

# UEAPME<sup>1</sup> Position

## Commission proposal for a Council Recommendation on access to social protection for workers and the self-employed COM(2018) 132

### Introduction

On 13 March 2018, the European Commission published its proposal for a Council Recommendation on access to social protection for workers and the self-employed COM (2018) 132.

### Key messages

- Modernising social protection systems in Europe is needed to make them sustainable, future-proof and respond to labour market developments.
- Representing entrepreneurs and self-employed, UEAPME advocates and promotes that they have access to basic levels of social protection at a reasonable cost. Member States should facilitate subscribing to higher protection levels on a flexible and voluntary basis, and with adequate offer for the self-employed.
- UEAPME has strong concerns with the mandatory approach to nearly all branches of social protection in the draft Recommendation. A better balance needs to be found at national level improving social protection of self-employed, but also respecting their freedom to choose.
- UEAPME insists on the strict competence of Member States in matters of designing and improving their social protection systems in coherence with their labour market organisation and industrial relations systems.
- All working people, whether employee or self-employed, should be able to operate with confidence in the modern economy. To facilitate this, UEAPME's priorities are facilitating transitions, tackling the rigidity of labour markets, lowering labour costs, providing more clarity on statuses, transparency on rights and obligations in work and B2B contracts, and fostering entrepreneurship.
- Member States in cooperation with social partners need to explore adequate policy options; business organisations representing SMEs and self-employed should be closely involved in the process.

<sup>1</sup> 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

## General comments

- UEAPME agrees with the proposal's objective to address gaps in social protection among people in all forms of employment. In matters of designing and improving their social protection systems, UEAPME insists on the strict competence of Member States in coherence with their labour market organisation and industrial relations systems. Member States should be left sufficient room to explore all possible legislative and non-legislative avenues to tackle rigid labour markets. However, **it is necessary to modernise social protection systems in the EU with a view to present and future labour market challenges**. Exchange of practices and mutual learning should enrich the reflections.
- As regards the social protection of the self-employed, which form the core constituency of UEAPME, there is a need for adequate social protection levels that encourage entrepreneurship in Europe. UEAPME supports and promotes adequate access to social protection for all, including self-employed and entrepreneurs. However, UEAPME insists that it is up to the Member States to decide which types of social protection should be compulsory or voluntary. In principle, anyone who is professionally active should have access to basic levels of social protection.
- **UEAPME advocates and promotes that self-employed have basic levels of social protection at a reasonable cost. Member States should facilitate subscribing to higher protection levels on a flexible and voluntary basis.**
- In its reply to the social partner consultation<sup>2</sup>, UEAPME has drawn attention to the **obstacles for becoming entrepreneur** and the difficult situation entrepreneurs often find themselves in, created by insufficient or too expensive access to social protection. In some Member States in particular, self-employed have not at all sufficient and effective access to many social protection branches, a situation which clearly needs to be addressed.
- A careful balance needs to be found at national level that supports at the same time entrepreneurship and improves the social protection of the self-employed, but also respects their freedom to choose and make risk assessments when becoming self-employed. **UEAPME expresses strong concerns with the mandatory approach in the Commission proposal to nearly all branches of social protection.** Applying this in all Member States fails to acknowledge the other side of the coin, which is the need to *offer* social protection for self-employed at a reasonable cost and under reasonable conditions.
- UEAPME sees **scope for action at EU level** mainly in drawing attention to possible gaps in social protection and exchanging experiences in policy approaches between Member States, in particular in the context of the European Semester process. Targets and benchmarks could be developed by Member States to monitor for instance the (effective) coverage and up-take of social protection, and the extent to which transitions between employment statuses are facilitated, provided that such targets and benchmarks leave room for a variety of policy avenues.

