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CONSULTATION DOCUMENT

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**Consultation of Social Partners under Article 154 TFEU on enhancing EU cooperation
in the prevention and deterrence of undeclared work**

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1. INTRODUCTION

The purpose of this document is to consult the social partners, in accordance with Article 154(2) TFEU, to obtain their views on the possible direction of European Union action aimed at enhancing cooperation between Member States in the prevention and deterrence of undeclared work.

At European level undeclared work is defined 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"¹, thus excluding all illegal activities.

Undeclared work is a complex phenomenon, which prospers due to different factors such as high tax wedge and labour costs, too much red tape, low trust in government, lack of control, lack of regular jobs on the labour market and high levels of social exclusion and poverty. These drivers for undeclared work have to be looked at and addressed in the wider context of the Europe 2020 Strategy, and of the need for structural reforms in order to make labour markets more inclusive.

In view of the complexity and heterogeneity of undeclared work, there is no simple solution to combat it. A balanced policy approach is needed, consisting of reducing the financial attractiveness of undeclared work, administrative reform and simplification, strengthening surveillance and sanction mechanisms, trans-national cooperation between Member States and awareness raising activities².

In the aftermath of the economic and social crisis, concern at high levels of undeclared work is high on the EU policy agenda aimed at improving job creation, job quality and fiscal consolidation. Undeclared work has serious budgetary implications through decreased tax and social security revenues. It has negative impacts on employment, productivity and working standards, skills development and life-long learning. It represents only a tenuous basis for pension rights and access to health care.

The Europe 2020 Strategy for smart, sustainable and inclusive growth sets a target of 75% of 20-64 year olds in employment by 2020³. In order to catalyse progress towards the target, the Commission adopted the Flagship Initiative "An agenda for new skills and

¹ Communication from the Commission "Stepping up the fight against undeclared work" COM (2007)628 of 24 October 2007

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007DC0628:EN:HTML>

² COM(2007) 628

³ 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>

jobs"⁴, where the promotion of job creation is key action no 13. In this context the move from informal or undeclared work to regular employment was highlighted.

The Employment Package⁵, adopted in April 2012, carries forward the actions presented in the above mentioned Europe 2020 flagship initiative. In the communication "Towards a job-rich recovery" the Commission stresses that employment policies help to create conditions favourable to job creation and that transformation of informal or undeclared work into regular employment could be one of the measures contributing to labour demand. Preventing and counteracting undeclared work as well as helping undeclared workers to integrate in the regular labour market, will facilitate the process of fiscal consolidation, create a better level playing field for businesses and improve the quality of employment. The Communication highlights the need for improved cooperation among Member States and announces the launch of consultations on setting up an EU-level platform between labour inspectorates and other enforcement authorities to combat undeclared work, aimed at improving cooperation, sharing best practices and identifying common principles for inspections. A public consultation on possible approaches to creating formal work opportunities in the sector of personal and household services was also launched as part of the Package⁶. The replies to this consultation have been analysed⁷ and the results show that public authorities could consider intervening with the aim of encouraging the provision of personal and household services in the formal economy. This could notably take the form of inspections and/or a direct intervention in the price paid by the user.

The recently-adopted Social Investment Package also contains guidance to Member States that can help to prevent and deter informal work, by stressing that tax and benefit systems need to be aligned in order to make formal work pay and to reduce the risk of poverty and inactivity traps.

In the 2012 Country Specific Recommendations⁸ - as well as in the Commission proposals for 2013 Country Specific Recommendations, published on 29 May, several Member States received recommendations concerning the prevention of undeclared work, the shadow economy, tax evasion and/or tax compliance.

The role of the social partners is emphasised in this context in the Annual Growth Survey 2013⁹ where the importance of fighting undeclared work is highlighted in order to prepare for the job rich recovery. It states that social partners have a key role to play alongside public authorities.

