ACCESS TO SOCIAL PROTECTION FOR SELF-EMPLOYED AND NON-STANDARD WORKERS

AN ANALYSIS BASED UPON THE EU RECOMMENDATION ON ACCESS TO SOCIAL PROTECTION

Access to social protection for self-employed and non-standard workers

An analysis based upon the EU Recommendation on access to social protection

Paul Schoukens and Charlotte Bruynseraede

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This is the integrated version of the following thematic discussion reports prepared for the EU Commission DG Employment, Social Affairs and Inclusion, and published as:
Access to social protection for workers and the self-employed,
Extending formal coverage: mandatory versus voluntary approach, © European Union, 2019
Effective coverage, © European Union, 2020
Adequacy and financing, © European Union, 2020
Transparency and transferability, © European Union, 2020

Compared to the four original discussion papers, a general introduction, foreword and conclusion were added as well as some 'textual bridges' connecting the four papers and a reposition of some parts of the texts in order to safeguard a more smooth and coherent building-up of the text (avoiding annoying repetitions). They do not change the contents, nor the ideas underlying the original texts.

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First edition: 2021

Published by
Acco cv, Sluisstraat 10, 3000 Leuven, Belgium
Email: uitgeverij@acco.be – Website: www.acco.be

The Netherlands:
Acco Uitgeverij, Westvlietweg 67 F, 2495 AA Den Haag, The Netherlands
Email: info@uitgeverijacco.nl – Website: www.accouitgeverij.nl

Cover design: Frisco-ontwerpbureau
Cover image: B7 Photography / Shutterstock.com
Typesetting: Crius Group

D/2021/0543/224 NUR 825 ISBN 978-94-6414-410-9

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Preface

This book integrates a series of discussion papers that were written between August 2019 and September 2020. Each paper has been presented during EU workshops attended by national representatives of Ministries, executive agencies, social partners, NGOs, researchers and members of the EU Commission DG Employment, Social Affairs and Inclusions. The manuscript incorporates many of the ideas that were discussed during these four workshops and this book is therefore more than the product of the two people who combined the papers to form an integrated whole. In this way the book represents the outcome of a group reflection, by people who are fully committed to the subject of social security and access to social protection. This means it is also the result of a truly European discussion since the seminars included specialists from all parts of Europe. In other words, it would not have been possible to write this book without the input of many other people; we would like to take this opportunity to thank them all.

First and foremost, we want to thank the members of the EU Commission DG Employment, Social Affairs and Inclusion (Unit Modernisation of Social Protection Systems) who took the initiative for the four workshops. Looking back at the extensive comments we received on our initial draft texts, we had a very committed team, with high expectations for the level of the workshops and with high hopes for a successful launch of the Recommendation. More than once, we were pushed to the best of our capacities in order to come up with discussion papers to match these expectations and hopes. Without doubt this brought us to a level where we were able to reach new insights on the subject. More in particular, we would like to express our gratitude to Lucie Davoine of the EU Commission. As our direct counterpart, she gave us the best support we could have hoped for; her guidance gave us the support we needed to prepare the workshop series to the best of our ability.

Of equal importance for this book, was Patricia Scherer (ICF) who acted as direct principal contractor for the work. Patricia, however, saw her role as being much more than that; apart from being a superb go-between with the EU Commission, she organized the workshops at a level approaching perfection – both from a practical and pedagogical point of view – and gave that little extra by showing sheer interest in the content matter. It was a great pleasure to work with her and we enjoyed the discussions we had with her when preparing the workshops immensely. She helped tremendously in sharpening our minds on the matter and by doing so contributed hugely to the

writing of this book. The collaboration we had in some ways feels like the start of a long-lasting cooperation and friendship.

The national representatives also played a major role in making this happen. Their presentations were highly inspiring and pushed us in the end to decide to integrate the discussion papers in this publication. Without the confidence and enthusiasm that we sensed among the workshop participants, we would never have taken this decision. And although Covid-19 forced us mid-term to switch to virtual conferences, a strong group feeling emerged between us all. It helped us to discuss the topic of accessibility in a very open spirit, in a truly European manner. This publication could simply not have been realized without the input of so many of the workshop participants, nor without the confidence that many of them gave us when they talked about the challenges they faced, and still face, when shaping accessibility to social protection. We are very much looking forward to meeting all of them again, whether to discuss the Recommendation on access once more, or to address another relevant social security issue. Finally, this work could not have been finalized without the support of so many others, in particular Paula Cunningham who was always available to make the first language corrections; Carla Ons who provided support in the textual outlining, as well as many of the collaborators and student assistants upon whom we always could rely to check the contents and (legal) sources.

It was a real pleasure to have collaborated with you all and to have reflected together on how to better design systems to improve their accessibility for all working people in society. And this is only the start, hopefully we will be able to rely upon you again in the not too distant future to make this aspiration of achieving full accessibility happen in reality.

Thank you so much for all the support you gave us and for your open mindset in our discussions.

Paul Schoukens and Charlotte Bruynseraede

March 2021

List of country abbreviations

(used in the text and annexes)

AT	Austria
BE	Belgium
BG	Bulgaria
HR	Croatia
CY	Cyprus
CZ	Czech Republic
DK	Denmark
EE	Estonia
FI	Finland
FR	France
DE	Germany
EL	Greece
HU	Hungary
IE	Ireland
IT	Italy
LV	Latvia
LT	Lithuania
LU	Luxembourg
MT	Malta
PL	Poland
PT	Portugal
RO	Romania
SK	Slovakia
SI	Slovenia
ES	Spain
SE	Sweden
NL	The Netherlands
UK	The United Kingdom

Introduction
Setting the scene, defining scope and concepts

Between October 2019 and September 2020, the European Commission's Directorate-General for Employment, Social Affairs and Inclusion organised a series of Mutual Learning Workshops on Access to social protection for workers and the self-employed. This series of workshops[1] coincided with the launch of the *EU Recommendation on access to social protection for workers and the self-employed* (2019) and was intended to support Member States in implementing the principles set out in this Recommendation.[2] At the same time the workshops also provided an opportunity for in-depth discussions among Member States on how to accommodate their social protection systems to include a growing group of atypical workers. In response to the financial and economic crisis of 2008-2010, Member States loosened their labour marker regulations, in an attempt to keep unemployment figures as low as possible. Consequently, the number of flexible work forms grew considerably throughout the EU, resulting in an overall figure of 40% of all professionally active persons being active in one or another non-standardised work activity. Apart from a growth of non-standard work and self-employment, atypical work forms became more diverse, with the introduction of new work categories such as platform work and zero-hours work contracts as well as the popular approach in some countries to offer young persons work experience through non-remunerative internships, apprenticeships and/or traineeships. In relation to work related social protection schemes atypical work forms create challenges with regard to accessibility: self-employment and non-standard work forms do not fit well into the design of the traditional work related social protection schemes which were originally designed with standard workers in mind, these being full-time wage-earners working on the basis of a permanent labour contract (Barrio and Schoukens, 2017, 221ff). The Recommendation addressed this challenge and calls upon Member States to accommodate non-standard workers and the self-employed in their social protection systems. The workshops served as a discussion forum among the Member States on how to tackle the social protection issues at stake when faced with growing groups of non-standard and self-employed workers.

Each workshop addressed one of the main four principles of the Recommendation: formal coverage, effective coverage, adequacy and financing, and transparency. The purpose of the mutual learning events was to bring experts from across the EU together, to discuss key take-aways of the Recommendation and exchange experiences on the principles of the Recommendation. In the context of each workshop, a thematic

1 Covering respectively the topics of formal access: https://ec.europa.eu/social/main.jsp?langId=en&catId=88&eventsId=1536&furtherEvents=yes; effective access: https://ec.europa.eu/social/main.jsp?catId=88&eventsId=1571&furtherEvents=yes&langId=en; adequacy: https://ec.europa.eu/social/main.jsp?langId=en&catId=1312&eventsId=1716&furtherEvents=yes; and transparancy https://ec.europa.eu/social/main.jsp?langId=en&catId=88&eventsId=1721&furtherEvents=yes#navItem-1

2 Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed (2019/C387/01); hereafter referred to as 'the Recommendation'.

paper was written, explaining the most urgent problems and gaps with regard to one of the four topics. These papers were used as a basis for discussions about specific topics at the actual event.

In this contribution, we have integrated the four thematic discussion papers into a single booklet. The idea was to present an integrated overview of basic guidelines on how to accommodate non-standard and self-employed workers in work related social protection schemes. These guidelines emanate from the thematic discussion papers we prepared for the four workshops, supplemented by the outcome of the discussions that took place at these events and best practices introduced by representatives of Member States.[3] Hence, we use the EU Recommendation as an evaluative framework to address the topic of accessibility to social protection. Moreover, the leading components of the Recommendation serve as basic chapters in the book, in which we consecutively address the aspects of formal access, effective access, adequate access and transparent access. The social protection of non-standard work and self-employment is for the purpose of this publication (only) addressed from the angle of accessibility. We will, for instance, not focus on the qualification debate touching upon the question of which criteria should be applied to distinguish wage earners from self-employed workers. Nor will we focus upon the issue of 'phantom' self-employment which is nothing more than wage earners in disguise, a growing phenomenon in quite a number of Member States. Neither will we give any attention to the main drivers behind the growing volume of non-standard work and self-employment. Here we will focus only on how to provide alternative work forms and self-employed work access to social protection. Using the Recommendation as a reference framework, our aim is to present a policy toolkit which can serve inspirationally when countries open up their systems to non-standard and self-employed workers or envisage adapting their systems to better accommodate these groups of workers.

Defining social protection

For the purpose of this publication, we use the same definitions applied by the EU Recommendation for the concepts of social protection, non-standard work(ers) and self-employed (work). Hence, by social protection we understand the set of schemes based on solidarity addressing the traditional social risks listed in the Recommendation (article 3.2): unemployment benefits, sickness and healthcare benefits, maternity and equivalent paternity benefits, invalidity benefits, old-age benefits and survivors'

3 Each workshop was followed by an extensive Outcome report, integrating the discussion paper, the outcome of the discussions and the best practices. All of these reports can be consulted at the mentioned Commission webpages.

benefits, and benefits in respect of accidents at work and occupational diseases. Consequently, we will not cover the social security contingencies of family benefits and social assistance.

In a traditional approach family benefit schemes are normally designed as universal, hence covering the whole of the population. In other words, the work status is not relevant when dealing with the issue of accessibility in the sense that one need not be professionally active in order to belong to the personal scope of the family benefit scheme. However, in more recent times, family benefit schemes may also cover the aspect of loss of (labour) income which emanates from the taking up of family duties and the related (temporary and/or partial) suspension of work activities as wage earner or self-employed worker. As this aspect of family benefit may affect non-standard work and self-employment, we decided to have it addressed within the ambit of maternity and paternity, which for the purpose here is understood broadly as parental leaves due to family responsibilities.

Neither is social assistance systematically covered. Traditionally this was not designed to protect workers facing work related risks; it mainly intervenes when the (ex-)worker is not (any longer) entitled to income replacement benefit. Social assistance is about poverty; workers traditionally generated sufficient income to stay away from the ambit of poverty. However due to the fact that many non-standard and self-employed workers generate only reduced levels of income, they may fall into poverty while working. These categories represent the growing group of 'working poor'. Consequently, we decided to have social assistance and minimum income only addressed where relevant. This will be for instance when we deal with the categorical social assistance schemes as they are closely related to the social risks. Categorical assistance schemes such as pension assistance, work incapacity assistance or unemployment assistance will, therefore, be dealt with. Furthermore, social assistance will be part of the analysis when dealing with access to adequate social protection. Social insurances alone will not suffice when providing income protection to non-standard and self-employed workers. In non-standard forms in particular, work or self-employment will not generate income levels of the kind needed to keep the workers and their families out of poverty. Social assistance schemes may have to be relied upon in a complementary manner to guarantee these workers and the self-employed income levels above the poverty level. Although it is strictly speaking not part of the definition of social protection, social assistance may be related to many social protection schemes when providing non-standard and self-employed workers with sufficient levels of protection. In this specific relation of (minimum) benefit guarantees, social assistance and other minimum income protection schemes will be addressed more extensively, especially in their interrelation with social (protection) insurances (see chapter on adequacy).

Furthermore, the reader should be aware that the focus of this publication is on work related social protection; at the end of the day the EU-Recommendation is about access to social protection for workers and the self-employed. Hence, social protection is mainly approached here from of the perspective of work related access to social protection. In social security traditionally we discern professional social insurances from universal social insurance (Pieters, 2006, p. 7-8). When it comes to the personal scope of protection, in the first kind of schemes professional activities provide the main access to social protection (Bismarck-approach), whereas in the latter kind of schemes residence is the crucial element in providing access (Beveridge-approach). Workers and the self-employed can thus also access social protection as residents of a country.

