



19 April 2018

Council Recommendation on access to social protection

KEY MESSAGES

- 1** Ensuring access to social protection in a financially sustainable and balanced way is important to ensure that we can accompany the changes in the labour market without stifling innovation.
- 2** Taking into account the division of competences between the EU and the national level, a non-binding approach which encourages member states to improve social protection coverage, should be the guiding principle of EU action in this field, monitored through the European Semester process and the open method of coordination. Furthermore, the EU should not interfere with member states' definitions of worker through this recommendation.
- 3** Member states should have the choice over how to extend coverage, to which groups of workers, and regarding which branches of social protection, to be able to take an approach which is targeted at the specific national situation and can be adapted to different types of workers and the situation of the self-employed.

WHAT DOES BUSINESSEUROPE AIM FOR?

- *Any EU initiative in this area must fully recognise the diversity of concepts underlying social protection systems in EU member states and respect that member states are competent for the design, organisation and financing of their social protection systems, as well as for defining different categories of workers.*
- *Whilst we support the decision of the Commission to not opt for binding EU legislation in this area, we are concerned that some parts of the proposed council recommendation are overly prescriptive and could interfere with the functioning of social protection schemes at national level.*
- *The recommendation should be based on the principle that any action at national level must ensure a balance between providing access to social protection schemes and not deterring employers, workers and individuals from using diverse contract forms, becoming self-employed, transiting between or combining different forms of work.*



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Proposal for Council Recommendation on access to social protection

I. Introduction

1. On 13 March, the European Commission published a proposal for a Council Recommendation on access to social protection for workers and the self-employed. This was part of a 'Social Fairness Package' presented by the Commission, as part of implementation of the European Pillar of Social Rights. The proposal is accompanied by an explanatory memorandum and an impact assessment.
2. The proposal follows a two-stage consultation of Social Partners under Article 154 of the TFEU on addressing the challenges of access to social protection for people in all forms of employment and a consultation of social partners on a voluntary basis on access to social protection for the self-employed.

II. General comments

3. The ever-changing world of work, with an increasing variety of forms of employment and more transitions between employment statuses can bring benefits for employers, workers and jobseekers alike. Whilst we note critically that the Commission still uses the terminology of 'non-standard' forms of work (see BusinessEurope responses to first and second phase social partner consultations), we are pleased to see a recognition that newer work forms are not only useful for employers, but also for workers and labour market entrants.
4. To ensure that we grasp the opportunities in this changing world of work, encouraging access to adequate social protection in a sustainable way, and effectively accompanying changes on labour markets should remain key goals for the EU. This must be done in a balanced way, which does not stifle innovation in the world of work nor in business models and which respects the division of competences between EU and national levels, and the role of social partners.
5. With this in mind, we support the Commission's intention to encourage member states to allow all individuals in employment and self-employment to adhere to corresponding social protection. This has to be done in a way which does not harm the sustainability of systems.
6. The emphasis is rightly on the EU encouraging and providing guidance, rather than obliging member states to take action in this area. In this respect, we view positively the decision of the Commission not to opt for binding legislation in this area. The proposed recommendation and the explanatory memorandum correctly recognise that member states are competent for designing their social protection systems, the level of protection and the financing. We also welcome the acknowledgement that



how member states achieve improvements in access to social protection is their choice, i.e. whether by extending coverage under existing schemes or creating new ones, as well as the balance between public, private and occupational schemes. However, unfortunately these important points are not adequately reflected throughout the text of the proposed Council Recommendation, in particular where it refers to establishing minimum standards at EU level. We are also concerned that the recommendation does not adequately distinguish between state, occupational, and/or private schemes, particularly bearing in mind the role of social partners in the provision, management and governance of occupational schemes. The Council Recommendation should not interfere in this.

