

# Access to social protection: a new framework for the EU

The EU Recommendation on access to social protection

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# Overview

- Positioning the EU Recommendation access to social protection
- The EU Recommendation addresses
  - Formal access
  - Effective access
  - Adequacy
  - Transparency
- Some conclusions

# Positioning the EU Recommendation

- European Pillar of Social Rights
  - 26 April 2017 (Recommendation Commission and joint declaration Council, Parliament and Commission)
    - Social framework for EU decision making
    - Respecting social objectives and fundamental social rights (Social Charter, EU (social) charters, ILO-minimum conventions, CoE Code social security, relevant UN Convention,...)
- EPSR: legal value
  - Legally not enforceable
  - MS remain competent in social security
  - Relation art. 34 EU Charter?
- EPSR → list of 20 social rights
  - Access labour market (4)
  - Work conditions (6)
  - **Social protection and social inclusion (10)**
    - Child care, health care, social protection, minimum (subsistence) income,

# Positioning the EU Recommendation

- Principle 12 of the European Pillar of Social Rights

“Regardless of the type and duration of their employment relationship, workers, and, under comparable conditions, the self-employed, have the right to adequate social protection.”

- Principle made legally more concrete → *Council Recommendation 12753/19, 8 November 2019*

# Recommendation: 4 dimensions of access

- Formal access (art. 8)
- Effective access (artt. 9-10)
- Adequacy (artt. 11-14)
- Transparency (artt. 15-16)

# Recommendation: scope

- Scope
  - Personal scope: workers (non-standard) and self-employed
  - Material scope (art. 3.2.): unemployment, sickness and health care, maternity and equivalent paternity, invalidity, old-age and survivors, accidents at work and occupational diseases
    - Not (art. 4): family benefits, social assistance and minimum income schemes

# Recommendation

- **Non-standard workers:** the persons working in the framework of an employment relationship with an employer, but whose contracts depart from the standard form (with regard to the duration of employment, the number of working hours or other terms of the employment relationship)
- **Self-employed:** all persons who work on their own behalf
- **Social protection:** the set of schemes addressing by way of solidarity the traditional social risks as listed in the Recommendation

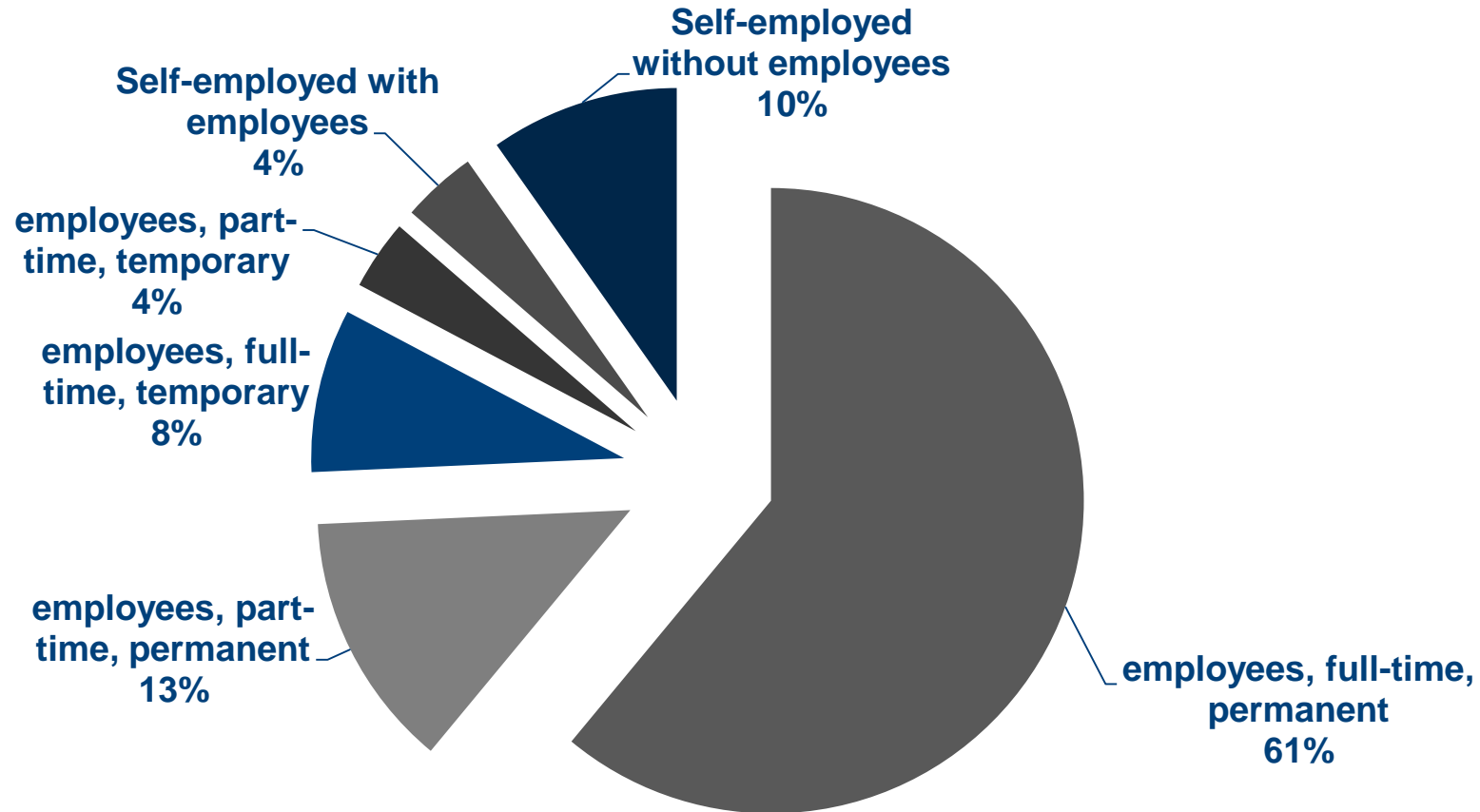
# Recommendation: objective of equal value protection across work/self-employment

