

European Platform to tackle undeclared work: Setup and Activities

KEY FINDINGS

- The **Decision by the European Parliament and the Council** adopted in March 2016 established a large network charged with a broad range of activities in terms of formats (cooperation, capacity-building, awareness raising) and content (prevention, deterrence, holistic approach). The European Parliament ensured a strong involvement of social partners, more ownership through governance and a focus on groups particularly affected. The Council had pushed, i. a., for the voluntary nature of all activities.
- In October 2016, the Platform **adopted an ambitious, well-structured work programme** (2017-2018) in line with the priorities set by the Decision. Countries nominated representatives mainly from labour inspectorates and ministries. The work programme is centred on the following strands: strengthening the **evidence base and policy learning** developing a holistic perspective and **capacity building** for labour inspectorates with a view to deterrence. A gradual **paradigm shift towards more holistic approaches** can be observed, promoting the use of incentives for declaring work and fostering institutional trust (e.g. by fighting corruption, fair procedures).
- There is sufficient evidence to suggest that **under-declared work** is the **most common type together with** undeclared **bogus self-employment**. However, recent Commission studies confirm that it is **difficult to measure the precise magnitude of undeclared work** given caveats inherent to all methods used. Country information tends to be scarce, irregular and results partially questionable. Nevertheless, continuous measurement using the same method is necessary to identify trends and groups affected.
- To achieve the objectives set for the Platform requires **considerable management efforts, resources and a long-term perspective** given its size, a broad range of activities and an initial stage of European coordination. Its success depends equally on the political will and activities by the **Member States**. At medium term, the topics **prevention and targeting groups** most affected could be systematically covered. Two complementary initiatives have recently been proposed by the Commission: a **European Social Security Card** supported by Parliament and a **European Labour Authority**.

1. INTRODUCTION

This briefing note has been prepared for the Employment and Social Affairs Committee to support an exchange of views with the European Commission to be held on 9 November 2017 on the state of play of the Decision *on establishing a European Platform to enhance cooperation in tackling undeclared work* adopted by the European Parliament and the Council on 9 March 2016¹. It continues and updates two briefings having been produced to support the European Parliament in its negotiations on the Decision:

1. Kiss, M. (2016): European Platform for undeclared work (European Parliamentary Research service)²;
2. Kraatz, S. (2014): European Platform to Enhance Cooperation in the Prevention and Deterrence of Undeclared Work (European Parliament, Policy Department A)³.

2. SETUP OF THE PLATFORM - DECISION BY EUROPEAN PARLIAMENT AND COUNCIL

All in all, the Decision demonstrates a considerable will to work together at Union level to achieve added value in terms of knowledge, capacity building and input for policy development at national level. The legal base (Art. 153 (2) TFEU) has been confirmed by legal services of the Council and of the Parliament. Further, Member States agreed to elaborate common concepts, guidance and tools taking account of national diversity.

However, contrasting with a similar decision on enhanced cooperation of Public Employment Services (PES) in Europe, this decision is less binding. It is up to the Member States to decide on their involvement in activities while in the PES decision contains, a few number compulsory activities for network members, such as data delivery on a number of quantitative indicators⁴.

Decision in a nutshell: Composition, governance and objectives

The **legal basis** is Art. 153 (2) (a) TFEU in the area of social policy: *'The European Parliament and the Council may adopt **measures designed to encourage cooperation** between Member States [...] excluding any harmonization'* in areas, such as working conditions and combating social exclusion to promote employment, improved living and working conditions.