7. We support a focus on member states giving the possibility to individuals to have access to social protection, as it allows them to take account of existing national social protection systems and the situation in terms of coverage and gaps. Such an approach would allow for targeted actions at national level to broaden coverage of certain branches of social protection to those forms of work, for which there is an unjustifiable lack of formal or effective access. The aim should be to find the right balance between providing adequate levels of social protection for all types of employment relationships, whilst not deterring people/workers and employers from using diverse forms of work. Unnecessary changes to national systems which work well should be avoided. Unfortunately, this approach is not adequately reflected in the proposed recommendation, in which the wording is too prescriptive, stating that member states should ensure workers have access.
8. Acknowledging that formal access to social protection is not the same as effective access, we agree that a distinction should be made between these. It makes sense that whilst granting formal access to workers and self-employed to those branches of social protection for which it is deemed appropriate at national level, effective access, i.e. being able to accrue and take up entitlements, should be provided in a way which takes account of the different types of work situations, particularly self-employed.
9. We support the focus on adherence to corresponding social protection (as mentioned in the explanatory memorandum), based on the understanding that this means corresponding to the specific individual work situation and sectoral/national specificities. If this is the case, we believe it would mean member states should take a targeted approach in terms of which branches of social protection and which types of scheme (public, occupational, private) should be accessible for different types of work situations. It is therefore unfortunate that this notion is not adequately present in the proposed recommendation. This notion would also take account of the fact that access to social protection differs not only between and within countries, but also between and within different forms of work, in particular workers and self-employed, different sectors, and regarding different elements of social protection.
10. We support the Commission's aim to encourage member states to make improvements regarding accumulation, preservation and transferability of entitlements, as this can be important in terms of facilitating smooth transitions in the labour market. This must be done in a way which does not bring additional costs for the new employer and does not hamper existing national, sectoral and company



practices that work well. Therefore, it is positive that the accumulation, preservation and transferability of entitlements should be facilitated in accordance with national arrangements on social dialogue, given that in some countries, social protection schemes, in particular occupational pensions, are managed by social partners. It is important to consider that transferring social protection entitlements between different types of systems both within or between EU member states, is very complex and difficult, for example, given the differences between pay-as-you-go and capital funded systems, as well as the different financing arrangements of national social security systems.

11. The scope of the section of the proposed recommendation on accumulation, preservation and transferability is however too broad, when it states that these aspects should be ensured across all types of employment and self-employment statuses and across all types of economic sectors. This should not be determined at EU level – member states should be given choice over these different elements and the draft recommendation should refer to encouraging member states in this area rather than ensuring it across the board.
12. We also agree on increasing transparency about entitlements and obligations and providing information on the conditions and rules of schemes. This should not only be accessible for individuals but also employers. Also, it should be done in a way that it does not lead to higher costs for employers, for example, due to increased information or reporting obligations to public authorities. Making sure people, workers and employers have access to information, particularly in the context of more transitions between jobs and work situations, helps labour markets to function more efficiently. We also support simplifying administrative requirements for schemes.
13. Implementation and monitoring through the European Semester process and open method of coordination is the right approach. If drafted in the right way, such a Council Recommendation could be useful in providing support for further reforms of social protection systems, combining sustainability and adequacy, and for mutual learning between member states. Issues for mutual learning could include incentives and disincentives, e.g. benefits/disadvantages of opt-in and opt-out systems, tax deductions etc. Social partners should be involved in any follow-up process, including the work foreseen with the Council's Social Protection Committee, to develop benchmarks.
14. We believe that some changes are needed to the proposed recommendation to bring it in line with the views highlighted above, and to ensure consistency in the Commission's approach. More information is provided in the next section.

III. Specific comments

15. Regarding the objective and the scope of the recommendation, we believe that it would be more appropriate for the stated aim to be encouraging member states to allow all individuals in employment and self-employment to adhere to social protection in an appropriate way. There should also be a more nuanced approach to allow member states the possibility to choose the different categories of workers



and self-employed to which effective coverage and transferability of social protection should apply, and which branches of social protection should be covered by their actions to implement the recommendation. It should also make clear the distinction between public and occupational schemes, making sure to respect the role that social partners play in provision, management and governance of occupational schemes.

