European Agency for Safety and Health at Work (EU-OSHA);
 - (c) a representative of the International Labour Organisation (ILO),
 - (d) representatives of EEA states.

Article 2

Objectives

The Platform, fully respecting national competences and procedures, shall contribute to more effective Union and national actions aimed at improving working conditions, promoting integration in the labour market and social inclusion, including better enforcement of law within those fields, and to the reduction of undeclared work and the emergence of formal jobs, thus avoiding the deterioration of quality of work, by:

- (a) improving cooperation between Member States' relevant authorities in order to prevent and deter more efficiently and effectively undeclared work and falsely declared work associated with undeclared work, including bogus self-employment;
- (b) improving Member States' relevant authorities' technical capacity to tackle cross-border aspects of undeclared work;
- (c) increasing public awareness about the urgent need for action and encouraging Member States to step up their efforts in dealing with undeclared work.

Article 3

Mission

To achieve the objectives listed in Article 2, the Platform shall encourage cooperation between Member States through:

- (a) exchanging best practice and information,
- (b) developing expertise and analysis,

- (c) promoting and facilitating innovative approaches of cross-border cooperation between Member States and evaluating Member States experiences of such cooperation.

Article 4

Initiatives

- (1) For the execution of its mission, and in accordance with the priorities established in the two-year work programme referred to in Article 7(2)(b), the Platform shall in particular carry out the following initiatives:
 - (a) improve the knowledge of undeclared work by means of common concepts, evidence-based measurement tools and promotion of comparative analysis and relevant methodological instruments, building, where relevant, on the work of other bodies, including the Employment Committee (EMCO) and the Social Protection Committee (SPC);
 - (b) develop the analysis of effectiveness of different policy measures in curbing the incidence of undeclared work, including preventive and punitive as well as deterrence measures in general;
 - (c) establish tools, for instance a knowledge bank of different practices/measures, including bilateral or multilateral agreements used in the Member States to deter and prevent undeclared work;
 - (d) develop non-binding tools such as guidelines for enforcement, handbooks of good practice and principles of inspections to tackle undeclared work;

- (e) facilitate and support cooperation between Member States by increasing their technical capacity to tackle cross-border aspects of undeclared work through promoting and facilitating innovative approaches, such as exchange of staff and joint activities, and evaluating experiences of such cooperation undertaken by participating Member States;
 - (f) examine ways to improve data sharing in compliance with the Union data protection rules, including exploring possibilities to use of the Internal Market Information System (IMI) and the Electronic Exchange of Social Security Information (EESSI);
 - (g) develop training capacity for relevant authorities and a framework for carrying out joint trainings;
 - (h) organise peer reviews to follow participating Member States' progress when fighting undeclared work;
 - (i) increase awareness of the problem by carrying out common activities such as European Campaigns and coordinating regional or Union-wide strategies, including sectoral approaches.
- (2) In carrying out these initiatives, the Platform shall make use of all relevant sources of information, including studies and multilateral cooperation projects and take into account relevant Union instruments and structures, as well the experience of relevant bilateral agreements.¹⁰

¹⁰ The ending moved to Article 8(2).

Article 5

Single point of contact

- (1) Each Member State shall appoint a single point of contact from the relevant authorities referred to in Article 1(2)(a). It may also appoint one alternate who shall replace the single point of contact whenever necessary.
- (2) In appointing their single point of contact, Member States should consider all public authorities having a role in the prevention and/or deterrence of undeclared work. They may also, in accordance with national law and/or practice, involve the social partners.
- (2a) The single point of contact shall participate in the plenary meetings of the Platform and, when appropriate, in other activities and working groups of the Platform.
- (3) The single points of contact shall provide the Commission with the list and contact details of the relevant authorities, and where applicable the social partners, which are involved in the prevention and/or deterrence of undeclared work.
- (4) The single points of contact shall liaise with all relevant authorities, and where applicable with the social partners, which are involved in the prevention and/or deterrence of undeclared work regarding the activities of the Platform and coordinate their participation at the meetings and/or contribution to the activities of the Platform or its working groups if issues discussed involve their field of competence.

Article 6

Representatives of the social partners

- (1) Representatives of the social partners at cross-industry level as well as from sectors with high incidence of undeclared work, referred to in point (a) of Article 1(3), may attend meetings of the Platform as observers, according to the procedures determined by their organisations.

- (2) On the basis of the proposals from cross-industry and sectoral social partners at Union level, this group of observers shall be composed of:
- (a) a maximum of eight observers representing social partners at cross-industry level (divided evenly between employers' and workers' organisations);
 - (b) a maximum of ten observers representing social partners in sectors with a high incidence of undeclared work (divided evenly between employers' and workers' organisations).

Article 7

Operation

- (1) The Commission shall coordinate the work of the Platform and chair its meetings.
- (2) For the execution of its mission, the Platform shall adopt by majority decision:
 - (a) the rules of procedure, containing, inter alia, the working and decision-making arrangements of the Platform;
 - (b) a two-year work programme of the Platform setting out, inter alia, the priorities and a concrete description of its initiatives referred to in Article 4, and regular reports of the Platform every two years;
 - (c) the establishment of working groups to examine issues specified in the work programmes of the Platform. Such working groups shall be dissolved as soon as their mandates are fulfilled.
- (2a) The decisions referred to in paragraph 2 shall be taken by simple majority at the plenary of the Platform with the Commission and each single point of contact having one vote.

- (3) Experts with specific competence in a subject under discussion may be invited on a case-by-case basis to participate in the Platform's or working group's deliberations if this is useful and/or necessary.
- (4) The Platform shall be assisted by a Secretariat provided by the Commission. The Secretariat shall prepare the meetings, the work programmes of the Platform and its reports.
- (5) The Commission shall regularly inform the European Parliament and the Council about the activities of the Platform.

Article 8

Cooperation

1. The Platform shall cooperate effectively with other relevant expert groups and committees at Union level whose work has a link with undeclared work, in particular, the Senior Labour Inspectors Committee (SLIC), the Expert Committee on Posting of Workers, the Administrative Commission for Social Security Coordination, the Employment Committee (EMCO), the Social Protection Committee (SPC) and the Working Group on Administrative Cooperation in the field of Taxation. Joint meetings may also be organised.
2. The Platform shall establish appropriate cooperation with Eurofound and EU-OSHA.

Article 9

Reimbursement of expenses

In connection with the Platform's activities, the Commission shall reimburse travel expenses for the single points of contact, observers and invited experts and, when appropriate, for other representatives of the authorities taking part in the activities of the Platform. Where appropriate, the Commission may also reimburse subsistence expenses.

The single points of contact and other representatives of the authorities taking part in the activities of the Platform, observers and invited experts shall not be remunerated for the services they render.

Article 10

Financial support

The global resources for the implementation of this Decision shall be established within the framework of the programme for Employment and Social Innovation (EaSI), the annual appropriations of which shall be authorised by the budgetary authority within the limits of the Financial Framework.

Article 11

Review

Four years after its entry into force, the Commission shall submit a report on the application of this Decision to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, and propose, where appropriate, necessary amendments and modifications.

The report shall in particular assess to what extent the Platform has contributed to the achievement of the objectives set out in Article 2 and carried out the initiatives as set out in Article 4 and addressed the priorities as set out in its work programmes.

Article 12

Addressees

This Decision is addressed to the Member States.

Article 13

Entry into force

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at,

For the European Parliament

The President

For the Council

The President
