

German employers' expectations of the Bulgarian EU Council Presidency

November 2017

Introduction

The EU is going through a period of upheaval which necessitates concerted and coordinated action by EU Member States: it is important to manage the process of the United Kingdom's withdrawal from the EU cleanly together. At the same time, strategic thought must be given as to what the EU should look like in the future.

What counts now is stabilising the EU for the remaining 27 Member States and restoring citizens' trust in the European institutions. In this regard, the Bulgarian Council Presidency in the first half of 2018 can set a decisive course for the future. In particular, it should vigorously champion a shared Europe which faces challenges as a united front. German employers would therefore greatly welcome it if the Bulgarian Presidency were to strive to further secure a common position among the remaining 27 Member States on the United Kingdom's process of withdrawal from the EU. The order of events determined by the European Council (first manage the withdrawal process, then address an agreement on future relations) must be maintained.

We need a fair outcome for both sides. The EU has always deployed strong arguments to underline the reciprocal major advantages of further countries becoming members of the EU. It is a question of logic that the reverse route decided by the United Kingdom inevitably entails the corresponding drawbacks – for the EU, but above all for the

country that is leaving. In particular, the Presidency must clearly reject any temptation to turn this logical negative consequence into an attempt at “punishment” of the departing country.

The Bulgarian Council Presidency jointly with Estonia and Austria has proclaimed a union for jobs, growth and competitiveness as a goal. Tying in with this idea, German employers have the following expectations of the Bulgarian Presidency:

- 1. United Kingdom's EU withdrawal: strengthen EU-27 cohesion, work towards a fair outcome for both sides**
- 2. Future of the EU: come to grips with central political challenges, avoid undue interference in Member States' affairs**
- 3. European pillar of social rights and follow-up measures: preserve principle of subsidiarity, prevent negative consequences for the integration process**
- 4. Worker mobility: use trilogue negotiations on review of the posting of workers directive to rectify a misguided Council decision, structure revision of social coordination provisions so as to combat existing false incentives**
- 5. Migration and asylum policy: preserve parallel national residence permits for highly skilled economic migrants in addition to the EU Blue Card, work towards a pan-European solution for refugee policy**

BDA is the leading organization dealing with social policy on behalf of the entire German private sector. It represents the interests of small, medium-sized and large companies in all sectors and all issues linked to social policy and collective negotiations, labour legislation, labour market policy and education. BDA works at national, European and international level for the interests of one million companies which employ 20 million workers, and which are networked with BDA through voluntary membership of employer federations. These employer federations are organized in 50 national sectoral organizations and 14 regional associations which are direct members of BDA.



1. United Kingdom's EU withdrawal: strengthen EU-27 cohesion, work towards a fair outcome for both sides

Core messages:

- **Pursue two-phase approach, manage United Kingdom's process of withdrawal from the EU smoothly**
- **Guarantee the indivisibility of the European single market's four fundamental freedoms**
- **Ensure cohesion of the remaining 27 EU Member States**

The United Kingdom voted to leave the EU at the end of June 2016. This decision by the population must be respected, even if there is a great danger that it will have disastrous political and economic consequences for Europe but also more specifically for the United Kingdom itself.

German employers have supported the position of EU-27 in the ongoing withdrawal process. Sufficient progress must be made on the issues identified for the first phase before there are discussions on future relations between the EU and the United Kingdom. At the same time, the United Kingdom's withdrawal process must be managed smoothly and talks on Great Britain's future relations with the EU should be held rapidly once sufficient progress has been made. Delays in this regard would unnecessarily protract the uncertainty for companies and also have negative consequences precisely for employment and the social situation in the EU.

The EU and the British government should clarify rapidly following the withdrawal how they want to place economic relations on a stable basis for the long term. A deep and comprehensive partnership, investment and trade agreement between the EU and the United Kingdom would be optimal. However, mutually agreed arrangements for the withdrawal must first be reached in order to avoid a disorderly departure and lay solid foundations for the future relationship with the United Kingdom.

It must be ensured during the Bulgarian Council Presidency with regard to the United Kingdom's withdrawal process that EU-27 does not allow itself to be divided in its

shared interests vis-à-vis the United Kingdom. There must be no incentives which would encourage a further disintegration process in individual Member States of the EU. At the same time, the axiom of the indivisibility of the four freedoms of the EU single market must be safeguarded. Each individual freedom on its own strengthens the European economic area but they deploy their full force in interaction with each other and have enabled the world's largest single market with an economic output of € 11,000 billion.

