

UEAPME¹ Position

Commission proposal for a Regulation amending Regulation 883/2004 on the coordination of social security systems and implementing Regulation 987/2009 – COM(2016)815

UEAPME takes note of the EC proposal of 13 December 2016 to revise Regulation 883/2004 on the Coordination of Social Security Systems (hereafter: the main Regulation) and Regulation 987/2009 laying down the procedure for implementing Regulation 883/2004 (hereafter: the implementing Regulation).

I. Introduction

- UEAPME recognises the need for modernising the rules for the coordination of social security within the EU, in line with ECJ jurisprudence. These legal texts are of great importance for the functioning of the Internal Market. A mobile workforce is highly needed in Europe, and **improving and clarifying rules concerning labour mobility within the EU is an important exercise to facilitate clarity, trust, and an overall positive view on mobility**. Moreover, the purpose of sustainability of social security systems requires that the rules are up to date.
- Updating the rules is at the same time a complex and sensitive exercise, **requiring a careful approach and thorough justification of the need for adaptations**. We need to arrive at rules that are credible and proportionate to be supported by all. UEAPME considers it important that decisions on the revision of the rules are based on sound evidence on the numbers and the practicality of implementation, and on transparency with regard to the principles underlying the decisions. A deeper impact assessment of the different proposals, including on the cost implications, could support this aim.
- As social security systems are a national competence, **Member States need to remain free to determine the features of their social security systems**, while ensuring that the coordination of systems is easy to enforce.

II. Comments

1. Social benefits claimed by economically inactive EU mobile citizens

- UEAPME welcomes in principle the Commission's intention to clarify the circumstances in which Member States can limit access to social benefits claimed by economically inactive EU mobile citizens, based on jurisprudence by the ECJ.

¹ UEAPME subscribes to the EC's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is 55820581197-35

- UEAPME agrees with the overall aim to grant Member States a right to make access to social benefits depending on the legal right for residence in the country of destination, but has **questions for further clarification with regard to the relation between the main Regulation and Directive 2004/38/EC on the freedom of movement of citizens** as described in several articles of the EC proposal (such as Articles 1.2, 1.3, 1.8, 1.11). UEAPME doubts if the proposed amendments to the Regulation are sufficient due to possible contradiction with other legal texts to which it is referred. These questions pertain in particular to the following issues:
 - The relation between different provisions in Directive 2004/38 to which the Regulation refers regarding conditions for right of residence (i.a. being self-sufficient and insured) on the one hand, and the right for equal treatment with host-country nationals after 3 months on the other. This contradiction may need further clarification;
 - The way provisions in the proposed recital 5 of Regulation 883/04 are formulated (a reference to the limitations expressed in Directive 2004/38) and, further on in the new Recital 5(c) and Recital 48, provisions that this should not restrict the fundamental rights recognised in the Charter of Fundamental Rights of the EU and the ECHR is equally contradictory.

2. Coordination of unemployment benefits

Aggregation of previous periods of unemployment

- UEAPME is in favour of the EC proposal for the aggregation of unemployment benefits, to require a minimum qualifying period of three months insurance in the Member State of most recent activity before a right to aggregate past periods of insurance can be applied. This means in practice that a person becoming unemployed in the host Member State will only be able to count previous periods of insurance in the first Member State for benefits granted by the host Member State after having been employed there for at least 3 months. This is a fair way to ensure equal treatment with host-country nationals, and better ensures a genuine link between the unemployed person and the labour market of the host Member State.

Export of unemployment benefits

- UEAPME does not support the EC proposal to extend the minimum period for export of unemployment benefits from three to six months. The current situation where it is optional for Member States to allow unemployed workers to take the benefits with them across borders for up to 6 months is seen as well-adapted and sufficient.
- UEAPME considers it important to encourage workers to actively seek employment. Extending the minimum period for export of benefits is counterproductive to that objective and constitutes a wrong signal. UEAPME believes that this may lead to inconsistencies between Member States, with a lack of activation as a result. This is due to different approaches to Active Labour Market Policies such as entitlements and requirements in the Member States for being at the disposal of the labour market during the period of entitlement. Without provisions for sanctions and controls, Member States will have less means to monitor (re)integration and activation measures for mobile citizens.

- Regardless of the minimum period for exporting benefits finally adopted, **UEAPME supports strengthening of mechanisms for enhanced cooperation between Public Employment Services in order to provide adequate support for job-seekers**. Therefore, UEAPME supports the obligation that job seekers must have been registered with the Public Employment Service in the Member State of origin for at least 4 weeks, before being allowed to export their benefits.

