



Brussels, 5 December 2012

**BACKGROUND<sup>1</sup>**  
**EMPLOYMENT, SOCIAL POLICY, HEALTH**  
**AND CONSUMER AFFAIRS COUNCIL**  
**Brussels, 6-7 December 2012**

*The EPSCO Council will start work at 10.00 on **Thursday** with employment and social policy issues and will continue at 10.00 on **Friday** with health items. With the exception of any other business items the whole meeting will be public and may be followed by video streaming at <http://www.consilium.europa.eu/videostreaming> .*

**Employment and Social Policy**

*The session dedicated to employment and social policy issues will be chaired by Ms Sotiroula CHARALAMBOUS, Minister for Labour and Social Insurance of Cyprus.*

*The Council will discuss a proposed directive intended to improve implementation and enforcement of the 1996 directive on **posting of workers** for service provision. Ministers will take stock of progress made and hold a debate on two key issues of the proposal.*

*The Council will take note of a progress report on the proposal to maintain **the European Globalisation Adjustment Fund**, set up in 2006 for the budgetary period 2007-2013, for the period 2014-2020, whilst extending its scope and introducing a number of other changes.*

*The presidency will brief the Council on the state of play in the negotiations with the European Parliament on the **EU programme for social change and innovation**, which is part of the draft legislative package framing cohesion policy for 2014-2020.*

*Ministers will also take stock of the progress of work on the proposal for an **equal treatment** directive aimed at outlawing discrimination on the grounds of religion or belief, disability, age or sexual orientation also in areas outside the labour market.*

*The Council is due to adopt conclusions on combating **violence against women** and a declaration marking the end of the European year for **active ageing** and solidarity between generations (2012).*

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<sup>1</sup> This note has been drawn up under the responsibility of the press office.

The Council will hold an exchange of views on economic **governance** in the field of employment and social policy within the framework of the implementation of the **Europe 2020** strategy. Ministers' discussions will be based on a presentation by the Commission of its Annual **Growth Survey 2013**, including the **Joint Employment report**, and of the **Alert Mechanism report**. In this context, the Council will be called upon to endorse the December 2012 update of the **Employment Performance Monitor**. Moreover, the Council will take note of a presentation by the Commission of its **youth employment package**.

Over lunch, ministers will have the opportunity to discuss the issue of a recent Commission proposal aimed at "improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures".

The presidency will hold a press conference at the end of the meeting (+/- 17.00).

### **Health and Consumer affairs**

Health and Consumer Affairs items will be addressed under the chairmanship of Mrs Androulla AGROTOU, Minister for Health of Cyprus.

On Friday morning, ministers are expected to agree a partial general approach on aligning the existing implementing powers enshrined in the four so-called **breakfast-directives** with the new rules on delegated acts as set out in the Treaty on the Functioning of the EU.

The Council will take stock of progress made on a draft decision aimed at strengthening EU capacities and structures for effectively responding to serious **cross-border health threats**.

The Council is also due to adopt conclusions on:

- **organ donation and transplantation;**
- **healthy ageing across the lifecycle.**

During lunch, ministers will have a discussion on the implementation of the joint action plan on medical devices following the PIP crisis.

The presidency will hold a press conference at the end of the session (+/- 13.00).

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## **EMPLOYMENT AND SOCIAL POLICY**

### **POSTING OF WORKERS**

The Council will discuss a proposed directive intended to improve implementation and enforcement of the 1996 directive on posting of workers for service provision in another member state. Ministers will take note of progress made in the ongoing work on the proposal (progress report: [16540/1/12 REV 1](#) + [16540/1/12 ADD 1 REV 1](#)) and will hold a debate on two key issues of the proposal on the basis of a presidency steering note ([16637/12](#)). The intention is to provide a solid basis for the future work under the incoming Irish presidency thus paving the way for the Council to reach a general approach on this proposal, which is one of the 12 priority proposals as set out in the Single Market Act.

The aim of the proposed directive is to guarantee the protection of workers' rights, clarify the regulatory framework and ensure fair competition. The need for such an enforcement directive arises since experience has shown that the rules of the 1996 directive are not always properly enforced and that posting is also being abused by letter-box companies artificially established abroad to benefit from lower levels of labour protection or social security obligations.