2. Future of the EU: come to grips with central political challenges, avoid undue interference in Member States' affairs

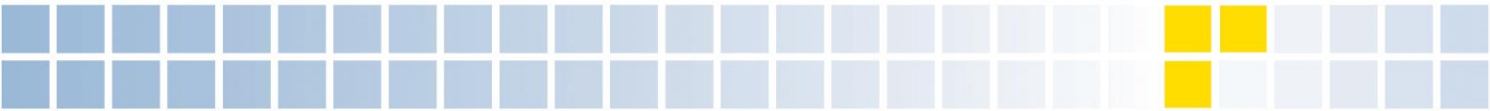
Core messages:

- **Do not hold discussions about social and economic dimension of the EU/EEA in isolation from each other**
- **Address reforms for more competitiveness and fairness in the EU single market**
- **Do not endanger acceptance of the EU by tinkering with people's everyday social and cultural lives**

Where should the EU of 27 Member States stand in 2025? Commission President Juncker presented five possible scenarios on this question in his white paper on the future of Europe. German employers welcome Juncker's initiative to give fresh impetus through the debate on the future of the EU. It is important to stress in this debate that competitiveness and economic growth are the preconditions for employment and a sustainable social policy. Economic and social progress must go hand in hand.

Nevertheless, the separate exposition in the reflection papers on the social dimension and on EMU poses a danger that this idea will not be taken into consideration. German employers therefore call on the Bulgarian Council Presidency not to hold discussions on the social and economic dimension of the EU/EEA in isolation from each other.

The European Commission's approach is not coherent. Juncker's announcement that he merely wishes to present further reflection



papers in the upcoming discussion phase on the future of the EU “without presenting definitive decisions” is misleading. With presentation of the 26 April 2017 “social package”, the necessary process of discussing the social dimension of Europe has been prejudged (see point 3).

German employers continue to argue for a strong EU in the debate. In this regard, it is of enormous importance that a further disintegration process is prevented in individual Member States of the EU. The EU must now show that a coordinated policy of European tasks and national reforms can provide Europe’s citizens with security, jobs and prosperity. Hence, EU Member States – supported by the EU – must rapidly come to grips with urgently needed reforms for more competitiveness and fairness in the EU single market.

More common European action is necessary where no real possibilities to influence and shape policy exist vis-à-vis other global powers without a European position. At the same time, the EU must not endanger its acceptance generally by tinkering with people’s everyday social and cultural lives. The EU must therefore exercise restraint in small matters and verify its proposals much more rigorously against the criteria of proportionality and subsidiarity.

3. European pillar of social rights and follow-up measures: preserve principle of subsidiarity, prevent negative consequences for the integration process

Core messages:

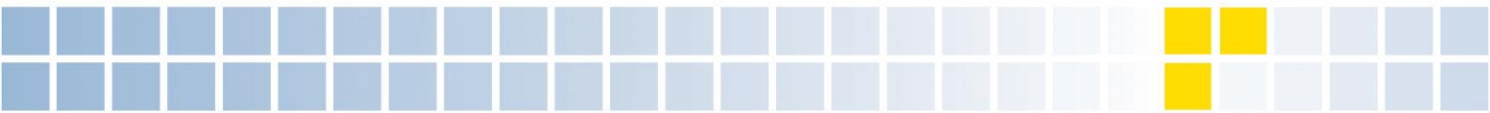
- ***EU Member States have highly developed social systems***
- ***Additional social policy regulation at EU level is counterproductive***
- ***Maintain the division of competences between European and national level***
- ***Recognise the importance of social dialogue, stop work on proposal for a work-life balance directive***

On 26 April 2017 the European Commission presented a recommendation for a pillar of social rights in its social package. In addition, the European Commission presented an

identically worded proposal for a joint proclamation of the European Parliament, the Council and the European Commission which will provisionally be signed at the social summit on 17 November 2017. Even if the Member States have made a number of important clarifications through the preamble to the pillar, German employers reject the pillar overall. They also encourage the Bulgarian Council Presidency to work for development of the new initiative for a work-life balance directive proposed in the framework of the social package to be halted, for the reasons set out below.