As regards **composition**, the **network** is rather large **consisting of more than 50 participants**, though of different status:

- **Members** having voting rights are **senior representatives from a "relevant authority"** from each Member State (+ 1 alternate member), 1 representative of the Commission, and a maximum of 4 representatives of cross-industry social partners at Union level (not having the right to vote). The **senior representative** has at the same time a **coordinating function**: He or she shall provide the Commission with the list and contact details of the relevant authorities and other relevant actors and also liaise with these regarding the activities of the Platform (Art. 7).
- **Observers** are a maximum of 14 representatives of the social partners in sectors with high incidence of undeclared work plus 1 representative of each agency (Eurofound, EU-OSHA, ILO) and of each third country in the EEA. Their contributions shall be taken into account according to the rules of procedure (not publicly accessible).

The Platform **meets at least twice a year**. It is **governed by a Bureau** consisting of the Chair (Commission) and two Co-Chairs chosen from among the senior representatives. The Commission assists the Bureau with a **Secretariat**.

Decisions on rules of procedure, the 2-year work programme, the establishment of working groups and reports are taken by **simple majority** (Art. 8). However, it is **up to the Member States to decide on their level of involvement in activities** (e.g. data delivery, campaigns at Union level, Recital - 16).

The Platform prepares every two years an activity report. The first one will be issued in 2018. It is **financed** through the PROGRESS axis of the European Union Programme for Employment and Social Innovation (EaSI) with an annual budget of EUR 2.1 million⁵.

A **review** will take place in 2020 based upon a report to be submitted by the Commission after having consulted the Platform.

Tackling the complex problem of undeclared work (including bogus self-employment) implies a **holistic approach** including **prevention and curing with a view to incentives to promote the declaration of undeclared work as a deterrent** (Art. 1, 4).

The **main objective** is to contribute to more effective Union and national actions by

1. **enhancing cooperation** between Member States' relevant authorities and other relevant actors;
2. **improving capacities** of Member States' relevant authorities and actors with a view to cross-border aspects;
3. **increasing public awareness** and encouraging Member States to step up their efforts.

The approach taken in the Decision is ambitious as it encompasses strategy and policy development, elaboration and improvement of tools, data exchange as well as organisational development of *all* relevant authorities. This Platform launches European cooperation **starting more or less from scratch** even if it can adapt lessons learnt in other networks, for example the Senior Labour Inspectors Committee or the PES network.

In order to achieve the objectives, the Platform shall carry out a **broad range of activities** in the following areas:

- **Knowledge:** improving the knowledge of undeclared work (e.g. shared definitions, evidence-based measurement tools) of different systems and practices to tackle it;
- **Information sharing:** establishing European tools for sharing of information, such as a knowledge bank including bilateral and multilateral agreements;
- **Guidance / tools:** developing guidelines for inspectors, handbooks of good practices and common principles of inspection, developing framework for joint training;
- **Cooperation:** tackling cross-border undeclared work, feasibility of rapid information exchange, application of Union law, staff exchange, training, use of databases;
- **Common activities:** European awareness raising campaigns, sector strategies, etc.;
- **Peer reviews and exchange of experience:** to follow progress and to develop best practices (e.g. cooperation of authorities, information provided to workers, application of relevant Union law (Art. 6)).

The Platform shall **cooperate with other committees** and avoid duplication of work (e.g. SLIC - Senior Labour Inspectors Committee focusing on compliance with regulations for health and safety at work, the Committee of Experts on Posting of Workers).

Changes resulting from negotiations on the Decision

The decision demonstrates a number of changes compared to the original proposal issued by the European Commission in March 2014⁶ **reflecting positions of the European Parliament and the Council**. As regards the **governance structure**, the European Parliament supported, for example, a **stronger involvement of social partners**. The final Decision sets out that a maximum of four representatives from social partners at union level participate as members of the Platform instead of being observers as proposed by the Commission. As consequence, the **number of observers from sector social partners has been reduced** from 18 to 14 in the final decision, thus keeping the original number of platform participants equal (Art. 2).