The debate will focus on two key issues with a view to the Council providing guidance for further discussions.

Firstly, under article 9 of the proposal, member states may impose **national** administrative requirements and **control measures** on undertakings posting workers in order to monitor compliance with the rules. While a group of delegations favours an exhaustive list of such measures on grounds of transparency and legal certainty, another group advocates an open list in order to give member states more flexibility. Ministers are invited to indicate what control measures they consider essential and to express their views as to how the need for flexibility on the one hand and for transparency on the other could be reconciled.

Secondly, the proposal provides for **joint and several liability** of contractors in respect of sub-contractors for compliance with applicable minimum wages, as far as the construction sector is concerned (article 12). Some delegations would prefer to remove this provision, arguing that such a system of liability does not exist everywhere and that existing systems widely differ one from another. Some other delegations, on the contrary, would like to further extend the application of joint and several liability. Ministers are invited to suggest possible solutions for member states that do not have joint and several liability for subcontracting situations, and to comment in particular on a gradual or voluntary introduction of such liability systems as well as on a possible involvement of social partners in this respect.

Moreover, contractors who have shown "due diligence" would be exempted from liability. The concept of due diligence has raised concerns because of its lack of clarity and legal certainty. Therefore, ministers are also invited to give their opinions on the possible role of "due diligence" and on possible alternatives to that concept.

In the discussions held within the Council and its preparatory bodies under the Cyprus presidency, considerable progress has been achieved on various issues of the proposed directive, such as:

- a clearer definition of the notion of "posting" through criteria for assessing the genuineness of posting cases;
- better information of workers and companies of their rights and obligations;
- enhanced cooperation between national authorities;
- cross-border enforcement of administrative fines and penalties imposed for non-compliance by introducing a system of mutual assistance and recognition.

However, further work will be needed on some of these issues as well as on a number of other issues, including inspections to be carried out by member states and the provisions on handling of complaints and back-payments.

A first progress report ([10571/12](#)) on the work on this proposal was discussed by the Council at its meeting in June (see press release [11386/12](#), pp. 10-11).

The Commission presented its proposal in March this year ([8040/12](#)). The European Parliament has not yet determined its position on the proposal.

## **EUROPEAN GLOBALISATION ADJUSTMENT FUND**

The Council will take stock of the state of play on the proposal to maintain the European Globalisation Adjustment Fund (EGF), set up in 2006 for the budgetary period 2007-2013, for the period 2014-2020, whilst introducing a number of changes, in particular an extension of its scope (progress report: [16035/12](#)).

Under the Commission's proposal ([15440/11](#)), the fund would not only provide support to workers made redundant due to structural changes in world trade patterns, as under the initial regulation, but could also be used in two other cases: redundancies resulting from serious economic disruption caused by an unexpected crisis and difficulties faced by farmers having to adjust or change their activities as a consequence of international agricultural trade agreements. Other changes compared to the 2006 regulation relate to the co-financing rate and to the acceleration and simplification of decision-making on applications for support from the fund.

The discussions held under the Danish and the Cyprus presidencies show that a large number of member states consider the fund to be a very important instrument of solidarity with workers. Many other delegations, though, are critical about different aspects of the proposal:

- Many delegations question the extension of the scope of the fund to farmers as well as the high amount to be reserved for this group. Other delegations could accept such inclusion of farmers if they are treated on the same terms as the other categories of workers, while the Commission's proposal provides for particular procedures and criteria for the support for farmers. In view of these positions, all specific references to farmers have been removed from the articles in the presidency's current draft of the regulation.

- Opinions also diverge on the introduction of a differentiated co-financing rate and the criteria for such differentiation.

- Several delegations oppose any extension of the scope beyond the categories of workers covered by the current regulation, which means that farmers, temporary agency workers, owner-managers of micro, small and medium-sized enterprises and the self-employed would not be covered.

- Finally, several delegations are opposed to the continuation of the fund during the next budgetary period up to 2020.

Discussions on the proposal will continue under the forthcoming Irish presidency.

At its meeting in June, the EPSCO Council had already taken note of a first progress report on the proposal ([10490/12](#) + [COR 1](#)).