In Employment Guideline¹⁰ Nr 7 "Increasing labour market participation of women and men, reducing structural unemployment and promoting job quality", Member States are

⁴ 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>

⁵ 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>

⁶ SWD(2012) 95 final, "On exploiting the employment potential of the personal and household services"

⁷ <http://ec.europa.eu/social/main.jsp?catId=333&langId=en&consultId=11&visib=0&furtherConsult=yes>

⁸ http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm

⁹ 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

¹⁰ 2010/707/EU Council Decision of 21 October 2010 on guidelines for employment policies of the Member States"

urged to step up social dialogue and tackle labour market segmentation with measures addressing precarious employment, underemployment and undeclared work.

Social partners have in their joint analysis¹¹ expressed their concern about the high level of undeclared work in many Member States. They see undeclared work as creating unfair competition for businesses in labour-intensive sectors, placing workers in insecure working conditions, and undermining the financing of social protection, the collection of tax revenues and government spending in general. They suggest that combating undeclared work can only be effective if actors at all levels are strongly committed to it and it is a shared responsibility of public authorities and social partners. The social partners call upon Member States to fight undeclared work by *inter alia* improving cooperation between social administrations throughout EU; and deciding with the social partners on joint initiatives depending on the national situation.

2. MAIN PROBLEMS

Preventing and deterring undeclared work are primarily tasks of the Member States. To tackle undeclared work, Member States mostly use a deterrent approach is by with the aim of influencing people's behaviour with measures such as stricter sanctions and more effective inspection activities. In addition Member States are using preventive measures, such as tax incentives, amnesties and awareness rising, to decrease the incidence of undeclared work and to support compliance with the existing rules. Member States have also put simplified administrative systems in place, with a view to reducing the cost of compliance with regulation.

In general, the three 'pillars' mainly involved with undeclared work are the following: abusive behaviour regarding working conditions and/or health and safety norms, leading to the involvement of Labour Inspectorates, fraud on social insurance contributions, involving social security inspectorates and tax evasion, mobilising tax authorities. In some cases, these tasks have been delegated to the social partners or special bodies created to fight undeclared work. Depending on where the Member State's focus lies, whether it is on labour, social security or taxes, one of those three authorities usually has a leading and coordinating role. In addition, some form of cooperation between these different enforcement authorities exists in some of the Member States¹².

Bogus self-employment occurs when a person is classified as self-employed instead of an employee to avoid certain obligations. This phenomenon is increasingly used as a strategy to circumvent taxes or social security contributions or other obligations arising from the laws applicable to employees.

These bogus self-employed persons also use the freedom to provide services and move cross borders as service providers avoiding obligations stemming from the host country's labour, social security, tax or other legislation, which they would have to comply with if they were classified as an employee or as an employer. The abuse of the status of self-

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010D0707:EN:NOT>

¹¹ "Key challenges facing European labour markets: a joint analysis of European social partners of 18 October 2007 <http://www.etuc.org/a/4119>

¹² "Joining up in the fight against undeclared work in Europe: Feasibility study on establishing a European platform for cooperation between labour inspectorates, and other relevant monitoring and enforcement bodies, to prevent and fight undeclared work", Regioplan 2010 <http://ec.europa.eu/social/BlobServlet?docId=6676&langId=en>

employed person, either at national level or in cross-border situations, is more frequently associated with undeclared work.

In order to have a comprehensive approach, policies which aim to reduce incentives for employers to use undeclared work and for workers to engage in such activities should be designed in harmony with already existing practical measures and different policies that influence the prevalence of undeclared work, such as employment, migration and taxation policies.