First, the European Commission disregards in its analysis the fact that binding minimum social standards are already laid down for all Member States in more than 70 EU directives and regulations, inter alia on work-life balance, working time, information and consultation as well as occupational safety and health. The existing European “social acquis” is adequate and at the same time ensures that justified differences that have evolved culturally and historically in the social systems of individual Member States are preserved. The cause of growing divergences in Europe cannot be traced back to inadequate social policy and/or too little spending on social protection but lies in deficient implementation of national structural reforms which could be sufficient to address weaknesses on national labour markets.

Second, with the pillar of social rights and follow-up measures, the European Commission presents proposals and fundamental principles for which the EU sometimes does not even have competence. For instance, article 153 paragraph 5 TFEU stipulates that supporting activity by the EU in social policy does not apply specifically to “pay, the right of association, the right to strike or the right to impose lock-outs”. Contradicting this, the European Commission formulates in key principle 6 of the European pillar of social rights that workers have “the right to fair wages” and that “adequate minimum wages” should be ensured. By so doing, the European Commission arouses expectations which it cannot meet. This will run counter to the European Commission’s objective of injecting new strength into citizens’ trust in



the European institutions. European promises which can be fulfilled only at national level – if at all – weaken the European integration process.

The proposal to replace the existing parental leave directive by a new directive on work-life balance sets a dangerous precedent which places a fundamental question mark over the European Social Dialogue as provided for in the European treaties. The parental leave directive is based on a social-partner agreement reached in 2010. In the social-partner consultation on a possible revision of this directive, employers came out clearly against whereas the trade unions were in favour of a revision. With an approach whereby a directive based on a social-partner agreement is replaced without both social partners agreeing to this approach, the Social Dialogue is considerably weakened. Failure to take the views of employers into account undermines the motivation of companies to take part in Social Dialogue. The Bulgarian Council Presidency should not seek to move forward with the new initiative on work-life balance in the Council.

4. Worker mobility: use trilogue negotiations on revision of the posting of workers directive to rectify misguided Council decision, structure revision of social coordination provisions so as to combat existing false incentives

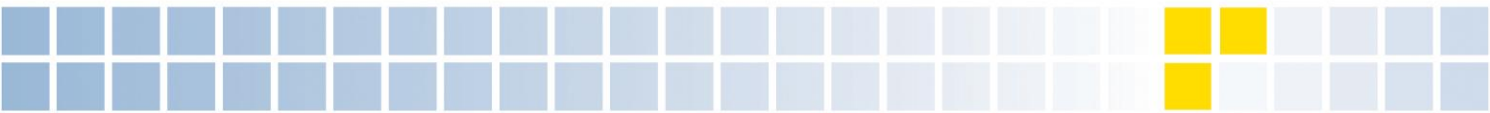
Core messages:

- ***Existing EU posting rules are sufficient and correct. The planned new rules do not solve the real problems***
 - ***Better: focus on implementation of the enforcement directive and better cooperation between national authorities***
 - ***Structure revision of regulation 883/2004 and directive 2004/38/EC such that abuse is prevented and acceptance of free movement is strengthened***
- a. No revision of posting of workers directive**

The assumptions underlying the proposals for revision of the posting of workers directive are very fundamentally wrong: it is not new rules that are needed to combat abuse and fraudulent practices in cross-border postings but effective enforcement of the existing rules. The directive on enforcement of the posting of workers directive (2014/67/EU) has still not been transposed or has only just been transposed into national law in many countries. Accordingly, the enforcement directive cannot yet deploy its full effect. However, instead of giving the enforcement directive an appropriate period to take effect, amendment of the posting of workers directive is being pushed forward.

German employers regard the “general approach” reached by the Council on 23 October 2017 as substantively and politically misguided. It is substantively misguided because the existing posting of workers directive contains a correct and adequate legislative framework for preventing unfair competition and social dumping. A limitation of posting provisions to twelve months with one extension possibility of six months is highly problematic because it makes long-term project deployments difficult and endangers the free single market.