The recent challenges that traditional work related schemes face due to the new types of work (atypical work) emerging from the flexibilization of labour markets are the reason for this publication's work related focus. People working in these new atypical work forms face difficulties accessing work related social security schemes; they end up with a rather basic level of protection or even no protection at all. It is precisely this challenge to accommodate the (new) atypical work forms into the work related schemes faster that is the centrepiece of this publication. This approach to work related social protection therefore has nothing to do with any conviction or belief that the *Bismarckian*-type of system is better than the *Beveridgean*. This kind of discussion will not be launched here, be it that we believe that certain types of risks may relate better to the one or the other system (see more about this in the chapters on effective protection and adequacy). Yet if countries decide to organize their social protection around professional activities (work) they may have to take account of some guiding rules in order to accommodate non-standard workers and/or the self-employed in the best possible manner. This is the underlying central reflection in this publication. Yet in our opinion the discussion in relation to access to work related social protection can also be relevant for universal social protection schemes. Also in the ambit of universal social protection schemes, workers constitute a relevant group of socially protected persons. They are still important for the financing of the system. Moreover, universal schemes are often complemented at a second pillar level, with work related schemes, that interconnect strongly with the residential-based basic pillar. In these schemes too, sufficient attention will have to be given to a transversal design of the work related protection rules. Hence it should not come as a surprise that some of the concrete practices designed come from systems that are traditionally labelled as universal systems.

Worker, non-standard worker and self-employed worker

Because, in line with the Recommendation, we focus mainly on professionally active persons, workers and the self-employed are the primordial groups of concern here,

when discussing access to social protection. Traditionally in work related schemes a distinction is made between subordinated work (done by wage earners or employees) and non-subordinated work (performed by the self-employed). The first type of work is carried out on the basis of a labour agreement; the latter type is based on a service contract. The concept of worker is normally a general concept referring to all persons working professionally (wage-earners and the self-employed regardless of whether this is done in a standard or non-standard manner).

As already mentioned, we align to the terminology of the Recommendation. When we use the term worker (regardless of whether work is performed in a standard or non-standard manner) we refer to work performed on the basis of a labour contract or subordinated work (meaning that it is performed in a legal relationship of subordination and thus carried out under instruction and control). We understand by self-employed workers all persons who work on their own behalf and thus not on the basis of a labour contract. The self-employed are thus negatively defined: they are professionally active yet do not work on the basis of a labour contract.

Non-standard workers are the persons working in the framework of an employment relationship with an employer, but whose contract departs from the standard form with regard to the duration of employment, the number of working hours or other terms of the employment relationship (Recommendation, article 7, 2019). When the deviation is in relation to working time we refer to part-time workers (the standard being full-time work); when the deviation is determined in terms of the duration, we refer to fixed term work (the standard being a permanent labour contract).

We are aware that in many national social security systems one may deviate from this traditional understanding as sometimes some self-employed groups are brought under the social protection schemes for employees and consequently may be labeled formally for the application of (national or European) social security as employee (or worker). For the sake of this publication, we decided however to apply the traditional definitions, as these reflect better the main work specificities under which respectively standard and non-standard workers, and self-employed persons, perform their professional activities. Whether these groups are formally brought under the one or the other scheme of social security is of less relevance here. More relevant is how the work is carried out; hence the way in which the work is carried out will be given much attention in each of the following chapters when discussing the issues of access and adequacy.

European Pillar of Social Rights and EU Recommendation on access to social protection

In the EU, overall, 61% of the employed population still works in a standard employment relationship (SER); 39% in one of the categories of non-standard work or

self-employment (Eurostat, Labour Force Survey 2018). Around 14% of the total 222 million people employed in the EU were self-employed; 8% were full-time temporary employees; 4% were part-time temporary employees; and 13% were part-time permanent employees (Figure 1). The European Commission's Impact Assessment which was launched in preparation of the Recommendation, found that it is particularly self-employed and non-standard workers who face obstacles in accessing social protection in specific social protection branches (Commission, Impact assessment, 2018). Social protection systems were namely primarily developed for standard workers, implying a long term, full-time work relationship (Barrio and Schoukens, 2017, 221ff); hence, systems are not always tailored to the specific work situations of self-employed and non-standard workers (Barrio, Montebovi and Schoukens, 2018, 226ff).

To improve social rights for EU citizens and achieve better working and living conditions in the EU, the European Commission launched the European Pillar of Social Rights (EPSR) in 2017. The EPSR contains 20 key principles structured over 3 categories. Under the category 'Social protection and Inclusion', Principle 12 has been listed. This principle states that, *'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'*. In order to achieve the goals of principle 12, the European Commission adopted the Recommendation on access to social protection in 2019.

The Recommendation calls for an effective (formal) and efficient access to social protection for all workers – regardless of whether they are working in a standard or non-standard manner – as well as for all self-employed workers. It emphasizes the need for an adequate social protection which should go beyond a minimum income protection but should aim at maintaining decent living standards that were achieved prior to the emergence of the contingency: *'social protection is considered to be adequate when it allows individuals to uphold a decent standard of living, replace their income loss in a reasonable manner and live with dignity, and prevents them from falling into poverty while contributing, where appropriate, to activation and facilitating the return to work'* (Recommendation, Consideration 17, 2019).

Although the Recommendation is addressing in its scope all persons who are professionally active it gives particular attention to the (new emerging) atypical workers, especially those groups who risk being left without proper social protection. Hence it calls for the existing schemes that tend to exclude these groups of workers due to a restrictive definition of the personal scope or because of the use of minimum work or income thresholds to be extended. In its call for extension, the Recommendations also call for account to be taken, wherever possible, of the work specificities characterising non-standard work and self-employment, as often it is these specific working situations that lead to exclusion from social protection. In other words, the job cannot be done by simply bringing groups of non-standard and self-employed workers under the

scope of existing work related protection schemes. Policy makers will have to rethink existing schemes to accommodate people working in a manner other than standard work more quickly.

Extending an existing scheme, originally designed for (standard) employees to include non-standard and the self-employed workers may require some form of adaptation: when a scheme is applied without adaptation to the specific working circumstances of the non-standard or the self-employed worker, it might not be applied effectively (European Pillar of Social Rights, Principle 12; Recommendation, observation 19, 2019).

In somewhat comparable fashion we came to a similar conclusion when studying the social security systems of the self-employed in the European Union: in order to accommodate non-standard workers and the self-employed, the system will need to be neutral in its design as regards labour status, yet sufficiently specific in its application rules in relation to the professional group it covers (Schoukens, 2000, 92ff).

The distinction between basic rules that have to be neutral with regard to the form of labour application rules that may be adapted to the specific labour form, is an essential principle guiding many a provision in the Recommendation. Next to some other underlying principles, referring to the traditional presence in social insurances of proportionality and equivalence, of redistribution of income and of system transparency, the principle of safeguarding labour neutral social protection with respect for the specific labour forms, forms the essential backbone or key to the various provisions in the Recommendation. More than once it will come back when discussing the various forms of accessibility in social protection.

Approach: 4 chapters on social protection access

The Recommendation approaches accessibility from various angles: in order to achieve an adequate social protection for all, the Recommendation encourages Member States to focus on various dimensions of accessibility:

1. **Formal coverage** (by opening up the schemes wherever possible to all working groups – extensive application of the scope of the schemes).
2. **Effective coverage** (covering these groups in an effective manner by reducing where possible existing thresholds such as minimum work records or insurance periods).
3. **Adequate coverage** (by guaranteeing protection levels that keep persons out of poverty and guarantee where possible a living standard in line with the situation previous to the occurrence of the social risk).
4. **Transparent coverage** (by keeping the design of the system simple and understandable, so the basic system fabric can be easily understood and hence

supported by society at large; and by informing sufficiently the population on their rights and duties while at the same by guaranteeing swift access to administration and judiciary).

In this contribution we follow a similar structure. In the first chapter, options to extend formal coverage will be discussed: how can we extend, wherever possible, the social protection schemes to accommodate the working population; when should this be done on a mandatory basis and what can be the role of voluntary insurances in this respect? The second chapter will focus on how to guarantee an effective access to non-standard workers and the self-employed. Here the focus will be on the use and role of waiting periods, minimum work records, minimum insurance records and other thresholds that may condition the access to the scheme. What is the function of these minimum thresholds in the design of social protection and how can we have them designed so that they do not overburden the accessibility for persons working in a non-standard fashion? The third chapter goes deeper into the adequacy and financing of social protection, addressing the essential question of how to align on the one hand equivalence and proportionality, while on the other hand building in sufficient amounts of redistribution to support the weaker groups in society with respect for financial sustainability. Finally, in chapter 4, transparency and transferability of (acquired) social rights and of social rights in the course of acquisition, are discussed. Country examples of best practices will be discussed in order to give insight in possible approaches to achieve a better accessibility to adequate social protection. Each of the chapters will follow a similar description: after a general introduction to the theme (aspect of accessibility), the challenges related to accessibility (approached from the given theme) are listed. In a subsequent part we focus upon schemes or concrete approaches that are actually in place; the chapter is then concluded with some policy design options, taking into consideration the discussions and outcomes of representatives of EU member states during the Mutual Learning Workshops.

Chapter I
Formal coverage

1. Introduction

The first principle focuses on how to extend formal coverage to all workers and the self-employed. In the Recommendation article 8 is of specific relevance:

> 'Member States are recommended to ensure access to adequate social protection for all workers and self-employed persons in respect of all branches [...]. 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.'

Formal coverage should be distinguished from effective coverage. The focus in relation to formal coverage is upon the personal scope of the social protection schemes under consideration. Effective coverage on the other hand, is related to the entitlement conditions, once the worker is already participating into the scheme. A person may be entitled to participate in the scheme (formal coverage), that does not say anything yet about their eventual entitlement to the benefit. A part-time worker may e.g. be taking part into a pension scheme and may contribute to the scheme, yet when it turns out that the worker did not contribute enough (i.e. does not reach the minimum level of contributions required to open entitlement) they may in the end of the day not qualify for benefit entitlement. Formal coverage refers to system entitlement and relates closely to the design conditions of the personal scope of the envisaged scheme; effective coverage focuses on benefit entitlement for persons who are already in the scope of application. Effective entitlement can be hindered by minimum conditions such as waiting periods, minimum insurance periods or minimum contribution thresholds. In some occasions formal access and effective access are closely interwoven, especially when schemes apply (minimum) income thresholds. As response to the growing amount of jobs assignments that are marginal in volume of work and/or of income, systems started to introduce all kinds of minimum thresholds monitoring the access to the respective schemes. If the work is not of a respectable level, it is not taking into consideration for social protection. It is an issue of formal accessibility when access is made dependent upon a minimum volume of work and/or income: the person concerned cannot access the system due to its restricted professional activities. Quite often the person will even not be considered to be a worker or a self-employed due to too marginal activities (activities which are not of a repetitive kind) or too low income. It is an issue of effective access, when the person has been accepted as worker or self-employed to the scheme but in the end cannot open entitlement to benefits due to too restrictive volumes of prior earned income or of performed work volumes.

Here we will focus upon the formal aspect, being the conditions to participate in a social protection scheme (personal scope); effective access will be addressed later in the following chapter.

We will restrict our approach in relation to formal coverage to the ways and options for extending social protection coverage for self-employed and non-standard workers. Social protection, especially work-related social insurance, has traditionally been designed with the typical worker in mind, i.e. the person working full-time in a subordinated relationship towards their employer, on the basis of a contract for an indefinite time (Barrio and Schoukens, 2017, 221ff). Extending work-related social protection schemes to the self-employed and non-standard workers, such as part-time workers, fixed-term workers or platform workers, is a challenge (Spasova, Bouget, Ghailana and Vanhercke, 2017, 60ff) as many of the rules do not fit the specific working conditions of these groups. However, looking at the social protection schemes in place in the EU, organizing fully-fledged social protection of non-standard workers and the self-employed does seem to be possible (Spasova, Bouget and Ghailani, 2019; see also typology Schoukens, 2000, 65-66). In the Recommendation the EU calls upon its Member States to ensure effective coverage for all workers, regardless of the type of employment relationship. Coverage for the self-employed should also be improved and extended, but the Member-States have been given more leeway here, allowing them to have the protection for the social risks organized 'at least on a voluntary basis, and, where appropriate, on a mandatory basis' (Recommendation, article 8, 2019).

We will sketch how mandatory social protection schemes can be extended to all workers and the self-employed, and the possible options that mandatory and voluntary insurance schemes may offer in establishing comprehensive social protection coverage for self-employed persons. At the same time, we will highlight the limits of a voluntary approach and indicate under which conditions it may be more appropriate to work with mandatory insurance schemes. These options and limits will be illustrated with some (best) practices that are currently in place.

In doing so, we first outline the current gaps of social protection coverage for these groups (2. Gaps in formal coverage). Subsequently, possible strategies to extend coverage will be addressed (3. Extending social protection). Here, we pay attention to some key principles mandatory social insurance schemes must respect when accommodating (existing) social protection systems to non-standard forms of work and for the self-employed (3.1). Then, on the basis of the national reporting of the Member States (Commission, Impact assessment, 2018; MISSOC, 2019) and recent literature regarding social protection for non-standard work and self-employed (Spasova, Bouget, Ghailana and Vanhercke 2017; Codagnone et al, 2018; Fondazione G. Brodolini, 2018; Barrio, Montebovi, 2018), best practices in extending coverage through voluntary insurance schemes will be highlighted and assessed on their possible merits and pitfalls (3.2). In the final part (4. Design and policy options), we make a synthesis and formulate some design and policy options.