## **PROGRAMME FOR SOCIAL CHANGE AND INNOVATION**

The presidency will brief the Council about the state of play in the negotiations with the European Parliament on the EU programme for social change and innovation, the adoption of which requires approval both by the Council and the Parliament.

The programme is designed to provide funding in particular for the development and implementation of employment and social policy, for European employment services promoting workers' mobility across Europe, and to facilitate access to finance for micro-entrepreneurs having difficulties in entering the labour market and for social enterprises. It integrates three existing programmes: Progress, EURES (European employment services) and the European progress microfinance facility, while extending their coverage to social innovation and experimentation and opening access to microfinance to social enterprises. The programme is part of the cohesion policy package for 2014-2020 and is intended to complement the European Social Fund.

In June this year, the Council reached a partial general approach on the draft regulation containing the programme ([10211/1/12 REV 1](#), see also press release [11386/12](#), p. 12). Since then, three informal meetings have been held between the Parliament, the Council and the Commission in order to seek an agreement. The negotiations are based on the Commission's proposal ([15451/11](#)), the Council's partial general approach and draft amendments established by the Parliament's Employment and Social Affairs Committee.

The negotiations until now have focused on the microfinance/social entrepreneurship axis and allowed common ground to be found with the Parliament on this part of the programme, pending an overall agreement on the programme as a whole. As regards the EURES axis and issues relating to the governance of the programme, discussions have recently started and will need to be continued. To deal with these and other remaining issues, further negotiation meetings will be organised under the Irish presidency.

The budgetary provisions of the programme were not covered by the Council's partial general approach and will be adapted, once the decision on the EU's multi-annual financial framework for the period 2014-2020 is taken.

## **EQUAL TREATMENT**

The Council will take note of a progress report ([16063/12](#)) on the equal treatment directive aimed at outlawing discrimination on the grounds of religion or belief, disability, age or sexual orientation also in areas outside the labour market.

The proposed directive, submitted by the Commission in July 2008 ([11531/08](#)), would prohibit discrimination on the above-mentioned grounds in the following areas: social protection, including social security and healthcare; social advantages; education; and access to goods and services, including housing.

Under the Cyprus presidency, progress has been made in the attempt to clarify the scope of the directive, in particular as regards access to social protection and to education. However, there is a need for further extensive work on the proposal, and more specifically on the following issues:

- the overall scope of the directive, the division of competences and the issue of subsidiarity;
- the disability provisions, including accessibility and reasonable accommodation for persons with disabilities;

- the implementation calendar;
- the need to ensure legal certainty;
- the overall impact of the proposal, including on SMEs.

Many delegations acknowledge the importance of the proposal, in particular with regard to the rights of persons with disabilities. A number of delegations, however, question the need for this instrument, which they see as encroaching on national competence, or have other concerns, notably as regards legal certainty and the practical, financial and legal impact of the proposal.

Unanimity in the Council would be required in order to reach agreement on this proposal. The European Parliament also has to give its consent.

The proposal complements existing anti-discrimination legislation in the EU (directives 2000/43, 2000/78 and 2004/113).

## **COMBATING VIOLENCE AGAINST WOMEN**

The Council is due to adopt conclusions on combating violence against women, calling for more determined action in providing support services for victims of domestic violence ([16382/12](#)).

The conclusions are aimed at monitoring and contributing to the implementation of the Beijing Platform for Action, which is an international agenda for the empowerment of women, established within the United Nations framework in 1995.

The Council stresses that all forms of violence against women are to be condemned as a violation of women's full enjoyment of human rights and cannot be justified neither by custom, tradition, culture, privacy, religion nor by so-called honour. It emphasises the role of the educational system as well as the need to take into account the role of men in all measures aimed at combating this type of violence.

To step up efforts, the Council calls in particular for comprehensive, multi-disciplinary, multi-agency and sustainably funded strategies. Appropriate training for the professionals involved in this field should be ensured, and long-term awareness-raising activities should be carried out and their impact evaluated. Moreover, data collection as well as the registration and handling of complaints should be improved.

Furthermore, the Council recommends considering the possibility of establishing a dedicated European helpline for victims of violence against women and of designating 2015 the European Year on zero tolerance for violence against women.