- The 4 dimensions apply to all workers and self-employed. The Recommendation acknowledges though that different rules could be applicable
  - Labour form neutral ↔ labour form specific
    - Principle 12 EPRS
      - “regardless of the type and duration of their employment relationship [...]
      - and under comparable conditions, the self-employed [...]
    - Recommendation, obs (19) “the same rules [...] might not be adapted to the situation of the self-employed [...]. There is scope to tailor the rules more to the situation of the specific groups ... “
    - Basic principles (of protection) – Specific adaptation of principles to specific work situations (art. 5)
- Distinctions in employment relationships (standard / non-standard) and labour market status (workers and self-employed) - art. 7



# How does the labour market look today?

Types of employment relationships, EU28 (2018)



Source: Eurostat

## Standard employment relationship II

### EMPLOYMENT RELATIONSHIP

- Personal subordination
- Bilateral character
- Salary
- Economic dependency
- Mutuality of obligations
- Work usually performed at the employer's premises

Self-employed

- Part-time work
- Temporary work

STANDARD  
EMPLOYMENT

### INCOME SECURITY

- Salary which is sufficient to ensure livelihood
- Expectation of an adequate level of social insurance

### LABOUR STABILITY

- Indefinite duration
- Full-time

# HOW NON-STANDARD WORK AND SELF-EMPLOYMENTS CHALLENGE SOCIAL PROTECTION?

To  
DEFINE/  
To  
DETECT  
WORK

TO DETECT  
EMPLOYER

LACK OF  
LABOUR /  
INCOME  
STABILITY

## WHY IS IT IMPORTANT FOR SOCIAL PROTECTION?

- Persons in 'work' earn a 'salary'
- Persons not in work need to find work
- Employer as key-actor for benefits / financing
- Employer decides on redundancy
- Thresholds in social protection schemes

## HOW IS IT CHALLENGED BY NON-STANDARD WORK/SELF-EMPLOYED?

- Unpaid activities/informal work? ...
- Unpaid work
- Marginal work
- Multiple 'employers'
- Issue of classification: Bogus self-employed Employer based social protection?
- Very small number of hours / low income
- Difficult to track hours

## Formal access (art. 8)

Member States are recommended to ensure access to adequate social protection for all workers and self-employed persons in respect of all branches mentioned in point 3.2. of this Recommendation. In light of national circumstances, it is recommended to achieve this objective by improving the formal coverage and extending it to:

- (a) all workers, regardless of the type of employment relationship, on a mandatory basis;
- (b) the self-employed, **at least on a voluntary basis and where appropriate on a mandatory basis.**

## Gaps : self-employed and system typology

Table 1<sup>a</sup>

'Inclusive systems'	'Access à la carte systems'	'Exclusive systems'
Mandatory protection	Access but with specific arrangements (voluntary schemes)	No full access to social protection

Table 2<sup>b</sup>

'Universal/general'	'General for all self-employed'	'Categorical'
A (basic) social protection in the same system for all working groups of the population or even for the whole population.	A system where all professional categories of self-employed people are compiled into one social security system.	Specific systems for different professional categories of self-employed persons. Benefits may differ across the categorical systems.

<sup>a</sup> S. Spasova et al, "Self-employment and social protection: understanding variations between welfare regimes", *Journal of Poverty and Social Justice*, vol. 27, No 2, 2019, (157), 162.