The crucial role played by national authorities in preventing, tracking and sanctioning undeclared work can be complemented by action at EU level aimed at facilitating and promoting cooperation between such authorities and facilitating exchange of best practices. That complementary action by the EU can be justified by a number of reasons:

- undeclared work is increasingly taking a cross-border dimension, as illustrated by practices such as falsely posted workers; bogus self-employment; work done, but not declared in one Member State, while receiving unemployment benefit in another, and employment of illegally staying 3rd country nationals;
- the challenges, such as detection of undeclared work and lack of cooperation between different enforcement authorities, are largely common to all Member States;
- in times of budgetary constraints, national authorities can benefit and draw lessons from the experience of others and thus improve the cost efficiency of their operational interventions;
- success in tackling undeclared work contributes to better enforcement of EU law, especially in the areas of employment, labour law, health and safety and coordination of social security.

There are several EU level working groups whose work is in some respect linked to undeclared work. The Senior Labour Inspectors Committee (SLIC) looks at undeclared work from the occupational health and safety angle; the Expert Committee on Posting of Workers deals with certain aspects of undeclared work related to the posting of workers in the framework of the provision of cross-border services; the Employment Committee (EMCO) discusses the impact of employment policy on undeclared work; the Administrative Commission for social security coordination is looking at social fraud. In tax issues there is the Expert group on administrative cooperation in the field of direct taxation and also the Expert group on an anti-tax fraud strategy.

These working groups nevertheless cannot approach the phenomenon of undeclared work in a comprehensive way since each of them is only concerned by a small part of the phenomenon and often as a sort of side-effect. They are neither addressing the phenomenon as such, nor are they able to develop a coherent strategic approach embracing all its causes and effects.

Over recent years, some Member States have concluded bilateral agreements that aim at reinforcing their cooperation or in some cases developed practical forms of coordination. However, this kind of coordinated action between labour inspectorates and other relevant enforcement authorities has been the exception rather than the rule¹³. In addition, cooperation between a few Member States, to the extent that it is effective and reflects

¹³ Regioplan, 2010

the high political priority accorded to this issue, might have a negative spillover effect, by increasing the prevalence of undeclared work in Member States, which are not involved in this cooperation or which attribute a lower level of urgency to the fight against undeclared work.

As a result, there is no coherent approach on EU level to preventing and deterring undeclared work. So far there is neither a 'pooling of expertise' nor any forums whose responsibilities extend to discussion on how to tackle the phenomenon and to development of a coherent set of actions which would take account of its multifaceted character and would cover the whole range of different measures and policies implemented by Member States.

3. ACTIVITIES IN THE FIELD OF UNDECLARED WORK

During the past years, the Commission has launched or promoted several studies in order to increase knowledge about the phenomenon and promote stakeholders' activities:

- A study on "Feasibility of establishing a European platform for cooperation between labour inspectorates, and other relevant monitoring and enforcement bodies with the aim of preventing and fighting undeclared work" (2010, Regioplan), was carried out with the aim to complement the Commission's assessment of whether such a platform is feasible and if so, what could be its scope, membership options, tasks and form. The study finds that the establishment of such a platform is feasible and suggests the creation of an Expert Network on Undeclared Work. The platform should cover cross-border as well as national issues and be tasked cooperation, capacity building and sharing of information. All Member States should be members right from the start and all relevant representatives of organisations dealing with undeclared work, including from perspective of labour, social security or taxes, should be invited.

- A study on "Indirect measurement methods for undeclared work in the EU"¹⁴ (2010). The aim of this study was to review indirect methods in the 29 countries covered and to propose and test options for identifying the most appropriate methodology to estimate undeclared work at the EU level. The study found that the labour input method is methodologically appropriate for Europe-wide application.

However, caution is needed when using indirect methods as there is wide agreement among experts that they over-estimate undeclared work and measure the whole shadow economy. Recent findings¹⁵ therefore may face strong criticism and should not be taken as producing uncontested values – even if they may have the advantage of applying a consistent methodology across Member States and over time, thus allowing a basis for identifying trends in the phenomenon.

