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*****I**

REPORT

on the proposal for a decision of the European Parliament and of the Council
on enhanced co-operation between Public Employment Services (PES)
(COM(2013)0430 – C7-0177/2013 – 2013/0202(COD))

Committee on Employment and Social Affairs

Rapporteur: Frédéric Daerden

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in bold italics. Highlighting in normal italics is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in bold. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a decision of the European Parliament and of the Council on enhanced co-operation between Public Employment Services (PES)
(COM(2013)0430 – C7-0177/2013 – 2013/0202(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2013)0430),
 - having regard to Article 294(2) and 149 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0177/2013),
 - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rules 55 and 37 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs (A7-0072/2014),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a decision

Citation 1

Text proposed by the Commission

Having regard to the Treaty on the Functioning of the European Union, and in particular **Article** 149 thereof,

Amendment

Having regard to the Treaty on the Functioning of the European Union, and in particular **Articles** 149 **and 14** thereof,

Amendment 2

Proposal for a decision Citation 1 a (new)

Text proposed by the Commission

Amendment

Having regard to the Charter of Fundamental Rights, and in particular Articles 29 and 36 thereof,

Amendment 3

Proposal for a decision Recital 1

Text proposed by the Commission

Amendment

(1) On 17 June 2010 the European Council¹⁹ endorsed the Commission proposal for a Europe 2020 Strategy for jobs and smart, sustainable and inclusive growth²⁰. The European Council advocated full mobilisation of the appropriate EU instruments and policies to support achievement of the common objectives and invited the Member States to step up coordinated action. The Public Employment Services (PES) have a central role in achieving the Europe 2020 target of 75 % employment rate for women and men aged 20 to 64 by 2020.

(1) On 17 June 2010 the European Council¹⁹ endorsed the Commission proposal for a Europe 2020 Strategy for jobs and smart, sustainable and inclusive growth²⁰. The European Council advocated full mobilisation of the appropriate Union instruments and policies to support achievement of the common objectives and invited the Member States to step up coordinated action. The Public Employment Services (PES) have a central role in achieving the Europe 2020 target of 75 % employment rate for women and men aged 20 to 64 by 2020, ***in particular by decreasing youth unemployment.***

¹⁹ Nr: EUCO 13/10 dated 17/6/2010.

²⁰ Communication from the Commission Europe 2020 – A strategy for smart, sustainable and inclusive growth, COM (2010) 2020 of 3 March 2010.

¹⁹ Nr: EUCO 13/10 dated 17/6/2010.

²⁰ Communication from the Commission Europe 2020 – A strategy for smart, sustainable and inclusive growth, COM (2010) 2020 of 3 March 2010.

Amendment 4

Proposal for a decision Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Public Employment Services are Services of General Economic Interest and as such are governed by Article 14 of the Treaty on the Functioning of the European Union (TFEU) and Article 36 of the Charter of Fundamental Rights of the European Union. Moreover, Article 29 of the Charter of Fundamental Rights of the European Union states that 'everyone has the right of access to a free placement service'.

Amendment 5

Proposal for a decision Recital 4

Text proposed by the Commission

Amendment

(4) These recommendations would benefit from being further supported by an enhanced evidence-base, feedback on success of policy implementation and co-operation between the PES of Member States. To this end, the PES Network to be established under this Decision should carry out concrete initiatives such as common evidence based benchmarking systems, corresponding mutual learning activities, mutual assistance between the network members and the implementation of strategic actions for the modernisation of PES. The specific knowledge of the network and its individual members should also be used to provide, upon request of the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) and the Employment Committee (EMCO), evidence for the development of

(4) Those recommendations would benefit from being further supported by the use of an enhanced evidence-base, feedback on the success of policy implementation and co-operation between the PES of the Member States. To this end, the PES Network to be established under this Decision should carry out concrete initiatives such as common evidence-based benchmarking systems, corresponding mutual learning activities, mutual assistance between its members and the implementation of strategic actions for the modernisation of PES. The specific knowledge of the PES Network and its members should also be used to provide, upon request of the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO), the Employment Committee (EMCO) ***and the Employment***

employment policies.

