



SECOND PHASE CONSULTATION OF SOCIAL PARTNERS UNDER ARTICLE 154 TFEU 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

4 January 2018

KEY MESSAGES

- 1** Increasing diversity in forms of employment is a positive development in the world of work, providing flexibility and opportunities for companies, workers and people. Social protection systems should be reformed, where necessary, to accompany changing economic and labour market realities and ensure people have access to employment opportunities.
- 2** We agree with the overall objective of promoting and supporting Member States to make improvements in social protection coverage where there is real evidence of gaps in coverage.
- 3** Where the EU can have added value is to encourage Member States to learn from each other to achieve better social outcomes in a cost-effective way.
- 4** Member States are competent for the design, organisation and financing of social protection systems, including the choice between tax- or insurance-based schemes. Defining who is a worker or self-employed is also an issue for the national level. Any initiative must respect the division between national and EU competences and not seek to harmonise or interfere with these aspects. The role of social partners must also be safeguarded.



4 January 2018

RESPONSE TO SECOND PHASE CONSULTATION OF SOCIAL PARTNERS ON ACCESS TO SOCIAL PROTECTION

1. On 20 November, the European Commission launched the second phase consultation of Social Partners under Article 154 of the TFEU on a possible action addressing the challenges of access to social protection for people in all forms of employment.
2. Following on from the responses to the first stage consultation, the aim of the Commission is to consult the social partners on the possible content of a Commission proposal “aiming at ensuring access to social protection for workers in non-standard forms of employment”.
3. The Commission is also consulting social partners on a voluntary basis on the content of a possible Commission proposal “aiming at ensuring access to social protection for the self-employed”.

1. What are your views on the possible avenues for EU action set out in section 4 of the document regarding non-standard workers and the self-employed, including

a. The objectives of coverage, transferability and transparency;

4. We see clearly that the world of work is changing, with an increasing variety of forms of employment and more transitions between employment statuses, partly due to digitalisation. We view these developments positively, as they provide flexibility and opportunities for companies as well as workers/people.
5. At the same time, we agree that it is important to look at the implications for social protection, including where there are unjustified gaps in coverage and how social protection systems will be able to effectively accompany the changes on labour markets. These issues have to be looked at with the future world of work in mind, so that the development of new business models, digitalisation and new forms of work is accompanied in a balanced way, without stifling innovation.
6. We also note that in many cases, access to certain elements of social protection is still today based on the employer-employee relationship, including a sharing of contributions, as part of an insurance-based scheme. As stated in the accompanying analytical document, social insurance represents one of the most important instruments through which social security schemes operate, as it has done since national systems emerged. Other elements of social protection are through tax-based schemes, in some cases providing universal access, in others providing access to some, based on means-testing. Social partners play a key role in the first



case, including defining (sometimes jointly with government) the appropriate coverage and level of protection. This role must be safeguarded. The choice between tax- or insurance-based schemes, including the possible mix between them for different types of social benefits, is for the national level. The EU cannot impose or recommend to Member States a specific type of system and discussions on making coverage of social protection broader or more universal should not imply a preference for one or the other.

7. With all this in mind, we agree with the overall objective of promoting and supporting Member States to make improvements in coverage of social protection, where some conditions to effective access may reduce certain working people's coverage unjustifiably. Governments need to involve social partners when assessing the possible need to adapt eligibility requirements to improve coverage, in line with the diversity of industrial relations systems in the Member States. Where changes to existing arrangements are deemed necessary, they should be agreed between governments and social partners in existing tripartite fora. The budgetary aspects of any possible changes also need to be taken into account, regarding the need to respect the stability and growth pact.
8. Supporting social protection coverage for forms of work, for which there is currently not formal or effective access, can help to promote them. However, the right balance has to be found to ensure that people/workers and employers are not deterred from using such forms of work, e.g. through increased labour costs or too high contributions. This is important as such forms of work are an opportunity for people to enter the labour market, as a stepping stone towards permanent full-time employment and provide an important flexibility for employers to hire people. In this respect, incentives that may exist to encourage employers to hire, or to ensure a certain level of income for workers, in particular for low skilled jobs, need to be tailored in a way that takes into account the need to ensure an adequate level of social protection for workers, for all types of employment relationships.
9. A clear distinction should be made between self-employed and those in an employment relationship and we acknowledge that the issue of employees' effective access to social protection is different to that of self-employed. Access and contributions must be well adapted to different work situations, including through appropriate eligibility requirements. In this context, it is important to recall that determining the different categories of worker, as well as the eligibility requirements, are tasks of national governments, sometimes together with social partners. And it is crucial that some eligibility conditions exist, for example for access to unemployment benefits, to ensure that they facilitate return to the labour market.
10. Access should also be based on contributions, to find a balance between employment related access (insurance-based) and recourse to tax-based assistance schemes, as this is important for the financial sustainability of the system. It is also important to remember that changing the system, which is the competence of Member States, can have huge implications, including in terms of costs.
11. We welcome the fact that the Commission has further analysed the situation and presented this in an accompanying document. However, we have an issue with



