

UEAPME¹ reply to the first phase consultation of the Social Partners on a possible action addressing the challenges of access to social protection for people in all forms of employment in the framework of the European Pillar of Social Rights

UEAPME takes note of the first stage social partners' consultation launched on 26 April 2017 by the European Commission and would like to make the following comments.

Introduction

The current consultation on Access to Social Protection takes place in the framework of the European Pillar of Social Rights which addresses among others the challenges of new and emerging forms of work and the level of social protection for people in all forms of employment. It mainly refers to principles 4, 5, and 12 of the Pillar.

Representing entrepreneurs and self-employed, the issue of access to social protection is a critical one for UEAPME. In this context, UEAPME has repeatedly asked for a balanced debate and a careful approach, taking into account the diversity of the European labour markets, employment statuses, and social protection arrangements, as well as thorough analysis of the reasons for and impact of current labour market developments. The diverse needs of enterprises and workers should be the basis of discussions.

Ensuring access to social protection for people in all forms of employment is an important issue. UEAPME supports initiatives at national level to address this and sees scope at European level to monitor developments in the framework of the European Semester. However, given the fact that social protection is the strict competence of the Member States and that governments have a very important role to play, policies should be left for the Member States themselves.

1st stage consultation on workers in non-standard forms of employment

Q 1 – Do you consider that the Commission has correctly and sufficiently identified the issues and the possible areas for further EU action?

UEAPME considers that the EU Commission sufficiently covered the issues and possible areas for action, but that additional analysis is required.

¹ UEAPME subscribes to the European Commission'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 underlines the importance of balancing the assessment of the on-going developments on the labour market. Representing entrepreneurs and self-employed, UEAPME has always drawn attention to the obstacles for entrepreneurship and the situation entrepreneurs often find themselves in, created by insufficient access to social protection. Being a good and necessary opportunity for job creation, self-employment is often discouraged by these risks, even if risk-taking is part of its nature. Social security systems should be up to date to respond to labour market developments and to people's needs in terms of desired flexibility.

Digitalisation creates many new job opportunities. The different forms of contracts offer opportunities in times of changing labour markets and help addressing high unemployment rates. Moreover and importantly, the increased variety of contracts is often needed by employers and provides for an amount of flexibility that is desired by both employers and workers. They ease transitions on the labour market and facilitate job creation. An increased share of such contracts, even in case they do not provide for sufficient levels of social protection, is often due to inflexible labour markets and high labour costs. UEAPME recognises that some people are exposed to risks related to possibly insufficient coverage of social protection. People under all types of employment contracts should contribute to and benefit from social protection systems.

Sometimes, a lack of social protection or unequal contributions by people in so-called 'non-standard' contracts occurs because social security contributions are not required. However, another reason for this difference can be that existing rules are not always applied. More emphasis on enforcement of contracts in the Member States is therefore required. The Commission has insufficiently highlighted this reason for the lack of social protection in some cases.

For all these reasons, addressing these topics needs to be done carefully, at the appropriate level, taking into account a variety of policy options including increasing the flexibility of the labour market and reducing labour costs. The focus should be on enforcement

UEAPME is especially critical on the description of the issues where it comes to the used terminology. The concept of what are standard and non-standard contracts differs from one Member State to another and many forms of employment indicated as 'non-standard' are in fact common practice in several Member States since long. As the Commission recognises, there are marked variations across Member States in the coverage of social security systems. For example, in several Member States there is no distinction in access to social protection between permanent full-time employment relationships and atypical relationships. And in the cases where this does exist, there is often voluntary access to forms of social protection, in addition e.g. to mandatory health insurance, as well as rights to employment support and/or further training in case of unemployment. Moreover, gaps in access to social protection are more often due to a lack of accrued periods than to the specific employment status. Finally, it is important to avoid stigmatising 'non-standard' forms of employment, especially when it concerns a free choice. As described above, there are often good reasons for the existence of such employment contracts and a lack of social protection can also be the consequence of insufficient enforcement and awareness.

Also, one needs to carefully take into account the difference between contributions and entitlements. For instance, in most countries, self-employed have access to basic social protection (e.g. pension) even if they don't pay contributions.