*and Social Affairs Committee (EMPL Committee) of the European Parliament, evidence for the development of employment policies, **with a special focus on tackling high unemployment among vulnerable groups and youth in particular.***

Amendment 6

Proposal for a decision

Recital 5

Text proposed by the Commission

(5) *The informal meeting of EPSCO ministers acknowledged that* greater and more focused cooperation between the PES would lead to an improved sharing of best practice and *asked for* a detailed proposal on a 'bench learning' initiative.

Amendment

(5) Greater and more focused cooperation between the PES would lead to an improved sharing of best practice and therefore a detailed proposal on a 'bench learning' initiative ***should be called for.***

Amendment 7

Proposal for a decision

Recital 6

Text proposed by the Commission

(6) The PES Network established under this Decision should work in close co-operation with EMCO based on Article 150 TFEU and contribute to its work as a provider for factual evidence and reports on policy implementation. Contributions from the PES Network to the Council will be channelled through EMCO. In particular, the combined knowledge of the PES Network on delivery aspects of employment policies and the comparative analysis of PES can serve policy decision makers at both national and Union level in the assessment and design of employment policies.

Amendment

(6) The PES Network to be established under this Decision should work in close co-operation with EMCO based on Article 150 TFEU, ***in particular at the level of their respective secretariats,*** and should contribute to the work of EMCO as a provider of factual evidence and reports on policy implementation. Contributions from the PES Network to ***the Parliament and*** the Council are to be channelled through EMCO, ***without any modification, together with comments where appropriate.*** In particular, the knowledge of the PES Network on delivery aspects of employment policies combined with the comparative analysis made by the PES can

serve policy decision makers at both national and Union level in the assessment and design of employment policies, *helping to achieve the country-specific targets and to boost the employment rate, by addressing the problem of unfilled vacancies. EMCO will also keep the PES Network informed of its activities.*

Amendment 8

Proposal for a decision Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) Public policy procedures consist of a planning and an implementation phase. Parliament and the Council, as co-legislators, should therefore take both these perspectives into account. With EMCO dealing with the planning phase, the PES Network should focus on the implementation phase of public employment policies. In this regard, the exchange of information between EMCO and the PES Network is vital. EMCO should not, where it has the opportunity to make comments on the PES Network's contributions, be able to change these contributions. Similarly, there should be no mechanism for endorsement by EMCO of the reports or the annual work programmes. The secretariats of the two bodies should, however, work closely together.

Amendment 9

Proposal for a decision Recital 7

Text proposed by the Commission

(7) The PES network should contribute to the implementation of policy initiatives in the employment field such as the Council Recommendation on Establishing a Youth Guarantee. The network may also support initiatives aimed at facilitating the transition from education and training to work, **including** through enhanced transparency of skills and qualifications.

Amendment

(7) The PES Network should contribute to the implementation of policy initiatives in the employment field such as the Council Recommendation on Establishing a Youth Guarantee. The PES Network ***should establish and share best practice on the identification of NEETs and on the development of initiatives to ensure these young people gain the skills necessary to enter and remain in the labour market.*** ***The PES Network*** may also support initiatives aimed at facilitating the transition from education and training to work, ***advising jobseekers on traineeship and further education, and promoting apprenticeships and work-based learning,*** through enhanced transparency of skills and qualifications, ***which meet needs and employers' requirements.***

Amendment 10

**Proposal for a decision
Recital 7 a (new)**

Text proposed by the Commission

Amendment

(7a) On 16 January 2013, Parliament adopted a resolution on establishing a Youth Guarantee, which should be taken into account whenever new legislation is being drawn up which will impact on the labour market.