In addition, the planned provision leads to complex legal issues, in particular regarding the contradiction with the Rome I regulation which does not provide for any timeframe for assessing the applicable law. In accordance with Rome I, the work contract is subject to the law of the country where the employee habitually carries out his work in performance of the contract. The applicable law does not change if the employee is employed temporarily in another country. In this regard, a temporary posting is understood to be where the employee resumes his work in the country of origin after being deployed abroad. Fixed time limits do not exist. It is similarly misguided politically because the proposal sets out highly bureaucratic rules which create new intra-European barriers as well as obstacles to growth and employment. This is the opposite of social fairness.



For example, through the twelve-month rule proposed by the Council (with one six-month extension), there would be considerable unplanned “collateral damage” to intra-group postings. Thus, for such postings, e.g. for projects lasting longer than twelve months, the labour law of the host country would have to be applied even though a return to the posting country is certain from the outset. In addition, a departure from the described principles of the Rome I regulation would lead to the issue of companies based in the EU having to determine the applicable labour law also for postings to third countries outside the EU. Yet such third-country postings are specifically not what the posting of workers directive sets out to regulate.

Given the concentration of postings in a small number of countries and sectors, an extension of the posting rules to all sectors is not necessary and constitutes a disproportionate encroachment into freedom to provide services. Three quarters of all postings are concentrated in the three sectors construction (43.7%), manufacturing industry (21.8%) and business services (10.3%). A similar strong concentration can be observed in the Member States from which workers are posted and in the countries which host posted workers. Thus, 50% of all posted workers are active in the three countries Germany, France and Belgium. A concentration mainly in Poland can be seen among the home countries of posted workers. It is not possible to deduce from this empirical observation any urgent need to extend the scope of the posting of workers directive to all sectors and to restrict freedom to provide services so drastically.

The move away from a minimum wage reference and extension to the entire pay matrix creates costly legal uncertainty for companies and endangers the autonomy of collective bargaining. The option of introducing a binding “collective agreement compliance clause” for the award of subcontracts must be deleted.

Given these massive reservations, German employers reject both the European Commission’s revision proposal and the Council’s general approach. They would very much welcome it if the Bulgarian Council Presidency were to bring their

counterarguments into the discussion as the decision-making process moves forward.

b. Revision of social security regulation 883/2004: general thrust correct but content inconsistent and incomplete

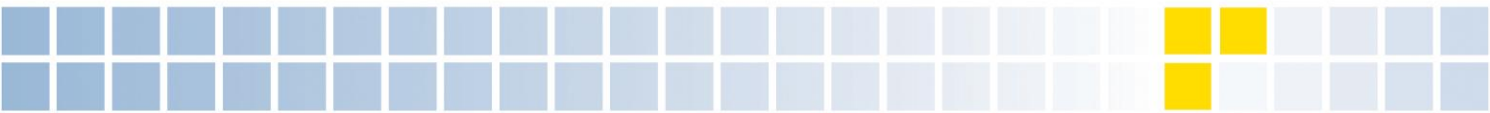
German employers take a critical stance on the Commission’s proposal for a revision of social security regulation 883/2004: although the general thrust is right, the content of the proposal is inconsistent and incomplete.

It is good that the European Commission has recognised that a revision of the regulation on coordination of social security systems is necessary. National social systems need to be strengthened and abuse prevented. Free movement of workers is an essential component of the European single market and must therefore be given particular protection. In order to maintain important acceptance of free movement of workers within Europe, corrections are needed to the coordination rules which currently apply.

It is welcome that stricter rules should be put in train for claiming social benefits. But the Commission’s amendment proposal does not go far enough because the relationship of regulation 883/2004 to the free movement directive is insufficiently clarified.

From the angle of labour market policy, the Commission’s proposal is wrong to require an extension of the export of unemployment benefits with a view to job search in another country to at least six months as opposed to three months at present. This runs counter to the principles of an active labour market policy. Eligibility for benefits, placement and incentives for optimal individual support to the unemployed must remain in the same hand. Those claiming unemployment benefits need to be available for placement in a new job on the home labour market as rapidly as possible.

The proposal for creation of a separate chapter on coordination of care benefits should also be rejected. The European Commission wants care benefits to be better coordinated between the Member States and structured in a more user-friendly way. However, the revision proposal as presented cannot achieve this objective and should



therefore be rejected. The envisaged assignment of competences on the basis of the distinction between exportable cash benefits and non-exportable benefits in kind would lead to considerable bureaucratic and financial side effects due to wide differences between national benefit rules.