## **EUROPEAN YEAR FOR ACTIVE AGEING AND SOLIDARITY BETWEEN GENERATIONS**

The Council is due to adopt a declaration marking the end of the European year for active ageing and solidarity between generations (2012) ([16592/12](#)). The declaration reviews the achievements obtained, outlines the challenges ahead and highlights a number of key messages. Its annex contains guiding principles, jointly agreed by the Social Protection and the Employment Committees, for further action in these fields, focusing on employment, participation in society and independent living.

The aim of the European Year 2012 is to highlight older people's contributions to society and economy, improve conditions for older people to lead independent lives and strengthen solidarity between generations.

In its key messages, the Council emphasises the need to ensure participation of older people in society and to make full use of their potential. Cooperation and transmission of knowledge and skills between the generations should be encouraged. Reconciliation of work and family life should be facilitated. Moreover, the Council underscores the importance of integrating the goal of active ageing into all relevant policy areas.

## **EUROPE 2020 GOVERNANCE IN THE FIELD OF EMPLOYMENT AND SOCIAL POLICY**

The Council will hold an exchange of views on economic governance in the field of employment and social policy within the framework of the implementation of the Europe 2020 strategy (see presidency steering note [16095/1/12 REV 1](#)). On the basis of the economic package that the Commission will present to the Council and of a contribution by the Employment Committee, ministers will be invited to comment on the priorities identified by the Commission and on ways to achieve them.

The Commission's Annual **Growth Survey** 2013 sets out its views on the budgetary, economic and social priorities for the coming year and launches the start of the 2013 European Semester, the cycle of annual monitoring of economic policies and structural reforms ([16669/12](#)). The Commission concludes that the five priorities identified last year still remain valid: differentiated, growth-friendly fiscal consolidation; restoring normal lending to the economy; promoting growth and competitiveness; tackling unemployment and the social consequences of the crisis; and modernising public administration. The Commission highlights in particular that the deteriorating employment and social situation calls for more determined action by the public authorities and social partners.

The Annual Growth Survey also includes the Joint Employment report ([16669/12 ADD 2](#)) and a macro-economic report ([16669/12 ADD 1](#)). The Alert Mechanism Report ([16671/12](#)), which initiates the macro-economic imbalance procedure designed to identify and correct problematic macro-economic imbalances in the member states, was also published at the same time as the Annual Growth Survey.

In addition, the Council will be called upon to endorse the December 2012 update of the Employment Committee's six-monthly **Employment Performance Monitor**, which for the first time includes a new benchmarking instrument for labour market targets ([16061/12](#)).

Moreover, the Council will take note of a presentation by the Commission of its **youth employment package**, which is due to be published on the day before the Council meeting. The package is intended to tackle the difficult economic situation of the youth in Europe and includes a proposal for a recommendation on youth guarantees and an update on the implementation of other initiatives relating to youth employment.

## ANY OTHER BUSINESS

- The presidency will brief ministers on the state of play on the following legislative proposals:
  - directive aimed at improving the acquisition and preservation of **supplementary pension rights** with a view to enhancing worker mobility (Commission proposal: [13857/07](#));
  - regulation establishing a fund for European **aid to the most deprived** (Commission proposal: [15865/12](#)).
- The Council will also be informed about **conferences** organised under the Cyprus presidency in the field of employment and social policy ([17045/12](#)).
- Finally, the incoming **Irish presidency** will present its **work programme**.

## **HEALTH AND CONSUMER AFFAIRS**

### **BREAKFAST DIRECTIVES**

The Council is expected to agree a general approach on aligning the existing Commission implementing powers for five so-called breakfast directives ([16260/12](#) + [COR 1](#) + [COR 2](#)) with the Treaty on the Functioning of the EU (TFEU), and more specifically with its article 290 on delegated acts.

A general approach is a political agreement of the Council pending the first-reading position of the European Parliament.

The five breakfast directives concern:

- coffee and chicory extract;
- cocoa and chocolate products;
- sugars;
- fruit jams;
- dehydrated milk.