Amendment 11

**Proposal for a decision
Recital 8**

Text proposed by the Commission

Amendment

(8) The PES Network should reinforce co-

(8) The PES Network should reinforce co-

operation between its members, develop joint initiatives aimed at exchanges of information and best practices in all areas covered by PES, comparative analysis and advice as well as promotion of innovative approaches in the delivery of employment services. By establishing this network an inclusive, evidence-based and performance-oriented comparison of all PES leading to the identification of best practices will be possible. With these results members of the network should be able to shape the design and delivery of employment services within their specific responsibilities. The initiatives carried out by the Network should improve PES effectiveness and allow for more efficient public spending.

operation between its members, develop joint initiatives aimed at exchanges of information and best practices in all areas covered by the PES, develop comparative analysis and advice as well as promote innovative approaches in the delivery of employment services. By establishing this network an inclusive, evidence-based and performance-oriented comparison of all PES leading to the identification of best practices ***and working structures of the employment services in the Member States*** will be possible. By taking into account those results, members should be able to shape the design and delivery of employment services within their specific responsibilities, ***thereby ensuring a better match of skills and qualifications of jobseekers to employers' needs***. The initiatives carried out by the PES Network should improve PES effectiveness and allow for more efficient public spending. ***The PES Network should also cooperate with other providers of employment services.***

Amendment 12

Proposal for a decision Recital 10

Text proposed by the Commission

(10) Due to the variety of PES models, tasks and forms of service delivery it is up to each Member State to nominate from the senior management of its Public Employment Services one member for the Board of the PES Network. Where applicable the member should represent in the Board the other Public Employment Services from the Member State. The appointed members should have the capacity to take decisions on behalf of their sending organisations. In order to ensure an involvement of all PES in the workings of

Amendment

(10) Due to the variety of PES models, tasks and forms of service delivery it is up to each Member State to nominate one member from the senior management of its Public Employment Services ***and one or more alternate members*** to the Board of the PES Network. Where applicable, the member ***and alternate members*** should represent in the Board the other Public Employment Services from that Member State. The appointed members should have the capacity to take decisions on behalf of their sending organisations. In order to

the Network, activities should be open to all levels of participation.

ensure an involvement of all PES in the workings of the PES Network, activities should be open to all levels of participation.

Amendment 13

Proposal for a decision Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) In order to ensure that the common tasks of PES are closely matched to the actual situation on the labour market, Eurostat should have real-time unemployment figures at NUTS level 3 .

Amendment 14

Proposal for a decision Article 1 - Title

Text proposed by the Commission

Amendment

Establishment

Purpose

Amendment 15

Proposal for a decision Article 1 - paragraph 1

Text proposed by the Commission

Amendment

An EU wide network of Public Employment Services (PES) - hereinafter referred to as 'the Network' - is established for the period expanding from ***1 January 2014*** to 31 December 2020. The Network will carry out initiatives as defined in Article 3.

A Union-wide network of Public Employment Services (PES) ('the Network') shall be established for the period from ***[the first day after publication of this Decision in the Official Journal of the European Union]*** to 31 December 2020. The Network shall carry out initiatives as laid down in Article 3.

Amendment 16

Proposal for a decision

Article 1 - paragraphs 2 and 3

Text proposed by the Commission

(a) the Public Employment Services as nominated by **the** Member States, and

(b) the Commission

Member States with regional autonomous Public Employment Services shall ensure adequate representation in the specific initiatives of the Network.

Amendment

(a) the Public Employment Services as nominated by **every** Member State, and

(b) the Commission

Member States which have **local or** regional autonomous Public Employment Services shall ensure adequate representation of those local or regional autonomous Public Employment Services in the specific initiatives of the Network **and shall identify the relevant public authority in charge of establishing and managing the PES. Where it is not possible for constitutional reasons to identify only one public authority, the Member State shall identify the relevant public authorities. Each Member State shall have one vote in the Network regardless of the number of local or regional employment services identified. Representatives of national Public Employment Services shall make every effort to ensure that the opinions and experience of local and regional authorities are taken into account in the Network's activities and that those authorities are kept informed of the Network's activities.**

Amendment 17

Proposal for a decision

Article 1 a (new)

Text proposed by the Commission

Amendment

Article 1a

Definitions

For the purpose of this Decision, the following definition applies: ‘bench learning’ means creating a systematic, integrated link between cross-comparison and mutual learning activities that is achieved by identifying good performance in the key activity sectors by way of a comparison based on indicators, identification of good practice and sharing of experience and by best practice through the learning process;

Amendment 18

Proposal for a decision

Article 2 - paragraph 1 - point a

Text proposed by the Commission

(a) the implementation of the Europe 2020 strategy for jobs and smart, sustainable and inclusive growth, and its headline targets especially those dealing with employment;