<sup>2</sup> [https://ueapme.com/IMG/pdf/UEAPME\\_reply\\_to\\_consultation\\_on\\_Access\\_to\\_Social\\_Protection.pdf](https://ueapme.com/IMG/pdf/UEAPME_reply_to_consultation_on_Access_to_Social_Protection.pdf)

- The impact of digitalisation and other changes on the labour market is taking shape, but still at the beginning. It is very diverse and takes place at different speeds in the Member States, according to sectors and structure of the economy. **The Commission has with its proposal chosen for a relatively early intervention, but solutions can only be developed at national level and in cooperation with social partners.** The diversity of European labour markets, industrial relations, and social protection systems; the existence and desires of different groups of self-employed, as well as the lack of sufficient analysis of current labour market developments and possible gaps in social protection levels; and finally the variety of policy options to tackle these developments in a proportionate way, require thorough consideration. Imbalances and potential inequalities should not be used as a pretext for discouraging self-employment.
- A variety of employment relationships and forms of self-employment exists, and it is important that they continue to exist. A labour market in transition should not be prematurely hindered with a harmful impact on growth and job creation. **Entrepreneurship and self-employment, with its contribution to growth, innovation and job creation for the European economy, needs to be supported.**
- The modern labour market requires diverse contract types, with a certain degree of security when moving between job statuses. Transferability of entitlements, provided that this would not incur additional financial and administrative burdens for employers, is therefore important. Becoming self-employed or starting a business should be made more attractive. **Labour markets in Europe are currently still too rigid**, with high labour costs, focusing too strictly on traditional dependent work contracts. This needs to be addressed first.
- **UEAPME believes that all working people, whether employee or self-employed (or unemployed), should be able to operate with confidence in the modern economy.** Many self-employed in Europe face an unequal playing field for instance when doing business on and/or with platforms. In terms of policy avenues, UEAPME supports in particular that Member States explore and implement effective ways to make the labour market function more smoothly. To do so, **UEAPME's priorities are:**
  - facilitating transitions between different statuses, be it from employee/unemployed to self-employed or vice-versa;
  - tackling the existing rigidity of the labour markets;
  - lowering labour costs;
  - improving clarity on statuses at national level, and increase transparency on entitlements, rights, and obligations in work and B2B contracts.
  - promoting entrepreneurship in particular through education

## Instrument

- For UEAPME, a Council Recommendation is the most suited instrument to address the topic in a proportionate way, and to put it on the agenda of Member States for discussing gaps in social protection, and for exploring policy options that take into account the labour market challenges and evolutions. It is important that the competence of Member States and social partners in the design of social protection systems is recognised. A Council Recommendation also allows for addressing these issues through the European Semester and the Open Method of Coordination which UEAPME supports.

## Scope, definitions and terminology

- UEAPME agrees with the objective to cover individuals in all forms of employment and taking into account emerging forms of work; however insists that a European definition of a worker (Paragraph 7) is not appropriate. As stated in its position<sup>3</sup> on the proposal for a directive on transparent and predictable working conditions, a European definition of “workers”, “employers” and “employment relationship” does not respect national competences, in particular in matters on social security, and will make its application at national level difficult. The definitions of “worker” and “employment relationship” in the Recommendation should refer to national law, collective agreements and jurisprudence.
- Furthermore, UEAPME points to the **problematic use of terms such as ‘non-standard’ forms of employment and ‘platform workers’**. In the former case, it stigmatises anyone without a traditional full-time open-ended contract. In reality, in many cases persons in ‘non-standard’ forms of employment may be working on a full-time basis but with different part-time jobs, or be part-time employed next to a self-employed activity. The use of such terms disregards the diversity of real-life situations on the labour market and the need for such contracts stemming from the employer or the worker or both, and more general the importance of making the labour market operate more smoothly. Moreover, in the case of ‘platform workers’, clarification is needed, since the term does not represent one single category. There is a large variety of platforms, used for work purposes by workers as well as by self-employed persons who work in a fully independent way. In the context of ‘new forms of employment’, better terminology is needed to ensure appropriate response and avoid more rigidity on the labour market.