<sup>b</sup> P. Schoukens, "Social security law for the self-employed persons", in EISS (ed.), *Changing work patterns and social security*, The Hague, Kluwer, 2000.

# Formal access: gaps social protection self-employed

Regardless type of system, gaps due to:

## i) Own kind of work

- Unemployment
- Sickness
- Accidents at work/occupational diseases

## ii) Income thresholds (more recent evolution) → all schemes

- Solo self-employed
- Marginal activities → work?

# Formal access: gaps social protection non-standard work

- Typology?
- Gaps related to:
  - Thresholds (income – volume work over time)
  - Marginal activities : work?
  - All risks (schemes) : compare self-employed

## Gaps addressed in voluntary protection : applied types of insurance

- Voluntary opt-in system **for all workers and/or self-employed** (*excluded risks*)
- Voluntary opt-in system **if time/income threshold reached** (*work but not mandatory covered → option voluntary*)
- Voluntary opt-in **system if time/income threshold not reached** (*marginal activity so not mandatory covered → option voluntary*)
- Voluntary opt-out system **if time/income threshold not reached** (*marginal activity*)
- Voluntary opt-out system **if similar protection available**
  - *if specific professional chamber supplies similar protection*
  - *private insurance*
  - *available assets*
- Supplementary voluntary insurance (*additional access to risk in scheme*)



# Formal access: mandatory vs voluntary

Mandatory: remains 'standard' approach for social protection

- Solidarity requires high degree of redistribution → statutory schemes (public law)
- Voluntary protection: high income groups and low-income groups → drop out (study Codagnone)
- Low-take up of voluntary schemes in reality
- Low take up of voluntary schemes → high potential dependency on social assistance schemes over time
- Risk of fragmentation of protection according to (professional group)
  - Mobility on a flexible labour market?
  - Growing relevance of qualification for professional activities (issue of bogus self-employed)

Voluntary: 'non-standard' approach for social protection

# Effective coverage (art. 9)

Member States are recommended to **ensure effective coverage for all workers**, regardless of the type of employment relationship, and for the self-employed, under the conditions set out in point 8, while also preserving the sustainability of the system and implementing safeguards to avoid abuse. To that end:

- (a) rules governing contributions (e.g. qualifying periods, minimum working periods) and entitlements (e.g. waiting periods, calculation rules and duration of benefits) should not prevent individuals from accruing or accessing benefits because of their type of employment relationship or labour market status;
- (b) differences in the rules governing the schemes between labour market statuses or types of employment relationship should be proportionate and reflect the specific situation of beneficiaries.

# Effective and formal coverage

- Formal coverage: conditions to participate in a social protection scheme
  - Focus here upon work related conditions
- Compare with effective coverage
  - entitlement conditions: although entitled to participate the person does not fulfil the entitlement criteria

# Effective and formal coverage

‘Effective coverage’ of a group means a situation in a specific social protection branch where the individuals in a group have an opportunity to accrue benefits and the ability, in the event that the corresponding risk materialises, to access a given level of benefits;

(Art. 7, sub f *Council Recommendation* 12753/19, 8 November 2019)

## Rules conditioning

- Access to social protection benefits (>< formal access)
  - Minimum qualifying period
  - Minimum work record
  - Waiting period
  - Minimum earned income level
- Duration and/or level of benefit
  - Relation qualifying period/work record and level/duration of benefit

[Preservation of rights: art 10]

# Problems effective coverage

## Time- and income- thresholds affecting the contingencies

- **Health care:** rather exceptional (minimum qualifying period and especially minimum income thresholds)
- **Accidents at work/occupational diseases**
  - Sometimes waiting period
- **Sickness, invalidity and maternity:** most countries
  - Minimum qualifying period
  - Waiting period (sickness)
    - Sometime covered by wage continuation
    - Especially self-employed → shorter duration of payment benefit
- **Old age, invalidity and survivorship** (pensions), including work accidents
  - Qualifying records (and work records)
  - Dual function: opening – composition of benefit
- **Unemployment**
  - Most schemes apply (min) work records (dual function)

# Problems effective coverage

## Time- and income- thresholds are...

... more challenging for non-standard workers:

- to reach the full-time equivalents of the time and income conditions
- to reach defined minimum level, especially when fragmented time and income records cannot be added
- for reaching decent benefit levels

... more challenging for self-employed:

- to open entitlement for sickness and unemployment (if formal access provided) due to longer waiting periods
- to access part-time or partial benefits (pensions, invalidity)
- for reaching decent benefit levels
  - Low or irregularly structured prior income
  - Limited assimilated periods

# Problems effective coverage

Time- and income thresholds are (often) historically justified (see above ratio and standards) and strongly rooted in our systems