2. Gaps in formal access

Compared to standard workers, self-employed and non-standard workers have not been given full access to social protection schemes. In particular, self-employed and non-standard workers face problems in accessing sickness benefits and health care benefits as well as unemployment schemes (Commission, Impact Assessment, 2018, 4ff). In addition to these two labour related risks, the self-employed lack protection against accidents at work and occupational diseases whereas the non-standard workers have difficulties in accessing maternity benefits schemes (Table 1 and Table 3). Contrary to the self-employed, a number of non-standard workers also experience problems accessing other social protection schemes (old age, survivors', invalidity, and health care benefits), mainly caused by the extensive use of minimum thresholds (Barrio, Montebovi and Schoukens, 2018, 226ff). However, contrary to the self-employed, most non-standard workers face problems with affective access to social protection (as will be discussed in the following chapter). Non-standard workers are traditionally insured (together with the standard workers) in the general work schemes that are in place for employees. Yet, although they do manage to gain access to the schemes, non-standard workers face problems of reduced coverage due to insurance records characterized by a low-income basis and by intermittent insurance periods. If the income basis upon which they contribute is low, the benefit paid will be low as well.

The self-employed, on the other hand, have a tradition in the EU of having own (categorical) systems in place, designed for the whole group of the self-employed or, alternatively, addressing separately the various self-employed groups (tradesmen, craftsmen, the free professionals, farmers, etc.). These schemes do not always provide a full coverage for all risks. Self-employed often end up in situations where they are not covered at all for risks such as unemployment, sickness and labour accidents.

Social protection for the self-employed can be grouped (Table 1) in **universal systems** (in which they share social protection with all the other workers and/or residents); **general systems for (only) the self-employed**; and **categorical systems** for specific self-employed groups (Schoukens, 2000, 65ff). Interesting to notice is that even if self-employed are integrated together with other workers in more universal work related schemes, the problem of limited formal access remains; also in those universal work schemes access is denied to unemployment, sickness and labour accident schemes. This becomes more clear in an alternative typology used by Spasova, Bouget and Ghailani (Table 2 addressing the level of protection of the self-employed as well): a distinction is made between inclusive systems, access à la carte systems and exclusive systems (Spasova, Bouget and Ghailani, 2019, 169). In **inclusive systems**, self-employed people are required to be insured under all the insurance-based schemes. The **'access à la carte systems'** cluster refers to countries where self-employed people have access to

all social protection schemes, but with specific arrangements: either voluntary affiliation to the insurance-based schemes or access to means-tested benefits. For instance, in some countries, the self-employed are not required to be insured under one or more insurance-based schemes, while salaried employees must be insured under all of them. However, the self-employed person in these countries may choose to voluntarily opt into the scheme(s) concerned. Moreover, the self-employed worker may not have access to the insurance-based version of a scheme, but can at least access the means-tested benefit. In the **exclusive systems** cluster, the self-employed are not covered by one or more insurance-based schemes, nor do they have the possibility to opt-in.

Both typologies indicate that self-employed traditionally lack a full range coverage across all risks. Probably more than is the case with non-standard workers, they face a major issue of formal access.

To cover the gaps of formal coverage, voluntary insurance for the self-employed is readily available (Semenza and Pichault, 2019, 37); yet it is not always popular among the self-employed (Table 6). Moreover, the insurance schemes for the self-employed and non-standard workers can take different shapes and forms (Table 7 and Table 8). As will be addressed more extensively below (see 3.2), the voluntary schemes differ widely in terms of the risks and groups of workers they cover, as well as in relation to the modalities under which they are offered (opt-in, opt-out, continued, conditions of affiliation).

3. Extending social protection: mandatory vs voluntary

How can we extend the coverage of social protection for non-standard workers and the self-employed? What can be the role of voluntary insurances in protecting the self-employed? Before we embark upon this, we should first emphasize that by default social protection is organized on a mandatory basis (Pieters, 2006, 4-5). There are several reasons to base social insurances on a mandatory protection, such as reduction of costs, economies of scale, but by large due to the fact that a high degree of solidarity (intergenerational and intragenerational; horizontal and vertical) is required to organize social protection; the regulation of social protection is hence mainly based upon public law. Even in systems where social protection is organized on the basis of mandatory private insurance, these private arrangements will be embedded in public law arrangements. The latter address the flaws typical to private insurance, guaranteeing equal access to the (private) scheme, addressing risk selection and providing support to low-income individuals to purchase private protection on the market. For example,

this is the case of the health care scheme in the Netherlands and the accident at work schemes in Denmark and Belgium.

Mandatory coverage seems to be the principle applied by the Recommendation. It calls for extending social protection to all workers, regardless of the type of employment relationship, on a mandatory basis (Recommendation, art. 8, 2019); only for self-employed the Recommendation seems to give some leeway for voluntary protection. Extending coverage should be done at least on a voluntary basis, yet where appropriate on a mandatory basis.

We will develop the option of voluntary protection for self-employed more extensively further in this chapter (3.2). Before we do so, we first give some general observations. Although voluntary insurance is accepted as a way to organize social protection, due to its 'exclusive' character it cannot be the standard (default) approach in organizing social protection. Voluntary access implies indeed that some groups will decide not to join; it turns out that groups deciding not to join are mainly to be found at both the highest and lowest levels of income (Codagnone et al, 2018, 87-88). The lowest income level is strongly represented by non-standard work or the self-employed, showing the intrinsic weakness of the voluntary approach for these groups; but losing high-income groups is equally problematic, not only with regard to guaranteeing the financial sustainability of the system, but also for maintaining the trust of the public. Both elements are essential for viable social protection systems.

The study on human behaviour in relation to the extension of social protection (Codagnone et al, 2018) showed some additional findings of interest. People seem to be more worried about old age and unemployment (especially after the recent global crisis) and are more inclined to accept mandatory insurance for these risks. This also applies for the group of self-employed persons considering insurance for unemployment as a necessary element in their protection (Codagnone et al, 2018, 76).

Less of a surprise is the finding that younger people seem to be less convinced about the necessity of being socially insured, whereas older people are more in favour of having good social protection (Codagnone et al, 2018, 87ff). But it is a risky policy to apply voluntary insurance as a standard for younger generations as they will get used to the fact that work does not relate to (mandatory) insurance for social protection (decommodification of the social protection idea). An important element to change attitudes (towards social protection) seems to be the moment one starts a family (Codagnone et al, 2018, 87ff), but this turns out to happen far too late in one's life, shortening the insurance years required for a sustainable social protection.

For some life contingencies or life situations non-standard workers and the self-employed seem to be more convinced of mandatory coverage than others. The fact that

some risks, such as old age, health care or unemployment, are considered to be more 'worthwhile' for social insurance protection (compared to other social risks) could be reason to create mandatory insurance schemes in a package. If people are more inclined to take out sickness and health care insurance, there is something to be said for linking work incapacity and health in an integrated health insurance scheme. The same goes for old age which can be provided in a package with invalidity or even accidents at work and occupational diseases. People indeed are more inclined to take out a voluntary insurance for short-term risks (such as sickness or accidents at work) than for long-term contingencies (such as old age); perhaps the insurance of risks that may occur in the short term could be made dependent upon the 'co-insurance' of a long-term risk.

Non-standard work in the form of fixed-term contracts is more likely to generate (the risk of) unemployment. In other words, there is a high risk of unemployment when people work on these types of contracts; social protection for unemployment should consequently be made mandatory for these types of contracts. Similarly, if certain types of work are more prone to accidents at work (regardless of whether the work is standard or non-standard), insurance for this type of accidents should be made mandatory. Protection for accidents at work is then to be addressed from a sectorial point of view; regardless as to whether one works under a standard form of employment or not, the risks at the construction site are the same for all those present (see section 3.2 below on occupational protection).

3.1 Extending coverage: some guidelines for successful application to non-standard work and self-employed

3.1.1 Labour form neutral – labour form specific

The Recommendation calls first and foremost for an extension of mandatory protection. Yet extending is much more than simply opening up the personal scope of existing social protection schemes to the likes of non-standard workers and self-employed people. A well thought out approach has to be deployed to accommodate these groups effectively in the body of the social protection schemes; more than simply extending, the schemes will have to be redesigned as well to give place to the specific work situation of self-employed and non-standard workers.

Comparative research shows that it is possible to create a fully-fledged social protection for non-standard workers and the self-employed (Spasova, Bouget and Ghailani, 2017 and 2019; Schoukens, 1999). Moreover, from the impact assessment study we learn that mandatory coverage for the self-employed is realistic (Commission, Impact assessment, 36) and that the self-employed are willing to take out full protection

(Codagnone et al, 2018, 102). However, in order to have an effective social protection system in place, it is advisable to distinguish in the regulation, between the basic principles which are valid for all involved work groups (standard workers, part-time workers, self-employed persons, etc.) and the application rules which have to take into account the specific work circumstances of each of the involved groups. In order to accommodate non-standard workers and the self-employed, the system will need to be neutral in its design as regards labour status, yet sufficiently specific in its application rules in relation to the professional group it covers (theory of *labour status neutrality vs labour specific applicability*: Schoukens, 2000).

If one wants to have the basic protection principles applied neutrally to all working people, these must be adapted to the specific work situation of the non-standard workers and of the self-employed (Barrio and Schoukens, 2017, 331-332). Social risks which are strongly organized around the worker's employment relationship with their employer generate problems when applied to the group of self-employed persons (for example, in the case of short-term work incapacity, unemployment and labour accidents). For wage-earners, the employer plays an important role in the design of these income replacement schemes. When one starts to apply these rules on self-employed for instance they will first have to be reformulated in a more neutral manner so that they can accommodate all relevant professional groups; it is only in their application that further rules can be developed taking into account the specific work situation of each of these groups: for workers this will be the legal relation with their employer; for self-employed this will be the business entity in which the self-employed activity is organised.

The example of Denmark revising its unemployment insurance to accommodate better all working groups is an interesting one in this respect. The insurance is originally based upon a collective agreement between social partners and hence was designed as a scheme to be joined on voluntary basis. It has been made available for all groups of workers (including part-time and defined time work). Already in the mid-1980s Denmark gave the self-employed the option to join as well. In 2018 the system has been further improved to accommodate better the group of the self-employed and the group of part-time workers. For the self-employed it turned out that the previous unemployment system did not always allow for an effective benefit entitlement. There were some issues with the assessment of the involuntary character of the unemployment situation which many self-employed considered to be taking place in a less objective manner, compared to the wage earners; the procedure to find out whether the business stopped in reality was in fact not clearly developed. Furthermore, insurance for self-employed was register-based which, in turn, created administrative burden. Part-time workers from their side struggled with the minimum work periods required to open benefit entitlement. Compared to the group of standard workers they felt that, due to the part-time nature of the activities, they had to fulfill longer periods of work in the end to become entitled again to a benefit.

The new unemployment scheme implemented in 2018 aims to handle better all types of employment and to increase coverage for people in non-standard jobs, with multiple jobs and persons combining employment and self-employment. In this new scheme, unemployment is first of all defined in relation to activities rather than a categorisation as either self-employed or wage earner. Entitlement conditions are now much more defined in terms of income than work activities. Income as both wage earner and self-employed – as well as income from multiple income sources (such as surplus in own company and secondary activities) – establishes thus eligibility and entitlements. This total income must reach a defined minimum within three years of activity (32.000 EUR). Eligible amounts are calculated monthly with a maximum accumulation (2.500 EUR). As in the 'ordinary' unemployment insurance scheme for wage earners, the unemployed can extend the benefit period by working; one hour of work results in a two-hour benefit extension, which helps the part-time and defined time workers to open again entitlement benefits. For self-employed the assessment of the unemployment situation is in its application more described in line with the work reality (e.g. inventories sold, permissions cancelled, business deregistered, etc.). Furthermore, the system links the tax system and the unemployment system by using earnings registered for tax purposes; the data transfer is fully digital. This makes it less bureaucratic, also by supporting different ways of declaring ceased business activity online.

In some situations the adaptation to the specific work situation of the self-employed and non-standard worker may have to take into account the change in nature of the underlying social risk. The risk of sickness for example may be perceived differently between workers and self-employed (see also Chapter II, section 2). For workers, sickness is resulting in a loss of income demanding for income replacement benefits. This is not necessarily the case for self-employed as they will face more a loss of manpower due to sickness than a loss of income. The different nature of the risk is to be translated in the concrete design of the scheme giving in the case of the self-employed more emphasis on cost compensation than on income replacement. An interesting example in this respect is the recent adaptation of the maternity benefit scheme for self-employed persons in Belgium, giving self-employed women after a first period, the option to modulate the protection across income replacement and manpower support (see also chapter II; section 4.2). The example shows that workers and self-employed will have a different translation of the risk of sickness and maternity in the design of the benefit (income replacement- cost compensation).

Policy makers will often be challenged in making work related schemes fit the respective work situations of the covered professional groups. Hence it should not come as a surprise that extending social protection will normally start more easily with social risks that have a more universal character such as health care, and long-term income replacement benefits schemes addressing old age, survivorship and invalidity.

However, this does not mean that schemes cannot be developed for the self-employed and non-standard workers that address the risks of unemployment, sickness and accidents at work or occupational diseases, in a manner adapted to their specific work situation. A major advantage of this approach – covering all workers and self-employed comprehensively for all contingencies – is that a full (equalized) protection for all involved professional groups is achieved and hence that the legal qualification of the occupational activities will become less relevant (Schoukens, 1999, 277-278). Furthermore it may generate an equal level playing field on the labour market when the social protection cost of contracting labour does not differ (too much) across the various groups of professionally active persons (see further on this below under chapter III on adequacy and financing).

