

Opinion of the European Economic and Social Committee on the 'Proposal of the European Parliament and of the Council on establishing an European platform to enhance cooperation in the prevention and deterrence of undeclared work'

COM(2014) 221 final — 2014/0124 (COD)

(2014/C 458/08)

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On 16 April 2014 the European Parliament and on 29 April 2014 the Council decided to consult the European Economic and Social Committee, under Article 153(2)(a) and Article 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Decision of the European Parliament and of the Council on establishing an European platform to enhance cooperation in the prevention and deterrence of undeclared work

COM(2014) 221 final — 2014/0124 (COD).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 27 August 2014.

At its 501st plenary session, held on 10 and 11 September 2014 (meeting of 10 September), the European Economic and Social Committee adopted the following opinion by 172 votes to 88 with 22 abstentions.

1. Conclusions and recommendations

The EESC

1.1 believes that undeclared work, as a problem affecting all Member States — though to varying degrees — undermines the European ideals of legality, security, solidarity, social and tax justice, free market competition and free movement of workers in the EU;

1.2 considers that tackling undeclared work, using appropriate measures to prevent, control and combat it, is a fundamental strategic choice if we are to bring this phenomenon out of the shadows and enable the competitiveness of the European Union's economic and social system to recover, in line with the priorities and guidelines set out in the Europe 2020 strategy;

1.3 welcomes the proposal to establish an European platform to enhance cooperation in combating undeclared work; it chimes with the various statements made in recent years by the European Parliament, the Council and the EESC, reiterating the need to launch a coordinated strategy at European level to create jobs and smart, sustainable and socially inclusive growth and improve cooperation on combating undeclared work, thus filling a gap at EU level, as the approach to undeclared work has so far been patchy and inadequately coordinated;

1.4 endorses the proposal to set up an European platform with mandatory involvement of all Member States and believes that through joint and coordinated participation of all the EU countries it will be possible to address cross-border matters and issues connected with the presence of undocumented undeclared workers from third countries;

1.5 while acknowledging that undeclared work and falsely declared or bogus self-employment are two distinct notions, considers that it is right to include bogus self-employment among the forms of undeclared work that the platform will endeavour to prevent, deter and combat, given the negative consequences it entails: i) for workers' rights and safeguards; ii) for normal free market competition; and iii) for the free movement of workers in the EU;

1.5.1 hopes that the platform — while abiding by national laws and practice, and by assessing the experiences of individual Member States — will define bogus self-employment and thus pave the way to an effective strategy for combating this phenomenon;

1.6 while fully agreeing with the functions and tasks of the platform, believes that its remit could be expanded to include the possibility of making recommendations on legislation at EU or Member State level, so as to ensure a more effective strategy (for instance, proposing tighter cross-border cooperation on inspection work to monitor and combat the problem);

1.7 with regard to the national appointment of a single contact point, believes that the Member States should ensure the mandatory involvement of the social partners and invite those civil society organisations that — having built up specific knowledge of undeclared work — can deliver added value to the strategy to tackle this issue;

1.7.1 considers that European platform meetings should be properly prepared by means of preparatory and briefing meetings, making it possible to disseminate the results of the platform's work (ensuring its activities are entirely transparent);

1.8 believes that measures designed to prevent and deter undeclared work should combine a variety of tools, marrying controls and sanctions with smart regulatory measures, with a view to securing a stable and predictable legal framework, while reducing the cost of implementing rules, avoiding excessive taxation on labour, using efficient methods so as to encourage employers to declare work and comply with the law, including through tax incentives and simplified systems for the payment of tax and social security obligations and introducing tax incentives to coax undeclared work into the open.

1.9 Within the EU-defined strategy for combating undeclared work, the EESC has worked unceasingly over the years to promote and encourage the sharing of instruments, policies and best practice, addressing both economic factors and the cultural and social context. The EESC thus hopes that this role will be officially recognised in the implementation arrangements and that it will be made one of the platform's observers;

1.10 considers that when it comes to raising public awareness, more must be done to step up the capacity for civil society involvement, not least through joint action by the EESC and national economic and social councils as part of the work done by the Europe 2020 strategy steering committee and other bodies within the EESC;

1.11 hopes that recognition will be given within the platform to the role that could be played by:

— Eurostat, by carrying out assessments to ascertain the scale of, and trends in, the shadow economy and undeclared work in the EU;

— Eurofound, by setting up an interactive database of best practices in tackling undeclared work at EU level; and

— the OECD, in providing technical support for understanding the phenomenon;

1.12 maintains that it would be worth equipping the platform with a monitoring and evaluation mechanism using a system of ad hoc indicators and independent assessors.

