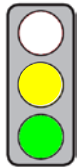


KEY ISSUES

Objective of the Decision: The Commission wants to integrate the employment services in the Member States into a formal network and improve their efficiency by way of a benchmarking system.

Parties affected: Employment services and governments of the Member States.



Pro: (1) By formally integrating the employment services, recommendations from the network assume a high degree of validity, making implementation more likely. This improves the efficiency of the public employment services.

(2) Uniform benchmarking may help to improve employee mobility.

Contra: The Commission's power to set the criteria for benchmarking by way of delegated acts is in breach of Art. 290 TFEU.

CONTENT

Title

Proposal COM(2013) 430 of 17 June 2013 for a **Decision** of the European Parliament and of the Council on enhanced **co-operation between Public Employment Services** (PES)

Brief Summary

► Context

- In 2012, the average employment rate in the EU-27 for 20-64 year-olds was 68.5%. For men it was 74.6% and for women 62.4%. (Source: Eurostat)
- It therefore fell below the key employment policy target of the "Europe 2020" strategy [COM(2010) 2020; see [cepPolicyBrief](#)] of achieving an employment rate of 75% by 2020 (Recital 1).
- The Commission wants to involve the public employment services of the Member States in the efforts to increase employment and, for this purpose, integrate them into a network.
- The money for this will come from the EU Programme for Employment and Social Innovation; **EaSI**.
 - The EaSI Programme is a new programme for the budgetary period 2014 - 2020.
 - It combines the programmes PROGRESS (Programme for Employment and Social Solidarity), EURES (European Employment Services) and European Progress Microfinance.

► Objective and initiatives of the network

- The network aims to improve the efficiency of employment services.
- The network should, in particular, take the following initiatives (Art. 3):
 - developing and implementing EU-wide benchmarking systems to assess the performance of employment services;
 - supporting the Member States in the implementation of the country-specific recommendations of the Council within the framework of the European semester [COM(2011) 400; see [cepPolicyBrief](#)];
 - collecting data and creating a "vehicle for mutual learning";
 - facilitating the exchange of information, experience and staff;
 - adopting a concept for modernising employment services.
- The initiatives will (Art. 2)
 - promote the implementation of the "Europe 2020 Strategy",
 - improve the functioning of the labour markets,
 - strengthen the cross-border mobility of employees and
 - combat "social exclusion" from the labour market.

► Organisation of the network

- The network will be governed by a Board (Art. 5 (1)).
- The Board will be comprised of one member of the "senior management" from each of the national employment services and one member of the Commission (Art. 5 (1)).
- The Board will appoint a Chair and two Vice-Chairs from among the members of the employment services (Art. 5 (2)).

- The Board adopts
 - its Rules of Procedure unanimously and
 - an annual work programme by way of simple majority (Art. 5 (3)).
- The Commission will provide a secretary (Art. 5 (4)).

► **Powers delegated to the Commission**

- The Commission adopts rules, in the form of delegated acts, for (Art. 7)
 - the implementation of benchmarking and inter alia "the methodology, the basic quantitative and qualitative indicators to assess the performance of public employment services",
 - the "learning instruments for mutual learning" and the terms for participation in these initiatives.

► **Duration and Cost**

- The network will be set up for the period 2014 to 2020.
- The cost of the network is not specified.

Statement on Subsidiarity by the Commission

The Commission recognises that the public employment services have a mandate "to pursue national interests and priorities" (p. 5). Nevertheless, it sees considerable added value in the benchmarking and mutual learning activities to be created, as compared with national activities.

Policy Context

The Decision aims to promote reform of the employment services. It is supplementary to the Youth Guarantee [COM(2012) 729, see [cepPolicyBrief](#)] and to the Employment Initiative for Young People [COM(2013) 144] which the Commission has already introduced in response to high levels of youth unemployment. The Commission announced further measures in the Communication on Combating Youth Unemployment [COM(2013) 447].

Legislative Procedure

17 June 2013	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Directorates General:	DG Employment and Social Affairs (leading)
Committees of the European Parliament:	Employment (leading), Rapporteur Frédéric Daerden (S&D Group, BE; Budgets)
Federal Ministries:	Federal Ministry for Labour and Social Affairs (leading)
Committees of the German Bundestag:	Labour (leading); EU Affairs; Budgets
Decision mode in the Council:	Qualified majority (Adoption by a majority of the Member States and with 260 of 352 votes; Germany: 29 votes)

Formalities

Legal competence:	Art. 149 TFEU (employment policy initiatives)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

The Decision is relevant for several reasons. Firstly, the public employment services are to be integrated into a cooperation which goes significantly beyond the informal collaboration which currently takes place. Although PES-Benchmarking (Public Employment Services-Benchmarking) has similar aims, participation is voluntary and has so far only been undertaken by twenty Member States. The public employment services of, among others, Spain, Portugal and Greece have abstained from PES Benchmarking, that is to say those Member States in which, in view of the high level of unemployment, an efficient employment service is essential. Secondly, the knowledge and experience of all national employment services are channelled into the development of the EU-wide benchmarking system used to assess the efficiency of the employment services.