3.1.2 Respecting proportionality, equivalence, sustainability and redistribution

The Recommendation stresses the need to develop basic rules that are neutral in their design as regards labour status, yet that are sufficiently specific in their application in relation to the professional groups that are covered. Although this is advocated as an essential principle, both by the European Pillar of Social Rights (principle 12) and the Recommendation, there are other major principles to be respected if the aim is to successfully extend social protection to accommodate non-standard workers and the self-employed. These are essential to the design of any social protection system at large and as such do not focus upon the extension of existing schemes to non-standard groups of workers and the self-employed. We will give further attention to them in the following chapters, yet we would like to stress here that policy makers will have to take them into account as well when extending social protection schemes to accommodate non-standard workers and self-employed persons.

For instance, social protection schemes will need to build in sufficient equivalence between what people pay into the systems and what they receive from the scheme if they become entitled to a benefit. This principle has its origin in the insurance field, yet also remains valid for social insurances that provide (income replacement) protection to workers. This is especially true for workers who have to declare their income for financing purposes themselves, such as the groups addressed in the Recommendation (i.e. the self-employed and non-standard workers). It is assumed that these workers are particularly sensitive to the relation between declared income and benefit return. The equivalence relation between income and benefits is also relevant for the participation of stronger income groups in the social protection system, needed to generate the necessary redistribution within the system. If a strong social protection is the aim, the stronger income groups will have to be kept interested in participating in the system. The relationship between equivalence and redistribution will be a tense one. In essence, higher income quintiles will have to have a lower return in the composition

of benefits. Finding the right balance between equivalence and redistribution will, in other words, be crucial for the success of the social protection scheme.

Proportionality is another key principle in the design of social protection schemes, reflecting the length of participation by the insured persons in the insurance scheme. Like equivalence it finds its origin in the insurance field and has a particular relevance for non-standard work as this is often characterised by intermittent work and insurance periods. The proportionality ratio reflects the period of insurance, having a direct impact on the benefit levels: the longer this is, the more extensive the protection will be and conversely, the shorter the participation rate, the lower the benefit level will be. Proportionality is often translated into a reference insurance record (especially in pension schemes) or a minimum work period (especially for unemployment and work incapacity schemes) that need to be fulfilled in order to enjoy a full benefit or even to open access to benefits. Benefits will thus be reduced if persons fulfill only a part of the reference period during their career; in case of minimum periods, benefit entitlement will simply be denied if the reference (work or insurance) period is not achieved by the worker. Here again corrections on a pure linear application of the reference record, will be applied for the sake of redistribution, which is often translated into the guarantee of minimum benefits. Like equivalence, proportionality and redistribution stand in a somewhat conflicting relationship, the balance of which is crucial for an effective design of social (insurance) protection schemes.

Both the principles of equivalence and proportionality have a strong interrelation with the sustainability, and in particular with the financial sustainability of the social protection system (to be distinguished from system sustainability overall; see further below). The former refers to the requirement regarding sufficient financial solidity of the system in order to guarantee the current and future claims to benefits by the system participants. The principle of financial sustainability is used as one of the major guidelines in the annual monitoring by the EU of the national budget plans (Schoukens, 2016, 38-39). However, sustainability can also refer to the system as a whole (system sustainability); this goes beyond the mere financial part (budget solidity) and calls essentially for the need to have a generally balanced approach in the design of social protection in which the principles of equivalence, proportionality, financial sustainability and redistribution are in balance. Finding the necessary balance between all these principles is even more essential for the groups of non-standard workers and the self-employed as, compared to standard work, insurance records and income levels do not always follow a linear pattern here (see more about this in chapter III on financing and adequacy).

Finally, systems will also have to build in enough transversality across the various schemes in order to keep the income of non-standard workers and the self-employed sufficiently protected when multiple jobs have been performed over time or are

performed simultaneously. Generally speaking, as we will explain in more detail in chapter IV, the transparency of the system is essential for it to work in practice. The system, in other words, will be successful when it works in practice. This is even more true for non-standard work and self-employment, taking into account the challenging and sometimes even complicated work relations in which these workers are involved.

In the following chapters, each of the principles mentioned will be recalled and applied when relevant for accessibility. In the chapter on financing and benefit adequacy in particular, the relation between the principles will be highlighted in detail. A sustainable system of social protection requires a balanced approach to the various principles; this is also true when applied to the need to access to social protection. It should not come as a surprise that the Recommendation gives ample attention to them.

3.2 Extending coverage: some considerations for a useful application of voluntary insurance

The Recommendation refers to voluntary insurances as a possible means to extend protection. This is especially true for the group of self-employed where it states that although mandatory insurance is the way to go for, voluntary protection can be applied as well to organize social protection for the group of self-employed. But when to use mandatory protection? And when is the approach of voluntary insurances to be preferred? In chapter II we will see that some social risks are indeed quite challenging for self-employed to have them addressed in an appropriate labour specific manner (in particular unemployment, sickness and labour accidents); this can be a justification that for the time being (before a mature scheme can be launched), self-employed groups are given voluntary access to protection.

However, as many examples show us, arranging mandatory protection to cover these 'risks that are difficult to organize for the self-employed' is possible. One example of a successful extension from a voluntary towards a mandatory scheme is, for instance, the social protection with regard to accidents at work and occupational diseases in Spain. Traditionally, social protection for self-employed workers in Spain has been managed on a voluntary basis following an opt-in approach, for accidents at work, occupational diseases and unemployment. As a result, coverage has been on the low side, amounting to 15,7% in 2018 for accidents at work and occupational diseases. The contribution basis was freely chosen by the self-employed and, as more than 80% of all self-employed opted for the minimum basis, their respective benefits were also low.

To extend social protection coverage and correct the negative impact linked to the voluntary basis of coverage against employment risks, a reform was undertaken in 2018, ultimately aiming for full convergence with the employees' system. This has led,

among other things, to a change in approach from voluntary to compulsory coverage for accidents at work, occupational diseases and unemployment as of 1 January 2019 for all self-employed, except for the group of (self-employed) agricultural workers. Furthermore, the reform has provided for a gradual increase in contribution rates. Apart from the desired extension of coverage, the reform also aims to increase the financial basis for social insurance participation. The shift from voluntary to compulsory insurance does not only show a bigger return in paid contributions, but also an increase in the income level that serves as a contribution basis. However, some outstanding questions remain: for example, whether the contribution rate should not, as is the case for employees, also take into account the actual risk of the self-employed activity. Furthermore – although not observed so far – the system could be more prone to abuse with regard to benefit claims. More about the relation between the type of social insurance (mandatory/voluntary) and the level of adaptation of the scheme to the specific needs for the self-employed in chapter II (effective protection).

Here we focus upon what is to be understood by voluntary insurances, what kind of limits the voluntary approach faces compared to mandatory social protection and limits when applying voluntary insurances and in which situations we often see voluntary protection taking place. These insights can help to unravel the considerations made under article 8, stating that mandatory protection is preferred, but that extending protection by means of voluntary insurances can be acceptable for the group of self-employed. Taking into account the latter specification to the group of self-employed, most of what will follow has mainly be written down with this group in the back of the mind.

3.2.1 Typology of voluntary insurance schemes

Essentially a voluntary insurance scheme is characterized by the fact that the person is not mandatorily insured for social protection overall, but for a certain risk (e.g. unemployment in case of the self-employed), or for a certain part in the provided protection (e.g. the self-employed are not mandatorily covered for the part of the work incapacity scheme covering accidents at work). The person is free to look for protection or not; protection can be offered on the private market; the accession to an insurance policy will then be made dependent by the policy provider on a risk assessment of the individual concerned, defining eventually the level of premium and possibly leading to rejection (adverse selection) by the insurance company.

In some systems, the person can – under certain conditions – adhere on a voluntary basis to available statutory schemes (e.g. the self-employed may join the health care scheme which is in place for wage-earners). When the person is allowed to join the existing social protection scheme, this is called 'opting-in'; however, in some situations

the persons may leave the scheme in which they normally should participate (opting-out). This sometimes happens when the person has an income above a defined threshold (and is allowed to take out private insurance), or for other specific reasons withholding the person from mandatary insurance (e.g. religious).

Adhering to or leaving the system must be made conditional; this is to prevent a too frequent change in adherence or departure of participants, which would make the scheme eventually unmanageable. Sometimes, (maximum) age requirements are applied and/or time spans during which one may adhere to/leave the system. Contributions are traditionally fixed by law (not risk based) and reflect the comparable amount of contributions standard groups are to pay for social protection. Reductions of or even exemptions from contributions may be granted to address the needs of persons on low incomes.

Voluntary schemes can address different needs for social protection. Although it is not always easy to differentiate these insurance schemes in practice, we can discern the following types of (private) voluntary insurance: supplementary, residual, substitutive and parallel insurance (Pieters, 2006, 90-91). Supplementary insurance schemes address goods, services or benefits which are left out of the social protection package. When, for instance, the self-employed is not covered for a certain risk (e.g. unemployment) or part of a covered risk (e.g. work incapacity related to labour accidents), they may decide to buy supplementary coverage for the non-covered risk. If the self-employed is not enjoying full coverage for the contingency (e.g. a waiting period is in place during which no benefit is paid), the person may – in a residual insurance – take out additional coverage for the non-insured part.

Sometimes groups of persons (e.g. defined groups of self-employed persons or self-employed persons earning above a defined threshold) may be exempted from mandatory coverage, yet it is left up to them whether or not to take out substitutive insurance, i.e. insurance that grants coverage comparable to the social protection scheme they are exempted from. This kind of insurance can be offered on the private market, yet most of the time it is provided in the (general) statutory scheme to which the concerned person can adhere on a voluntary basis (opting-in).

Finally, it is possible that the person is mandatorily insured, yet decides to take out parallel insurance on the private market providing a comparable package next to a mandatory system; hence the person is insured 'twice' for the same risk. People are to look for a parallel insurance in the private market if they do not have enough trust in the protection granted by the social protection scheme. Most voluntary insurance is of a supplementary and/or substitutive nature (Tables 3-8). Some of these insurance schemes are organized as a continued insurance, meaning that the self-employed

decide to continue their previous social insurance in the (general) scheme for employees when starting self-employment.

Voluntary insurance can have a role in extending social protection for groups excluded from (parts of) protection; yet it cannot replace mandatory insurance to address the core functions of a redistributive system. It can be useful in a residual or supplementary way to plug some loopholes in protection, or possibly in a substitutional way, by (re)integrating excluded groups into the main social protection system. However, the latter approach of substitutional coverage is only sustainable if the number of those insured on a voluntary basis remains restricted. If the group of voluntarily insured grows too strong in numbers, it will challenge the financial sustainability required to organise redistribution. Furthermore, in a similar fashion as mandatory insurance, voluntary insurance will need to address the above-mentioned principles of equivalence, transparency, transversality and labour status neutrality/specificity; these drivers might also be helpful in making voluntary insurance more effective.

3.2.2 Current approaches in voluntary protection: how to extend protection?

Voluntary insurance schemes are present in various forms (Tables 3-8). Overall, they can be grouped around four major drivers: the social risk (gaps in protection), income, the professional group (excluded groups) and (the lack of occupational) 2nd-pillar protection. A short explanation for each of them, followed by a discussion how these drivers can be addressed to extend coverage is provided below.

3.2.2.1 Covering the gaps in the social risks (unemployment, sickness and accidents at work)

The first series of voluntary insurance schemes address the gaps in social protection. These gaps in protection (Tables 2-4) refer to social risks which might appear difficult to organize for the self-employed group, due to their specific work situation (Spasova, Bouget and Ghailani, 2019, 169; Spasova and Wilkens, 2017, 97; Schoukens, 1999).

Social risks which are strongly associated with the workers' relationship with an employer, do indeed generate problems when applied to the group of self-employed persons. In this case, one refers to the protection of short-term work incapacity (i.e. sickness), unemployment and protection in the event of accidents at work and/or occupational diseases. Organizing protection for more universal risks (such as health care, maternity/paternity benefits, old age and survivorship and invalidity), which are not so dependent on the specific type of work, is easier. This has inspired some systems to provide the coverage for unemployment, short-term work incapacity and accidents at work (only) on a voluntary basis, as a kind of extra (supplement) to the

mandatory coverage of the other risks. In practice, this is mainly achieved by giving access on a voluntary basis to the social protection schemes which are in place for the wage-earners. Most of the insurance schemes are thus of a substitutional kind. This somewhat prudent approach in opening up what is available for wage-earners, is apparently not so successful in practice as the number of persons taking out voluntary insurance remains limited.

This is at odds with the outcomes of the behavioural study mentioned earlier which showed that the self-employed do indeed wish to be protected against the risk of unemployment (Codagnone et al, 2018, 76 and 102). Against to what is often believed – i.e. that the risk of unemployment is considered to be a typical risk of entrepreneurship – self-employed people do wish to receive income protection in case they have to stop trading or close their business for reasons beyond their control or will. If one wants to make the voluntary access approach more successful, one may have to build in more elements that address this wish; for example, this can be achieved by designing the scheme more around the needs of the self-employed. Providing temporary protection against external risks that have a direct impact upon the functioning of the business is by some self-employed considered as interesting as the more traditional coverage against unemployment due to closing down of the business. Building in a temporary unemployment protection can be a relevant element in addressing this wish, yet at the same time it will be a more challenging one as it turns out to be difficult to single out the external cause creating the temporary loss of income from the mere economic cycle which every business had to handle (Weber and Schoukens, 2020, 17-19).