An additional element has been introduced into the **governance structure** to strengthen ownership by the Member States: A **Bureau**, which is composed of the Chair (Commission) and two Co-Chairs (representatives from Member States). It prepares and organises the work of the Platform in conjunction with the Secretariat operated by the Commission (Art. 7)

Further, the European Parliament stressed that **certain social groups, above all young people, women and migrants, are more affected** (see recital, 11). The Parliament also supported the Commission position to include **bogus self-employment** as 'falsely declared work'. In addition, it stressed the importance to transform undeclared work into 'declared' work. The latter is reflected in an indirect manner: the platform shall take a '*holistic approach*' (recital, 12) and it shall ('*contribute to more effective Union and national actions aiming to [...] promote integration in the labour market*') (Art. 4 - objectives).

Major changes introduced by the **Council** underline national competences. The Member States are not bound by the decision, but decide upon the concrete involvement in activities (Recital, 16) and upon measures to tackle undeclared work (Art. 3). Moreover, Member States nominate "**senior representatives from relevant authorities**" instead of "**representatives from national enforcement authorities**" functioning as "single points of contact" liaising with national enforcement authorities. This makes sense, as the mandate of the Platform goes beyond enforcement.

Finally, the Decision provides for **basic involvement of the European Parliament (and the Council)**. Both shall be regularly informed about the Platform activities (e.g. work programme, activity reports, review report in 2020) and, strikingly, also about joint meetings with expert groups and committees, Art. 8, ¹²).

3. STATE OF PLAY: MEMBERS AND ACTIVITIES

The **European platform for tackling undeclared work** was formally **launched on 27 May 2016**. By now, the Platform held three further Platform meetings in October 2016, in March 2017 and in October 2017⁷. At its launch meeting the Platform established a working group to elaborate the rules of procedure. These are not accessible for the public.

Who are the members of the platform?

According to information from the Commission, Member States nominated “senior representatives” from a range of “relevant authorities” with nearly half of them coming from a policy background and the other half from enforcement authorities:

- 9 representatives from labour ministries;
- 3 representatives from other ministries;
- 12 from labour inspectorates;
- 3 from custom and tax authorities
- 2 representatives from employers (BusinessEurope, UEAPME;)
- 2 Social partner representatives from trade unions (ETUC, UNI Europa).

According to information from the Commission, Social partners have access to all activities.

How does the Work programme relate to the priorities as set out by the Decision?

In October 2016, the Platform adopted its first Work Programme (2017-2018)⁸ listing 28 activities in line with the **types of activities** as set out in the Decision: It focuses on increasing knowledge (studies and surveys), mutual learning and cooperation / joint action across borders (e.g. tools for labour inspectorates, staff exchange). The Commission has also set up a website and a knowledge centre. In particular the virtual library contains already a bulk of information bringing together studies, reports from mutual learning as well as good practices⁹ and might soon need a user-friendly sub-structure.

As regards content, activities listed in the Work Programme are so far centred on **two strands**: strengthening the **evidence base and policy learning in a more holistic perspective** and **capacity building for labour inspectorates with a focus on deterrence and enforcement**. This does not come as a surprise: the Decision has a strong focus on deterrence and enforcement, many Platform members represent enforcement authorities and as research demonstrates, in general, deterrence strategies dominate in this policy field. Further currently, strategies for **prevention are less visible as well as analysis of and approaches for groups particularly affected**¹⁰.

Table 1: Approach taken in the Work Programme (2017-2018)

Topic	Activities, e.g.
Strengthening evidence base on undeclared work, policies and practices (studies, surveys etc.)	Tackling undeclared work: Country reports and synthesis report based on country information (2016), update in 2018 with more information on policy approaches Undeclared work - shared definitions and common concepts (2018) Practices for evasion of taxes and social security contributions (2018) Studies on Under-declared work, Bogus self-employment, construction sector - Patterns, policies, practices Success stories from companies / workers' representatives - changing behaviour on the ground (working group 2017) Updates on new policy developments (Member State contributions) Fact sheets on existing tools, handbooks, guidelines