In addition to indirect methods, direct survey based methods of measurement are used. According to the Special Eurobarometer on undeclared work¹⁶, which was based on interviews with EU citizens, 5% of citizens said they did undeclared work in 2007. Although the results generally understated the extent of the phenomenon and seemed

¹⁴ ec.europa.eu/social/BlobServlet?docId=4546&langId=en

¹⁵ "Size and Development of the Shadow Economy of 31 European and 5 other OECD Countries from 2003 to 2012: Some new facts" by Friedrich Schneider

<http://www.econ.jku.at/members/Schneider/files/publications/2012/ShadEcEurope31.pdf>

¹⁶ http://ec.europa.eu/public_opinion/archives/ebs/ebs_284_en.pdf

unreliable for comparisons between countries, they provided useful insights into the socio-economic characteristics and the drivers of undeclared work.

- A study "ICENUW - Implementing Cooperation in a European Network against undeclared work" (2010), investigated how cross-border cooperation of labour inspectors against undeclared work could function better.¹⁷ The study focused on the documents and procedures necessary to conduct an inspection and the need for comparability between Member States. On 18th of February 2011 under ICENUW co-operation the Bruges Charter "Pathways in cross border fight against undeclared work" was signed by 11 EU Member States and Norway.

- A study "CIBELES: Convergence of Inspectorates building a European Level Enforcement System"¹⁸. The aim of the project was to assist the Senior Labour Inspectors Committee (SLIC) and the Commission to improve and enhance the co-operation between Labour Inspectorates, establishing principles for setting up a network for exchanging information. Austria, Belgium, France, Germany, Hungary, Malta, Italy, Portugal and Spain took part in the project. The CIBELES concentrated on situations which require mutual assistance in occupational health and safety cross-border enforcement matters in relation to posting of workers. A number of country reports elaborate further on undeclared work in the context of posting. The project's final report was published in 2012 and it made several proposals concerning specific actions to be carried out before, during and after inspections, including creating an integrated procedure at European level for all communications on posting, introducing a uniform mandatory declaration for posting, establishing a European identification card that posted workers can show to labour inspectors and a regulation on all forms of exchange of information and cooperation between labour inspectors. In addition, it proposes the creation of a European network of experts on occupational health and safety to facilitate the technical assistance for Labour Inspectorates, organise training and information actions at European level as well as collect data or evidences between Labour Inspectors.

In 2012, in the framework of the PROGRESS Mutual Learning Programme, a peer review on "Combating undeclared work as a growing challenge in the context of high unemployment"¹⁹ was undertaken. It showed measures introduced by the Czech Republic as well as some other Member States to fight against undeclared work. Its conclusions stressed *inter alia* that establishing partnerships, networking and cooperation between the different stakeholders is critically important.

The Commission services continue to explore the phenomenon of undeclared work and to that end a joint management project started in September 2012 with the ILO on "Labour Inspection strategies for combating undeclared work in Europe". The project covers 7 Member States: Spain, Italy, France, Ireland, Belgium, Romania and Netherlands. The purpose of this research is to consider the role of national labour inspection systems in the EU as part of a strategic policy response to undeclared work. In

¹⁷ <http://www.socialsecurity.fgov.be/nl/nieuws-publicaties/conferenties/icenuw/deliverables.htm>

¹⁸ http://www.empleo.gob.es/itss/web/Sala_de_comunicaciones/Noticias/Archivo_Noticias/2011/11/20111122_not_web_port.html

¹⁹ http://www.mutual-learning-employment.net/index.php?mact=PeerReviews,cntnt01,detail,0&cntnt01template=display_by_year&cntnt01year=2012&cntnt01orderby=start_date%20DESC&cntnt01returnid=59&cntnt01item_id=96&cntnt01returnid=59

addition to country studies and a comparative study, a set of guidelines on labour inspection and undeclared work will be prepared by the 3rd quarter of 2013.