Furthermore, UEAPME stresses the need to take into account the heterogeneity and diversity of groups, employment statuses, desires, and labour market configurations throughout the EU. Diversity relates to the type of contract, sectors, and activities. Also, as activities in 'non-standard' forms of employment are often undertaken in addition to 'regular' jobs, it is important to look at the share of these activities compared to and social protection provided by the 'regular' forms of employment.

UEAPME refers in that regard to its continuous request for a solid mapping exercise of the national policies, the availability and offer of tailored social protection schemes, and the take-up broken down by different groups.

The key aspects of insufficient access to social protection are well described by the Commission. A main area to address is the lack of transferability of social protection rights between different jobs and different forms of employment and employment statuses, but as this is of a complex nature it has to be addressed at Member State level. This would help also in reducing the gap in access to social protection.

In terms of the consequences of differential treatment in access to social protection, UEAPME underlines the need for a balanced assessment of labour market segmentation. The main labour market segmentation, as the crisis has shown, is between insiders and outsiders of the labour market.

In terms of actions under consideration, UEAPME believes indeed that the 4 actions mentioned by the Commission should be addressed, but in a proportionate way without creating new labour market obstacles. UEAPME is opposed to any legislative EU initiative, but considers that at EU level, benchmarks in the framework of the European Semester could be considered, but only in terms of targets and not of means.

Q 2 – Which branches of social protection and employment services do you consider to be most relevant for an EU initiative covering access for workers in non-standard forms of employment?

Any EU initiative should be restricted to coordination, monitoring developments and setting targets. Coverage of the different branches of social protection differs widely between Member States, therefore a classification and prioritisation at this stage would be inappropriate. UEAPME is opposed to establishing at EU level unemployment benefit schemes or pension funds. By no means, the EU should determine conditions for benefits.

Q 3 – Should all workers in non-standard forms of employment be included in such an initiative?

UEAPME considers that access to social protection should be proportionately provided to all workers. UEAPME does not consider legislative EU action in the area relevant

Q 4 – Do you consider that improvements should be made to EU legislation or other EU level instruments to address the identified issues?

UEAPME wishes to point out that whereas the objectives of sustainable and adequate social protection for people in all forms of employment are supported in itself, this does not imply that such issues need to be addressed at EU level. Like many of the areas addressed in the EPSR, social protection is the strict competence of Member States. This in itself requires a critical approach to any EU level initiative in the field as it would interfere with national social protection systems.

In accordance with the Treaty, UEAPME sees no scope for improvements to EU legislation in the field of social protection other than in terms of coordination. The actions under consideration are related to the European Pillar of Social Rights, where UEAPME insists on respecting subsidiarity and national diversities in organising national social protection systems. As already explained, the role of the EU should be in coordinating, establishing benchmarks, and facilitating mutual learning to achieve convergence. Social partners should be closely involved in the process of any initiative undertaken at EU level.

Q 5 – Would you consider initiating a dialogue under Article 155 TFEU on any of the issues identified in point 4 of this consultation?

Ensuring access to social protection for all is important and UEAPME supports initiatives at national level to address this. However, given the fact that social protection is the strict competence of the Member States and that governments have a very important role to play, UEAPME does not see scope for a dialogue in terms of Article 155 TFEU.

Voluntary consultation on people in self-employment

Q 1 – Do you consider that the Commission has correctly and sufficiently identified the issues and the possible areas for further EU action?

UEAPME considers that the EU Commission sufficiently covered the issues and possible areas for action, but points to important nuances. Representing self-employed, UEAPME has repeatedly pointed out the need to promote access to social protection schemes.

Adequate social protection has always been an issue for self-employed, in particular for those suffering from risks of low income. In addition, UEAPME recognises the importance of basic levels of social protection for a good functioning of the labour market, as well as to respond to modern needs of self-employed for instance in terms of protection against old-age poverty, sickness, incapacity to work, etc. and the reconciliation of work and family life.

The decision whether or not to participate in insurance schemes is often part of the risk calculation of starting a business. This also depends heavily on levels of basic social assistance in case of failure, which are highly diverse between Member States. In addition, the lack of sufficient social protection can even create obstacles for entrepreneurship as they will find themselves more secure in employment relationships. It is important to remove such obstacles where they exist and promote sufficient access to social protection, without creating new barriers.

UEAPME, representing self-employed, advocates and promotes that self-employed have basic levels of social protection at a reasonable cost. Member States should facilitate, incentivise and remove obstacles for subscribing to higher protection levels on a flexible and as much as possible voluntary basis. Participation in insurance schemes should be facilitated with offers that are tailored to the needs of the self-employed.

