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CEEP answer to the second stage consultation on enhancing EU cooperation in the prevention and deterrence of undeclared work

Introduction

On 29 January 2014 the European Commission published a second stage consultation of social partners on enhancing EU cooperation in the prevention and deterrence of undeclared work. CEEP once again reiterates its support for further cooperation between Member States in the framework of the struggle against undeclared work.

Indeed, as the European Parliament stated in its resolution of the 14th of January 2014 the undeclared work *“has negative consequences for Member States’ economies and for the financial sustainability of the European social model, undermines the funding and provision of social benefits and public services, and imposes insecurity, vulnerability and poverty on the people concerned, both while they are working and in their old age”*.

Therefore the improvement of the cooperation tools for the purpose to fight undeclared work is of great importance in order to guarantee the sustainability of public finances in the long term. Thus, an appropriate and well defined strategy enhancing further cooperation needs to be implemented to answer this specific challenge the Member States have to face.

Necessity to take into account the role and the discrepancies between national labour inspections

Labour Inspectors are in the front line when addressing undeclared work. Therefore any improvement of the exchange of information mechanisms is most welcomed to provide the inspectors with all the relevant information. The EU has a special role to play and a special input with regard to the increasing volume of workers posted abroad or to fostering workers’ mobility within the EU or just from one border to the other on a regular basis.

However when the Commission proposes to develop guidelines for inspectors or to adopt common principles and/or standards for inspections, it should not elude the issue of the discrepancies between each Member States’ labour inspectorate e.g. the differences in regard to national systems and provisions, whether restructuring, social security contributions or undeclared work are part of the remit of labour inspectors, the growing role of the private sector in labour inspectorates in several EU countries and its result on their autonomy or ways to conduct inspections etc.

In this respect, the educational purposes of the future platform are most essential. The exchange of good practices has to be systematically accompanied by a reflexion on the ways for the Member States to seize themselves with the identified practices and translate them through their own national mechanisms.

Strong risk of overlapping competences

Regarding the Commission's answer to the first stage of consultations of the social partners:

The Commission seems to have chosen the idea of a new European platform chaired by its own services which would include the participation of all the relevant Member States' authorities and representatives of the social partners.

However CEEP understands that the relevant authorities do not include representatives from the EMCO, the Senior Labour Inspectors Committee (SLIC), the Administrative commission for the coordination of social security systems or the Expert group on posted workers related issues and that these committees only shall be consulted "when appropriate".

This future architecture of the Platform presents clear risks of overlapping competences by adding another level of negotiations and exchange on top of already existing entities, dedicated to the very same objectives of enhancing the exchange of good practices, raising the understanding of undeclared work related issues and propose guiding principles of national labour inspectorate.

For instance the Senior Labour Inspectors Committee is already charged with the responsibility to define common principles for labour inspections in the field of occupational health and safety and to take full account of the ILO Convention on Labour Inspection (No. 81). The administrative commission of the coordination of social security systems is well suited to provide data and input on the impact of undeclared work on public finances and the Expert group on posting of workers is already dedicated to the understanding of this phenomenon and its evolutions.

Thus it seems more appropriate not only to consult these committees "when appropriate" but rather give them an active role in the development of the new platform. The platform should therefore foster a new architecture between these already existing entities turned toward educational as well as well-defined operational purposes for the effective coordination of labour inspectorate services based on pertinent information.

A clear role for European social partners

The social partners are those most directly in contact with undeclared work. The employers are for instance directly impacted by unfair competition and social dumping and the input of the social partners is therefore inestimable on this very issue and they should be given an adequate role in the development of the platform.

Future content of the platform

CEEP believes that great caution should be taken when deciding on which form of undeclared work should be included in the Platform's competences.

Possibility to include False-trainees

It may prove very difficult and resource consuming to dedicate the platform to the struggle against **False trainees**. As the quality framework for traineeship highlighted, it is not in the

EU's ability to act inside the sphere of "in education traineeships". The QFT could only act on the "open-market" traineeships (in bi-partite conventions). However the "open-market" traineeships are forbidden in few Member States, as long as they exclude an education provider's participation in the convention. Therefore what is necessary on this particular issue is before any operational or regulatory arrangements, the constitution of a proper understanding of this phenomenon at the EU level.

Possibility to Include bogus self-employment

CEEP wishes to raise some concerns with the possible inclusion of bogus self-employment in the issues addressed by the future EU platform. Bogus self-employment has been regarded in a recent resolution from the European Parliament of the 14 January 2014 as a form of partial contribution evasion that is difficult to detect and undermines the sustainability and adequacy of pension schemes.

However, the Parliament also rightly says that it could be useful to lay down a clear definition of bogus self-employment. In this framework, CEEP wishes to stress the fact that our overall knowledge of bogus self-employment is still limited in comparison to our understanding of other social-dumping related issues (such as wrongful posting of workers). From CEEP's point of view this question is closely connected to national labour law, coordination between Member States labour administrations and provisions of different kinds such as social security and tax issues which are national competences. Therefore, the EU level should first focus on educational purposes when dealing with this phenomenon in order to better understand this important and difficult issue, assist the Member States while avoiding a one size fits all approach.

Thus CEEP strongly believes that before focusing on the operational ways to tackle bogus self-employment, the platform should concentrate its efforts on the problem description at EU level, and strongly encourage the application, by the Member States, of ILO recommendation n°198, which is a relevant tool to address potential bogus self-employment in the EU. Paragraph 4 of the recommendation specifies that National policy should at least include measures to: (a) provide guidance for the parties concerned, in particular employers and workers, on effectively establishing the existence of an employment relationship and on the distinction between employed and self-employed workers.

"Where there has been an attempt to disguise the employment relationship, there is a particular danger that workers will be deprived of the protections due to them, and trust in the legal system suffers if national policy is unable to address the difference between fraudulent practices and true civil and commercial business relationships."

Conclusion

CEEP agrees on the idea of a platform dedicated to the exchange of information and best practices at the EU level, with a strong educational component in order to understand the many aspects of undeclared work, and to build upon already existing networks/organisations in this work (instead of creating something independent, and completely new Platform). Therefore CEEP agrees with the Platform objectives of:

- the reinforcement of the cooperation between Member State's different enforcement authorities (exchange of personnel would be particularly useful in term of transnational forms of undeclared work);
- the improvement of Member State's different enforcement authorities' technical capacity to tackle cross-border aspects of undeclared work (the bettering of the information exchange systems through the proper evaluation of initiatives such as Project CIBELES or Euro-detachement appear as determining in this aspect);
- the improvement of Member States' awareness on the urgency of the action and encourage the efforts in the fight against undeclared work.

However CEEP wishes to highlight some of the concerns raised by the foreseen initiatives' content such as the elaboration of "standards for inspections" or "development of guidelines for inspectors", since discrepancies between Member States remain high in the field of inspections.