

---

The impact of Brexit on labour law: what is on the horizon? A focus on the coordination of social security systems and on the rules on the transfer of undertakings

Brexit will directly impact on EU regulations in the labour law field, particularly on the coordination of social security systems (EU Regulation No. 883/2004). This regulation aims to balance national rules to avoid unequal treatment of employees who work in foreign countries.

To this aim, the following rules have been mainly laid down by EU Regulation: (a) the aggregation of insurance periods (i.e., that contribution periods completed in an EU country will be taken into account to the extent necessary to calculate both the pension age and the pension itself in another EU country); and (b) the exportability (i.e., that a social security pension to which an individual is entitled must be paid in any other EU member state where he/she or his/her family resides).

Additionally, the “territoriality principle”, according to which contributions must be paid where the employee works, is meant to avoid the double payment of contributions – and also avoid costs being doubled – and prevent the total lack of any social security insurance. Some exceptions are provided to this principle: the most relevant one is for seconded employees, who are allowed to continue paying social security contributions in their home country even if they are sent to work in another country for a period of time and so avoiding their social security contributions becoming fragmented.

As to non-EU countries, social security systems are coordinated by single international conventions, which provide specific rules to avoid the double payment of contributions or the total lack of social security insurance.

If no convention is in force with the non-EU country in question, Italian Law No. 398/1987 protects Italian citizens who work in non-EU countries by imposing the duty

to pay social security contributions (calculated on a “conventional salary”) also in Italy, in addition to any contributions paid in the non-EU country.

Considering the EU Regulation has not been enacted into national law, after Brexit it will not be applicable in the United Kingdom.

Therefore, if there is no accession to the Regulation, the United Kingdom should be deemed as a non - EU country with no social security convention, and the Italian and foreign employers will be compelled to pay social security contributions twice, thus bearing additional costs for Italian employees working in the UK; on the other side, employees will lose some guarantees they previously had, such as the aggregation of insurance periods.

Another labour law topic that is likely to be affected by Brexit is the protection of employees in transfers of undertakings.

The various European systems were harmonised by common rules in Directive No. 96/1971. These rules mainly: (i) provide for the automatic transfer of employees from the transferor to the transferee but grant employees the same rights they were entitled to before a transfer; (ii) prohibit dismissals for reasons relating solely to a transfer; and (iii) provide for information and consultation rights of the unions of both the transferor and the transferee.

These principles were enacted into Italian law in Article 2112 of the Italian Civil Code and in Law No. 428/1990 and into UK law in the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”).

As the Directive was also enacted into national law, Brexit will not automatically cause these rules to no longer apply.

However, the lack of EU boundaries might induce the UK legislator, in an employer-friendly approach, to change the laws deriving from EU legislation.

Indeed, the UK legislator might decide to repeal the rule on the automatic transfer of employees to the transferee or grant the transferee the possibility to amend the terms and conditions of the transferred employment relationships (this would also enable the employer to ensure all its employees receive the same employment conditions, regardless of whether they were the result of a transfer). Similarly, the UK legislator might decide to repeal – or reduce – the duties of informing and consulting the unions in the light of speeding up the transfer.

In short, UK labour law – which already strongly differs from Italian labour law – might well be reformed either directly or indirectly by Brexit.

The effects are, of course, unpredictable at this stage, but one possibility is the “social dumping effect”, which is something that the EU legislation wants to avoid.