Amendment

(a) the implementation of **relevant Union policies, including** the Europe 2020 strategy for jobs and smart, sustainable and inclusive growth, and its headline targets especially those targets dealing with employment, such as **through increased cooperation on specific initiatives for modernizing the PES;**

Amendment 19

Proposal for a decision

Article 2 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(a) supporting the most vulnerable social groups with high unemployment rates, especially older workers and young

NEETs, by monitoring and supporting the implementation of initiatives such as the Youth Guarantee;

Amendment 20

Proposal for a decision

Article 2 – paragraph 1 – point a b (new)

Text proposed by the Commission

Amendment

(ab). promoting decent and sustainable work;

Amendment 21

Proposal for a decision

Article 2 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) the better functioning of the labour markets in the EU;

(b) the better functioning of the labour markets in the Union *by comparing the performance of public employment services against relevant benchmarks;*

Amendment 22

Proposal for a decision

Article 2 - paragraph 1 - point b a (new)

Text proposed by the Commission

Amendment

(ba) the link between abilities and the needs of employees and employers;

Amendment 23

Proposal for a decision

Article 2 – paragraph 1 – point c

Text proposed by the Commission

(c) the better integration of labour markets;

Amendment

(c) ***the identification of best practices and*** the better integration of labour markets;

Amendment 24

Proposal for a decision

Article 2 - paragraph 1 - point d

Text proposed by the Commission

(d) increased geographical and occupational mobility;

Amendment

(d) increased ***voluntary*** geographical and occupational mobility, ***without social dumping, in compliance with the relevant Union law;***

Amendment 25

Proposal for a decision

Article 2 - paragraph 1 - point e a (new)

Text proposed by the Commission

Amendment

(ea) increased Member States' engagement in bench learning for better implementation of successful best practice;

Amendment 26

Proposal for a decision

Article 2 – paragraph 1 – point e b (new)

Text proposed by the Commission

Amendment

(eb) identifying skill gaps and providing information as to their extent and location;

Amendment 27

Proposal for a decision

Article 2 – paragraph 1 – point e c (new)

Text proposed by the Commission

Amendment

(ec) contributing to evaluation and assessment with a view to launching labour market policy initiatives that become necessary in the short term;

Amendment 28

Proposal for a decision

Article 3 - paragraph 1 - point a

Text proposed by the Commission

Amendment

(a) Develop and implement European wide evidence-based **benchmarking** systems among public employment services based on the use of quantitative and qualitative indicators to assess PES performances and to gather evidence with a view to establishing an appropriate mutual learning vehicle. It shall also participate actively in the implementation of these activities by sharing data, knowledge and practices.

(a) develop and implement Union-wide evidence-based **bench learning** systems among public employment services based on the use of quantitative and qualitative indicators to assess PES performances and to gather evidence **from all Member States** with a view to establishing an appropriate mutual learning vehicle. The Network shall also participate actively in the implementation of these activities by sharing data, knowledge and **best** practices. ***The objective shall on no account be to rank PES performances, but rather to facilitate learning on the basis of a common methodology.***

(The part of the AM replacing "benchmarking" with "benchlearning" applies throughout the text.)

Amendment 29

Proposal for a decision

Article 3 - paragraph 1 - point c

Text proposed by the Commission

(c) Adopt and implement a concept for modernising and strengthening PES in key areas.

Amendment

(c) adopt and implement a concept for modernising and strengthening PES in key areas, ***in line with wider social objectives and by fostering mutual learning and improving service capacity and efficiency.***

Amendment 30

Proposal for a decision

Article 3 – paragraph 1 – point d

Text proposed by the Commission

(d) Prepare reports in the employment field, at the request of either the Council, or the Commission or on its own initiative.

Amendment

(d) prepare reports in the employment field, at the request of the Council, ***the Commission or the European Parliament*** or on its own initiative.

Amendment 31

Proposal for a decision

Article 3 – paragraph 1 – point e

Text proposed by the Commission

(e) Contribute to the implementation of policy initiatives in the employment field.

Amendment

(e) contribute to the implementation of policy initiatives in the employment ***and social*** field.