2. The phenomenon of undeclared work in the European Union

2.1 Undeclared work is defined in the EU as 'any paid activities that are lawful as regards their nature but not declared to public authorities, taking into account differences in the regulatory system of Member States' ⁽¹⁾. It also includes falsely declared work, or bogus self-employment. This is when the worker is formally declared to be self-employed and working on the basis of a service contract, although the work performed fulfils all the criteria that are used by national law and practice to characterise that of an employee ⁽²⁾.

⁽¹⁾ COM(2007) 628.

⁽²⁾ COM(2014) 221 final.

2.2 Undeclared work and bogus self-employment are diverse aspects of a phenomenon that has negative consequences for workers' rights and safeguards, for normal competitive conditions on the single market and for the free movement of workers in the EU. It is perfectly logical to include bogus self-employment among types of undeclared work to be countered by the platform, since these are forms of illegality that are expanding as undeclared work spreads within the service sector and that deprive workers of rights and safeguards in a way similar to undeclared work ⁽³⁾.

2.2.1 As the EESC has already pointed out ⁽⁴⁾, there is as yet no single definition for the self-employment category at European level. Each competent authority thus refers to national legislation, making it difficult to implement an European-level strategy for countering bogus self-employment, especially when it comes to the cross-border context.

2.2.2 Against this background, the EESC has previously advocated assessing the various experiences gained in the individual Member States in order to draw conclusions and draw up recommendations for an effective strategy to counter falsely declared or bogus self-employment. In its opinion on the *Abuse of the status of self-employed* ⁽⁵⁾, the EESC stressed the need for reliable regulation based on a definition of bogus self-employment that could protect the genuinely self-employed and micro businesses from the risks of unfair competition.

2.2.2.1 This position is consistent with the case law of the European Court of Justice, which, with a view to ensuring normal market conditions and the free movement of workers, while reiterating the responsibility of the Member States for defining employed and self-employed workers, has provided guidelines for a general definition of these concepts — by means of standards — so as to ensure the uniform application of the provisions of the Treaties ⁽⁶⁾.

2.2.2.2 The EESC believes that, through this approach, the socio-economic role of self-employment would be further enhanced, with only genuinely self-employed people coming under this category. The legitimate status of self-employed would thus be respected for whoever freely chooses to provide their services independently. The EESC limits itself here to guiding the Member States by suggesting best practice models.

2.3 The variety and complexity of undeclared or falsely declared work means that it involves a very diverse range of people: employees not covered by social security, or without a contract or paid partly in cash; family helpers; workers who do not declare their second job; self-employed workers who choose not to follow the rules; the bogus self-employed; irregular immigrants involved in undeclared work, and workers from third countries who subcontract to Member States without minimum standards for decent work ⁽⁷⁾. Such heterogeneity makes undeclared work difficult to tackle and calls for targeted strategies.

2.4 Undeclared work affects all Member States and is a phenomenon that runs counter to European ideals of legality, security, solidarity, social and tax justice, free market competition and free movement of workers in the EU.

2.4.1 Undeclared work must be properly addressed because of its numerous effects on both companies and workers, not to mention on the public purse:

- it leads to unfair and distorted competition between companies that abide by the rules and those that do not, keeping companies in business that would otherwise probably not be in the market; it also creates a dynamic of inefficiency, with companies stunting their own growth so as to remain in the shadow economy, where they do not have access to credit and are not in a position to access the possibilities offered by public procurement;

⁽³⁾ European Parliament (2013) *Social protection rights of economically dependent self-employed workers*. Study; Floren, B. (2013), *Fake self-employment in the EU — A comparison between the Netherlands and the UK*, Tilburg University.

⁽⁴⁾ CES2063-2012_00_00_TRA_PA.