Thirdly, **formal integration also lends the findings of the network** - by contrast with the existing voluntary and informal cooperation - **a high degree of validity so that implementation of recommendations is more likely. This improves the efficiency of the public employment services.**

Fourthly, the public employment services receive a high degree of autonomy with respect to the Commission. The Commission only represents one vote in the 29-member Board and otherwise only provides the secretariat. Thus it has only a small amount of influence on the network Board, which is appropriate in view of the labour-market expertise which the employment services possess. However, this approach is contradicted by the Commission's power to adopt delegated acts in order to regulate the implementation of benchmarking without the network Board having any formal influence is however inconsistent. Not even the European Parliament and the Council can influence the content of delegated acts, but can only prevent them completely, a measure, moreover, which requires an absolute majority in the European Parliament and a qualified majority in the Council.

Impact on Growth and Employment

Although establishing the network does not have a direct influence on growth and employment, nevertheless **standard benchmarking** may, in future, lead to information on job vacancies being available at least county-wide, and better still EU-wide. This **may help to improve employee mobility** which in turn leads to greater conformity between the supply and demand for work and also has a positive influence on growth and employment.

Impact on Europe as Business Location

An essential criterion for deciding on a business location is the availability of qualified staff. Greater employee mobility promotes EU-wide job applications and thus strengthens the EU as an investment location.

Legal Assessment

Legislative competence

The EU is competent to adopt employment policy incentives which do not contain harmonisation measures (Art. 149 TFEU). This Decision complies with the ban on harmonisation. Art. 149 TFEU does not contain any further requirements.

However, the current Art. 149 TFEU was already adopted, in substance, by the Treaty of Amsterdam (Art. 129 TEC). At that time, the Member States issued, in this regard, Declaration No. 23 stating that an incentive should not be for longer than five years and should contain a cap on costs. This Decision, however, provides for seven years and contains no upper limit on costs. Academic opinion considers that the requirements under No. 23 are still valid (one example of many: *Marauhn/Simon* in: Grabitz/Hilf/Nettesheim, Art. 149 par. 6). Nevertheless, the European Court of Justice decided that Declarations by the Member States cannot be relied upon to interpret primary law where no reference is made to them in the measure under examination (Case c-233/97, par. 23; c-197/94, par. 51; c-292/89, par. 18; c-143/83, par. 13), which is the case here. Consequently, there is no breach of Art. 149 TFEU.

Subsidiarity

Unproblematic.

Proportionality

The Decision aims to improve the efficiency of the national employment services. This aim can be achieved by developing the benchmarking system. However, what is disproportionate is the network's obligation to "assist" the Member States in the implementation of the - non-binding - country-specific recommendations, which the Council addresses to the Member States, at the suggestion of the Commission, within the European Semester framework. It is disproportionate because it should be left up to the Member States to decide whether and how they want to comply with a non-binding recommendation. This freedom cannot be effectively nullified by a requirement placed upon a national authority.

Other Compatibility with EU Law

The Commission's power to set the criteria for benchmarking by way of delegated acts is in breach of Art. 290 TFEU which basically regulates such delegation of power. According to the wording, delegation of power must be limited to "supplementing or amending certain non-essential elements of the legislative act". This is not the case here because the main aim of the Decision is to develop a benchmarking system. It is also to be expected that the results of benchmarking will be channelled into country-specific recommendations - the Commission is already asking Italy to improve its employment service - and will also be taken into account as part of macro-economic monitoring. Determining the criteria on which the benchmarking system is based therefore constitutes supplementing an essential element of the Decision. This cannot be conferred on the Commission by way of delegated acts. The adoption of benchmarking criteria should therefore take place in the course of ordinary legislative procedure (Art. 294 TFEU).

Impact on German Law

It is not yet possible to say whether the network's findings will give rise to changes in labour and social law.

Alternative Approach

Instead of having the power to adopt delegated acts, the Commission could propose the criteria for benchmarking by way of ordinary legislation and attach to the proposal a statement of opinion from the network Board. The procedure will thus take account of all legitimate interests: The legislator - Council and European Parliament - adopts the benchmarking criteria, which, in view of the importance of the system, is appropriate. It will have the factual information necessary for its decision in the form of the statement of opinion from the network and the Commission's Explanatory Memorandum. And finally, the Commission will still be able to deviate in its proposal from the network's view if it considers it necessary to do so.

Conclusion

By formally integrating the employment services, recommendations from the network assume a high degree of validity, making implementation more likely. This improves the efficiency of the public employment services. Uniform benchmarking may help to improve employee mobility. The Commission's power to set the criteria for benchmarking by way of delegated acts is in breach of Art. 290 TFEU.