Amendment 32

Proposal for a decision

Article 3 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) establish and share best practice on the identification of NEETs and on the development of initiatives to ensure that

these young people gain the skills necessary to enter and remain in the labour market.

Amendment 33

Proposal for a decision

Article 3 - paragraph 1 - point f b (new)

Text proposed by the Commission

Amendment

(fb) assess the impact of implementing legislation in relation to worker mobility in the Union on the labour markets of the Member States.

Amendment 34

Proposal for a decision

Article 3 – paragraph 2

Text proposed by the Commission

Amendment

2. The Network shall establish a reporting mechanism in relation to the initiatives 3.1.*a* and 3.1.*b*. In accordance with this provision network members shall report annually to the network.

2. The Network shall establish a reporting mechanism in relation to ***all*** the initiatives ***listed in*** paragraph 1. In accordance with this mechanism, members shall report annually to the Network.

Amendment 35

Proposal for a decision

Article 4 - paragraph 1

Text proposed by the Commission

Amendment

1. The Network shall cooperate with labour market stakeholders including other providers of employment services by involving them in relevant activities and meetings of the Network and by

1. The Network shall cooperate, ***exclusively on its initiative***, with labour market stakeholders including other providers of employment services, ***such as, where appropriate, social partners, organisations representing unemployed***

exchanging information and data.

persons or vulnerable groups, NGOs working in the field of employment, regional and local authorities, the European network for a lifelong guidance policy, private employment services and national labour inspectorates by involving them in relevant activities and meetings of the Network and by exchanging information and data.

Amendment 36

Proposal for a decision Article 5 - paragraph 1

Text proposed by the Commission

(1) The Network shall be governed by a Board for which each Member State shall nominate from the senior management of its Public Employment Services one member and one alternate *member*. The Commission shall appoint one member and one alternate member for the Board. Alternate members shall replace the members whenever necessary.

Amendment

(1) The Network shall be governed by a Board for which each Member State shall nominate from the senior management of its Public Employment Services one member and one alternate *member, while respecting the role of local and regional authorities as set out in the third paragraph of Article 1 and consistent with the degree of centralisation of competences for employment policy in the Member State concerned*. The Commission shall appoint one member and one alternate member for the Board. Alternate members shall replace *or accompany* the members, *without additional voting rights*, whenever necessary.

Amendment 37

Proposal for a decision Article 5 – paragraph 3

Text proposed by the Commission

3. The Board shall adopt its Rules of

Amendment

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Procedure by unanimous decision containing, inter alia, the decision-making arrangements of the Board, the provisions on the appointment and term of office of the Chair and Vice-Chairs of the network. The Board shall adopt by majority decision the annual work programme including the setting up of working groups and the language arrangements of the Network meetings, and the annual network report that should be published.

procedure by unanimous decision containing, inter alia, the decision-making arrangements of the Board and the rules for the appointment and term of office of the Chair and Vice-Chairs of the Network. The Board shall adopt by majority decision the annual work programme including the rules for the establishment of working groups, the language arrangements of the Network meetings and rules for the communication of the annual network report. That report shall be *sent to the Council, sent for assessment to the Committee on Employment and Social Affairs of the European Parliament and shall be published.*

Amendment 38

Proposal for a decision Article 6 - subparagraph 1

Text proposed by the Commission

The global resources for the implementation of this Decision shall be established within the framework of the Programme for ***Social Change*** and Innovation, the annual appropriations of which shall be authorised by the budgetary authority within the limits of the Financial Framework.

Amendment

The global resources for the implementation of this Decision shall be established within the framework of the Programme for ***Employment*** and Innovation, the annual appropriations of which shall be authorised by the budgetary authority within the limits of the Financial Framework.

(This amendment applies throughout the text.)

Amendment 39

Proposal for a decision Article 7

Text proposed by the Commission

Adoption of a ***general*** framework

Amendment

Adoption of a ***technical*** framework

The Commission shall be empowered to adopt delegated acts in accordance with Article 8 concerning a **general** framework for the delivery of the **benchmarking** and mutual learning initiatives as defined in Article 3.1 including the methodology, the basic quantitative and qualitative indicators to assess PES performance, the learning instruments of the integrated mutual learning programme and the terms for participation in these initiatives.