Topic	Activities, e.g.
Holistic Approach	Developing a holistic approach for tackling undeclared work (Learning Resource from seminar, 2016) 2 seminars on sectors: construction sector (Learning resource published in 2017)
Prevention (e.g. simplification of regulations, administrative procedures in the area of taxes, tax and social security incentives, new categories of work such as student jobs, improving institutional trust)	Identification of elements of preventive approaches (2018) (partially included in a number of other deliverables)
Enforcement / deterrence (e.g. data sharing, hotlines, workplace inspections, registration of workers prior to starting work, certification of business, setting and implementing sanctions, strengthening organisational capacities)	Studies: Feasibility study for exchange of information (IMI), Overview of organisational characteristics of enforcement bodies Assessment Framework for enforcement bodies (transfer of Benchlearning initiative - PES Network) ¹¹ Capacity building (e.g. staff exchanges for max. 30 persons / 5 days per year, 4 x mutual assistance on request based upon organisational assessment, starting with Romania, thematic Review on data mining for enforcement, inventory of digital tools used, seminar on how to identify letterbox companies)
Cooperation of national authorities	Thematic Review on national, bilateral agreements and memoranda of understanding (the European Parliament had pushed for this aspect in the Decision) Plus 4 national seminars
Campaigns for awareness raising	Planned for 2018

Source: Own compilation, derived from Work Programme (2017-2018)

4. FACTS AND FIGURES: RESULTS FROM SELECTED STUDIES

What to measure? - Definition of undeclared work

According to the **commonly used definition in EU policies**, undeclared work encompasses *'any paid activities that are lawful as regards their nature but not declared to public authorities, taking account differences in the regulatory systems of the Member States. The three key reasons not to declare these otherwise lawful activities are: to avoid payment of income, value added or other taxes; to avoid payment of social security contributions; and to avoid having to meet certain legal labour standards, such as minimum wages, maximum hours, safety standards, etc. If there are additional differences, it is not undeclared work. If the goods and services provided are unlawful (e.g., the production or trafficking of drugs, firearms, persons or money laundering forbidden by law), it is part of the wider criminal economy (i.e., the 'shadow economy' is often defined as including both the undeclared economy and criminal economy), and if there is no monetary payment, it is part of the unpaid sphere'* (i.e. the **'informal economy'** defined as *'not covered or insufficiently covered by formal arrangements'*, thus including undeclared and unpaid)¹².

According to a recent Commission study (2016), **most countries (17) do not have any official or legal definition of undeclared work.**

What is the size of undeclared work in Europe?

Recent studies **confirm the challenge to precisely measure the magnitude of undeclared work.** Estimates based upon indirect methods of measurement (e.g. comparison of macroeconomic aggregates such as differences between output, income and expenditure data) tend to overestimate the extent of undeclared work, as all types of not declared income

are included. Results from direct survey-based methods (e.g. Eurobarometer) instead tend to under-report the phenomenon due to the sensitivity of the issue¹³.

Given current caveats, it is **not very probable to achieve more than a rough estimate** of undeclared work in the near future. Nevertheless, it makes sense to **continue analysis based upon currently used methods**, as this allows to **identify trends** and to further analyse which groups are particularly affected - presumed that analysis makes transparent, what results exactly mean to avoid misinterpretation.

Despite methodological variety and some inconsistency in results, **all studies find that undeclared work is a problem** and call for mitigating policy strategies.