some pre-conceived ideas about some forms of work, which we consider not to be appropriate. For example, it is not because a self-employed person is economically dependent on one contractor, that this has an automatically negative impact on income and/or social protection coverage. Also, we do not find it appropriate to describe agency work 'as one of the more insecure of contractual forms', as this is not the case in many national legal systems and, irrespective of the legal system, it is a useful stepping stone onto the labour market for many people.

12. We also do not agree that in almost all countries few formalities have to be fulfilled to set up as self-employed - there are still many barriers to becoming an entrepreneur. And in any case, this implies that cutting formalities in order to facilitate self-employment would be negative, whereas this is an important goal in terms of developing this form of work, which is key for the economy and for many individuals. When it comes to bogus self-employment, as pointed out by the Commission, there is a much more likely correlation with restrictive labour market regulations and high non-wage labour costs rather than lack of formalities to set up as self-employed.
13. We note the figures in the analytical document regarding in-work poverty and certain types of contracts. However, we also note that this describes certain types of work combined with low wages, rather than the type of work per se. Also, it shows that unemployment is still the largest determinant of poverty overall. Whilst recognising the need to tackle in-work poverty, increasing employment and getting people back onto the labour market must remain a priority.
14. We would also like to point out that there are some inaccuracies in the data presented in the analytical document for specific sectors and/or countries.
15. We welcome the recognition by the Commission of the heterogeneity between groups (i.e. different forms of work) and that this should be taken into account when considering whether broadening access to social protection responds to an actual need. At the same time, it is also important to take account of the needs and wishes of individuals within groups, which are not the same.
16. We agree with the objective to support Member States to improve transferability of social protection entitlements. This could help to facilitate mobility between jobs and different types of employment or forms of work, thereby making labour markets function more efficiently. It should also be taken into account that other possibilities already exist in some countries, such as retaining access to accumulated rights, e.g. by freezing them when changing jobs rather than transferring them. It is important to consider that transferring social protection entitlements between different types of systems such as between pay-as-you-go and capital funded systems (in both a cross-border or national context), is very complex and difficult.
17. When preserving the social protection rights gained in a previous job and transferring them to a new work situation/employer, it is important to make sure that this does not bring additional costs for the new employer and that existing national, sectoral and company practices that work well are not hampered.



18. We also agree with the objective of improving transparency. To accompany transitions between different jobs and types of work, people and employers need to have better access to user-friendly information on their rights and obligations. This supports more dynamic labour markets.

b. The options of mandatory or voluntary formal coverage;

19. We acknowledge that formal access to social protection is not the same as effective access, as this depends for example on eligibility requirements. At the same time, the Commission's analysis clearly shows that formal and effective access to social protection differs considerably along many different parameters, i.e. between and within countries, between and within different forms of work, between sectors, and regarding different elements of social protection. The Commission even notes that there are differences among categories of self-employed covered by the same scheme. This means that there is a complex web of cross-cutting issues. And as the Commission states, this is without having a full picture (due to lack of data) of the different forms of employment present in the labour market, not to mention new forms of work that will appear in the future. This should be taken into account in choosing an appropriate approach.

20. We believe that contribution and access to social protection is important for the self-employed, as long as they have freedom of choice regarding the type of insurance (private, occupational, state etc), the provider and the type of scheme. The conditions for formal or effective access for self-employed should not be based on the conditions prevailing for workers, as their situation is different. However, it is important, in particular to safeguard the sustainability of the overall system, that self-employed also cover themselves in the case of potential social risks, to avoid reliance on tax-financed social assistance without the necessary and appropriate contribution base.

21. The EU should support and promote access to social protection for employees working on different types of contract, based on definitions at the national level. The measures to be taken at national level must be targeted at different circumstances (concerning both countries and individuals), taking account of existing national social protection systems and the situation in terms of coverage and gaps, transferability mechanisms and information provision. This means that action would be supported and promoted where it has real added value.

