

4.4 Fear of portability losses

Members of social security schemes have at forums such as institutional Annual General Meetings expressed the fear of portability losses due to imperfect arrangements. It is still unknown to them whether other schemes would accept rights accrued in other schemes without a penalty. Pension funds would also need to clarify in regulations, the impact on pension where an employee migrates to a partner state before completing the vesting period.

4.5 Limited awareness on social security

Awareness among the general public on existing opportunities for portability of social security in the EAC is low. This is compounded by the poor security culture among immigrants. As a result, migrant workers from within the EAC, not seeing social security as a right often are not motivated to push for it. For instance, the private schemes which exist provide a good opportunity for workers to take advantage to enhance their social security benefits even in cases where portability with regard to public contributions is limited. Lack of awareness and knowledge implicates that migrant workers from within the EAC have a high risk of losing social security benefits and find themselves in a difficult situation when in a situation which would otherwise entitle them to benefits in their country of origin.

5. Coverage of social security

The study conducted by EAEO and EATUC to inform the development of recommendations on portability of social security benefits, also reveals that most of the workers in the East African Community are left out uncovered for the social security benefits.

The pension system in each country covers just about 10% of the population, mostly in the formal sector. This is because contributory/formal/mandatory social protection schemes are based on the contractual relationship between worker and employer (ILO, 2010b). Those employed in the formal sector also constitute public servants (for whom the question of portability of social security is somehow different as the CMP has not opened up for free movement of workers).

However, the East African economies are dominated by the informal economy, which until recently has not been catered for in terms of legal and regulatory regimes with regard to social security. In recent years, more Partner States have put in place measures and mechanisms to ensure workers in the informal economy opportunities to register and contribute to licenced pension savings schemes and health social security schemes. There are still very many workers in the private formal economy who are not covered by social security schemes, because employers do not register all their employees to a licensed pension scheme. And in general awareness and knowledge on social security is low due to number of reasons including increased casualization of labour and economic consideration.

As part of recent developments, it was found that in Tanzania Mainland, pension funds covers some employees in the informal economy and almost all pension funds has started to compete to recruit workers in the informal sector for benefits such as work injury, medical and pensions.

In the bigger picture, EAEO and EATUC find that it is unfortunate that EAC Partner States have not ratified the ILO convention 102. However, taking into consideration that coverage of social security is also limited by the budgetary constraints brought by the fact that EAC Partner States are classified as Least Developed Countries (with the exception of Kenya), it would most certainly not make a big difference in terms of applying the conventions. Even though not ratified, the EAC Partner States should use the convention 102 for guidance on how to gradually improve the social security systems, including how to ensure the portability of social security benefits. This implies that actions towards consolidating and where possible redirecting the actions of Partner States towards enhancing the portability of social security is urgently required.

6. Recommendations

To promote portability of social security in the EAC, EATUC and EAEO, recommend the following;

i Commence with co-ordination

This has been alluded to by the EAC Pensions Unit at some of their meetings. This recommendation would seek to commence with the signing of MoUs between schemes in order to agree on how to co-ordinate towards establishing common rules and principles within which to operate, and thereafter pursue harmonization of some aspects of the pension schemes. Those the EAC Pensions Unit has alluded to include common pension age across the region, common rules of accounting and audit, common DB schemes actuarial valuations, common investment guidelines, transferable individual accounts for DC schemes and common payment arrangements. The first part could focus on mandatory schemes across the region being identical in retirement age, vesting period, accrual rates and contribution rates.

In moving forward, the EAEO and EATUC recommend that the current arrangement between Rwanda, Burundi and DRC on portability of social security benefits is taken into consideration as the good example which can potentially be replicated at the EAC level.

ii EAC to expedite the process of finalizing the draft EAC Pension policy

Noting that there is a draft EAC pension policy, the secretariat should expedite the process of finalizing the policy and ensure it is adopted by the Council of Ministers for implementation. The policy, once finalized, will help

address issues of portability, investment, taxation, annuities, pension coverage, indexation, legal and regulatory structures and Coordination mechanism since they are already included in the draft policy.

Expediting the finalization of the EAC Pension policy will also create the necessary policy framework for the EAC Partner States to gradually increase coverage of social security, including the introduction of more of the nine branches of social security.

In the meantime, increased coverage – in terms of number of people being entitled to register and contribute to licenced pension savings schemes and health social security schemes – should be addressed. This will require that more pension schemes and/or branches be opened up to contributions from informal economy workers, while at the same time awareness and knowledge on social security is raised. Increased coverage should also be addressed by enforcing rules and regulations which requires private sector employers to register all their employees to a licensed pension scheme.

iii Conduct an actuarial study

EAC should conduct an actuarial study to evaluate all schemes in the region. The study need to take cognizance of government structures and steps and find how best they can collaborate in executing some of these initiatives.

