

4. Potential Policy Options to promote EFP at EU level

EFP is a cross-sectoral concept, it affects different policy areas within which the EU has different legal competences, such as social and labour market policy as well as different fields of economical policy (corporate governance, business succession, company law) up to tax policy. Especially the latter is subject to exclusive national sovereignty. However, all sectors allow certain activities to promote EFP at least through soft law instruments.

Based on what has been proposed in research and in politics, the following potential activities to promote EFP have been identified within the EU pilot project:

- **Stocktaking and assessment of the current situation,**
- **Identification of Best Practice,**
- **Establishment of a Code of Conduct / Benchmarks,**
- **Implementation of an awareness and information strategy,**
- **Introduction of a complementary decision making tool,**
- **Provision of fiscal and other incentives,**
- **Establishing a legal framework at EU level.**

These activities can be potentially implemented by a range of different policy instruments (see Table 1). A distinction between “soft” and “hard” measures is made referring to the impact the policy instruments can have. While the former are not binding and aim at peer group pressure the latter do establish new rules which – depending on the instrument – may even force changes in national legislation.

Table 1: Mapping the policy options to promote EFP

POLICY INSTRUMENTS ACTIVITIES TO PROMOTE EFP	HARD LAW			SOFT LAW		
	Directive	Regulation	Decision	Recommendation	OMC	Preparatory: Action Program / Informative: Communications
Stocktaking and assessment of the current situation						Report / Commission Communication
Identification of Best Practice				Evaluation of current policies through best practice method	Regular evaluation of current policies through best practice method	
Establishment of a Code of Conduct / Benchmarks				Propose a voluntary code of conduct based on best practice	Facilitate an agreement among the various stakeholders	
Implementation of an awareness and information sharing strategy			<i>On financing of Information Centre(s)</i>			Information Centre(s)
Introduction of a complementary decision making tool			<i>On financing of e.g. Effective Tax Rate Calculator</i>			e.g. Effective Tax Rate Calculator
Provision of fiscal and other Incentives				Counselling & Coaching for firms / Fiscal incentives	Fiscal incentives	EIB-Access to finance
Establishing a legal framework at EU level	EU minimum requirements for national law	EU law and national law parallel: 29th Regime / ECS				

Policy instruments at disposal vary from a legally binding Directive to different soft law instruments. Following the distinction according to their impact we can group the first six as implemented by “soft” measures (except for financing decisions, where necessary) while only the last one aiming at the establishment of a EU legal framework requires “hard” measures.

Description of activities according to implementation instrument

a) Stocktaking and assessment of the current situation

The results of the assessment of EFP across the EU-28 with a focus on ESO undertaken in the context of the pilot project could be published in the form of a report and be incorporated into a Commission Communication on the promotion of ESO at EU level. Such a report would provide an analysis of the reasons for the wide divergence in approaches between Member States and the various problems concerning cross-border implementation of EFP. It would make up-to-date and summarised information on national legislation on EFP/ESO available to the different stakeholders.

b) Identification of Best Practice

A (regular) evaluation of best practice examples from all 28 EU Member States and the development of their policies on EFP/ESO would be conducted resulting in recommendations to the Member States. Any best practice approach should include information sharing among them, policy learning and could eventually result in a form of alignment of national rules. There are two policy options for the (regular) formulation of best practice of ESO, i.e., a Commission Recommendation and the Open Method of Coordination (OMC), which can be used jointly or separately.

c) Establishment of a Code of Conduct / Benchmarks

A voluntary code of conduct with benchmarks resulting from the best practice analysis on EFP/ESO in the 28 EU Member States could be established via Recommendation or OMC. The European Commission could facilitate the process of finding an agreement among the various stakeholders, by providing information and guidance as well as establishing a communication platform. Such an agreement on common principles and behaviour for companies and (potential) employee shareholders could serve as a first step towards further legislation on EFP/ESO.

d) Implementation of an awareness and information strategy

An activity designed to reach out to key stakeholders, i.e. employers and employees on the one hand and policy makers on the other, is to develop and implement an “awareness and information sharing strategy”. Since the lack of awareness and information has been identified repeatedly in policy documents as one of the main obstacles to the implementation of ESO schemes, accessibility, custom-made practical solutions and the popularisation of the issues at stake will be in the core of this activity (e.g., via information centre(s); see EP own-initiative report (2013/2127(INI))).

e) Introduction of a complimentary decision-making tool

In addition to sharing information on different EFP schemes the information could be made available in a more dynamic way in order to facilitate decision-making of firms (esp. with cross-border operations) interested in implementing ESO schemes. For that purpose, e.g. the up-to-date information on general taxation, social security contributions and specific tax incentives relevant to different EFP schemes in each of the 28 EU Member States could be used to calculate effective rates for different taxes, personal status and situations (see EP own-initiative report (2013/2127(INI))).

f) Provision of fiscal and other Incentives

The provision of incentives to promote EFP and reduce cross-border obstacles could be undertaken both at European and at national level. An example of such an incentive at European level could be the provision of easier access to financing through the European Investment Bank (EIB), whereas fiscal, tax and other incentives are examples for national incentives. Although any matter of taxation is subject to national legislative sovereignty it is still essential to provide orientation on best practice at the European level (see EP own-initiative report (2013/2127(INI))).

g) Establishing a legal framework at EU level

There are two possible legislative instruments to establishing a legal framework at the EU level:

- EU minimum requirements for national legislation on EFP/ESO by member states’: The laws governing EFP are national law, but they have to fulfil EU minimum requirements, e.g., a Directive on EFP (minimum harmonisation).
- Optional EU legislation on EFP/ESO: EU rules governing EFP/ESO are implemented parallel to existing national law, with employers and employees free to choose between the two (opt-in: the default rules are the national rules, private parties have the right to opt into the EU law). An example is the “29th Regime on EFP” (see EP own-initiative report (2013/2127(INI))).

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