3.2.2.2 Income as a driver for voluntary (opt-in and/or opt-out) insurance

In some countries, the level of income is an element for making insurance schemes voluntary. Low income groups are exempted from mandatory insurance, as high income as well. Besides the level, the income tax treatment of the cost of the voluntary scheme can also be an important element for the eventual decision of joining (or not) the insurance. Both elements are shortly addressed in the below paragraphs, explaining their historic rationale and the current pitfalls.

Some Member States, such as Germany and the Netherlands, decide(d) to exempt high-income groups from mandatory protection or give them the chance to opt out in favour of privately-run insurance schemes. This policy is applied regardless of the labour market status and is historically rooted in the belief that high-income groups are (financially) strong enough to decide for themselves what kind of protection they want to purchase on the market or, alternatively, can decide to stay unprotected from some life contingencies and individually bear the risk of non-protection.

Income is the main factor determining whether or not a person has to be insured, but alternatively, other elements of wealth (such as property) have been accepted in the past to justify an exemption (e.g. the original pension scheme for self-employed farmers in Belgium). For middle- and lower-income classes no choice for alternative protection is provided. One of the major negative elements of this opting-out policy is that high incomes are lost for the financing of the scheme, and alongside this, the support of the high income groups in society for the idea of a strongly developed social protection lessens; in the long term, this approach may undermine the sustainability of the social protection scheme.

However, much more in fashion nowadays are policies of voluntary protection for the low(er) income levels, and specifically for persons who due to their labour market status (part-time, fixed-term, non-remunerated work, self-employed work, freelance work, intermittent or on-call work) generate income below some defined minima (e.g. minimum subsistence, comparable minimum wage). A majority of social protection systems (Table 8) have set minimum income or work time requirements for participation in the scheme, excluding – from the outset – non-standard workers with (irregular) low income. Consequently, they are left without any social protection at all, and should a risk manifest itself, they will have to call upon social assistance.

The opt-in voluntary systems for low-income groups differ in design; yet overall, we see that either the person is given the option to enter the full system (all contingencies) or the opt-in is limited to some defined contingencies (Table 8 and Table 9). But here again the success seems to be rather moderate as many persons decide not to join in; and although this hypothesis cannot be proven, it is likely that the financial burden for low-income persons of joining in is still too demanding (Codagnone et al, 2018, 60). On the other hand, similar to mandatory social protection, allowing workers with low-income into the scheme might require rethinking the balance between equivalence and redistribution (see above 3.1.2).

Tax incentives and/or granting financial support to contribution payers definitely help in making voluntary insurance successful (Fondazione Brodolini, 2018, 133ff). Both can be granted in various forms. Tax relief is best known as the possibility to deduct (insurance) premiums from taxable income; but it can also take the form of a negative tax, providing income to the persons with no or (too) low income which, in turn, could help pay the required contributions. Financial support can be direct (provided e.g. by social assistance) but also indirect, by reducing contributions or even through exemption from contributions (often applied for voluntary health care insurance).

These financial corrective rules can indeed be effective in convincing persons to opt for voluntary insurance. Yet, as will be touched upon later, they will generate a burden on the public budget, may conflict with the redistribution of means and/or will inhibit

the projected system equivalence. Granting tax incentives may create a *Matthew effect*[4] (Berghman, 2010) and end up financially supporting the better-off income groups: due to generous tax exemptions, the middle classes tend to be the main beneficiaries of social benefits and services, even if these are primarily targeted at the poor.

To the same token one has to be cautious not spending more money, by generous tax exemptions or on privately run voluntary schemes than on social welfare support to the lower-income segments in society. As is well-known, redistribution of means is not something exclusively reserved for social protection, but also occurs in fiscal and occupational policies[5] (Berghman, 2014, 23-48). Exempting (low-income) families from contribution payment will inevitably generate a burden on the public budget, which may endanger the sustainability of public finances if a (too) large group of the persons is on low incomes. Not supporting those on low incomes may be at odds with the element of equivalence, as the level of benefits in the end will have to be kept restricted, in line with the previously low (declared) income. Whatever option for support is adopted, one has to obey by its intervention logic and be aware of the possible effects it may have on the key determinants of every social (protection) system.

3.2.2.3 Voluntary insurance for (unprotected) groups

A third driver for voluntary insurance is to give groups of the self-employed, left without protection, the option to join the general social protection of the (traditional) workers. Historically, this has often been the gateway for the group of self-employed to access social protection schemes (Semenza and Pichault, 2019, 37). Nowadays, this approach is still to be found for some defined categories, such as the (self-employed) farmers, freelancers, micro-entrepreneurs, or the in-between group of the 'economically dependent self-employed persons' (Barrio, Montebovi and Schoukens, 2018, 226ff).

Historically, these voluntary insurance schemes are mainly found in categorical social protection systems (Schoukens, 1999, 273) where new groups of self-employed or left-over groups traditionally have been included in the mainstream system (of the employees). Some groups were not strong enough (in number and/or income) to have a social protection system on their own and have been given the option to adhere to the mainstream system. The fact that the group was contained in quantity justified the voluntary adherence, which was considered to be financially sustainable. Sometimes,

4 A "Matthew effect" appears when the policy widens the gap between those who have more and those who have less.

5 Already in the 1980s Berghman was calling to study more carefully the welfare effects of both fiscal and occupational policies. If we want to have a holistic view on the social protection of (working) persons, tax and occupational (welfare) schemes need to be taken into account as well.

one's access is conditional upon having worked before as a worker (continued insurance).

Traditionally, the more developed social protection systems for wage-earners acted as an accommodating system (Schoukens, 1999, 271-275); yet examples can be found showing that new groups (e.g. freelancers) were introduced in a system already in place for one of the traditional self-employed groups (see e.g. France and Austria in this respect; Schoukens, 1999, 106ff and 209ff). When mandatory insurance was not achieved, the compromise was often to have the insurance granted on a voluntary basis (opting-in). This policy of opting-in is now especially in fashion for the in-between group of dependent self-employed persons, who – from an economic point of view – are comparable to the group of wage-earners having their main income source coming from one client.

The challenge for these opting-in insurance schemes is to make sure that the new groups of self-employed can be accommodated correctly. It is one thing to grant the external group access to the pre-existing system, but quite another to ensure that the system reflects their specific social protection needs (see discussion below). The Austrian example of fitting in the emerging group of 'Unselbständigen' (freelancers) in the 1990s is interesting in this respect: having first introduced them to the general wage-earners' social protection system in which they were not properly accommodated, they were then re-integrated into the self-employed protection system for traders.

An important driver for taking up voluntary insurance can be continued insurance. The latter presupposes that the person was already insured (in their previous occupation) and that they had decided after the change of job/occupation to keep their insurance in the former system (i.e. continued insurance in case of changing professional group). One of the main reasons for consolidating the old insurance is the fact that the new occupation does not have proper social insurance in place for the risk in question. In many social protection systems, continued insurance is available for the risks of invalidity, accidents at work and unemployment (see the three gap schemes above).

The availability of continued insurance allows workers to safeguard their social protection (addressing a potential protection gap); moreover, the fact that one stays in the same scheme may reduce issues of (lack of) coordination between schemes. Yet the challenge remains that the continued insurance must take into account the fact that the underlying profession – for which a continued insurance is taken up – has changed in character. If the application conditions of the scheme do not adapt to this change in professional activity, the insured person may be at risk of non-entitlement (see labour form neutral and labour form specific application above).

3.2.2.4 Co-insurance and extending occupational (2nd pillar) social protection on a voluntary basis to self-employed

Finally, in some countries, a series of 2nd pillar (occupational) schemes for workers has been opened up on a voluntary basis to self-employed. Although the technique is present in many systems, the opening up of occupational schemes to self-employed seems to be strongly present in the Nordic states (Spasova, Bouget and Ghailani, 2019, 169). These systems are often characterized by a two-pillar approach, of which the basis (1st pillar) provides universal protection for all residents and the secondary (statutory) pillar provides occupational protection for the workers.

Originally, wage earners have been the central group around which the income related protection (2nd pillar) has been organized. Social partners have a fundamental role in the financing and administration of the schemes; the legal basis of the scheme is sometimes even a collective labour agreement which is then often reflected in the voluntary participation to the scheme. Based on the policy of inclusion, other groups than the historical central group have been integrated; yet due to the strong relation to the social partners, the occupational related schemes can only be accessed on a voluntary basis (in the first period). The extension is often applied to the self-employed directors of the company who can join the occupational scheme in place for their workers; often this is practiced with regard to the risk of unemployment or accidents at work (Schoukens, 1999). This approach of voluntary protection in occupational schemes could now be extended to all self-employed persons either overall or in relation to the occupational sector in which the self-employed is active. The concrete approach will depend upon the way occupational protection is organised in the given Member State. In the longer run, a shift for mandatory coverage may be even envisaged.

The downside is that 2nd pillar protection may generate problems for transversality (see above) and restrict labour mobility. Moreover, occupational schemes are traditionally designed and run by social partners, excluding from the outset self-employment. If social partners manage to incorporate the self-employed among their associations, this may open up perspectives for creating occupational protection for these groups as well (Semanza and Pichault, 2019, 37ff).

Allowing self-employed in occupational (2nd pillar) schemes will inevitably mean that trade unions will have to reorganise themselves in order to accommodate this group (see more on this issue in chapter IV on Transparency). Some national unions introduced a sub-section in their organisation for self-employed, solo-self-employed or freelancers (*FNV* in the NL; *ACV* in Belgium). Yet it is considered to be problematic that self-employed belong to the same unions as their workforce, which in the end can lead to conflicts of interest within the union. Another approach is to use more the existing unions for self-employed as one of the leading actors in the organisation of occupational (mandatory or

voluntary) social protection schemes. If indeed the group of self-employed will grow in the future, it is justified to have their representatives introduced in the management of (occupational) social protection; the latter approach, however, requires an adaptation of the existing EU regulatory framework for fair competition. Self-employed persons are considered to be economic agents; any kind of action that may impede price setting in the open market is considered to be potentially in conflict with these rules.

An advantage of occupational protection for self-employed persons could be that the eventual protection is designed more in line with their work situation. Moreover, when protection is tailor-made to the work situation of the self-employed persons, they may be more inclined to buy additional coverage.

In the end, the representative bodies for the self-employed know better what kind of (social protection) needs their respective group has in practice when facing a social risk. For the self-employed this could, for example, mean that sickness is only covered from a certain time period onwards (after 3 or 6 months when income loss definitely takes place); yet an additional protection can also be guaranteed in an initial period providing a flat-rate income compensation or alternatively manpower support.

Maternity/paternity protection (and more in general family protection) could be split into basic mandatory coverage (flat-rate income guarantee for the partners, child benefits) and supplementary coverage that helps the self-employed in continuing their business while taking on family responsibilities as well (child care support, income replacement related to previous income, etc.). As family businesses are still important among the self-employed, an additional insurance could be offered on the basis of which old age pension accruement could be organized based on 'splitting' (aggregating the family income of the self-employed across the partners).

This approach may sound indeed a workable solution giving enough leeway for the self-employed to develop their own kind of occupational protection. However, this approach will also face some serious challenges, such as the representation of self-employed in unions, the pressure from higher- and/or middle-income and high-income earners to keep the first pillar as basic as possible, and the fact that the voluntary insurance schemes will still need to stay attractive for adherence.

4. Design and policy options

How can social protection systems extend their coverage to accommodate non-standard workers and the self-employed? Voluntary insurance schemes can have a role to

play in expanding protection, but the main approach in organizing social protection remains mandatory insurance, given the redistribution required within the systems.

Voluntary insurance schemes could be useful to help further extend protection across all forms of self-employment, mainly in a supplementary and residual manner (in addition to mandatory protection), possibly also by granting substitutive protection to (excluded) groups. Initially, such schemes can help to complete the protection for social contingencies in respect of which it is challenging to organize protection for the self-employed, such as unemployment, sickness and labour accidents. Voluntary insurance can be a way of introducing those self-employed workers who have remained outside the general protection system, to social protection. This approach can at least be justified, when these groups remain limited in number. Techniques of co-insurance, combined insurance or continued insurance can also be helpful in this respect. However, if existing systems rely on 2nd pillar protection, integrating the self-employed will require a revolutionary rethinking of work representation and unionism.

It goes without saying that financial incentives may help in extending coverage, yet at the same time, these might be quick to clash with the major goals of social protection, i.e. redistribution and equivalence in social protection. Moreover, one has to be aware of the undesired effects of redistribution in other policy areas (occupational and fiscal protection). Equally, the income basis from which the financing is generated, will have to be kept in mind as well. This is particularly true for the self-employed who declare their own income, as will be addressed in detail in the up-coming chapters.

By default, a mandatory approach to social protection is considered the best option also for the self-employed and non-standard workers, particularly with a view to ensuring solidarity and adequate insurance coverage for all. Voluntary coverage has various shortcomings, including the risk that the lowest and highest earners will opt-out. An opt-in of the highest earners is important for the financial sustainability of the system and to maintain public trust. In exceptional circumstances, voluntary coverage can be an effective approach, for example as a way of introducing the self-employed to social protection. It has been evidenced that people are more willing to seek protection against some risks than others, such as old age, healthcare and unemployment. In light of this, providing mandatory insurance schemes in a package which includes coverage against other social risks, such as work accidents, could be an option.