16. Regarding the definitions, we do not support the definition of a worker included in the proposed recommendation. As stated in our position on the Commission's proposal on transparent and predictable working conditions, the EU should not interfere with member states' definitions of the term "worker". National definitions have been adapted over the years in law, collective agreements and jurisprudence, to take into account new forms of work and changes in national labour law and social security. An EU definition would not be able to capture different situations and would be much more difficult to adapt to future developments. It would lead to more rigidity. Also, determining the different categories of worker, as well as the eligibility requirements, are tasks of national governments, sometimes together with social partners.
17. We agree that member states should be encouraged to make improvements in terms of formal coverage of both workers and self-employed. However, a requirement on member states (even taking account of the non-binding nature of a council recommendation) to ensure that all workers have access to all branches of social protection, is too prescriptive. This should be amended throughout the proposed recommendation. To allow for a necessarily targeted approach adapted to different work situations and national specificities, member states should be given the choice over which types of workers and which branches of social protection to take action on, according to existing coverage and gaps at national level. This decision should be partly based on an assessment of the impact that broadening coverage is likely to have on employers' use of different forms of work and on people's/workers' willingness and possibility to become self-employed or move to a different form of work.
18. There is a need to respect the different situations of workers and self-employed. At the same time, to safeguard the sustainability of the overall system, self-employed should be formally covered in case of potential social risks and contribute in an appropriate way, to avoid reliance on tax-financed social assistance without the necessary contribution base. However, they should be able to choose the branches of social protection for which they want coverage and the type of insurance, provider and type of scheme which best corresponds to their situation. In this respect, member states should be encouraged to facilitate availability of market-based solutions. We agree that formal coverage on a voluntary basis for self-employed is more suitable in the case of unemployment insurance, as there is an inherent risk for self-employed related to setting up and running an entrepreneurial venture.
19. We do not agree that the same approach should be taken for effective coverage as for formal coverage, i.e. that effective coverage should be ensured for all workers, regardless of the type of the employment relationship and for self-employed. Firstly, this should be a choice for the national level. But in any case, a more nuanced approach is needed, where the conditions for effective access (e.g. eligibility



requirements), need to take account of the differences between labour market statuses and types of employment relationships. Often, this makes differences in rules covering contributions and entitlements justifiable and logical. We do not believe that the proposed recommendation takes this point into account adequately. Whilst it rightly does not prescribe the rules governing contributions and entitlements, which is the prerogative of the provider (member state, social partners and/or private sector), it goes too far by stating that rules governing contributions and entitlements should not hinder accrual or access due to the type of employment status. This is an issue for the national level and/or the specific provider of the scheme. This point is clearly covered in 10.b of the proposed recommendation, as long as those rules are proportionate of course. It should therefore be integrated with 10.a to ensure that they are no longer contradicting points. This would also be more in line with the approach in point 13., which also allows for a differentiation depending on the work situation of an individual, by stating that contributions to social protection should be proportionate to their contributory capacity. It is also important to have a clear link between the contributions paid and the entitlements provided.

20. Regarding accumulation, preservation and transferability of entitlements, it is positive that the proposed recommendation leaves it to the member states to determine the way in which entitlements are accumulated, preserved and transferable. However, we believe that the recommendation should also allow each member state to choose for which types of employment/self-employment statuses and which branches of social protection this should be achieved, taking account of the national situation as well as needs in specific sectors. In this respect, this section of the proposed recommendation should be brought in line with the section on the objective and scope, which refers to the fact that different rules may apply for workers and for the self-employed in this area. It is also important to note that transferring entitlements between different types of systems and schemes is complex and that there are different ways to achieve this. Whilst the two options included in the proposed recommendation are possibilities, other options may exist. To allow member states to learn from different experiences, this should be looked at further.
21. Whilst it is important that social protection systems provide an adequate level of protection, whether systems and benefits are deemed as adequate is very much an issue for the national level, as it is based on national culture, traditions and choices. This should also be combined with a section in the proposed recommendation on the financial sustainability of social protection systems, as these two issues go hand in hand.
22. We believe that the section on adequacy is general enough to encompass different national realities, however, it does not take account of the fact that adequacy may be achieved for an individual by protection through multiple schemes (e.g. combination of public, occupational and/or private). Therefore, assessing whether one individual scheme is sufficient to uphold the standard of living, provide appropriate income replacement and prevent members from falling into poverty may not be relevant. If a discussion and learning between member states is to take place regarding adequacy, it should relate to the overall national social protection system and should be combined with a discussion on sustainability.



23. We support the reference in the section on adequacy to the need for contributions to be proportionate to the contributory capacity of workers and the self-employed. This is key to ensuring that broadening social protection coverage does not deter people/workers and employers from using diverse forms of work due to increased labour costs or too high contributions. This is important bearing in mind that the diverse forms of work on today's labour markets provide opportunities for employers, workers and in particular labour market entrants, and contribute to the economy. In addition, there should be reference to the need for benefits to be proportionate to the contributions made, to ensure that the system is fair and financially sustainable.
24. Regarding transparency and information provision, it should be for member states to decide how best to make improvements in this area, taking account of what already works well at national level. For individuals and employers to be able to make use of information, particularly on the rules and conditions of schemes complementary awareness-raising needs to be provided by governments to increase financial literacy and understanding of schemes.