Table 2: Proportion of shadow economy, estimates for Europe, 2015

Shadow economy, % GDP, 2015*)	Countries
≤ 10 %	4 countries AT (8.2 %), LU (8.3 %), NL (9 %), UK (9.4 %),
11 - 15 %	8 countries FR (12.3 %), IE (11.3 %), DK (12 %), DE (12.2 %), FI (12.4 %), SE (13.2 %), SK (14.1 %), CZ (15.1 %),
16 - 20 %	3 countries BE (16.2 %), PT (17.6 %), ES (18.2 %),
21 - 25 %	8 countries IT (21.6 %), HU (21.9 %), LV (23.6 %), PL (23.3 %), SI (23.3 %), EL (22.4 %), MT (24.3 %), CY (24.8 %),
> 25 %	5 countries LT (25.8 %), EE (26.2 %), HR (27.7 %), RO (28%), BG (30.6 %)

Source: Own compilation, derived European Semester Thematic Factsheet (2016)¹⁴. *) Estimates for all EU countries using the broader concept of shadow economy including also illegal work such as drug trafficking and money laundering.

As regards **estimates for the shadow economy** with undeclared work being a larger part, a **regional pattern** can be identified: in most Northern and Central European countries the share is rather low, in a number of South and East European countries more than 20 % of national production takes place economy in the shadow economy (see table above).

On the other hand, the recent Commission study also reveals a need for further analysis at country level, as information tends to be scarce, irregular and sometimes questionable (e.g. value for Poland):

Table 3: Proportion of undeclared work, country information

Undeclared work, % GDP*)	Country reports*)
≤ 10 %	5 countries SE (5 % - 2012), DE (7.2 % - 2006), IE (8 % - 2013), PL (3.9 % - 2013), UK (8 % - 2014)
≥ 10 %	4 countries HR (10 - 30 % - 2011), LV (14 % - 2014), CY (15 % - combined estimate 2015) EL (24 % - 2012)

Source: Own compilation using data from the European Commission Study: European Platform (2016)¹⁵
*) For other countries no information was available.

What are the most common types of undeclared work?

Country reports of 2016 show, that **under-declared work**, i.e. declared work with an undeclared element (envelope wages) and undeclared, off-the book payment is the most common type as indicated by 13 Member States. Further, 11 countries indicated under-payment as main type and a further 6 none or under-reporting of hours worked. **Undeclared or 'bogus' self-employment** (13 countries) is equally spread, followed by **workers without contracts or appropriate documentation** (11 countries). **Illegal migrants** employed in legal employment or working without work permits are relevant in few countries (CY, DE, ES, HR, PT and UK)¹⁶.

What is considered to be a promising approach to reduce undeclared work?

Research demonstrates a **gradual paradigm shift** from still dominating policies of deterrence ('sticks') **to increasingly incentivising take-up of declared work ('carrots') and indirect measures to change cultural norms and behaviour**. Recent research points to a new evidence-based consensus to work on norms, values and beliefs regarding acceptability of undeclared work in connection with trust in institutions. To improve trust requires well-functioning institutions and good governance to reduce corruption and to augment perceived fairness of treatment. Finally, comparative research points to the role of increasing GDP per capita, sufficient expenditures on ALMP and welfare to reduce undeclared work. All in all, policies should *'not aim to eradicate the undeclared economy, but rather to mover undeclared into declared economy'*¹⁷.

5. CHALLENGES AND WAYS FORWARD

Taking into account that the Platform came into action less than 1.5 years ago, **considerable progress** has been achieved in terms of evidence base, conceptual work and actions to strengthen the capacity of labour inspectorates. The Work Programme shows a structured, building-up approach making systematic use of experience from other networks in the field of employment, such as the European Network of Public Employment Services and the Benchlearning initiative. Nevertheless, a few challenges remain, partially due to provisions of the Decision itself.

Platform management and Member States' action

A number of potential challenges are inherent in the design of the Platform, the role of the Member States and the focus on deterrence:

1. A large and diverse membership together with a broad range of tasks require good management and sufficient resources to achieve the objectives set for the Platform - the more as it starts from a rather initial stage of European cooperation compared to the PES network.
2. As the example of the PES network demonstrates, it requires considerable input from all sides and takes time to transform European added value into concrete actions and results at national level.
3. Member States' commitment will be key as all national activities are voluntary. This relates in particular to coordination of relevant actors in the field, to deliver data and the political will to take measures at national level reflecting lessons learnt.