It is, after all, crucial to consider the specific work situation of the self-employed and non-standard workers when deciding on the most suitable way of extending coverage and meeting their social protection needs. An important element in this regard is the need to take into account the individual's 'total' income, including assets. To enable this, closer cooperation between the tax authorities and social security services is needed (see too, chapter III on Adequacy and financing). Furthermore, Member

States see a clear need for awareness-raising activities to educate the self-employed and non-standard workers about the importance of coverage and provide them with an accurate cost-benefits assessment of such coverage (see more extensively chapter IV on Transparency).

Both for society at large and for the groups involved, it may in the end be more beneficial if we can create social protection that neatly accommodates their particular social needs. Although social protection systems across the EU have to be adapted further to the specific work situations of self-employed and non-standard workers, some reforms have already been implemented, and we can find several examples in practice of formal coverage to social protection being extended in this manner (see the examples of the Danish reformed unemployment insurance, the Belgian maternity scheme for self-employed and the Spanish labour accident scheme, described earlier).

Chapter II
Effective coverage

1. Introduction

Non-standard workers and self-employed may face problems in being effectively covered by social protection, even though they have been formally admitted to a social protection scheme (see chapter I on the latter aspect of formal access). Entitlement conditions that open the right to a benefit may be designed in a manner less beneficial to non-standard workers and self-employed; likewise, some elements that determine the eventual coverage, e.g. the benefit amount and/or duration, may not be as beneficial to these groups. This chapter focuses on these conditions, such as qualifying periods, waiting periods and income thresholds, which in practice hamper non-standard workers and self-employed in enjoying (full) protection.

The Recommendation calls for effective coverage, regardless of the type of employment relationship or labour status. Rules governing contributions and entitlements should not prevent individuals from accruing or accessing benefits because of their type of employment relationship or labour market status. If deviating rules apply to non-standard work or self-employment, these should be proportionate and reflect the specific situations of beneficiaries (art. 9).

In this chapter, firstly, we want to highlight when and where entitlement conditions generate less effective coverage; secondly, we try to unravel the specific working situations underlying non-standard forms of work or self-employment that may serve as justification for deviating entitlement conditions. In order to do so, this chapter is divided into the following parts: after the introduction (part 1), we address in a systematic matter (part 2) the issues at stake: we start from the contingencies at stake in the Recommendation and highlight to what extent non-standard work and self-employment may differ from standard work in addressing social risks in their work organisation. This overview is followed by an introduction to the main problematic entitlement conditions for non-standard workers and self-employed in getting effective protection: the main questions are 'What are these conditions about?' and 'Why have they been developed in the first place?'.

The next part (3. What is in place) provides an overview, based on the MISSOC tables,[6] of the extent to which Member States in the EU still apply these entitlement conditions and how problematic they are for non-standard work and self-employment in their

6 Missoc or Mutual Information System on Social Protection (https://www.missoc.org/missoc-database/comparative-tables/) refers to comparative tables in the field of social protection covering 32 European countries (Member States of the EU, EFTA, and Switzerland). For this contribution only the Member States of the EU have been used as comparative basis. Last consultation on December 2020. This comparative overview can be consulted as well on the website of the European Institute of Social Security under the heading of research (www.eiss.be).

application. Where reported in the MISSOC tables, conditions that may be specifically designed for non-standard workers or self-employed will also be introduced. From the mapping it turns out that time and/or income thresholds are still widely used in the social protection systems of the states.

In the last part (4. Design and policy options) with reference to the Recommendation, we investigate how these conditions could be better adapted to the needs of non-standard work forms and self-employment without ignoring the original reasons that justify the use of (minimum) qualifying records, waiting periods and minimum income thresholds. In addressing these strategies, examples of best practices applied in some Member States will be highlighted.

2. Defining the social risks and the conditions related to entitlement and duration

2.1 Introducing the underlying social risks: comparing standard work with non-standard work and self-employment

In its ambition to safeguard effective access to social protection the Recommendation addresses the following contingencies: old age and survivorship (pensions), sickness and health care, maternity and paternity, invalidity, work accidents and occupational diseases and unemployment.

Each of these schemes address a specific social risk, such as the loss of income or the fact that one faces exceptional costs. Compared to standard work – which has often been the basis for addressing the risk – non-standard work and self-employment may have been addressed differently (or even not addressed at all) when designing the scheme. Here we take a brief look at the effective coverage and the different approaches to the specific risks and possible reasons for this difference. This approach may help us later in finding strategies to redesign entitlement conditions. The overview is to a large extent based upon the MISSOC tables, the guidelines for correspondents for these tables,[7] and two books by Pieters introducing the social security policy options and the basic principles of social protection systems in Europe (2018, 121pp and 2006, 137pp.).

7 These guidelines give additional information on correspondents to the comparative tables and on how to report and interpret the (social security) concepts used in the tables (https://www.missoc.org/missoc-database/comparative-tables/). Last consultation on December 2020.

2.1.1 Old age and survivorship

In most social protection schemes, old age and survivorship are brought together under a common pension scheme, sometimes even incorporating the contingency of invalidity. In the case of old age, income replacement is guaranteed for persons having reached an age at which it is commonly accepted that they cannot (continue to) work (full-time). The risk of survivorship refers to the loss of a partner who was the main earner in the family unit. Both contingencies are thus essentially compensating the loss of income. The (pension) benefits providing the income replacement are traditionally labelled as 'long-term benefits' as they rely heavily on the prior insurance record of the insured person reflecting the years of work, residence and/or contribution payment accrued over a certain period of time or even over the person's lifetime. For work related schemes that are based upon the prior professional activities, the professional income generated over the working life will be crucial, too. In some pension schemes, the family situation will be another determining factor.

The insurance record reflecting the overall years of work and/or residence is thus essential to old age and survivorship benefit schemes. Compared to standard workers, the constitution of this record may be problematic for self-employed and non-standard work. Hurdles can be constituted by the fact that the prior record has not been consistently built-up over the years due to intermittent periods of no work. The periods during which the person worked may be too limited in time or frequency to be captured by the rules generating the pension insurance record (regardless of the income earned during these short irregular time periods). This can happen e.g. when the rules demand a minimum amount of time (hours, full-time days, etc.) over a certain defined period of time (day, week, month, etc.) and the non-standard worker does not reach the required levels. Another reason can be the fact that the non-standard worker or self-employed does not generate enough income to be taken into account for the insurance record. Fragmented work periods and/or too low income generated over time may be detrimental for the overall length of the pension record. Consequently, people will face a reduced pension benefit. In some situations, they may benefit from a basic (social) pension; however, if too many individuals have to rely upon these minimum pensions, financial sustainability may be at stake (to be covered by chapter III).

As such, the risk at stake is fundamentally not very different for non-standard workers and self-employed. The main elements jeopardizing effective entitlement are related to the constitution of the insurance record which is essential for these long-term benefits.

2.1.2 Sickness and healthcare

In terms of social protection, health care refers to the compensation of costs that are generated by the consumption of health services, products and/or treatments. The social protection component of health care is thus mainly related to the access to the health care facilities that are in place, making the latter accessible to all, possibly by taking into account the financial capacities of the insured person (also known as social health care). Sickness, on the other hand, refers to the coverage of loss of income (income replacement) which may be caused by ill health. Sickness and health care are fundamentally different as to the underlying social risks, yet are often connected because of their health related origins. Often persons suffer from both risks at once, when taken ill: because of their inability to work they lose income and are in need of compensation of the health costs inflicted by the health problems, but this is not always the case. One can be in need of treatment, yet still be able to work.

Currently, access to health care is guaranteed to all citizens in a large majority of Member States, even if the social protection scheme for health care is organised on the basis of professional activities. The need for health care protection is considered to be a universal risk; the work situation of the person should not be relevant in this regard. Situations where non-standard workers or self-employed persons may face restrictions to access health coverage are thus expected to be scarce.

More of a problem are the entitlement conditions shaping the access to sickness benefits. Originally sickness benefits cover the worker's loss of earning capacity. However, not all health-related issues result in an inability to work; it is only when the inability is serious enough, that the worker loses his capacity to continue to work and earn income. Sickness is part of the umbrella contingency for work incapacity and refers essentially to the short-term period (over a period of six months to one year, exceptionally as in the Netherlands, two years). Contrary to invalidity, which refers to a long-term or consolidated work incapacity, the sickness scheme refers in its design to a reference framework that reflects the situation of the worker, just prior to the health problems. So, the last earned wage is often used as basis for the calculation, and the kind of work the person was doing is the reference for assessing the degree of work incapacity.

The deviating protection for self-employed and/or non-standard workers can have various reasons. First of all, the underlying social risk may be defined differently for workers and the self-employed. For the former group, the risk addresses the loss of work capacity; yet, for the latter group, the work incapacity may be difficult to determine, especially in the first period of sickness. Work incapacity does not automatically lead to loss of income, e.g. when the remuneration is (partially) based upon return from capital, the self-employed persons may be in a position to postpone some of their tasks.

However, a number of self-employed people do face the risk of loss of manpower when they fall ill. Consequently, this different approach to the social risk may lead to deviating entitlement conditions (limiting the protection for the self-employed) and/or different ways of organising any protection.

Secondly, another reason for deviating entitlement conditions may be related to the role of the employer in granting sickness benefits to workers. In the initial period, sickness is covered by the (additional) wage continuation that employers guarantee. Moreover, the assessment of the degree of work incapacity in the case of sickness relies heavily on the previous work and how this was performed for the employer. The fact that the employer may have a central role to play in the organisation of the benefit provision, may be problematic for the self-employed (absence of employer) and some categories of non-standard work characterized by several potential employers (agency work, platform work) or not having an employer (economically dependent self-employed). For self-employed persons the risk of sickness may be of a different nature than for workers: essentially, it is difficult to measure the real loss of income (capacity) of the self-employed.

2.1.3 Invalidity

Invalidity refers to long-term work incapacity, usually starting after an initial period of sickness and/or when sickness shifts from temporary into consolidated work incapacity. Whereas entitlement conditions for sickness mainly refer to the past situation – prior to the incapacity – invalidity starts to consider future perspectives of rejoining the labour market. More than in the case of sickness, the educational background and work experience determine the degree of work incapacity (what kind of work the person can still perform, taking into account the potentially reduced work capacity). This may eventually have an impact upon the determination of the degree of incapacity for work, which – in the case of invalidity – may be lower than in the case of sickness. Compared to sickness, invalidity schemes generally operate with reduced or partial work incapacity and situations in which the insured person can combine a (partial) benefit with a (reduced) income. Compared to workers, determining partial (or reduced) work incapacity may be more challenging for the self-employed as it is hard to figure out to what extent their reduction of income is caused by the reduced work capacity (of the self-employed person themselves) or by the overall economic situation. Apart from this problem of delineation, there is an additional issue in monitoring the loss of income for the self-employed: for workers, the guiding parameters are hours of work and wage, which – due to the partial work incapacity – will reduce in number. This reduction in working time and income, however, is not so clear cut for the self-employed (and other non-standard workers not having a fixed income in relation to a fixed number of working hours). Hence, some systems consider partial work incapacity to be a difficult risk to cover for the self-employed.

Other factors may lead to less favourable entitlement situations for non-standard workers and self-employed due to the (possible) long term nature of invalidity benefits. Some of these schemes are even organised as a pension (so-called *type B* invalidity) and hence reflect similar problematic entitlement issues as the ones described under old age and survivorship (due to the insurance record and/or irregular patterns of earning income during the career). Yet similar issues – due to irregular patterns during the career and previously earned income – will adversely affect any benefit, even when invalidity is organised as a continued sickness benefit (or *type A*).

2.1.4 Maternity and paternity

Maternity refers to work incapacity due to pregnancy and childbirth; both are presumed to cause work incapacity for a certain period of time. The loss of income due to this interruption of work is compensated by a benefit. However, like sickness, maternity schemes may also grant health care protection during pregnancy (preventive and check-ups) and childbirth. Traditionally, the benefits in the case of maternity are slightly higher compared to sickness benefits and aim to guarantee the (expecting) mother a replacement income which equals or is almost comparable to the previously earned net-income.

Paternity benefits guarantee income replacement for the days during which the new mother's partner has been granted leave from work. Consequently, the underlying risk is related to the work incapacity of the mother: mother and new-born are in need of additional support from the partner. Paternity benefits are not to be confused with parental benefits, which are provided as a temporary work leave to the parents after the (first) period of maternity and/or paternity elapsed and which are essentially taken up to take care of the child.

It is often accepted that, in fact, maternity and the related paternity schemes integrate two underlying risks: alongside work incapacity, the leave addresses as well the income loss that emerges from the work leave in order to spend time for child raising. This leave facilitates the creation of the bond between child and mother/partner and hence reflects the idea of child support more in line with the logics of family support (M. De la Corte-Rodriguez, 2019). This opening up of the leave to the mother and her partner (often organized in combination with the parental leave) then enables both partners to take up their responsibility in caring for the child.

Maternity and paternity schemes reflect to a large extent the risk underlying the sickness scheme; and even if the second layer reflecting family support is incorporated, they are comparable to sickness schemes. Therefore, comparable problems with the entitlement conditions may emerge for non-standard work and self-employment with

regard to the position of the employer in the organisation of the scheme and a risk which materialises rather as loss of manpower than as loss of income.