The Commission shall be empowered to adopt delegated acts in accordance with Article 8 concerning a **technical** framework for the delivery of the **bench learning** and mutual learning initiatives as defined in points (a), (b) and (c) of Article 3(1), including the methodology, the basic quantitative and qualitative indicators to assess PES performance, the learning instruments of the integrated mutual learning programme and the terms for participation in these initiatives. ***The delivery of the remaining initiatives as defined in Article 3(1) shall be the responsibility of Network.***

(The part of the AM replacing "general" with "technical" applies throughout the text.)

Amendment 40

Proposal for a decision Article 8 - paragraph 5

Text proposed by the Commission

5. A delegated act adopted pursuant to Article 7 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **2** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by **2** months at the initiative of the European Parliament or the Council.

Amendment

5. A delegated act adopted pursuant to Article 7 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

Amendment 41

Proposal for a decision

Article 9

Text proposed by the Commission

Four years after its entry into force, the Commission shall submit a report on the application of this Decision to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions. The report shall in particular assess to what extent the network has contributed to the achievement of the objectives set out in article 2 and whether it fulfilled its tasks.

Amendment

Two years after its entry into force, the Commission shall submit a report on the application of this Decision to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions. The report shall in particular assess to what extent the Network has contributed to the achievement of the objectives set out in Article 2 and whether it has fulfilled its tasks. ***Where necessary, the Commission shall submit a proposal for a review of this Decision.***

EXPLANATORY STATEMENT

There have been changes to the tasks and *modi operandi* of Public Employment Services because of the economic crisis and associated unemployment but also as a result of the changes in national labour markets stemming from technological developments and changes in the demand for labour and to careers (mobility between sectors or geographical mobility, and careers being interrupted and resumed).

With the commitment of the Member States to improving their economic and employment policies within the Union, all the instruments which can enable the Union to keep abreast of the transformation must be brought to bear.

Under the European Semester, for example, the Member States compare their public employment policy approaches – with particular reference to budgetary matters – in order to identify which approaches are suitable for which Member States in view of their economic situation (and that of the other Member States) and achieve the target figure of the EU 2020 strategy (a 75% rate of employment for people aged between 20 and 64).

However, in addition to the strategic choice of one public policy over another, the effectiveness of such policies relies on their proper implementation. This is the point where the Public Employment Services step in.

The rapporteur therefore welcomes the Commission's initiative to give a tangible structure to an existing network of representatives of these national Public Employment Services so that they can compare, on the basis of detailed figures, the effectiveness of labour market measures which they are responsible for implementing in their Member States.

This comparison will enable the advantages and weaknesses of the various measures to be identified and integrated by the Member States, where appropriate, into their strategies.

The rapporteur sees an opportunity for this cooperation to be improved by various means:

- the addition to the objectives of special attention to the fight against youth unemployment, the promotion of lasting employment and the fight against social dumping;
- the involvement of social partners and national labour services;
- taking into account the organisation of competences in the different Member States.

Apart from these basic details, the rapporteur believes that – at a more technical level – adoption will not be possible in time for the instrument to be implemented properly by 1 January 2014 but is committed to its adoption as soon as possible. The rapporteur also proposes changing the details of the text to bring it into line with other negotiations of legal or budgetary bases (PSCI/EASI).

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS

Mrs Pervenche Berès
Chair
Committee on Employment and Social Affairs
BRUSSELS

Subject: Opinion on the legal basis on a proposal for a decision on enhanced cooperation between Public Employment (COM(2013)0430 - 2013/0202(COD))

Dear Mrs Chair,

By letter of 12 December 2013 you asked the Committee on Legal Affairs pursuant to Rule 37 of the Rules of Procedure, to give its opinion on the appropriateness of adding Article 14 TFEU as a second legal basis of the proposal for a decision of the European Parliament and of the Council on enhanced cooperation between Public Employment Services (COM(2013)0430).

I. Background

On 16 June 2013, the Commission published a proposal for a decision on enhanced co-operation between Public Employment Services (COM (2013)0430, "the Decision"), with Article 149 TFEU as its legal basis.

