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Delegations will find attached document SWD(2021) 368 final.

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COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the document

Proposal for a Council Recommendation

on individual learning accounts

{COM(2021) 773 final} - {SEC(2021) 417 final} - {SWD(2021) 369 final} -
{SWD(2021) 370 final}

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?

1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?

The envisaged legal basis is Article 149 combined with Article 292 TFEU. It allows for non-binding measures in the field of employment aimed at providing comparative analysis and advice as well as promoting innovative approaches. It contributes to the implementation of article 145 TFEU, according to which *"Member States and the Union shall (…) work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change"*.

1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?

In the case of employment policy, the Union's competence is shared. This follows from Article 4(1), 3 and 6 TFEU. *Subsidiarity does not apply for policy areas where the Union has **exclusive** competence as defined in Article 3 TFEU[1]. It is the specific legal basis which determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU[2] sets out the areas where competence is shared between the Union and the Member States. Article 6 TFEU[3] sets out the areas for which the Unions has competence only to support the actions of the Member States.*

2. Subsidiarity Principle: Why should the EU act?

2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2[4]:

- Has there been a wide consultation before proposing the act?
- Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?

The stakeholder consultation included targeted consultation events and the public consultation. Stakeholders could send comments on the Commission's inception impact assessment as well as provide written statements, in response to the targeted consultations and the public consultation.

The Inception Impact Assessment was available online for public feedback between 23 March 2021 and 20 April 2021. 23 contributions were received, mostly from trade unions (9), NGOs (5) and EU citizens (3). 12-week public consultation was launched on 23 April through an online questionnaire (including both open-ended and closed questions), which ended on 16 July. 216 respondents replied to the consultation comprising 78 citizens, 26 public authorities, 46 business associations and enterprises, 26 trade unions and 40 NGOs/other respondents. The majority of answers came from Belgium (35), of which 23 belonged to EU-level organisations, followed by Italy (24). 38 stakeholders submitted position papers in the context of the public consultation.

Starting with a high-level forum on individual learning with nearly 800 participants from 48 countries on 4-5 March 2021, the Commission also conducted targeted consultation events with different groups of stakeholders. This included consultations of the social partners, the Employment Committee (EMCO), the Committee of the Regions, the European Economic and Social Committee (EESC), the European Quality Assurance in vocational Education and training (EQAVET) network, the

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E003&from=EN
[2] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E004&from=EN
[3] https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E006:EN:HTML
[4] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN

Public Employment Service (PES) Network, the Advisory Committee for Vocational Training (ACVT)/ Directors General for Vocational Training (DGVT), and the the European Qualifications Framework and Europass Advisory Groups and Euroguidance Centres. The ACVT adopted an opinion on the initiative on 16 August 2021.

The explanatory memorandum and the impact assessment both contain a section on the principle of subsidiarity, as further explained under question 2.2. Throughout the impact assessment, qualitative and, where possible, quantitative indicators are provided to allow for an appraisal of this issue.

2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?

In the impact assessment, Section 3 explains the necessity and added value of EU action, which is summarised in the explanatory memorandum. While the initiative is expected to support and accelerate national efforts, it will fully respect the principle of subsidiarity, by leaving decisions on key design parameters to the Member States, notably decisions on the funding source, the amount of entitlements, priority target groups or eligible training opportunities.

While Member States can take measures to improve the situation at national level, an EU initiative can support and accelerate national efforts by sharing experiences and promoting innovative approaches. It can also help set expectations and create trust among Member States and stakeholders for an increase in public and private investment in skills, sending the message that all of them will contribute to, and benefit from, the shared asset of a skilled EU labour force. 84% of respondents to the public consultation agreed that the initiative could also lead to a more efficient use of EU funds for skills development.

The initiative can facilitate access to training for the growing number of EU citizens who reside in another EU Member State, contributing to labour mobility within the EU and a further integration of the single market. The initiative can also contribute to creating a level playing field for companies operating on the single market by enhancing the quality and transparency of the training market across the EU.

Article 149 TFEU precludes measures which would lead to a harmonisation of the laws and regulations of the Member States in this area, respecting subsidiarity by allowing Member States to adapt the measures taken to national circumstances.

2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?

The proposed action aims to support Member States in their national reforms and investments to tackle common challenges. In the absence of supporting EU action, progress is expected to be insufficient and uneven.

(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

The proposed action aims to support Member State national reforms to tackle common challenges concerning low participation in adult learning mainly in national context. However, the problems have transnational aspect. Limited transparency about training offers and uncertainties about their quality and recognition can be expected to create particular challenges for EU citizens who reside in another Member State and companies operating on the single market. Moreover, a skilled EU labour force is a shared asset benefitting all EU Member States in view of increasing intra-EU labour mobility