## Formal coverage

- UEAPME supports and promotes adequate access to social protection for all, including self-employed and entrepreneurs. In the case of self-employed, in some Member States there are important gaps which need to be addressed. In principle, anyone who is professionally active should have access to basic levels of social protection.
- However, UEAPME insists that it is up to the Member States to decide which types of social protection should be compulsory or voluntary. **UEAPME expresses strong concerns with the mandatory approach in the EC proposal to nearly all branches of social protection for self-employed.** The currently wide approach, asking Member States to ensure access on a mandatory basis for all branches except unemployment benefits, does not sufficiently respect national competences with regard to the design of social protection systems. It covers branches that should be left to Member States’ discretion, and disregards the potential need at national level for a clear distinction between self-employed and other workers in terms of social protection. It is essential that Member States remain more free to discuss at national level how and to whom to apply a mandatory approach, and for which branches of social protection. For UEAPME, rather than fundamentally choosing between mandatory or voluntary coverage, a ‘facilitating’ approach is important.

<sup>3</sup> [https://ueapme.com/IMG/pdf/180226\\_UEAPME\\_position\\_on\\_transparent\\_and\\_predictable\\_working\\_conditions.pdf](https://ueapme.com/IMG/pdf/180226_UEAPME_position_on_transparent_and_predictable_working_conditions.pdf)

- Social protection has a different function for self-employed than it has for workers in a dependent employment relationship. Even if borders seem to be blurring with current developments on the labour market, the fundamental differences remain. Several Member States offer entrepreneurs a choice with regard to several types or levels of social protection. *For example*, occupational risks are very low in many sectors or jobs, and it is therefore not always reasonable to include these as mandatory part of social security. Self-employed need a certain degree of choice, and Member States need more room to decide which branches should be mandatory for which type of workers.
- In most Member States, self-employed decide by themselves the extent to which they wish to participate in social protection schemes, depending on the offer, the contributions/benefit proportion, and other conditions, which makes the *effective* coverage the crucial element. **Without adequate and tailored offer, a mandatory approach to social protection for self-employed is not the right approach.** The needs of self-employed should be at the basis of discussions at national level, respecting their relative freedom to choose and make risk assessments when becoming self-employed. Therefore, more transparency with regard to available offer is highly needed to make an informed choice.

## Effective coverage and adequacy

- Facilitating subscribing to higher levels of protection needs to be done through adequate and affordable offer of social protection schemes for those who choose to subscribe. In reality, current social insurances are very often considered as too expensive for many entrepreneurs and self-employed, especially when they start their business.
- Furthermore, many entrepreneurs and self-employed who would like to subscribe to higher levels of insurance, are held back by the price and/or conditions set by the providers. Such obstacles need to be addressed at national level, in order to promote access to social protection, without creating new barriers. **This would support entrepreneurs and self-employed to choose the available type of scheme and provider which best corresponds to their situation**, e.g. public, semi-public, or privately organised schemes.
- **Insurance for self-employed needs to be offered at a reasonable cost, and the level of benefits should reflect the level of contributions.** Disproportionately raising contribution levels should be avoided. Furthermore, the assessment of proportionality as well as what constitutes the income base should be done in close cooperation with the self-employed and business associations representing them, to create real access. Factors that make paying contributions more complicated for self-employed should be recognised, such as fluctuating income, low levels of benefits, and other disincentives to contribute. Such complications make that the lack of tailored offer is a serious barrier to effective coverage and entrepreneurship. This is further aggravated by rules governing contributions and entitlements, such as qualifying or waiting periods.
- As regards the adequacy of the level of protection, it should be recognised that effective social protection is usually dependent on the interplay between the different financing methods, carefully balanced at national level. Social protection systems can be based on taxation or contributions or both. In addition, effective social protection of people in any form of employment is not achieved through coverage by formal social protection schemes only. Many other factors contribute as well, e.g. (public) services paid for by taxes, or informal assistance.

