

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 ¹

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.²

¹ COM(14) 221.

² 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.³ It would be given 9 specific tasks.⁴

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.⁵

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”.⁶
- As the Commission also rightly acknowledges in its explanatory memorandum, “The main responsibility for tackling undeclared work lies with the Member States”.⁷ 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

³ Article 3.

⁴ Article 4.

⁵ Articles 5 and 6.

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

⁷ 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.⁸

- 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.⁹ Participation in an EU Platform is unlikely to give Member States significant additional awareness of the problem, as the Commission claim.¹⁰
- Member States can and do co-operate and co-ordinate with each other to a significant degree through voluntary participation in existing EU fora.¹¹ 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

⁸ 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".

⁹ Recital (2) to the proposal.

¹⁰ Section 3.3 of the Commission's Impact Assessment.

¹¹ See the information provided at section 3.2.2. of the Commission's impact assessment.

as a reason to tailor the proposal,¹² 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 high¹³ minimises any problems which the Commission perceives in participation in the Platform not being comprehensive.
- The output from the tasks given to the Platform¹⁴ 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.¹⁵

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.

¹² Section 3.2.1 of the Commission's Impact Assessment.

¹³ Section 6.3.5. of the Commission's impact assessment.

¹⁴ 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.

¹⁵ 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.