and economic inter-dependency on the single market.
(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty[5] or significantly damage the interests of other Member States?
In its Conclusions of 25 June 2021, the European Council welcomed the ambition from the European Pillar of Social Rights Action Plan and the Porto Declaration that at least 60% of all adults should participate in training every year by 2030. The analysis in the impact assessment suggests that progress is unlikely to be sufficient in the absence of EU level action to support national actions.
(c) To what extent do Member States have the ability or possibility to enact appropriate measures?
Most Member States have identified increasing participation of adults in learning as a priority in legal acts, policies, or strategies and have taken measures relevant to the general and specific objectives of the proposed action. However, the past experience shows that progress, overall and across groups of adults, is uneven. The proposal aims to support Member State's reform and investment efforts by providing them with a commonly agreed framework for the key functional elements needed to make progress.
(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?
While the extent of the problem varies across EU Member States, the underlying problem drivers of insufficient financial support for training and limited incentives and motivation of individuals to take up training are common across the EU. They result from underinvestment in training stemming from its costs being concentrated while its benefits are shared widely (positive externalities), and from information problems concerning training availability, quality and recognition of training in the labour market.
(e) Is the problem widespread across the EU or limited to a few Member States?
The problem is wide-spread across the EU. This is reflected by the fact that adult learning participation fell short of the EU level target for 2020 that had been set in the Council Conclusions of 12 May 2009 on a strategic framework for European cooperation in education and training ("ET 2020") in 21 of 27 Member States. In addition to being low, participation in adult learning is unequal and strongly depends on the labour market status, employment relationship, company size, educational attainment and the exposure of sectors or occupations to automation. As documented in the impact assessment this problem is -to varying degrees- present in all Member States. All Member States received country-specific recommendations on skills in the context of the European Semester in either 2019 or 2020.
(f) Are Member States overstretched in achieving the objectives of the planned measure?
No, the qualitative and quantitative analysis of the impacts of the recommended measures on the Member States, in particular the economic and social impacts, do not suggest that the Member States are overstretched (Section 6 of the impact assessment).
(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?
In the public consultation, a large majority of respondents agreed that this initiative addresses

[5] https://europa.eu/european-union/about-eu/eu-in-brief_en

relevant constraints to training and expected positive impacts, with particular strong agreement among Member States with lower participation rates. In the targeted consultations, social partners sought reassurance that the implementation of either policy option will not come at the expense of support for training provision by employers, and social partners and public authorities pointed to the diversity of existing national arrangements to support training. The proposed Recommendation complements existing training provision and leaves Member States with sufficient room of manoeuvre for implementation according to national circumstances, notably concerning the funding of training entitlements or governance arrangements to ensure the quality and labour market relevance of training offers eligible for funding.

2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?

EU action can increase the chances that national reforms in the Member States achieve the common objectives.

(a) Are there clear benefits from EU level action?

Yes, EU level action would set a clear and common framework for the Member States for their national reforms to close gaps in the access to training and increase individuals' incentives and motivation to takeup training. It would increase the chances of reaching the Union's ambition from the European Pillar of Social Rights Action Plan and the Porto Declaration that at least 60% of all adults should participate in training every year by 2030, alongside other actions from the European Skills Agenda and at Member State level.

(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?

While the focus of the initiative is on supporting Member States' national reforms, these reforms can benefit from a common EU framework that facilitates mutual learning. More than 8 of 10 respondents to the public consultation agreed that it could also lead to a more efficient use of EU funds for skills development. Enhancing the quality and transparency of the training market across the EU improves the functioning of the single market by supporting labour mobility and contributing to a level playing field for companies operating on the single market.

(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?

The proposed action does not replace well-functioning national policies, but supports Member State reforms to complement them. Recommendations have been derived on the basis of comparative analysis to identify innovative approaches to tackle the common challenges, as outlined in the impact assessment.

(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?

Given the choice of the proposed instrument (Council Recommendation, see Section 3.1 of this document), there is no loss of competence of the Member States and the local and regional authorities.

(e) Will there be improved legal clarity for those having to implement the legislation?

The proposal improves clarity on how Member States can integrate "demand side" financial support to individuals with ongoing implementation efforts on existing EU Recommendations that focus on the "supply side". This concerns notably the Recommendations on VET, Upskilling Pathways and the validation of non-formal and informal learning.

3. Proportionality: How the EU should act

3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?

The content and the proposed instrument (Council Recommendation) of the proposed action are proportionate to its objectives. As outlined in the impact assessment, the main arguments are the urgency of the up- and reskilling challenge in view of the digital and green transitions, the ambition of Member States to increase adult learning participation levels significantly by 2030 beyond levels that can reasonably be expected to be reached under the baseline scenario, and Member States' ambition to strengthen their provisions on individual training entitlements and ensure their transferability during professional transitions (as stated in the revision of the Employment Guidelines of 13 October 2020).

3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?

Yes. The proposed action would provide Member States with a framework for the key functional elements needed to achieve its objectives. It would not make recommendations on design aspects that are best left to Member State's consideration in light of national circumstances.

(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?

The recommendations are limited to the aspects needed to reach the objectives of the initiative. Important design aspects such as the funding source, amount of training entitlements or governance arrangements to ensure the quality and labour market relevance of training offers are left to the Member States.

(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?

Yes. A Council Recommendation would provide a common framework for action that could serve as basis for subsequent analysis of reforms and progress. It would create political ownership by Member States of commonly agreed recommendations on the concrete elements that can help them to make the necessary progress towards the agreed targets on adult learning participation.

(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)

Yes. The initiative is limited to the key functional elements needed to achieve its objectives, while

leaving many important design aspects to the Member States. The recommendation to set up personal accounts for training entitlements is proportionate because such accounts allow to de-couple training entitlements from their original funder and give individuals full ownership over the entitlements, which is essential to ensure the transferability of entitlements. Personal accounts also facilitate flexible funding models with cost-sharing across different funders of training entitlements and modulated support by target groups, accommodating a wide range of possible national funding and implementation models.
(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?
The impacts related to the costs of the initiative have been analysed to the extent possible (Section 6 and Annex 3 of the impact assessment). The analysis suggests that the benefits of the recommended measures (notably in the form of higher productivity and wages) would outweigh their costs within a few years after implementation.
(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?
Yes. No recommendations are made on the source of funding for training entitlements in order to accommodate the different national traditions, including concerning the role for collective bargaining in the provision of training entitlements. The impact assessment analyses possible differential impacts across Member States depending on their estimated levels of adult learning participation under the baseline scenario and concludes that the benefits of the recommended measures would outweigh their costs also in Member States with already relatively high adult learning participation.