22. Whilst we acknowledge that by its very nature a mandatory approach would lead to broader social protection coverage, this is likely to deter employers from using different forms of work, e.g. by increasing labour costs. It is also important not to deter people who are already or who wish to become self-employed, or those who wish to move to a different form of work, for example through too high contributions. As has already been highlighted, these varied forms of work provide opportunities for both employers and individuals and make a positive contribution to the economy. Any approach must take account of individual choice, by giving the possibility of social protection coverage in a way that responds to actual needs and wishes of individuals.



23. We acknowledge that further steps would be necessary to encourage coverage, in particular awareness-raising, including on the possible implications of non-coverage in terms of costs and financial/ social risks. The EU could also promote and facilitate exchanges of practices between Member States, with social partners, on incentives for take up, e.g. tax deductions, exemptions from social security contributions for self-employed etc, as well as on disincentives. This should also take account of voluntary and private schemes – we welcome that these aspects have now been included in the overall analysis. We would also welcome a discussion between Member States and social partners on the different benefits/disadvantages of opt-in and opt-out systems, and how these could improve coverage.

c. The appropriate action to ensure effective coverage;

24. We agree strongly that any EU initiative in this field should not seek to harmonise social protection or interfere with Member States' design, organising and financing of their social protection systems. Furthermore, the definition of worker or employee is an issue for the national level and the EU should refrain from regulating this. It is also necessary to take account of the diversity of arrangements in terms of financing, eligibility requirements, the mix of occupational/public/private schemes, and the situation in terms of formal and effective access to social protection. And this diversity is not only between countries, but also between and within different categories of workers and different elements of social protection. Crucially, these arrangements are built on national traditions, culture and choices and should remain the prerogative of national authorities, jointly with social partners according to the national specificities.

25. For this reason, one of the aims of the Commission (as stated in the analytical document) - to ensure that all 28 Member States move in the same direction – is a concern. This could have implications for the organisation of social protection systems, where the EU clearly does not have competence. Furthermore, whilst we agree with breaking down barriers to mobility and transitions between different forms of work, these concerns are compounded by the statement in the analytical document that mobility in the internal market is constrained due to the different ways in which social protection is organised. Finally, the issue of eligibility as a barrier to effective coverage is mentioned on a few occasions in the consultation and analytical document, whereas eligibility requirements are also a decision for the national level, in which social partners should be involved, in line with the national industrial relations system.

26. The need to take action in the area of social protection also seems to be based on the need to match economic progress in the internal market – the analytical document states that the conditions in the 'common market' between Member States are close to the internal market of a single country. However, this is not the reality and even when it will be complete, this does not mean that national social systems need to be harmonised.



27. At the same time, we note the results of the analysis done by the Commission, that in some cases gaps in coverage of social protection do exist.¹ However, the picture across the EU is complex. In assessing whether and what kind of action could be taken at EU level, the elements highlighted in the answers to the previous questions should be taken into account.
28. In order to respect the division between national and EU competences in this area, EU action would be most appropriate where it supports and promotes solutions at national level, where there are unjustified gaps in social protection coverage, which have a negative impact on workers, citizens, employers or the overall sustainability of the social protection system.
29. We note that Member States have already undertaken reforms in this area and this is in fact mentioned in the Joint Employment Report, “Member States continue to modernise social protection systems, by improving coverage and adequacy of benefits and services, notably for non-standard workers”. The assessment in this consultation is less positive, i.e. that the current measures in place are not sufficient or effective enough, and that further reforms are needed.
30. In this context, we believe that the most appropriate vehicle for EU level action would be the European Semester process, as this is dedicated to supporting and promoting reforms at national level. This could build on the integration of the social scoreboard (part of the European Pillar of Social Rights) into the annual growth survey and existing benchmarking activities, e.g. regarding unemployment benefits and pensions. Improving national implementation of the country specific recommendations is also important.
31. More generally, we would also be in favour of facilitating learning at EU level between Member States, including with social partners, also at sectoral level, on how to broaden coverage in an effective and efficient way. In general, Member States should be encouraged to exchange information about their labour markets so that they can learn from each other in order to have an adequate response for organising their social protection systems. This could be done through the Open Method of Coordination, which we believe has not yet been fully optimised.
32. We see this as a more appropriate way, rather than an EU directive, for the EU to support reforms to address gaps where they exist at national level and there is a need for adaptations. Firstly, this is precisely the role of the European Semester. Secondly, even though the aim of a directive would be to leave room to the Member States to decide on how to achieve the objectives set out, this would still be a binding instrument. We strongly believe that an EU initiative should leave the choice of whether to extend coverage and how to do this for the national level, including the social partners.