Article 290 TFEU provides the possibility for the EU co-legislators (i.e. the Council and the European Parliament) to delegate to the Commission the power to amend or supplement certain non-essential elements of legislative acts. The so-called delegated acts cover almost the same type of measures as those adopted so far under the "regulatory procedure with scrutiny" (as introduced by the Council into the "comitology" decision in 2006).

Subject to the conditions of the delegation, the Council and the European Parliament may decide to revoke this delegation or object to a Commission delegated act. The specific objectives, content, scope and duration of a delegation must be defined in each basic act.

### **CROSS-BORDER HEALTH THREATS**

The Council will take stock of progress made on a draft decision aimed at strengthening EU capacities and structures for effectively responding to serious cross-border health threats and provide the Irish presidency guidance for further work ([16570/12](#)).

Serious cross-border health threats can be events caused by communicable diseases, biological agents responsible for non-communicable diseases, as well as threats of chemical, environmental, or unknown origin, including threats of malicious intentional origin. Threats deriving from the effects of climate change (i.e. heat waves, cold spells) would also be included in the scope of the decision.

During the Cyprus presidency good progress has been achieved and the draft decision amended in line with the member states' comments. Changes proposed by the Cyprus presidency ensure notably member states' autonomy in preparedness and response planning, the non mandatory character of preparedness planning at European level and attributes to the Health Security Committee a key role in the consultations among the member states and the Commission. However, further discussions are needed in order to reach agreement in the Council on the whole proposal. This would enable the incoming Irish presidency to engage negotiations with the European Parliament with a view to a first reading agreement.

The objective of the draft decision is to:

- strengthen the epidemiological surveillance in the EU and the early warning and response system;
- allow the joint procurement of medical countermeasures (e.g. vaccines) by several EU member states;
- give a legal basis to the functioning of the health security committee.

The draft decision is subject to the ordinary legislative procedure, meaning that the European Parliament and the Council have to adopt it together on an equal footing.

## **ORGAN DONATION AND TRANSPLANTATION**

The Council is also due to adopt conclusions on organ donation and transplantation ([16666/12](#)). These conclusions were drafted on the basis of the mid-term review of the Commission's action plan on this issue for the years 2009-2015. The conclusions focus on the three main challenges addressed by the action plan: increasing organ availability; enhancing the efficiency and accessibility of transplant systems; and improving quality and safety.

The draft conclusions welcome the measures taken so far to increase organ availability (such as the development of national programmes to improve performance in the deceased donation process) and recall the importance of encouraging people to commit to becoming organ donors after death. They also invite the member states to pursue their efforts to increase the availability of organs, for example by creating transparent mechanisms for reimbursing living donors for the costs incurred and, if applicable, for compensating the loss of income in direct relation to the living donation procedure.

As regards the efficiency and accessibility of transplant systems, the draft conclusions welcome the establishment of bilateral and multilateral agreements between member states to exchange organs and recall that organ trafficking violates fundamental human rights and has a negative impact on public trust and citizens' willingness to donate organs. Member states are invited to engage in a twinning agreement if they have less than ten deceased donors per million inhabitants or when there is a lack of specific transplantation programmes within their borders.

Concerning quality and safety of transplantation, the draft conclusions recall the need to improve knowledge on health outcomes in transplanted patients and invite member states to share their national procedures for authorisation of procurement organisations and transplantation centres, as well as their expertise on the transplantation of organs from "expanded criteria donors" such as older donors in order to increase the number of available organs.

Organ transplantation is considered to be the most cost-effective treatment for end-stage renal failure and is the only available treatment for end-stage failure of organs such as the liver, lung and heart.

Organ donation and transplantation is a priority for the Cyprus presidency and was discussed at the informal ministerial meeting which took place in Nicosia on 10-11 July 2012.

## **HEALTHY AGEING ACROSS THE LIFECYCLE**

The Council is also due to adopt conclusions on healthy ageing across the lifecycle ([16665/12](#)). The draft conclusions, which build on a conference on this subject organised by the presidency in September, call for efforts to foster health promotion, disease prevention and early diagnosis to be stepped up.