Finally, in June 2013, Eurofound has updated the EU-wide online database on measures against undeclared work in the EU Member States and Norway²⁰. An update of the 2007 Eurobarometer survey on undeclared work is foreseen to be presented by autumn 2013.

From all these studies we can conclude that greater cooperation at EU level is necessary in order to tackle undeclared work in Member States more effectively and efficiently. They suggest, that since undeclared work is dealt at national level by different actors, such as labour inspectorates, social security and tax authorities, it is necessary to involve all these actors in whatever form of cooperation is decided at EU level.

4. OBJECTIVES AND POSSIBLE CONTENT OF THE INITIATIVE

The Commission is currently examining how to enhance cooperation at EU level between enforcement authorities, such as labour inspectorates, social security, tax and migration authorities, whose aim is to track, prevent and sanction undeclared work. Such enhanced cooperation should contribute to increasing the effectiveness and efficiency of national enforcement authorities and therefore have a positive impact on job creation (by transferring from illegal to legal employment), better enforcement of EU law, decent work and collection of tax revenue. Enhanced cooperation would preserve the current allocation of competences between the national and the Union level. Member States dispose of the policy instruments both to prevent undeclared work (e.g. by using fiscal incentives or awareness raising campaigns) and to deter it (e.g. by means of control measures and sanctions). However as the phenomenon becomes more transnational, the importance of an EU dimension in preventing and deterring undeclared work is increasingly recognised.

Such an improvement in EU cooperation between labour inspectorates, social security inspectorates and tax authorities could inter alia lead to several tangible results:

- Improving the knowledge and measurement of the phenomenon of undeclared work,
- Sharing best practices (e.g. by developing guidelines; creating a handbook) not only on deterrence measures but also on prevention (e.g. fiscal incentives, administrative reforms and simplification, awareness raising campaigns targeting vulnerable groups or specific sectors etc.),
- Identifying common principles for inspections,
- Promoting exchanges of staff and joint training,
- Facilitating joint control actions.

One possible way of enhancing cooperation between enforcement authorities at EU level is the establishment of a European platform. The platform could be set up by the Commission and could comprise representatives of the Member States and other

²⁰ <http://www.eurofound.europa.eu/areas/labourmarket/tackling/search.php>

stakeholders. When establishing the platform, the following building blocks should be considered:

- a) Membership: should membership be mandatory or could Member States join voluntarily?
- b) Scope: should the platform deal only with cross-border issues or widen its scope to national issues? Should all the pillars be covered or should the platform's work be limited to labour inspections? Should the platform also deal with the phenomenon of bogus self-employment?
- c) How far-reaching should the tasks of the platform be? Should the tasks consist only of sharing information and best practices or should they go further by developing specific expertise and improving operational cooperation?
- d) What form should the platform take? Should it be established as an individual body or as a subgroup to an existing body such as SLIC, EMCO, SPC or as a part of an agency such as Eurofound?

These options as well as the option of taking no action, and improving coordination between the work of the various existing groups/committees will be examined in the Impact Assessment that will be carried out in parallel with this consultation.

5. AIM OF THE CONSULTATION

Under Article 154(2) TFEU, before submitting proposals in the Social Policy field, the Commission must consult management and labour on the possible direction of Union action.

The Commission will examine the views expressed, and will then decide whether there is a case for EU action.

The questions on which the Commission proposes to consult the social partners are as follows:

- 1) Do you consider the description of the problem in this paper correct and sufficient?
- 2) Do you agree that action at EU level is justified? If so, what should be the main scope and objectives of that action?
- 3) Do you consider that a European platform as delineated above could be an appropriate vehicle for enhancing cooperation between Member States? Can you express your preferences as to the options listed under the different building blocks (i.e. membership, scope, tasks and form)?
- 4) Do you think that the objectives could be achieved with already existing groups and committees, if their coordination is improved and/or scope expanded?
- 5) What role do you see for social partners in this framework?
- 6) Would you consider negotiating any initiative in this field?