⁽⁵⁾ OJ C 161, 6.6.2013, p. 14-19.

⁽⁶⁾ As pointed out by Floren, B. (2013) op.cit., the judgment of the European Court of Justice (ECJ) C-66/85 of 3 July 1986, Lawrie-Blum/Land Baden-Württemberg, defined an employee as: 'a person who for a certain period of time performs services for and under the direction of another person in return for which he receives remuneration'. As this definition was adopted in recent ECJ judgments (Joined cases C-22/08 and C-23/08, Athanasios Vatsouras and Josif Koupatantze v Arbeitsgemeinschaft (ARGE) Nürnberg 900; C-268/99 Judgment of 20/11/2001, Jany and others) it has implicitly established the conditions for also defining — by exclusion — self-employment. This is illustrated by the aforementioned judgment C-268/99, where the ECJ explicitly affirms that: 'any activity which a person performs outside a relationship of subordination must be classified as an activity in a self-employed capacity'.

⁽⁷⁾ European Commission (2014), *Undeclared work in the EU*. Special Eurobarometer 402; A.T. Kearney, VISA, Schneider, F., (2013) *The Shadow Economy in Europe*.

- the workers concerned suffer poor conditions in terms of physical safety, and income, job and social security, with consequences not only from an ethical standpoint regarding their dignity, but also in terms of their career, as they are denied the opportunity for life-long learning, retraining and for keeping skills, production processes and products up to date;
- resources are lost to the public purse, as tax and social security income falls (the tax gap), meaning that the cost of public services and the welfare state is unevenly spread (free-riding).

2.4.2 Undeclared work exists within the EU to varying degrees across different sectors: agriculture, construction, craft manufacturing (textiles, clothing, footwear, etc.), retail, hospitality, catering, maintenance and repair services, care work and domestic services⁽⁸⁾.

2.5 Estimates of the scale of the phenomenon vary widely and quantifying it at EU level is very complex. The results we do have, including from the most recent surveys⁽⁹⁾, highlight the difficulties. Obviously, this opacity has a direct impact on the capacity to mount effective intervention, calling for action targeted specifically at different sectors.

2.5.1 In a recent Eurofound study, 18,6 % of the sample interviewed across 27 EU Member States said that they had carried out undeclared work in 2008⁽¹⁰⁾. Of those, 31,3 % were employees who were paid partly in cash, not declared by their employers (usually around one quarter of their salary); 14,4 % were employees whose pay was entirely undeclared; 14,4 % were undeclared self-employed people; and 39,7 % were people carrying out services on a cash basis for family members, friends, social contacts, etc. According to the latest Eurobarometer survey⁽¹¹⁾ of 2013⁽¹²⁾, only 4 % of respondents admitted that they performed undeclared work. However, 11 % admitted that they had purchased goods or services in the previous year where they had good reasons to believe it involved undeclared work. There are considerable variations across the EU⁽¹³⁾.

2.5.2 As things stand, there is uncertainty about the trends in undeclared work during the crisis. There is a risk that it will grow further in the areas of activity and occupation types where it already exists and that it will spread into other areas (for instance with the advance of information and communication technologies)⁽¹⁴⁾.

2.6 Globalisation and socio-demographic change also provide additional fertile ground for the shadow economy and undeclared work, so policies to counter them must evolve accordingly. There is no doubt that individual countries have limited capacity for action here. This is particularly clear when it comes to the transnational aspects of undeclared work.

2.7 The involvement of irregular immigrants in undeclared work is a serious problem that must be tackled as part of the overall strategy to counter irregular immigration. For many irregular immigrants undeclared work is an unavoidable survival strategy. The promise of undeclared work can also act as a 'pull' factor for irregular immigration.

3. General comments

3.1 The decision to put in place an European platform is the outcome of a long process of taking stock of the gravity of the phenomenon and of scrupulous preparation by the main EU institutions⁽¹⁵⁾.

3.2 The proposal to make Member State participation in the European platform mandatory is a logical EU initiative given that all Member States are now affected by the problem of undeclared work, to varying degrees but nevertheless in similar ways.