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EAST AFRICAN EMPLOYERS ORGANIZATION (EAEO) AND EAST AFRICAN TRADE UNION CONFEDERATION (EATUC)

JOINT POSITION PAPER ON PORTABILITY OF SOCIAL SECURITY BENEFITS IN EAST AFRICAN COMMUNITY (EAC)



Group photo: Representatives of EATUC, EAEO and their affiliated national constituencies of trade union centers and Employers organizations meeting in Arusha Tanzania in September 2017. On this day, EATUC/EAEO Joint Position Paper on Portability of Social Security Benefits in EAC was adopted by EAEO and EATUC political leaders

1. Introduction

This is a joint position of the East African Employers Organisation (EAEO) and the East African Trade Union Confederation (EATUC) regarding the portability of social security benefits within and across the Partner States of the East African Community (EAC) as enshrined in the EAC Common Market Protocol.

It is an evidence-based position paper which has been developed on the basis of a study that was conducted in 2016 in the five EAC Partner States of Burundi, Kenya, Rwanda, Tanzania and Uganda. The study was undertaken to provide concrete facts on the current status of social security systems within the EAC Partner States and barriers to portability of social security benefits across the EAC.

2. Background

On 30th November 1999 the Treaty of the East African Community (EAC) was signed by the EAC Partner States in order to secure harmonization and integration in the East African region. The Partner States thus undertook the task to establish among themselves a Customs Union, a Common Market, subsequently a Monetary Union and eventually a Political Federation. As a means to this end the Common Market Protocol (CMP) came into force on 1st July 2010 holding the provisions on the free movement of persons, labour, services, capital and goods across the EAC.

The employers and employees of East Africa embrace this integration process as the free movement of all factors of production across a common market in the EAC is expected to drive job creation as well as economic growth. Therefore, the EAEO and the EATUC and the constituencies of affiliated national trade union centres and employer's organisations welcome the further regional integration, and urge the political decision makers in the region to push on to implement the already agreed policies of regional integration.

Based on the constituencies, EATUC and EAEO have a special interest in the free movement of workers and find that the free movement of people and labour is equally important to the EAC integration process as free movement of goods and capital. Given the importance of free movement of labour, EATUC and EAEO, in 2014, embarked on a process to provide joint recommendations to governments of the EAC Partner States in order to speed up this process for the people of East Africa to feel the direct benefit of the regional integration while respecting the need for a time frame with adequate transitional mechanisms.

In 2014, EATUC and EAEO presented a joint position paper with recommendations on strategies and decisions needed in terms of revising existing national work permit regimes as a barrier for the free movement of workers within the EAC. In 2016, EATUC and EAEO conducted a comprehensive study on the implementation of the schedule for free movement of workers (Annex II) as included in the CMP and came up with joint recommendations on the way forward.

This document is a follow-up to the previous two policy recommendations and

addresses yet another barrier to free movement of labour within the EAC, i.e. the question of lack of portability of social security benefits.

In continuation of the study conducted for informing the development of the joint recommendations, the position paper also holds information and recommendations on social security coverage in the EAC Partner States, as this is also of great importance for the development of stable labour markets and inclusive societies.

3. The Concern of EAEO and EATUC

The EAC Common Market Protocol came in to force on July 1, 2010. However, free movement of person and labour across the region is yet to be fully realized despite the fact that the CMP has been in place for over six years.

The EAC Common Market aims to achieve widening and deepening cooperation among the Partner States in the economic and social fields for the benefit of the Partner States. The free mobility of labour is an important component as it not only leads to macro-economic benefits but also is a very tangible benefit of regional integration. In other words, it is a right which the EAC citizens feel directly when looking for new job opportunities. It supports the cross border mobility which creates room of having better chances of looking for new jobs in other EAC Partner States which will match with skills, qualifications and aspirations for a better future.

For employers, mobility of workers is very important for productivity and efficiency, as they will have better chances of matching job requirements with skills and qualifications when recruiting new employees, thus for sustaining and expanding the integration of economic activities within the Community.

Better opportunities for job-seekers are a very visible benefits for the individual, and working together with other EAC citizens will increase the sense of mutual benefits and diminish myths about other nationalities, thus bring about support for the idea of a people centred integration in the region.

It is also important to note that free movement of labour cannot fully be achieved without portability of social security benefits.

The above fact notwithstanding, a specific directive on social security has already been developed and agreed by the Partner States. But again implementation is lacking somehow behind.

Partner States have been undertaking a number of social security reforms. Some of the reforms are facilitating the process towards harmonization of social security systems within the East African Community. Other reforms are however impeding on the process. For example, Uganda has drafted a bill seeking to liberalise the retirement benefits sector while Kenya has harmonized its social security policy to allow portability of social security benefits both internally and across EAC partner states.