2.1.5 Work accidents and occupational diseases

Work accidents and occupational diseases may address several contingencies at once: health care, work incapacity (sickness and invalidity) and survivorship. A variety of approaches exists across the EU, with the extremes being – on the one side – no separate provisions at all in place for work accidents and occupational diseases (the Netherlands) to a separate scheme providing a specific additional coverage for all three eventualities (e.g. in Belgium and Germany), on the other side. Essentially work accident and occupational disease schemes address the civil liability of the employer towards their employees to guarantee a healthy work environment**.** If an accident occurs at the workplace or a disease is contracted because of the work, we legally assume that the employer is to be held responsible. Over time and to guarantee an effective and equal application to all workers, the (original civil law) risk has been solidarised in a social protection scheme of its own or in providing additional coverage in the schemes already in place. Moreover, the beneficial coverage of the work accidents scheme has been extended to accidents that occur while commuting to work and back home.

Compared to the other contingencies, work accident and occupational disease schemes have a long tradition of broad application, covering both standard work and non-standard work, even if the latter is unpaid (such as in the case of apprentices, internships, volunteer work). Regardless of the type employment relationship or contract, workers face similar dangers when performing professional activities. Moreover, both types of workers are comparable in that they both perform work on the instruction of an employer or a similar person and have limited responsibility (under civil law) for their actions which follow the given orders. Problems occur when there is no clear employer (instructor) for non-standard work (agency work, platform work) or in case of self-employment where there is no employer at all. Hence, some countries are reluctant to organize social protection for the eventualities of work accidents and occupational diseases for the self-employed. Apart from this fundamental difference, there are some other more practical application issues that are the consequence of the rather volatile work environment of the self-employed person (geographically and in time): how can it be determined for a self-employed person whether, for example, the car accident took place during working hours? Taking into account the number of work accident schemes that have been made available to self-employed persons, this demonstrates that it is possible to organize them for this group as well; yet, this calls for a rethinking of the organisation of the schemes in terms of the working situation of the self-employed.

2.1.6 Unemployment

Unemployment addresses the situation in which the person is willing to work (and available on the labour market), does not find a job or occupation, however, because the labour market is ineffective. In some systems, the unemployment scheme is restricted to the group of wage-earners; consequently, entitlement to a benefit requires a prior record of work (minimum work record). Additional conditions refer to the previously earned income (wage) and the length of the prior work record (qualifying condition determining the benefit amount; see below). Entitlement to the benefit will also depend on the involuntary nature of the unemployment situation, the condition mainly defined in terms of how the dismissal occurred (is the wage-earner to be blamed?). This work-related scheme is very much organized around the traditional wage earner and intends to protect this group only with an income related benefit (based upon the previously earned wage). Yet, unemployment schemes may be of a more general nature, too, focusing not so much upon the previous work period, but more upon the future work opportunities (the unemployed person's availability for the labour market) and the behaviour of the unemployed person (willingness to find work). As there is no link with the previous work, these schemes are often organised as minimum income benefit schemes – either as unemployment assistance or as universal (basic) unemployment schemes providing a fixed cash benefit to unemployed people.

Unemployment schemes of the more general type will more easily absorb self-employed and non-standard work forms in their scope. The schemes of the first type (work related) are more problematic though. The issues typical to income replacement schemes, which fall back upon prior insurance records, work conditions and/or waiting periods, will emerge alike (see also above, sickness and pensions). For the self-employed, however, the problem is more fundamental as the risk to be addressed may be of a different kind. Some countries consider that the risk of unemployment is not insurable for self-employed people as they take this kind of risk on themselves: if the economic market weakens, the self-employed should bear the risk (i.e. the loss), not society. Some countries have decided to provide unemployment insurance to the self-employed as this group might otherwise make a disproportionate claim on social assistance. Moreover, it provides individuals an additional guarantee of protection in case the initiative to start a business is unsuccessful. The idea that some protection is guaranteed if the business has to be stopped for reasons beyond their control, is an additional incentive to take entrepreneurial risks. But even then, the scheme may need a major redesign, largely because many of the current entitlement conditions reflect the employer-employee relationship (prior work, wage as basis for benefit calculation, dismissal, etc.). Therefore, some systems have been extended only partially to those self-employed who work in a similar situation as wage-earners (dependent self-employed) or focus more upon temporary loss of income due to low activity caused by external situations (weather, major

works, etc.). Compared to wage-earners, self-employed are more interested in having a temporary reduction of work covered than a final closure of their business.

2.2 Entitlement conditions in relation to insurance and work records

Not all entitlement conditions are problematic when applied to non-standard work forms or self-employment. However, those regarding the prior insurance record of the worker or the prior work period may be problematic if they are based overly on standard work situations (full-time work, wages, relation employee/employer). These conditions may limit the access to the benefit (minimum amount of work/income to be earned before entitlement can be opened) or they may have a decisive impact upon the amount of any benefit paid (the longer the insurance or work record, the higher the benefit and/or the longer the benefit will be paid). The latter entitlement conditions will affect the level of the benefit and are to be distinguished from the conditions governing access to the benefit. Furthermore, a distinction is to be made between conditions that refer to prior (minimum) periods which need to have been accomplished (time thresholds conditioning access to and/or level of benefit) and entitlement conditions that refer to (minimum) prior income (income thresholds monitoring access and/or level). Sometimes the income thresholds will be determined in relation to a certain time period (a certain level of income must be reached during a certain time before the risk occurs). The most relevant eligibility criteria are introduced, first in relation to their impact for access to benefits, then in relation to the composition of the level of benefits.

Qualifying periods refer to a prior period of insurance, contribution payment, work and/or residence which must be completed before the person is entitled to the benefit. These periods are often applied in sickness, invalidity and pension schemes; sometimes they also apply in health care schemes. However, the periods are in principle not accepted for work accident and occupational disease schemes as these are based on the idea of civil liability (of the employer), which cannot be made dependent upon a prior time period.

Sickness and invalidity qualifying periods mainly target possible fraudulent behaviour, such as hiring a person with the sole purpose of creating a benefit entitlement. Qualifying periods applied in sickness and invalidity schemes are traditionally short (expressed in months). According to the relevant minimum standards of the ILO[8] and the European Code of Social Security[9] (Council of Europe) these minimum periods are allowed in

8 International Labour Organization, C102 – Social Security (Minimum Standards) Convention, 1952 (No. 102) https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312247

9 Council of Europe, European Code of Social Security, ETS No. 048, 17 march 1968. https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/048

so far as they may be considered necessary to preclude abuse (art. 17 of ILO Convention 102 and the Code). In line with the interpretation of the expert committee monitoring the legal application of the standards, six months is the reference for a maximum term.

In pension schemes much longer qualifying periods are applied, often counted in a minimum number of years in the scheme before entitlement can be opened. A maximum term of 15 years[10] is established by the ILO and Council of Europe (art. 29, ILO Convention 102/Code); however countries have to provide a (reduced) minimum benefit for those who do not satisfy the qualifying period and who have accomplished a period of at least 10 years of work (or five years of residence).[11] Systems which require a minimum insurance record to be fulfilled on a yearly basis, must guarantee the minimum benefit to those who have fulfilled at least half of the (yearly) record (art. 29, ILO Convention 102/Code). Qualifying periods have been mainly introduced to avoid marginal low benefit payments to persons with a reduced insurance record (for financial and administrative reasons). Moreover, in a number of systems such persons are considered to be sufficiently protected already by alternative benefits, either in the system (protection in a universal basic scheme, under social assistance) or through family situations (person is dependent upon a family member and entitlement to a higher (family) benefit can be claimed).

A variation of qualifying periods are **minimum working periods**: the insured person is required to prove they worked a certain number of years in order to become entitled to the benefit. Minimum working periods are often applied in (work related) unemployment schemes. They have been designed to preclude abuse (see art. 23 ILO Convention 102/Code; see sickness) but more generally they also express the idea that sufficient work has to have been performed before solidarity can be claimed from fellow workers.

Waiting periods apply after the insured person has acquired entitlement. When the risk occurs, the person still has to wait for a period of time before a benefit can be paid. The technique is most often applied in the sickness scheme and counters possible fraudulent use by the worker of sickness periods which – because of their short duration (e.g. 1 day) – are difficult to check by the employer or the social security institution. In other words, the main consequence of the waiting period is that the risk of sickness in the initial period is co-shared by the employee. For self-employed persons this period is often defined over a longer time-span (first weeks or even months of sickness), as it refers to the period during which it is hard to assess the real income loss of the self-employed person due to sickness. Waiting periods are also applied for unemployment; here, they are mainly used to sanction the worker if unemployment is

10 Comparable provisions are applied in case of invalidity and survivorship, yet of a somewhat shorter time period (5 years).

11 Ibidem.

(partially) caused by their own actions (voluntary unemployment). In terms of international standards, waiting periods of up to seven days can be applied for unemployment (art. 24, ILO Convention 102/Code).

Income thresholds can, besides conditioning formal access to schemes, also be applied to condition benefit entitlement; in this situation, they refer to the minimum amount of contributions that have to be paid/or income that has to be earned prior to the contingency in order to become entitled to the benefit. This mainly refers to the duty to have contributed and thus serves indirectly to sustain the system. Broadly speaking, income thresholds may also refer to the application of means-testing, a technique essential to social assistance schemes which can also be applied in social protection (insurance) schemes in order to better target benefits to those in true need. In social protection, the testing of means may be restricted to the assessment of the (professional) income of the worker. Apart from deservedness, the application of a means-test is also intended to sustain the system.

Entitlement conditions may also have an impact on the composition of the **level of the benefit**. In this way, the benefit will be of a higher level or will be granted for a longer period if the person is able to prove they satisfy a qualifying period or work record or when the person has paid a higher amount of contributions (as prior income threshold). As to the duration, the technique is mainly applied for unemployment benefits which traditionally are only granted for a limited period. As for the determination of the benefit level, the technique is applied across social protection schemes.

3. Mapping what is in place

From an initial consultation of the MISSOC tables, we observe that Member States still make use of both time and income thresholds. Here we summarise some overall findings starting with the main contingencies (of the Recommendation and as introduced before), followed by some general remarks in relation to non-standard and self-employed work.

3.1 Time-thresholds and income-thresholds affecting the contingencies

Health care benefits are easily accessible regardless of the type of work performed or the form in which the person performs the work. In many systems, the scheme is universal (residence based).[12] Neither do work-related health care schemes require many

12 DK, FI, SE, CY, IT, MT, PT, IE, LV, UK, NL

time or income thresholds. Rather exceptionally some countries[13] do, however, apply a qualifying period or impose a minimum-income threshold.[14]

Sickness on the other hand is often made subject to a number of time thresholds. To start with, most countries apply a minimum qualifying period (normally below the maximum standard of six months). Moreover, every country applies some form of a waiting period. In a number of countries,[15] the waiting period is even significantly longer for self-employed than for employees (see below). The duration of the benefit is mostly the same for all categories of workers, except in some countries,[16] although self-employed workers do face shorter benefit durations; this however is explained by the longer waiting period which consequently leads to a shorter period in between the (possible) start of the sickness period and the beginning of invalidity. Aligned to what is in place for sickness, *maternity* (and paternity) apply similar qualifying periods to open entitlement.[17] Waiting periods however are rarer; compared to sickness, the occurrence of maternity cannot be deliberately restricted to a very short time period of a couple of days. It is as work incapacity, that is easier to control.

Invalidity 'type A' schemes are designed as follow-up benefit schemes in the case of consolidation of sickness and, hence, similar thresholds are applied (both in terms of qualifying and/or waiting periods). In addition, some invalidity schemes (of type A) have the benefit level determined by a prior qualifying period. In countries, where invalidity is organized as a pension (together with old age and survivorship; invalidity of 'type B'), several time and income thresholds can be found.

Accidents at work and occupational disease schemes are often restricted to the group of (standard and non-standard) workers. In 14 countries, this scheme is not accessible at all for the self-employed[18] (problem of formal access). Qualifying periods are not applied, only in exceptional cases a short waiting period is applied.

Regarding *old-age* and *survivors'* pensions, a (first) major distinction is made between systems[19] where pensions are residence based, and systems where the pension scheme is linked to gainful employment/payment of contributions.[20] Whereas waiting periods are less present here, pensions on the other hand are regularly determined based on a qualifying period (sometimes in combination with minimum working periods).

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13 BE, CY, EE, EL
14 AT, CY, EE, MT
15 AT, BE, HR, CY, CZ, DK, EE, LU, SE
16 AT, IT, PT
17 AT, BG, CY, EE, DE, IT, IE, PT, RO, SI, ES, NL
18 BE, BG, CY, CZ, EE, FR, EL, IE, LV, LT, RO, SK, NL, UK
19 BG, DK, EE, FI, NL
20 AT, BE, BG, HR, CY, CZ, DE, FR, HU, IE, IT, LV, LT, LU, MT, PL, PT, RO, SK, SI, ES, SE, UK

Qualifying periods can have a dual nature: either they condition the entitlement to access the benefit (e.g. the person should have fulfilled a minimum qualifying period of at least 15 years) and/or the amount of the pension benefit depends upon the number of insurance years (or work record).

The *unemployment* scheme is often organised only for the group of workers, thus excluding self-employed from (formal) access.[21] In countries where the self-employed are included in the scope, they regularly face stricter entitlement conditions in relation to qualifying and waiting periods (see below). Work related unemployment schemes apply minimum work periods that must be fulfilled by the insured worker to open entitlement[22]; all schemes (regardless of whether they are work related or not) have waiting periods thus 'sanctioning' situations of voluntary unemployment.