⁽⁸⁾ European Commission (2014), op.cit.; European Commission (2013), *Employment and social developments in Europe*; Hazans, Mihails (2011), *Informal workers across Europe: evidence from 30 European countries*, World Bank; Koettl, Johannes, Packard, Truman, Montenegro, Claudio E. (2012), *In from the shadow: integrating Europe's informal labor*, Washington, DC: World Bank.

⁽⁹⁾ See especially: Eurofound (2013), *Tackling undeclared work in 27 European Union Member States and Norway — Approaches and measures since 2008*; Eurofound (2013) [b], *Tackling undeclared work in Croatia and four EU candidate countries*; Special Eurobarometer 402, *Undeclared work in the European Union*, March 2014.

⁽¹⁰⁾ Eurofound (2013) [b].

⁽¹¹⁾ All figures result from direct surveys, which were based on face-to-face interviews with EU citizens. Meaning that awareness, national definitions, transparency of undeclared work and trust in the interviewer, are important factors for citizens to enable them to indicate that they have performed or benefitted from undeclared work.

⁽¹²⁾ Special Eurobarometer 402, *Undeclared work in the European Union*, 2013.
http://ec.europa.eu/public_opinion/archives/ebs/ebs_402_en.pdf

⁽¹³⁾ COM(2014) 221 final.

⁽¹⁴⁾ European Commission, 2013, op. cit.

⁽¹⁵⁾ See the following documents: COM(2010) 2020, COM(2012) 173, Council Decision 2010/707/EU of 21 October 2010, European Parliament Resolution 2013/2112(INI) of 14 January 2014.

3.2.1 Instigating this type of cooperation among the Member States is all the more important given the need to uphold and safeguard the European ideals of solidarity and social justice; free market competition; and the free movement of workers as one of the EU's fundamental freedoms, and also given the cross-border dimensions of undeclared work and the challenges posed by labour mobility.

3.2.2 The platform should ensure better coordination between the various committees and working groups that exist in the Member States, thus filling a gap at EU level, where the approach to undeclared work has so far been patchy and inadequately coordinated.

3.2.3 The shared and coordinated involvement of all the EU Member States is essential to stiffen the resolve to combat illegal work in its various guises (including bogus self-employment) and the cross-border aspects and problems that come from the presence of undeclared workers from outside the EU.

3.3 The fact that the wording of the proposal fully respects the EU's subsidiarity and proportionality principles, and should continue to do so, is to be welcomed.

3.3.1 Action to prevent and deter this kind of work remains a matter for the Member States. Non-criminal sanctions (administrative and non-administrative) and criminal sanctions are available based on the principle of legality and respect for procedure and for the provisions in force in each country.

3.4 Combating undeclared work is a fundamental strategic choice for the EU. It is a strategy that will bring the phenomenon out of the shadows and thus help to drive economic growth and relaunch the competitiveness of the EU's economic and social system in line with the Europe 2020 goals.

3.5 Action to prevent and deter undeclared work must be targeted at its real causes and the need to combine instruments to tackle it — in the form of inspections and sanctions designed to combat improper, unfair and undeclared commercial or business practices — with smart regulation measures that provide a stable and predictable legal framework.

3.5.1 It would be helpful to create a positive environment for businesses and workers in which the costs of implementing the rules are reduced, administrative and fiscal procedures are revised and simplified, and regulations on labour, safety in the workplace, seasonal and casual work and new forms of work are improved.

3.5.2 Tax incentive policies can play an important role in preventing and deterring undeclared work, with tax breaks rewarding behaviour that upholds the rules and helps to bring undeclared work into the open, including domestic and care work.

3.6 Care must be taken to ensure that the European platform avoids duplicating existing initiatives or forms of cooperation, as well as reporting obligations that are not helpful in tackling the problem and are therefore redundant.

4. Specific comments

4.1 Given that our picture of the extent of and trends in undeclared work often appears incomplete, it is quite clear that action by national authorities to tackle it would benefit greatly from the hands-on knowledge that can be offered by the social partners, as well as SME organisations, the professions, the social economy, and more generally civil society organisations. Ensuring such a flow of information is in fact the best way to guarantee that the work of the platform is steered most effectively.

4.2 With regard to the national appointment of a single contact point, it is important that the Member States ensure the mandatory involvement of the social partners and invite the civil society organisations that are playing a decisive role in national action to combat undeclared work.