## Transferability

- UEAPME considers that improving the accumulation, preservation and transferability of entitlements between employment statuses can certainly support people to move from one to another professional activity, which would better reflect the evolution of the labour market and facilitates transitions. This is an important step forward for helping all working people, whether employee or self-employed, to operate with confidence in the modern economy and help the labour market function more smoothly.
- However, **it is for the national level in cooperation with social partners to define the modalities, due to the specific design of social protection systems in the different Member States.** For example, it is logical that in contributions-based systems, these contributions generate benefits, rights and levels of coverage that can be preserved, but this is different from tax-based systems. Also, capital-funded pension systems are different from pay-as-you-go-systems. Existing attempts to provide rules on transferability by allowing for the accumulation of entitlements from different sources of employment have proven to be difficult. Such rules are linked to the entire social security system, and may imply complete revision. Modalities are difficult to define, and cost-effectiveness is not guaranteed. Member States should be able to make a distinction in the way different benefits, rights, and levels of coverage are accumulated, preserved, and made transferable for the different types of social protection, whilst respecting the needs of the different categories of beneficiaries.
- It is important to avoid new costs for individuals who start as self-employed, thereby discouraging entrepreneurship. For UEAPME **it is important that the design of the systems allows that social protection of the self-employed is organised separately from schemes for workers in a dependent employment relationship.** This would mean in practice that formulas e.g. for calculating benefits follow the rules of the applicable scheme. Member States should be able to set different minimum requirements for the different types of social protection.
- Also, there should be flexibility in the way each type of social protection is organised in this regard, e.g. between pension, health, and unemployment benefits. When people who are in a dependent employment relationship wish to start as self-employed/entrepreneurs, it is an important incentive if they keep their right to unemployment benefits from previous periods of employment at least for a certain period, allowing them to have some reduced risks as entrepreneurs. Access to the assistance of public employment services should be available to people in all forms of employment.

## Transparency

- UEAPME believes that access to information regarding obligations, entitlements and conditions of social protection schemes is important in facilitating transitions on the labour market, as far as it concerns the principle of informing citizens of their accrued entitlements and of the social protection levels in different statuses. It is up to Member States to organise this, and the Recommendation should only provide with general provisions.

- At the same time, UEAPME is cautious of new burdens that increased transparency might generate, in particular for SMEs and micro-companies, for instance in terms of obligations to provide information. As stated in its position<sup>4</sup> on the proposed directive for Transparent and Predictable Working Conditions, new obligations for SMEs should be avoided. Existing administrative requirements of social protection schemes should be simplified, and an increase in costs and burdens for SMEs and micro-companies should be avoided.

## Implementation

- Actions for ensuring effective coverage and removing obstacles for access to social protection need to be developed at national level. UEAPME sees **scope for action at EU level** mainly in drawing attention to possible gaps in social protection and exchanging experiences in policy approaches between Member States. The European Semester and the Open Method of Coordination are the right tools for monitoring such progress.
- In addition, UEAPME would support the development of targets and benchmarks by Member States in cooperation with social partners, in order to monitor for instance the (effective) coverage and up-take of social protection, incentives and disincentives for subscribing to higher levels of social protection, and the extent to which transitions between employment statuses are facilitated. It is essential that such targets and benchmarks leave room for different policy avenues.
- UEAPME would like to stress that when implementing the Recommendation at national level, it is of utmost importance to closely involve social partners and business organisations representing SMEs and self-employed, given the need for tailor-made solutions. For some branches of social protection, such as the management of occupational pensions, the competence of social partners should be particularly respected.

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<sup>4</sup> [https://ueapme.com/IMG/pdf/180226\\_UEAPME\\_position\\_on\\_transparent\\_and\\_predictable\\_working\\_conditions.pdf](https://ueapme.com/IMG/pdf/180226_UEAPME_position_on_transparent_and_predictable_working_conditions.pdf)