In Tanzania Mainland, the president called for mergers of the pension funds in 2016. The intension here is to come up with only two pension funds, one for the public sector

and one for the private sector. This is expected to be effected in the near future. This merger, will contribute towards harmonization within Tanzania Mainland – thus facilitate harmonization within the EAC.

At the regional level, there is a draft EAC pension policy (April 2015) which seeks to address issues of portability of social security benefits but all these are still in theory and have not taken a practical action to allow portability of social security benefits across the region. One would therefore be right to argue that in the EAC, it is only Burundi and Rwanda which have portability arrangement for social security benefits and this is a good example which can be replicated at the EAC level.

4. Challenges/ Barriers to portability of social security in EAC

4.1 Differences in social security schemes

The differences are manifested largely in system design, sector control, legal framework, entities to which supervisory organs report to and the licensing regimes. Schemes also have a mix of pension and non-pension benefits with schemes in Tanzania, Kenya and Uganda offering non pension benefits such as funeral and maternity grants.

The legislations in each country in particular are most varied with each country's structure depending on inherited colonial frameworks. Similarities in legislation are found in Tanzania, Kenya and Uganda while Rwanda and Burundi cluster together owing to British and French influences respectively.

Differences are found between Partner States, but also between Tanzania Mainland and Zanzibar within the United Republic of Tanzania.

4.2 Lack of a system which allows movement of benefits across funds

The study shows the existence of legal provisions which allows portability of social security for example the NSSF Act, under Article 64 sub section 3 observes that where the employee resides outside Kenya but is within the EAC member States, the Board shall coordinate with the social security scheme of the Member State, or a similar scheme, to ensure that the member, while in that member state, is registered for purposes of the membership of the Member country's social security scheme. The Law also guarantees exportability of benefits where an employee decides to return to Kenya. In addition, the Kenyan law exempts any payments relating to social security from taxes as noted in Article 65 which states that stamp duty shall not be chargeable in respect of any receipt, contract, instrument or other document executed by or on behalf of the Fund. The same is provided for in Tanzania under NSSF act section 92 of the Act which empowers the Tanzanian government to enter into a reciprocal agreement with the Government of any other territory in which a scheme similar to the Scheme has been established.

However, there are currently no useable provisions allowing contributors to carry pension benefits from one pension system to another in the event of mobility. Meaning that even where those provisions exist in law, there are no regulations in place to actualise the provisions. A case in point, NSSF Tanzania and Kenya. Zanzibar has a reciprocal (bilateral) arrangement on portability of social security benefits with Tanzania Mainland, the arrangement is formed in a manner that retirees who contributed to ZSSF and decide to relocate to Tanzania main land can receive their pension through one of the schemes in Tanzania main land. Zanzibar – Tanzania Mainland portability arrangement is an informal arrangement. So the Social Security Regulatory Authority (SSRA) has stated that there is currently no formal portability arrangement between Zanzibar or Tanzania Mainland schemes with other EAC partner states social security schemes.

4.3 The harmonization/coordination debate

According to EAC (2014a) Partner States still maintain restrictions in regard to Free Movement of Persons, Free Movement of Capital, Free Movement of Services and Free Movement of Workers which contravenes the Common Market Protocol. This is attributed to the delay in harmonization of national laws and other administrative procedures to comply with Common Market Protocol.

Walusimbi (2014) reinforces SEATINI (2014) by asserting that given the multiplicity of the legal, economic, social, historical, political, structural and regulatory peculiarities of the EAC Partner States, pursuing harmonization as an approach may not be an achievable option. The lack of progress with regard to the critical aspect of the built-in agenda for implementation of the CMP more than four years since ratification can therefore be attributed to the difficulties associated with harmonization of social security schemes. Considering that the EAC is open to admitting new members in future with Southern Sudan already being admitted, this option is likely to become more complicated and not easier in future.

The EAC CMP does not recognise social security as a right. It however recognises the need for Partner States to “coordinate and harmonise their social policies to promote and protect decent work and improve the living conditions of the citizens of EAC for the development of the Common Market” (Article 39 (1)). A number of challenges hinder harmonization at the EAC level including differing political systems, differing levels of development, differing social and welfare systems and differing legal systems. Coordination may however be easier to realize since every state under a coordinated systems includes provisions for eligibility, the benefits granted, and conditions for accessing these benefits as well as calculations of benefits and the nature of contributions. Harmonization and coordination however go hand in hand and agreement within partner states forums may prioritize which simpler aspects of harmonization partner states could start with. This is a hybrid strategy which would unlock the doors to portability.