4.2.1 It is crucial that preparatory meetings be held in each Member State, to lay firm foundations for meetings of the European platform, as well as national follow-up meetings at which the results of the platform's work can be disseminated.

4.3 The EESC has stressed the need to bolster action to combat undeclared work through 'the systematic exchange of information, data and studies at European Union (EU) level, so as to secure the involvement and cooperation of the competent authorities and the social partners concerned' ⁽¹⁶⁾.

4.3.1 The EESC has worked unceasingly to promote and encourage the sharing of instruments, policies and best practices that bear upon economic factors and the cultural and social context. It therefore calls for its role to be officially recognised in the implementation arrangements and to be made one of the platform's observers.

4.4 The work to raise public awareness provided for in the platform provides an important opportunity for all the Member States to boost the prevention, reduction and combating of undeclared work. It is important here not to underestimate the potential of civil society involvement, activated by a joint initiative of the EESC and the national ESCs within the Europe 2020 strategy steering committee and other EESC bodies.

4.4.1 The part played by national authorities when it comes to prevention, information and consultation ⁽¹⁷⁾ has been inadequate and it is important that the platform discuss measures of this kind, including in the form of joint action such as European campaigns, which are, moreover, provided for in Article 4(1)(i).

4.5 The EESC is in complete agreement with the mission and tasks defined for the platform. There is no doubt that pooling information and sharing best practice, as well as developing analysis, research and competences (via joint training courses), are the first stage in launching coordinated transnational operations. In this respect, the EESC would be in favour of expanding the platform's remit to enable it to make recommendations on legislation, at EU or Member State level, so as to ensure the implementation of a more effective strategy (for instance, proposing tighter cross-border cooperation on inspection work to monitor and combat the problem).

4.6 As already stated in the earlier opinion, the platform should lay the groundwork for a quantitative and qualitative assessment: i) of the phenomenon of undeclared work (which differs enormously from one Member State to the next); ii) of the adverse economic and social effects, which also vary in the Member States as a result of differing structural and underlying conditions; and iii) of the effectiveness of action carried out within the Member States to combat it.

4.6.1 The establishment of the platform is important in this context and it is desirable that both Eurostat and Eurofound be able to play an important role within it.

- Eurostat could provide technical support to solve methodological problems regarding estimates of the scale and evolution of the shadow economy and undeclared work, which are so far incomplete and unshared.
- To support the platform's work, Eurofound, for its part, could transform its current database into an interactive knowledge bank of best practice in countering undeclared work.

4.7 The OECD has acquired special expertise over a number of years regarding undeclared work ⁽¹⁸⁾ and the EESC therefore believes that it would make sense to invite it to take part in the platform's work as an observer.

4.8 Rather than being limited to an audit every four years, the monitoring of the platform should be continuous, and it must be ensured that external assessors are truly involved in the choice of outcome and impact indicators and in the stage of assessing the platform's programme.

Brussels, 10 September 2014.

The President
of the European Economic and Social Committee
Henri MALOSSE

⁽¹⁶⁾ OJ C 177, 11.6.2014, p. 9-14.

⁽¹⁷⁾ In the 2014 Country Specific Recommendations, the following Member States received specific recommendations for action to fight the shadow economy: Bulgaria, Croatia, Hungary, Italy, Latvia, Romania and Spain.

⁽¹⁸⁾ OECD, 2002, *Measuring the Non-Observed Economy — A Handbook*; OECD, 2014, *The Non-Observed Economy in the System of National Accounts*, Gyomai, G.; van de Ven, P., Statistics Brief, No 18.