The Committee on Employment and Social Affairs, as the Committee responsible, adopted its report on 9 December 2013, including Amendment 1 tabled by the rapporteur, Frédéric Daerden, which seeks to add Article 14 TFEU as a second legal basis.

By letter of 12 December 2013, the Committee on Employment and Social Affairs asked the Committee on Legal Affairs for an opinion pursuant to Article 37 of the Rules of Procedure on the appropriateness of this legal basis and specifically:

- whether Article 149 TFEU constitutes the sole appropriate legal basis; and
- whether Articles 149 and 14 of the TFEU can be adopted as a joint legal basis for the proposed decision.

II. The proposal

The proposed decision aims at strengthening cooperation between the Public Employment Services (PES) of the Member States. PES are responsible for implementing active labour

market policies and providing employment services in the public interest. They are part of the relevant ministries, public bodies or organisations, which are governed by public law in this respect. Strengthening cooperation between PES in the EU has been recognised as a crucial in order to achieve the employment targets of the Europe 2020 Strategy. According to the explanatory memorandum in the proposal, it constitutes an incentive measure for the purpose of Article 149.

III. The proposed legal bases

The sole legal basis proposed by the Commission for the decision is Article 149 TFEU. The article reads as follows:

The European Parliament and the Council acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, may adopt incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovating approaches and evaluating experiences, in particular by recourse to pilot projects.

The report adopted in the Committee on Employment and Social Affairs seeks to add a second legal basis, Article 14 TFEU. The article reads as follows:

Without prejudice to Article 4 of the Treaty on European Union or to Articles 93, 106 and 107 of this Treaty, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Union and the Member States, each within their respective powers and within the scope of application of the Treaties, shall take care that such services operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfil their missions. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Treaties, to provide, to commission and to fund such services.

IV. The case law

It is settled case law that the choice of the legal basis for a Union measure must rest on objective factors amenable to judicial review, which include in particular the aim and the content of the measure¹.

In principle, a measure is to be founded on only one legal basis. If examination of the aim and the content of a Union measure reveals that it pursues a twofold purpose or that it has a twofold component, falling within the scope of different legal bases, and if one is identifiable as the main or predominant purpose or component whereas the other is merely incidental, the measure must be based on a single legal basis, namely that required by the main or

¹ Case C-440/05 *Commission v. Council* [2007] ECR I-9097.

predominant purpose or component¹.

A dual legal basis can only be used if a measure simultaneously pursues a number of objectives or has several linked components, without one being secondary and indirect in relation to the other,² subject to the condition that the procedures laid down for each legal basis are not incompatible.³

V. Analysis of the proposal for a decision on enhanced cooperation between Public Employment Services

In order to determine which legal basis should apply in this case, it is necessary to examine the aim and the content of the measure. The legal proposal seeks to be an incentive measure to strengthen cooperation between the PES of the Member States. It strives to expand, reinforce and consolidate on-going initiatives for the benefit of all PES.

For that purpose, it proposes to set up a more formal PES Network which should implement initiatives having the nature of incentive measures designed to improve cooperation between Member States in the employment field. This structure would be a pre-condition to increase the network's potential to contribute to the development of innovative, evidence-based policy implementation measures in line with the Europe 2020 objectives. It would also facilitate the implementation of labour market projects financed by the European Social Fund (ESF).

Article 149 TFEU provides a legal basis for incentive measures aiming at encouraging cooperation between Member States in the field of employment. The procedure laid down for this legal basis is the ordinary legislative procedure. To that extent, the aim and the content of the decision seem to be a clear implementation of Article 149 TFEU, which is why this legal basis is appropriate for the purposes of the decision.

Article 14 TFEU refers to services of general economic interest in general. The adding of this article as a second legal basis is supported by Amendment 2 tabled by the rapporteur, referring to Article 36 of the Charter of Fundamental Rights which reads as follows:

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union. However, it is worth recalling that the EU Charter of Fundamental Rights does not constitute a legal basis.

The procedure provided for the adoption of measures under Article 14 is the ordinary legislative procedure, which, as such, would be compatible with Article 149 TFEU.

Nevertheless, it is important to underline that Article 14 TFEU explicitly refers to action by means of regulations, whereas the measure in question is a decision. Article 14 TFEU could therefore not be used as a legal basis for the proposed act unless its form was changed.