More specifically, the draft conclusions acknowledge that innovative approaches in health promotion and disease prevention could help elderly people to remain independent longer and improve their quality of life. They underline that good health among working age people contributes to higher productivity and other benefits for citizens and society to meet the goals of the EU2020 strategy for smart, sustainable and inclusive growth. The draft conclusions call upon the member states to make the issue of healthy ageing across the lifecycle one of their priorities for the coming years and to adopt an approach that shifts the focus towards health promotion, disease prevention and early diagnosis. The Commission is invited to contribute to the development of policies towards health promoting activities, and together with the member states it is called upon to promote strategies for combating risk factors, such as tobacco use, alcohol related harm, illicit drugs, unhealthy diet and lack of physical activity as well as environmental factors.

## **ANY OTHER BUSINESS**

### ***Health for growth programme 2014-2020***

The Cyprus presidency will inform the Council on the state of play in the negotiations on the EU health for growth programme 2014-2020 ([17027/12](#)).

Discussions held between the Cyprus presidency and representatives of the European Parliament and the Commission in the last months allowed them to achieve an agreement on the proposal pending three issues. These include the question of the level of EU grants for those member states whose Gross National Income is less than 90% of the EU average (article 7(3)c); the question by which legal means (delegated vs. implementing act) the annual work programmes setting out the priorities and actions to be undertaken under the health programme should be adopted; and finally the amount available for this programme to be decided once the discussions on the EU's multiannual financial framework for 2014-2020 are completed.

The new health programme is one of the EU's financial priorities for 2014-2020 as set out in the next multiannual financial framework.

The new health programme is also an important part of the Europe 2020 strategy. It emphasises the potential of the health sector as a driver for economic growth and a generator of jobs.

The general objectives of the programme are, together with member states, to encourage innovation in healthcare and increase the sustainability of health systems, to improve the health of EU citizens and protect them from cross-border health threats.

These general objectives will be pursued through measures grouped under four specific objectives:

- (1) innovative and sustainable health systems,
- (2) increased access to better and safer healthcare,
- (3) prevention of diseases and promotion of good health and
- (4) protection from cross-border health threats.

### ***Transparency of prices of medicinal products***

The Cyprus presidency will inform the Council on the state of play in the negotiations on a draft directive relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion within the scope of national health insurance systems ([16555/12](#)).

### ***Medical devices***

The Commission will inform the Council on the state of play in the negotiations on two draft regulations one of which concerns medical devices and the other in vitro medical devices.

### ***Food intended for vulnerable people***

The Cyprus presidency will inform the Council on the agreement reached with the European Parliament on a draft regulation concerning foods considered essential for certain vulnerable people such as babies and young children ([17033/12](#)).

The draft regulation will now have to be formally adopted by the Council and the European Parliament.

The draft regulation seeks to clarify the legal framework relating to these foods by avoiding the overlap between the specific legislation applicable to such foods and the legislation applicable to normal food. It further aims at closing legal loopholes under the existing system and ensuring that the EU rules on such foods are applied in the same manner in all member states. It thereby contributes to providing legal clarity in the interests of both consumers and producers, and to preventing distortions in the internal market.

### ***EU framework on salt reduction***

The Commission will inform the Council on its survey on implementation of the EU framework on salt reduction by member states ([17035/12](#)).

### ***Patients rights in cross-border healthcare***

The Commission will inform the Council on the transposition of directive 2011/24/EU on patients' rights in cross-border healthcare ([17037/12](#)).

### ***WHO framework convention on tobacco control***

The Cyprus presidency and the Commission will inform the Council on the 5th session of the conference of the parties to the WHO framework convention on tobacco control (FCTC CoP5) ([17038/12](#)).

### ***Working party on public health at senior level***

The Cyprus presidency will inform the Council on the meeting of the working party on public health at senior level on 28 September 2012 ([15014/12](#)).

### ***Asbestos health threats***

The Italian delegation will draw the Council's attention to asbestos health threats and suggest addressing it by a common EU strategy ([17009/12](#)).

### ***Conferences under Cyprus presidency***

The Cyprus presidency will inform the Council on the conferences organised under its auspices ([17018/12](#)).

### ***Work programme of the forthcoming presidency***

The Irish delegation will inform ministers on its work programme in the field of health and consumer affairs as the incoming Presidency of the Council of the EU.

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