... yet were traditionally designed with standard workers in mind

**But they hit often disproportionately non-standard work and self-employment**

- EU Commission Draft Joint Employment Report
- OECD Employment Outlook 2019

# Addressing effective coverage

Recommendation allows the use of income and time thresholds - entitlement/eligibility rules should serve an objective (art 9)

- In their objective rules should be neutral in relation to nature of work or labour status (art 9, par 1)
- In relation to non-standard work and self-employment, calls for double attention (art 9, par2)
  - Differences in rules across workers and professional groups → proportional and in relation to specificity to the group
  - Same rules apply? Check upon undesired effects for non-standard work and self-employment



# Addressing effective coverage

Even if justification ground present, it must still be executed in an **appropriate and effective manner**

e.g. European Court of Justice (ECJ) cases C-161/18 (Villar) and C-98/15 (Espadas Recio)

- Same objective addressed twice in two different sets of rules
- Entitlement conditions affecting level of benefit, reflecting equivalence
  - However, smaller pension benefit due to lower income basis and due to shorter work record
    - Disproportional
    - Although correction factor in place, not effective/appropriate
  - Reduced length of unemployment benefit (contribution record affected length of payment)
    - Not effectively/appropriate applied
      - Discrimination vertical and horizontal part-time work
      - Financing rules and benefit rules were using different time-frames

# Addressing effective coverage

Recommendation is first and foremost an invitation to **reconsider entitlement conditions** such as qualifying records minimum working periods

**Underlying objectives** (still relevant, pertinent)

Proportionality, effective and coherence of the **existing** rules

To what extent different rules can be justified, both in relation to reduced protection as in relation to more extensive **protection for non-standard workers and self-employed**

**Balance** between underlying objectives of these rules and other objectives present in social protection

# Adequacy

11. *Where a risk insured by social protection schemes for workers and for the self-employed occurs, Member States are recommended to ensure that schemes provide an adequate level of protection to their members in timely manner and in line with national circumstances, **maintaining a decent standard of living and providing appropriate income replacement**, while **always preventing those members from falling into poverty**. When assessing adequacy, the Member State's social protection system needs to be taken into account as a whole.*

12. *Member States are recommended to ensure that the contributions to social protection are proportionate to the contributory capacity of workers and the self-employed.*

13. *In light of national circumstances and where appropriate, Member States are recommended to ensure that any exemptions or reductions in social contributions provided for by national legislation, including those for low-income groups, apply to all types of employment relationship and labour market status.*

14. *Member States are recommended to ensure that the calculation of the social protection contributions and entitlements of the self-employed are based on an objective and transparent assessment of their income base, taking account of their income fluctuations, and reflect their actual earnings.*

(Art. 11-14 [Council Recommendation 12753/19](#), 8 November 2019)

# Adequacy = adequacy and financing

- Focus = adequacy of benefits and its interrelation with financing social protection
- Issues with organising financing self-employed and non-standard workers
- What is an adequate level of social protection benefits
- Adequate benefits pre-supposes adequate ways of financing: interrelation underlying principles social protection

# Adequacy

- Adequate level of benefits (art. 11 Rec)? Compare ILO Convention 102 and European Code of Social security

Part	Contingency	Standard Beneficiary	Percentage
III	Sickness	Man with wife and two children	45
IV	Unemployment	Man with wife and two children	45
V	Old age	Man with wife of pensionable age	40
VI	<u>Employment injury:</u>		
	Incapacity of work	Man with wife and two children	50
	Invalidity	Man with wife and two children	50
	Survivors	Widow with two children	40
VIII	Maternity	Woman	45
IX	Invalidity	Man with wife and two children	40
X	Survivors	Widow with two children	40

# Adequacy?

## Adequacy of benefit level?

Compare indicators used by EU in monitoring of social protection and poverty outcome

AROPE: 60% national median equivalised disposable income after social transfers

Indicator for the accrual rate for pensions (based upon insurance record)

Indicator net replacement rate unemployment benefits

Complementary (more dynamic and multidisciplinary compared) to minimum-standard instruments  
ILO/Council of Europe?

Attempt for an integrated approach for the sake of the Recommendation?

# Transparency (artt. 15-16)

- Member States are recommended to ensure that the conditions and rules for all social protection schemes are transparent and that individuals have access to updated, comprehensive, accessible, user-friendly and clearly understandable information about their individual entitlements and obligations free of charge.
- Member States are recommended to simplify, where necessary, the administrative requirements of social protection schemes for workers, the self-employed and employers, in particular micro-, small and medium-sized enterprises.

# Transparency

- Administrative dimension
- Dimension contents design
- Transferability (art. 10)



# Conclusion

- Recommendation: nothing new under the sun?
- Legal enforceability?
- Future will tell, but lawyers at EU level start(ed) to discuss again about social protection
- Effect on other EU rules?