¹ For example - EC consultation document – “17 million self-employed and about 8 million people employed on non-standard contracts are at risk of not being covered by unemployment benefits. 12 million self-employed and 2 million people employed on non-standard contracts are at risk of not being covered by sickness benefits.”



33. Thirdly, as already highlighted in our response to the first stage consultation, given that this would require unanimity in Council, combined with the fact that it would be a binding instrument, it is likely to lead to difficult and divisive discussions between Member States. This is not a good basis for the EU to move forward, especially at this critical time in its development.

d. The minimum requirements appropriate to ensure transferability and transparency.

34. Action at EU level regarding accumulation and preservation of social protection rights when changing employers or types of work, has to take account of the diversity of situations. For example, someone changing employers, but retaining the status of employee has very different needs compared to someone who is becoming self-employed after being in an employment relationship. It also has to take account of existing rules/schemes at national and EU level, for example, the ongoing implementation of the directive on acquisition and preservation of supplementary pension rights. The impact and results of implementation should be looked at before taking any new measures to enhance transferability in the specific field of this directive. The picture at EU level is also made more complex by the mixture of statutory, occupational and private social protection schemes.

35. It is also important to take into account the differences in terms of moving cross-border in the EU or simply changing jobs or status in one country. In fact, the coordination of and access to statutory social protection is probably one of the most complicated areas when moving cross-border, which means it is important that the rules in this area (regulation 883/2004), work better, in particular regarding cooperation between national authorities. We also agree with the Commission that different requirements and objectives may be needed for different types of social protection, particularly bearing in mind that some are linked to an employment relationship (insurance-based) and others are provided to all citizens through tax based schemes or some citizens on the basis of means-testing.

36. In this context, a blanket approach at EU level with binding requirements for Member States to make rights transferable for all workers including self-employed across all social protection domains, would not be appropriate or feasible. The EU's approach should be to promote and encourage measures, targeting the national and sectoral level, including where relevant by social partners, to develop transferability of social protection rights. This should focus on where there is demand, based on what already exists and any gaps. In some cases, the choice at national level may be to make all rights transferable; in other cases, it may be to target certain groups of workers or certain types of social protection. The instrument – e.g. social dialogue, national legislation, or awareness-raising – is also a decision for the national level.

37. Differences also exist in terms of the need for easily accessible information on social protection rights, depending on the type of social protection. We agree that some basic information would be helpful, as long as this can be provided in a cost-effective way by public authorities, that it does not put extra administrative burdens on employers to generate the information, and that it takes account of existing initiatives



and schemes at national level. Online tools could also be considered. This is an area where the EU could provide guidance.

38. A different approach may be necessary in both cases regarding EU cross-border mobility and this requires further reflection, including how to encourage projects or pilot schemes in this field. This should include assessing the pilot scheme for an EU pension tracking service (relevant in terms of information provision) and the ReSaver project, which allows cross-border access for mobile researchers to pensions (relevant in terms of transferability).
39. In both areas, the EU should also facilitate learning between Member States, social partners and sectors. A number of good examples are already highlighted in the analytical document and the EU could do further work to map the situation across countries and sectors as a basis for mutual learning.

2. Are the EU social partners willing to enter into negotiations with a view to concluding an agreement under Article 155 TFEU with regard to any of the elements set out in section 4 of this document?

40. We are not willing to enter into negotiations on any of the elements set out in section 4 of the document and we believe that EU level social partner negotiations are not an appropriate way forward on this issue.
41. Firstly, any EU action should be restricted to promoting and supporting Member States to make improvements in coverage of social protection, where there are unjustified gaps identified at national level and therefore action is deemed necessary. The EU could also encourage action by Member States and social partners regarding transferability and information provision.
42. Secondly, although we welcome the recognition that occupational and private provision of social protection should be taken into account in assessing coverage, since the core of the issue is access to statutory social protection, we believe public authorities are the relevant actors in terms of implementing any EU action in this field.
43. We would however be happy to discuss with EU social partners at cross-sectoral and sectoral level a number of issues, also jointly with national governments (as highlighted above within the European Semester coordination and the social OMC). However, this would not constitute a formal social dialogue negotiation according to Article 155 TFEU.