Action at European level

Two planned European initiatives could complement the Platform activities with a view to cross-border mobility:

In his State of Europe Address to the European Parliament of 13 September 2017, President Juncker announced plans for a **European Labour Authority** to be established by the end of 2018 in order to strengthen cooperation between labour market authorities at all levels. This shall also support a further initiative to facilitate labour mobility and to avoid its abuse: a **European Social Security Card** in connection with other policy initiatives, such as the modernisation of EU rules to for the coordination of social security systems and the launch of the Electronic System of Social Security Information¹⁸.

The European Parliament did not only welcome the launch of the Platform to tackle undeclared work and its goals. In its resolution of 14 September 2016 on social dumping in the European Union, it also reiterated its call upon the Commission *'to investigate the benefits of introducing [...] a forgery-proof **European social security card** or other EU-wide electronic document, on which could be stored all the data needed to verify the bearer's employment relationship'*¹⁹. As regards the proposal to establish of a European Labour Authority, more details and analysis will be needed as basis for a sound debate in the Employment and Social Affairs Committee.

- ¹ Decision: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016D0344>.
<http://ec.europa.eu/social/main.jsp?langId=en&catId=706&eventsId=1093&furtherEvents=yes>.
- ² Kiss, M., European Parliament - EPRS (2016):
http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573945/EPRS_BRI%282016%29573945_EN.pdf
- ³ Kraatz, S., European Parliament, Policy Department A (2014):
http://www.europarl.europa.eu/RegData/etudes/BRIE/2014/536296/IPOL_BRI%282014%29536296_EN.pdf
- ⁴ Decision - Public Employment Services: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014D0573&from=EN>.
- ⁵ Kraatz, S. (2014), see endnote 3.
- ⁶ Commission proposal: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2014:0221:FIN>; see Kiss (2016): -endnote 2; Kraatz (2014): endnote 3).
- ⁷ Launch event: <http://ec.europa.eu/social/main.jsp?langId=en&catId=706&eventsId=1093&furtherEvents=yes>.
- ⁸ Platform Work Programme (2017-2018): <http://ec.europa.eu/social/BlobServlet?docId=16358&langId=en>.
- ⁹ Platform Website / Knowledge centre: <http://ec.europa.eu/social/main.jsp?catId=1299&langId=en>.
- ¹⁰ See Kraatz, S., European Parliament (2017), endnote 3.
- ¹¹ Kraatz, S., European Parliament, Policy Department A (2016):
[http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/587322/IPOL_BRI\(2016\)587322_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/587322/IPOL_BRI(2016)587322_EN.pdf).
- ¹² Derived from Platform glossary: <http://ec.europa.eu/social/main.jsp?catId=1323&langId=en>.
- ¹³ European Commission (2013): <http://ec.europa.eu/social/BlobServlet?docId=11386&langId=en>.
- ¹⁴ European Commission (10.11.2016): European Semester Thematic Factsheet:
https://ec.europa.eu/info/sites/info/files/european-semester_thematic-factsheet_undeclared-work_en.pdf.
- ¹⁵ Commission study - Undeclared Work (2016): <http://ec.europa.eu/social/BlobServlet?docId=16412&langId=en>.
- ¹⁶ See endnote 13.
- ¹⁷ Commission study (2016), Holistic approach (Williams, C.):
<http://ec.europa.eu/social/BlobServlet?docId=17242&langId=en>, pg. 1.
- ¹⁸ State of the Union Address (2017): https://ec.europa.eu/commission/sites/beta-political/files/european-labour-authority-factsheet_en.pdf.
- ¹⁹ Resolution of 14 September 2016 on social dumping:
http://www.europarl.europa.eu/img/struct/files/icn_pdf.gif;
Resolution of 14 January 2014 on effective labour inspections:
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2014-0012+0+DOC+PDF+V0//EN>.

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