Coordination of unemployment benefits for frontier workers

- With regard to proposed amendments to the rules for coordination of unemployment benefits for frontier workers, **UEAPME believes that transparency and clarification is needed with regard to the principles and arguments for changing the rules**, i.e. letting go of the exception from the rule that the country of employment is responsible for paying unemployment benefits.
- There are several perspectives on the issue of cross-border employment that have all a different outcome. On the one hand, the original exception has been in place for a reason: frontier workers often have a stronger link with the Member State of residence, and the different cost of living in the Member State of residence could also justify different benefits. However, at the same time, each case of cross-border employment is different – for example the difference in cost of living does not occur in every case. In addition, leaving the situation as it is would mean a breach with the principle of equal benefits for contributions. In the latter case, it could even be argued that the minimum period of 12 months of employment in the host Member State before applying the proposed rule is too long.
- For that reason, and **to assure support for changing the rules by all Member States**, UEAPME **believes that a thorough impact assessment is to be conducted by the EC on the costs, but that at the same time the principles behind the choices are clarified**.

3. Posting of Workers and Social Security Coordination

- With regard to changes made in the EC proposal concerning the relation between the Regulations for Coordination of Social Security, and Directive 96/71/EC on the Posting of Workers, **UEAPME supports the aim of clarifying the conflict rules**. It is important to create trust in such a highly sensitive matter.
- In its note² on the revision of the Posting of Workers Directive, UEAPME has stated that its priorities are tackling abuses and illegal practices, fighting against letterbox companies and all types of frauds, tackling undeclared work, and facilitating controls, but also – importantly – avoiding disproportionate burdens for small businesses to continue operating abroad. **The freedom to provide services cross-border should not be undermined. Hence, it is important that the impact of seemingly technical changes in both the main and the implementing Regulations is thoroughly assessed for possible negative consequences for employers.**
- Furthermore, it is important that changes to the Regulations are consistent with the Enforcement Directive (2014/67/EU), to avoid any new misunderstandings and/or loopholes.

² http://ueapme.com/IMG/pdf/UEAPME_Note_Posting_of_Workers.pdf

- UEAPME believes that it is important that authorities have effective and adequate tools to verify the social security status of posted workers. This means that the **A1 form needs to become more reliable** to enable better enforcement of the rules. The Commission could consider prohibiting ex-post issuing of A1 forms, and could strengthen the host Member State's rights for controls to determine the legal character of posting. **However, this can only be done under the condition that it does not constitute new disproportionate burdens or limitations for sending companies due e.g. to extension of procedures or additional obligations.**
- **Clarification of the notions of 'sent' and 'posted' workers could be helpful, but further clarification with regard to the implications is even more relevant.** Coordination between the Social Security Regulations and the Directive is of delicate nature, since Regulations refer in this case to a Directive which by nature has only an obligation concerning the result. This has practical implications, depending on which legal basis prevails, be it the Posting and implementing Directives, or the Social Security Regulations. Interpretations of which mechanism is to be applied for verifying the status of the employee and the posting entity may differ.
- With regard to article 14.5(a) of the implementing Regulation, the EC intends to clarify that an employee is subject to legislation of the Member State where the employer or place of business is situated *only if* the company "ordinarily carries out substantial activity in that Member State". **UEAPME requests more clarification on the reason for adding this criterium.**

4. Indexation of family benefits

- UEAPME takes note of the Commission's decision to not introduce mechanisms allowing Member States to apply indexation of family benefits to living standards in the country of residence of family members. As a European organisation, **UEAPME supports in principle this decision, as it is opposed to discrimination between foreign and domestic workers and supports the principle of equal benefits for contributions to social security systems.** In addition, since the cross-border provision makes up only small percentages of total national provision of family benefits, the administrative burden for indexation mechanisms and the difficulty of establishing criteria what constitutes the 'cost of living' in a Member State may be disproportionate.
- Nevertheless, as it is a mechanism requested by some member organisations and some Member States, UEAPME considers that **the EC could explore how an indexation system could look like**, with an impact assessment related to the costs and benefits, the administrative efforts required, the criteria to be established, and the possible effects on labour mobility. Furthermore, the current Impact Assessment uses figures from different years to calculate the average share of family benefits that is being exported in the EU Member States, and also uses data from different numbers of countries (EU28 and EU28 + EFTA Members). These are inconsistencies which need to be corrected.
- However, **UEAPME points out the need to prevent possible opposition between Member States, in order to maintain a positive perception of mobility in the Internal Market.**

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