



30 September 2013

EU cooperation in the prevention and deterrence of undeclared work – Social Partners' consultation

KEY MESSAGES

- 1** Undeclared work is a serious problem as it distorts competition between companies which obey the rules and those which do not.
- 2** One of the main drivers of undeclared work is unsuitable regulatory, fiscal and policy environment which makes it costly and difficult for companies and individuals to comply with regulations
- 3** Member States differ considerably in terms of the scale, types and drivers of undeclared work. Deterring and preventing undeclared work is a task primarily of national authorities.
- 4** If the EU platform on undeclared work is created it should focus on ensuring that EU law does not create incentives for undeclared work and on exchange of best practice on issues – transnational and domestic - which are of shared interest to the Member States.

WHAT DOES BUSINESSEUROPE AIM FOR?

BUSINESSEUROPE's objective is to ensure that any EU action on undeclared work does not open a door to new EU regulation as this problem is mainly a national issue.



Introduction

1. On 4 July 2013 the European Commission launched social partners' consultation, in accordance with Article 154 TFEU on enhancing EU cooperation in the prevention and deterrence of undeclared work.
2. With this position paper BUSINESSEUROPE replies to the questions raised in the Commission's consultation document.

Do you consider the description of the problem in this paper correct and sufficient?

3. BUSINESSEUROPE agrees in particular with the following observations:
 - From business perspective, undeclared work distort competition between companies and self-employed who obey the rules and those who do not.
 - Drivers of undeclared work have to be looked at and addressed in a wider context of Europe 2020 strategy and its employment targets.
 - Successful policy strategies to address undeclared work consist of a combination of deterring measures (such as inspections, sanctions) and preventive actions (such as awareness rising, appropriate regulatory and fiscal environment, administrative simplification). But there is no simple, universal solution to combat undeclared work.
 - Member States differ in terms of the scale and types of undeclared work and motives for engaging in such work. Deterring and preventing undeclared work is a task primarily of national authorities.
 - Measures at national level can be complemented by actions at EU level aiming at facilitating and promoting cooperation between national authorities and facilitating exchange of best practice.
4. However, we do not understand why the Commission's document makes a strong link between "bogus-self employment" and cross-border services provision. Problem of the abuse of the status of self-employed person is predominantly a national issue, not least because of relatively small proportion of service providers doing business across borders. Moreover, "bogus self-employment" and undeclared work are two separate problems. Bogus self employment is not an undeclared, but wrongly declared activity. It is for each country to ensure that the right tax regime and employment status are enforced and, by doing so, to avoid bogus self-employment.

Do you agree that action at EU level is justified? If so, what should be the main scope and objectives of that action?

5. A variety of EU level actions to support Member States in deterring and preventing undeclared work are already in place. For example:
 - various working groups and committees can discuss different legal, institutional and policy issues linked to combating undeclared work (e.g. Senior Labour Inspectors Committee (SLIC), Employment Committee (EMCO), expert group



on posting of workers, expert group on anti-tax fraud strategy, High Level Group on Administrative Burdens)

- Eurofound produces analytical reports on measures and strategies aimed at combating undeclared work,
- EU funding for cross-border cooperation is available (e.g. for research studies, exchange of staff of labour inspectorates),
- IMI system can assist national authorities in communication related to cross-border services provision and posting of workers,
- proposal for the posting of workers enforcement directive aims at providing a legal framework for cooperation between national authorities on this cross-border issue.

6. Any further EU cooperation should focus on facilitating exchange of practice and methods among national authorities, while avoiding the overlap with the above-mentioned, existing forms of cooperation.

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)?

7. The Commission's consultation document suggests that the weakness of existing EU actions on undeclared work is that "there is no coherent approach at EU level to preventing and deterring undeclared work" and there is no forum to develop "a coherent set of actions which would (...) cover the whole range of different measures and policies implemented by Member States". It is suggested that the new "EU platform" on undeclared work gathering representatives of national enforcement authorities and other stakeholders could help address these issues.
8. BUSINESSEUROPE has doubts to what extent the perceived weaknesses of current EU actions described in the consultation document are real problems. Given the diversity of situations in Member States in terms of the extent of undeclared work and its drivers, BUSINESSEUROPE is of the opinion that different priorities could be legitimately chosen at national level and different policy responses can be optimal. In this light, we have doubts whether the EU should primarily seek to "increase coherence" of actions aimed at preventing and deterring undeclared work. In our view, the cooperation among Member States should focus on promoting best practice and increasing the efficiency of actions aimed at combating undeclared work. This may lead to more coherence, but it may as well not.
9. BUSINESSEUROPE considers exchange of practice between Member States can be useful, on the condition that national authorities are interested in it. At the same time, it appears to us that it may be possible to organize it within existing structures e.g. during (possibly enlarged) EMCO or SLIC meeting or a workshop organised by Eurofound.
10. If the new platform is created, BUSINESSEUROPE is of the opinion that:



- a. Membership should be voluntary to ensure that those involved are truly interested in the cooperation;
- b. Competences: the platform should focus only on exchange of practice, as deterring and preventing undeclared work is primarily a national competence;
- c. Scope: the platform should discuss both preventive and deterrent measures, and both domestic and transnational issues. Bogus self-employment should not be discussed as it is a separate problem. It is not an undeclared, but wrongly declared activity.

11. The consultation document suggests that one of the outcomes of increased EU cooperation could be to identify “common principles for inspections”. BUSINESSEUROPE is sceptical about setting such a goal for subsidiarity reasons. There is currently a wide diversity among Member States in terms of how inspections and controls are organised. Member States should retain the competence to adapt the methods and practices used to their labour market and institutional context.

Do you think that the objectives could be achieved with already existing groups and committees, if their coordination is improved and/or scope expanded?

12. BUSINESSEUROPE would prefer to organise such an exchange of practice within the existing bodies.

What role do you see for social partners in this framework?

13. Consulting social partners (mainly) at national level, both cross-industry and sectoral, can be useful, as in many member states social partners are involved in design and implementation of actions aimed at preventing and deterring undeclared work such as awareness raising campaigns, inspections, or fiscal incentives.

Would you consider negotiating any initiative in this field?

14. BUSINESSEUROPE does not see it as a priority for EU social partners to negotiate an initiative in this field.