EUROPEAN COMMISSION

Brussels, 11.8.2014
C(2014) 5848 final

Dear Chairman,

The Commission would like to thank the House of Commons for its Reasoned Opinion concerning the proposal for a Decision on establishing a European Platform to enhance cooperation in the prevention and deterrence of undeclared work {COM(2014) 221 final}.

The Commission would like to give the following remarks to the comments of the House of Commons:

It should be clarified that the Commission does not question the effectiveness of the Platform. The quote referred to in the first bullet point of paragraph 7 of the Reasoned Opinion states the reason why, in the course of the Impact Assessment, it was found unrealistic to assess the social or economic impact per se. Instead, it was considered possible to assess to what extent the different options would achieve the specific objectives set, that is (1) to improve cooperation between Member States' different enforcement authorities at EU level to prevent and deter undeclared work more efficiently and effectively, (2) to improve Member States' different enforcement authorities technical capacity to tackle cross-border aspects of undeclared work and (3) to increase Member States' awareness on the urgency of the problem and to encourage Member States to step up their efforts to fight against undeclared work.

Although the nature of undeclared work varies in different Member States, it is a persisting problem for all Member States, despite their efforts, and there is sufficient similarity in challenges and policies for cross-border cooperation to be beneficial to all Member States. Furthermore, challenges posed by undeclared work, such as problems with the identification of and imposing sanctions for abusive behaviour, negative consequences and difficulties with cross-border aspects, are common to all Member States. In addition, there are no common fora or "pooling of expertise" at the EU level on how to tackle the phenomenon and to develop a coherent set of actions, which would take account of its multifaceted character and involve the whole range of different national enforcement authorities. Therefore, the Commission considers that although the Member States have the main responsibility for tackling undeclared work, EU level action can support and facilitate their efforts by

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enhancing cooperation between Member States. However, in order for this cooperation to be effective and to have real added value, in particular when related to cross-border aspects of undeclared work, all Member States should participate in the future Platform.

The Commission would like to clarify that the proposal involves cooperation at EU level between the Member States' different enforcement authorities. It does not cover as such internal coordination within a Member State and does not include any harmonisation of the laws and regulations of the Member States. At the same time, as stated in the Impact Assessment {SWD(2014) 138 final}, some degree of coordination within a Member State between different enforcement authorities could contribute to more effective policies. The exchanges of best practices between Member States in the framework of the Platform, would facilitate the comparison of experiences and promote the identification of effective approaches.

Based on several studies[1], the Impact Assessment identifies several issues related to cross-border aspects of undeclared work as the underlying drivers of more effective fight against undeclared work (i.e. the lack of knowledge of national enforcement authorities and their competencies in other Member States, the lack of mechanisms and resources to tackle cross-border cases and different rules regarding data protection and exchange of personalised information). As it has been identified that cross-border aspects cause problems for national authorities, the Commission is of the opinion that an action at EU level to support Member States to tackle these aspects of undeclared work is fully justified.

During the recent years, country-specific recommendations have been given to some Member States on the fight against undeclared work. The country-specific recommendations are designed to offer tailored advice to Member States on how to boost growth and jobs. However, these recommendations alone are not enough to address the phenomenon. As described above, there are no common fora or "pooling of expertise", to support Member States' efforts to fight undeclared work. Regarding the awareness raising, the Commission would like to clarify that this does not include only the awareness of public authorities, but also awareness of individuals. Studies[2] have shown that citizens are often not aware of the negative consequences of undeclared work. Activities such as information campaigns, as foreseen by the proposal, are needed to increase awareness.

Some multilateral cooperation has indeed already taken place. Countries participating in international cooperation are mostly countries where undeclared work is relatively low and policy efforts to mitigate the extent of the problem have been more successful. However, in Member States taking part in international projects only occasionally, or not at all, awareness of the urgency of the problem is low. This group includes countries with higher levels of undeclared work. Therefore, for the EU level action to have real added value and go further than the multilateral cooperation carried out so far, all Member States should participate in the future Platform.

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[1] The European Commission and ILO joint study on "Labour Inspection and undeclared work in the EU" and the Regioplan's study on "Joining up in the fight against undeclared work in Europe"

[2] The Special Eurobarometer 402 "Undeclared work in European Union"

As regards participation, the Commission would like to clarify that although high participation in case of voluntary participation was anticipated in the Impact Assessment, it could not be guaranteed. The success of the voluntary platform would depend on the willingness of Member States to become members of the Platform. Therefore, the Impact Assessment concluded that one of the essential elements of the Platform, tackling cross-border aspects of undeclared work, could not be fully achieved with voluntary participation. The Platform with mandatory participation would allow for the initiation of a European level debate on undeclared work. It would evolve progressively from a forum for exchange of information and best practice to more elaborate forms of cooperation as mutual trust and experience build up. However, this mandatory participation in the Platform would be combined with some degree of flexibility allowing Member States to modulate their participation in some of the activities of the Platform according to their needs and priorities.

In the light of the above and taken into account the high prevalence of undeclared work in the EU, its negative consequences and its cross-border dimension, which could impact the proper functioning of the Internal Market through unfair competition between service providers, the Commission considers that the mandatory participation in the Platform is justified. In addition, the legal basis of the proposal, Article 153(2)(a) TFEU, can be used for a measure creating obligations to the Member States, such as the participation in the Platform as long as it encourages cooperation between Member States and does not include any harmonisation of the laws and regulations of the Member States.

Finally, as the initiative addresses the cooperation between national enforcement authorities who are mainly responsible for the fight against undeclared work and as the proposal does not include any harmonisation of the laws and regulations of the Member States, the Commission considers it to be in line with the principle of subsidiarity.

The points made above are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council at which your government is represented.

The Commission hopes that these clarifications address the issues raised by the House of Commons in its Reasoned Opinion and looks forward to continuing the political dialogue in the future.

Yours faithfully,

Michel Barnier
Member of the Commission