Self-employment is the motor of job creation in Europe and an attractive and promising form of work for many people. The Commission's analysis paints a rather negative picture of self-employment. This picture is distorting the reality and needs to be more balanced.² Focus should be on addressing the lack of flexibility on the labour market and high labour costs in many Member States.³ One of the consequences of this, is the phenomenon of so-called 'bogus self-employment', which should be tackled in its right proportion.

As the needs of the groups of self-employed are rather different, thorough and nuanced analysis is needed to ensure the right policy response. The group of self-employed is very heterogeneous and is embedded in completely diverse labour markets.

² Research of the Dutch agency for socio-cultural planning (SCP) showed that of the total group of solo-self-employed in the Netherlands (ZZP'ers), only 6% would prefer to be an employee http://www.scp.nl/Publicaties/Alle_publicaties/Publicaties_2014/Bevrijd_of_beklemd

³ E.g. high tax wedge on labour, too strict regulations for protection against dismissal, duration of sickness benefit payment for employees

Aside from different needs in different sectors and professions, self-employed often already have access to basic, statutory social protection schemes (e.g. pension). In addition, some groups prefer participating in private or privately organised insurance schemes⁴ e.g. for pensions or unemployment. Coverage by statutory or private schemes influences the statistics and needs to be better taken into account. Moreover, it is important to also look at the share of the total income that is received from self-employed activities, and finally the actual take-up of existing insurance schemes. As recognised also by a report of the European Social Policy Network, the offer of social protection schemes does often not respond to the needs of different types of self-employed, which decreases the real level of access to such schemes.⁵

UEAPME refers in this context to its continuous request for a solid mapping exercise of the national policies, the availability and offer of adapted social protection schemes, both statutory and voluntary/private schemes, and the take-up broken down by different groups of self-employed.

It is neither feasible nor desirable that all social and labour law rules for workers are applied to self-employed, as this 1) does not fit the needs and wishes of different categories of the self-employment and 2) only adds to the rigidity of the labour market when we need it to be more adapted to today's conditions. Any initiative should remain flexible.

When addressing these issues, it is essential to keep in mind that the design of social protection schemes varies widely between Member States. The financing of social protection schemes, in line with their competences, is different between Member States, be it based on taxation, social security contributions or a mix of both – also depending on the wider labour market configuration. It is for each Member State to appropriately and fairly incentivise and remove obstacles for self-employment and create a level playing field. Obstacles can also be created when access to social protection is enhanced through increase of social security contributions for employers, which highlights the need for a good balance.

UEAPME is opposed to any far-reaching EU initiative, but considers that at EU level, benchmarks in the framework of the European Semester could be considered for access to social protection for people in self-employment, but only in terms of targets and not of means to achieve them. Such benchmarks could address in particular the degree of access to basic levels of social protection, the availability of tailored offer for subscribing to higher levels, and access to employment services. When monitoring progress, it is essential that the needs of the self-employed and the take-up of the offers is thoroughly taken into account.

Q 2 – Which branches of social protection and employment services do you consider to be most relevant for an EU initiative covering access for people in self-employment?

Any EU initiative should be restricted to coordination, exchanging practices, monitoring developments and setting targets. Measures for ensuring social protection for all should take place primarily at national level, since the design of social protection systems is solely at the discretion of Member States.

Coverage of the different branches of social protection differs widely between Member States, where some are mandatory and others are voluntary. Making a classification and prioritisation at this stage is not appropriate; priority should be on basic levels of social protection.

⁴ See for instance so-called insurance cooperatives or 'bread funds' for solo-self-employed
<http://www.workplaceinnovation.org/nl/kennis/kennisbank/broodfonds--bread-fund--insurance-co-ops-in-the-netherlands/1305?q=&p=35> and
<http://www.workplaceinnovation.org/nl/kennis/kennisbank/broodfonds--bread-fund--insurance-co-ops-in-the-netherlands/1305/download/knipfonds-broodfonds/3211>
⁵ <http://ec.europa.eu/social/BlobServlet?docId=17683&langId=en>

Q 3 – Should all workers in non-standard forms of employment be included in such an initiative?

UEAPME considers that in principle all self-employed should be included in such an initiative under similar conditions.

Brussels, 27 June 2017