Concerning the content of the decision, there can be no doubt that the public employment services that the decision concerns are services of general economic interest covered by Article 14 TFEU. This is not in any way drawn into question by the proposal. It must be underlined that Article 14 TFEU is intended for the purpose of establishing the principles, and

¹ Case C-137/12, *Commission v Council*, judgment (Grand Chamber) of 22 October 2013, para 53.

² Case C411/06 *Commission v Parliament and Council*, [2009] ECR I-07585, para. 47.

³ Case C-300/89 *Commission v Council* ("Titanium dioxide") [1991] ECR I-2867, paras. 17-25.

set the conditions, on the basis of which such services operate – particularly economic and financial conditions – in order to fulfil their missions, while respecting the Member States’ basic competence in this domain.

Thus, one must conclude that Article 14 TFEU is intended for other purposes than a network of cooperation or the kind of incentive measure covered by the proposed decision. As Article 149 TFEU already provides a specific legal basis for incentive measures of the kind proposed in the decision it would neither seem necessary, nor in more general terms justified in view of the case law of the Court of Justice, to add a second legal basis for the decision, as Article 149 fully covers the proposed decision.

VI. Conclusion and Recommendation

The Legal Affairs Committee considered the above question at its meeting of 21 January 2014. At this meeting the Committee decided unanimously¹ by 22 votes to recommend that the appropriate legal basis for the proposal for a decision on enhanced cooperation between Public Employment Services should be Article 149 TFEU as the only, single legal basis.

Yours sincerely,

Klaus-Heiner Lehne

¹ The following Members were present: Raffaele Baldassarre (Vice-Chair), Sebastian Valentin Bodu (Vice-Chair), Françoise Castex (Vice-Chair), Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Klaus-Heiner Lehne (Chair), Eva Lichtenberger, Antonio López-Istúriz White, Antonio Masip Hidalgo, Alajos Mészáros, Angelika Niebler, Bernhard Rapkay, Evelyn Regner (Vice-Chair/rapporteur for opinion), Francesco Enrico Speroni, Rebecca Taylor, Alexandra Thein, Axel Voss, Cecilia Wikström, Tadeusz Zwiefka.

PROCEDURE

Title	Enhanced co-operation between Public Employment Services (PES)		
References	COM(2013)0430 – C7-0177/2013 – 2013/0202(COD)		
Date submitted to Parliament	17.6.2013		
Committee responsible Date announced in plenary	EMPL 1.7.2013		
Committee(s) asked for opinion(s) Date announced in plenary	BUDG 1.7.2013		
Not delivering opinions Date of decision	BUDG 27.6.2013		
Rapporteur(s) Date appointed	Frédéric Daerden 12.6.2013		
Legal basis disputed Date of JURI opinion	JURI 21.1.2014		
Discussed in committee	10.10.2013	26.11.2013	5.12.2013
Date adopted	9.12.2013		
Result of final vote	+: 38 -: 0 0: 3		
Members present for the final vote	Regina Bastos, Heinz K. Becker, Jean-Luc Bennahmias, Phil Bennion, Pervenche Berès, Vilija Blinkevičiūtė, Philippe Boulland, Alejandro Cercas, Ole Christensen, Emer Costello, Frédéric Daerden, Philippe De Backer, Sari Essayah, Marian Harkin, Nadja Hirsch, Stephen Hughes, Danuta Jazłowiecka, Ádám Kósa, Jean Lambert, Patrick Le Hyaric, Verónica Lope Fontagné, Olle Ludvigsson, Thomas Mann, Elisabeth Morin-Chartier, Csaba Öry, Siiri Oviir, Konstantinos Poupakis, Sylvana Rapti, Elisabeth Schroedter, Joanna Katarzyna Skrzydlewska, Jutta Steinruck, Ruža Tomašić, Traian Ungureanu, Inês Cristina Zuber		
Substitute(s) present for the final vote	Georges Bach, Sergio Gutiérrez Prieto, Richard Howitt, Anthea McIntyre, Evelyn Regner, Tatjana Ždanoka, Gabriele Zimmer		
Date tabled	3.3.2014		