APPENDIX

to the Opinion of the European Economic and Social Committee

The following amendments were rejected, although they did receive at least a quarter of the votes cast:

Point 1.5

Amend as follows:

~~'while acknowledging notes that undeclared work and falsely declared or bogus self-employment are two distinct notions, considers that it is right to include bogus self-employment among the forms of undeclared work that the platform will endeavour to prevent, deter and combat, given the negative consequences it entails: i) for workers' rights and safeguards; ii) for normal free market competition; and iii) for the free movement of workers in the EU. The EESC has already pointed out ⁽¹⁾ that "there is a need for more reliable evidence" in this area, recommending that "tackling the specific problem of the self-employed be discussed in the social dialogue at both European and national level and that organisations representing their interests be allowed to take part in the social dialogue";'~~

Result of the vote:

For: 107

Against: 153

Abstentions: 12

Point 1.5.1

Amend as follows:

~~'hopes that the platform — while abiding by national laws and practice, and by assessing the experiences of individual Member States — will encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences define bogus self-employment and thus pave the way to an effective strategy for combating this phenomenon;'~~

Result of the vote:

For: 113

Against: 149

Abstentions: 10

Point 1.6

Amend as follows:

~~'while fully agreeing with the functions and tasks of the platform, believes that its remit could be expanded to include the possibility of making recommendations on legislation at EU or Member State level, so as to ensure a more effective strategy (for instance, proposing tighter cross border cooperation on inspection work to monitor and combat the problem) agrees with the functions and tasks of the platform, since they are merely indicative;'~~

⁽¹⁾ OJ C 161, 6.6.2013, p. 14-19.

Result of the vote:

For: 114

Against: 150

Abstentions: 9

Point 2.1

Amend as follows:

'Undeclared work is defined in the EU as "any paid activities that are lawful as regards their nature but not declared to public authorities, taking into account differences in the regulatory system of Member States" ⁽¹⁾. ~~It also includes falsely declared work, or bogus self-employment. This is when the worker is formally declared to be self-employed and working on the basis of a service contract, although the work performed fulfils all the criteria that are used by national law and practice to characterise that of an employee ⁽²⁾.~~

Result of the vote:

For: 104

Against: 142

Abstentions: 6

Point 2.2

Amend as follows:

'Undeclared work and bogus self-employment are diverse aspects of a phenomenon that has negative consequences for workers' rights and safeguards, for normal competitive conditions on the single market and for the free movement of workers in the EU. Bogus self-employment is established by national legislation and by the legal definition drawing a line between paid employment and self-employment, and each Member State is responsible for adopting the provisions needed to comply with tax and social security obligations. Bogus self-employment cannot be dealt with at EU level without referring to the diversity of national definitions and status of self-employed. It is perfectly logical to includeCombating bogus self-employment ~~among types of undeclared work to be countered by the platform, is necessary,~~ since these are forms of illegality that are expanding as undeclared work spreads within the service sector and that deprive workers of rights and safeguards in a way similar to undeclared work⁶.

Result of the vote:

For: 112

Against: 142

Abstentions: 10

Point 2.2.1

Amend as follows:

'As the EESC has already pointed out⁴, there is as yet no single definition for the self-employment category at European level. and Each each competent authority thus refers to national legislation, ~~making it difficult to implement a European-level strategy for countering bogus self-employment, especially when it comes to the cross-border context. The EESC has stressed that ⁽³⁾:"self-employment differs from one Member State to another" and "different definitions exist not only in the various European countries, but also in EU law".~~

⁽¹⁾ COM(2007) 628.

⁽²⁾ COM(2014) 221 final.

⁽³⁾ OJ C 161, 6.6.2013, p. 14-19.

Result of the vote:

For: 115

Against: 151

Abstentions: 5

Point 2.2.2

Amend as follows:

~~'Against this background, the EESC has previously advocated assessing the various experiences gained in the individual Member States in order to draw conclusions and draw up recommendations for an effective strategy to counter falsely declared or bogus self-employment. In its opinion on the Abuse of the status of self-employed⁵, the EESC stressed the need for reliable regulation based on a definition of bogus self-employment that could protect the genuinely self-employed and micro-businesses from the risks of unfair competition that "there is a need for more reliable evidence to assess the number of affected workers and the most critical borders. Therefore more professional research is necessary." It further recommended that "tackling the specific problem of the self-employed be discussed in the social dialogue at both European and national level and that organisations representing their interests be allowed to take part in the social dialogue".'~~

Result of the vote:

For: 113

Against: 156

Abstentions: 9

Point 3.3

Amend as follows:

~~'The fact that the wording of The proposal must comply fully with the Community acquis and respects the EU's subsidiarity and proportionality principles, and should continue to do so, is to be welcomed.'~~

Result of the vote:

For: 105

Against: 152

Abstentions: 13