These likely and considerable obstacles are contrary to transparent and rapid processing of claims. This objective of the Commission can be achieved better and with less effort if specific rules on care benefits are incorporated in the chapter on sickness benefits instead of through creation of a separate care chapter.

In addition, the proposal for revision of social security regulation 883/2004 is incomplete, since it lacks provisions on adjustment of cash child benefits to reflect the cost of living in the child's country of residence. EU Heads of State and Government decided on 18-19 February 2016 that there should in future be the possibility to adjust cash child benefits to reflect the cost of living in the child's country of residence. To our great surprise, this decision has not been incorporated in the European Commission's proposal for revision of regulation 883/2004. The legal objections now being advanced by the European Commission could just as well have been made in February 2016, but that was not the case. Furthermore, the European Court of Justice had already ruled in case C-308/14 that the introduction of an adjustment option for cash child benefits can be justified. The proposal for a revision is therefore incomplete.

5. Migration and asylum policy: preserve parallel national residence permits for highly skilled economic migrants in addition to the EU Blue Card, work towards a pan-European solution for refugee policy

Core messages:

- ***A strict ban on other residence permits in parallel to the EU Blue Card is not helpful***
- ***De facto equal treatment of professional experience and tertiary diploma for holders of EU Blue Cards questionable***

- ***Coordinated approach in asylum and refugee policy necessary for fair burden-sharing between EU Member States***
- ***Durably reduce refugee flows into Europe***

The EU Blue Card is an important component of the strategy for attracting highly skilled workers into Europe. Nevertheless, it has had very variable success in the individual EU Member States. Against this background, the European Commission presented a proposal for reform of the EU Blue Card which broadly addresses the right points. In particular, simplified admission conditions for the issue of this residence permit can increase its attractiveness. However, important rectifications are still needed on individual aspects of the rules. For example, the strict ban on other access routes for highly skilled economic migrants from third countries in particular is not helpful. German employers therefore expressly welcome the fact that the EU Council's compromise agreement supports preservation of parallel national residence permits in addition to the EU Blue Card.

German employers are broadly positive with respect to the possibility of substituting the absence of a recognised tertiary diploma with appropriate professional experience. However, since holders of EU Blue Cards also have facilitated access to a permanent residence permit – at least in Germany – it must be ensured EU-wide that only those with genuinely special professional experience whose qualification is comparable to that of graduates in terms of usefulness on the labour market can benefit from this rule. The directive should therefore already give concrete pointers as to which common criteria should underlie the assessment so that it is ensured at an early stage that interpretation by the Member States does not diverge unduly and this does not become a loophole for immigration of non-formally qualified workers.

In the context of refugee and asylum policy, German employers welcome the Trio Council Presidency's continued efforts to manage the problems on a concerted basis in the EU. It rightly regards the review of the Common



European Asylum System as one of its top priorities. In asylum specifically, it is absolutely necessary that pan-European solutions are found. The reform of the Common European Asylum System initiated by the Commission is therefore deemed to be positive, since it would promote a common asylum policy with greater solidarity. Also welcome is the current effort by the European Council to reach “an agreement which strikes the right balance between responsibility and solidarity and ensures resilience to future crises” during the first half of 2018. German employers hope that Bulgaria will support the European Commission in its endeavours in the first half of 2018.

German employers continue to support efforts for effective control of the EU’s external frontiers. A coordinated approach within the EU for fair burden-sharing between the Member States, effective control of the EU’s external frontiers, financial support for countries in the regions from which by far the most refugees have fled as well as a common EU stance in all international efforts to combat the causes of flight are absolutely necessary.

Refugees with a good chance of being given leave to remain must be integrated as rapidly as possible in training and work and hence in the societies of the host Member States. Integration in society, training and work is a difficult challenge where rapid results will still tend to be the exception. The main stumbling blocks are inadequate language skills as well as know-how and qualifications which are useful to companies. To this is added a lack of knowledge about education and training systems in Europe as a fundamental obstacle. In this regard, the EU under the leadership of the Bulgarian Council Presidency can promote the exchange of best practice initiatives as well as flagship projects to further encourage integration of refugees in Europe.

Contact:

BDA | DIE ARBEITGEBER
Confederation of German
Employers’ Associations

European Union and International Affairs
Tel +49 30 2033-1900
europa@arbeitgeber.de

EU Transparency register no 7749519702-29