3.2 Time-thresholds and income-thresholds affecting non-standard workers and self-employed

From the MISSOC tables we noticed that time and income thresholds are being applied for all contingencies. Even for universally granted benefits, such as health care and family support, Member States use minimum insurance and/or work records and sometimes apply waiting periods before entitlement is granted. Most entitlement conditions with minimum time or income conditions, are however to be found in the income replacement schemes related to work incapacity, unemployment and pensions. Time and income thresholds are used both for conditioning the entitlement to the benefit and the eventual composition of the benefit. Although these conditions may be justified, they are – in practice – especially problematic for self-employed and non-standard workers for the following reasons.

Time and income thresholds are in most cases equally stipulated for all workers, regardless of whether they are working in a standard or non-standard situation. However, it is more challenging for *non-standard workers* to satisfy these conditions. For many *non-standard workers* it is more challenging to reach the full time equivalents (FTE) of the time or income conditions that are defined for standard work: simply put, if a certain minimum number of days is to be worked, the person working half time will take twice as long to satisfy the condition. Similarly, when a minimum amount of income/contributions is to be accomplished, the non-standard worker will often need a longer period of time to reach this minimum amount. Also, qualifying records determining the amount of the benefit – often applied in invalidity, survivorship and

21 BE, BG, CY, EE, FR, EL, IE, LV, NL, UK

22 AT, BE, BG, HR, CY, CZ, DK, EE, FI, FR, DE, EL, HU, IE, IT, LT, LV, LU, MT, PL, PT, RO, SK, SI, ES, SE, NL, LU

old age – will often be to the detriment of the non-standard worker even when the condition is stipulated in an equal manner.

Another problem is related to the requirement that the work or income should be of a defined level before it will be taken into account. If part-time workdays cannot be added together in order to reach the required FTE, non-standard workers will lose their fragmented half days and may not be able to reach the defined FTE. Finally, and closely related to this, non-standard workers have much more difficulty generating adequate benefits as the income levels for which they have paid contributions are often limited or sometimes even absent (e.g. volunteers, internships, etc.).

For *self-employed* persons the problems with thresholds are of a slightly different nature. First of all, we notice that Member States apply longer waiting periods or qualifying records (compared to those for workers), especially in relation to the contingencies of sickness, maternity (paternity) and unemployment. Longer waiting periods lead – in some cases (sickness in particular) – to a shorter duration of benefit payment (as after a certain defined period sickness turns into invalidity). Reasons for these strict entitlement conditions are not always communicated, but often find their origin in the fear of fraudulent use of the benefits by self-employed people. This is linked to the fact that it is more difficult to check the involuntary character of the risk (is the self-employed worker to be blamed?) and that the risk which is addressed for self-employed is fundamentally different and thus needs to be organized and conditioned in a specific way, different to the scheme in place for workers.

Other restrictions can be found in benefit adequacy (conditions determining the level of the benefit) and are of a similar kind as the ones which non-standard workers with low and irregular income face (see above). In addition, the group of self-employed may include low income earners.

Other issues are more restrictive benefit modalities when applied to self-employed. This often deals with the situation of part-time (partial) benefits such as part-time unemployment, pensions and/or work incapacity (sickness, invalidity, maternity, work accidents and occupational disease). For workers, this is defined in terms of reduced working hours and equivalent benefits based upon the number of hours during which work is not performed. Although remuneration techniques are more flexible these days, for workers part-time coverage can be organized in a rather linear way: for the hours or days not worked, compensation can be provided. As the income for the self-employed is irregular (in line with the economic cycle) and is declared by the self-employed themselves, it is much more difficult to have this linear approach applied by analogy. Most systems – if they do extend coverage to the self-employed – consequently refrain from part-time benefit coverage. When such an approach is applied to the self-employed, income is closely monitored afterwards and the compensation

for reduced work is restricted to the sole situation of half-time work; this calls for a well-functioning fiscal system in which the reported earnings reflect reality (reliable income data).

Finally, the self-employed may face some restrictions in the number of assimilated insurance periods compared to (standard) workers. In some systems, time periods during which no work was performed, no professional income earned and no contributions paid, will nevertheless be treated as normal insurance records. This is especially true for periods of sickness, unemployment, invalidity, parental leave, leave and time credits to take work leave. However, self-employed will not be able to invoke the assimilated period when they are not protected for these contingencies (justifying this period); consequently, it will be more challenging for them to fulfil the minimum insurance period (as qualifying record) or to generate a benefit at a decent level if this depends upon the prior fulfilment of insurance periods.

Even though Member States are taking initiatives to have the time and income threshold adapted to the needs of non-standard workers and self-employed, we can see from the overview that still much can be done for further improvement. The Recommendation now provides guidance on this matter in article 9.

4. Design and policy options

The Recommendation calls for an effective access to social protection for all professionally active persons, regardless the type of the employment relationship (standard and non-standard work) or labour market status (worker – self-employed). Article 9 of the Recommendation governs the use of time and income thresholds that may affect benefit coverage for workers and self-employed persons. It should thus be clearly distinguished from the use of eligibility conditions that prevent workers and self-employed to take part in the personal scope of social protection schemes (formal access) governed by article 8 of the Recommendation Even though persons may be given access to the scheme, they can still face problems to the eventual entitlement, due to the use of (minimum) qualifying periods and/or waiting periods. As mentioned earlier, these thresholds can negatively affect both the access to a benefit and the composition of the benefit (level and/or duration).

Member States should thus pay attention when using these time and income thresholds, especially in relation to the effect these eligibility conditions may have on non-standard work and self-employment. Most of these conditions were originally designed with the full-time worker in mind – employed on the basis of an open-ended

labour contract – and can become detrimental in their application upon work forms that deviate from this type of work. From the recent EU Commission Draft Joint Employment Report (2019, p. 104) we can learn, for instance, that the share of short-term unemployed people covered by unemployment benefits amounts to around one third on average; non-standard workers are especially hit as they often do not qualify for a benefit due to non-adapted entitlement conditions. To the same token, people in non-standard work or self-employment often face less favourable conditions for accessing and accruing pension rights than those in open-ended, full-time job contracts (Draft Joint Employment Report, 2019, p. 146). Similar figures indicating the gap in social protection coverage can be found in the recent OECD Employment Outlook (2019, 23-26). In principle, the Recommendation allows the use of eligibility conditions such as minimum qualifying periods, work periods or waiting periods. Yet such rules should serve an objective, such as preserving the sustainability of the scheme or combating abuse (article 9, par. 1). Moreover, in their objective and outcome, these rules should stay neutral with regard to employment relationship or the labour market status the person has for the organization of the professional activity. The kind of work or the labour market status should thus not be the reason for introducing the entitlement condition (art. 9, par. 1, sub a); the reason for having the rules introduced should be justified based on a clear objective (e.g. financial sustainability, insurance logics such as the respect of equivalence and/or the combat of abuse). In Poland for instance, self-employed face more stringent eligibility criteria for sickness and maternity in terms of longer waiting periods. Furthermore there are (stricter) income thresholds for invalidity and pensions in case of early retirement, as well as (longer) qualifying periods for unemployment benefits. The rationale for them is to guarantee fiscal sustainability (lower contributions paid in) and to avoid abusive application of the benefits by the self-employed. One element is of course the supporting objective for the restrictions; another one is the proportionality and pertinence use of the measure. If the supporting objectives are not translated in proportional and pertinent measures, it will be difficult to justify the measure from the viewpoint of effective access.

As to the concrete entitlement conditions and their possible effects on non-standard work and self-employment, the Recommendation calls for two-fold attention. First of all, if rules are differently designed across workers and professional groups, they should not penalize a group unnecessarily (Recommendation, Obs. 19): '*differences in the rules governing the schemes between labour market statutes or types of employment relationships should be proportionate and reflect the specific situation of beneficiaries*' (Ar. 9, par. 1, sub b). However, one should also be aware of applying the rules (as designed originally for standard workers) to groups of non-standard work and self-employment: '*[t]he same rules applied to all groups could lead to poorer outcomes for people outside standard employment and might not be adapted to the situation of the self-employed*' (Recommendation, Obs. 19). Member States are thus invited to check both eventualities when going through the entitlement conditions in the current social

protection legislation: different rules across the groups should be examined on their differences (see 4.2); if similar rules are applied, the undesired effects of these rules for non-standard work and/or self-employed should be assessed and where possible reformulated in a manner more adapted to the specific work/professional groups (see 4.1). Finally, it can be justified to apply specific rules in support of non-standard work situations, e.g. to address undesired overlapping of protection schemes or to guarantee a basic protection (see 4.3).

4.1 Same rules or the need to redefine time and income thresholds in a fashion more aligned to non-standard and self-employed work

Applying the rules designed for standard workers may create problems when applied in an identical manner to non-standard work and self-employment. Even though the underlying objective of applying the rule is similar, it can still mean that the concrete rule will have to be adapted to the specific situation of the non-standard worker or self-employed.

Taking into account the reduced working time or irregular work patterns common to many non-standard workers and self-employed, the time-periods for the definition of qualifying periods or waiting periods (full-time work per day or per week) may be better reformulated in smaller time units, under the condition that the total result of the smaller time units reflects the same overall volume as that required for standard work. For example, instead of requiring proof of one month of (full-time) work (23 working days), this total can also be reached by showing the FTE in working hours. Similarly, the reference period in which the work-time or income has to be earned can be stipulated in a more extensive way as long as a comparable average in workload or income is reached (e.g. work hours per year instead of per day, week or month: e.g. at least X euro earned on average on a monthly or yearly basis instead of per week or per month).

In Belgium, for example, this has led to a redetermining of the time thresholds in sickness and pension schemes: the minimum qualifying records are now increasingly stated in hours of work (for sickness) instead of workdays, or in days (e.g. for the pensions) instead of years of work. In the Netherlands, the minimum qualifying period for both unemployment and invalidity benefits for non-standard work has been redefined from working days to hours of work. At the end of the calculation, the required (minimum) time volume remains the same, yet it is expressed in income units which are more in line with the work reality of non-standard work and self-employment.

A complementary step is to introduce the possibility of adding concurring entitlements in different systems at the same time. This is reflected in the Recommendation when

it calls on Member States to ensure that entitlements are preserved, accumulated and/or transferred across the various types of employment and self-employment (art. 10). Although this topic will be addressed more extensively in the following chapter, it suffices here to mention that organizing social protection across different categorical schemes may ultimately hinder effective access to social protection in each system. For example, the combination of two (part-time) jobs may result in a loss of protection if these jobs are taken into account under different schemes and the income, earned in each of the jobs, cannot be added to fulfil the relevant qualifying periods. A number of national practices exist, where insurance records stemming from several professional activities can be added together or aggregated to reach the necessary (minimum) time equivalents or income thresholds. For instance, countries increasingly use so-called 'integrated income accounts' in which all income earned across labour statuses can be aggregated.

In Denmark, in order to integrate non-standard work and self-employment more swiftly into the unemployment scheme, the benefits are now assessed based on income rather than on hours of work, which was used in the old system (European Commission, *Best practices*, 2018). All work-related income earned within the past three years is therefore taken into account. It is not relevant anymore whether the income is from standard work, self-employment and non-standard work; moreover, it is also possible that the aggregated income from various kinds of work and self-employment, performed simultaneously, is used as a basis for the benefit calculation.

The possibility to add several income sources from different work positions has also been reported in Bulgaria, extending in this manner the coverage for sickness, maternity and unemployment for self-employed and non-standard workers. France reported the implementation of a personal activity account which integrates different types of earnings into one unique account (European Commission, *Best practices*, 2018). The earnings are translated into points, regardless of the labour status. This does not only create more flexibility to take earnings (from work time) into account, integrating non-standard work more easily, but also considers different labour status and the combination of different types of jobs. In addition, in Greece and Latvia similar practices of integrated insurance accounts have been reported; in Greece it has been reported as one of the outcomes of the integration of the various professional social protection systems into one general system (European Commission, *Impact assessment*, 2018). In Ireland, at the occasion of the launch of the new unemployment scheme for self-employed, specific rules have been developed for situations where persons perform both employed and self-employed activities, allowing workers to add the insurance record of the side-activity to the main activity (European Commission, *Impact assessment*, 2018).

4.2 Having different rules in place: possible justifications

On some occasions, having different rules in place is justified as long as this is proportionate and/or reflects the specific situation of the beneficiaries (art. 9, sub b). In some countries, we notice a stricter use of qualifying periods and/or waiting periods for unemployment benefits when they have been extended to self-employed. In Poland, this was extensively motivated by the danger of possible abuse by some self-employed in case of the same thresholds being applied to workers and self-employed. In the Polish case, access is provided based on stricter entitlement conditions, the reason being that the standard rules are too prone to abuse, as it is hard to prove the involuntary nature of unemployment (a key-condition in the unemployment scheme) for self-employed people. The approach of having stricter periods should be proportionate to the objective of preventing fraudulent behaviour.

Some social protection systems moved away from the protection developed for standard workers, creating a separate form of protection, adapted to non-standard work or self-employment. The protection may be designed concretely in different ways, yet overall a comparable protection is guaranteed across the workers and self-employed. This approach allows for the reconsideration of the (stricter) threshold conditions and alignment to the rules in place for standard workers.

In Belgium, for instance, the waiting period in the case of sickness for self-employed people has been gradually reduced until, in a similar way as for the wage earners, it eventually has been abolished (after it was originally reduced from three months, to two weeks, resp. to one day). The waiting period of three months was originally launched as it was considered impossible to determine the real income loss for self-employed people in the case of sickness. However, the fact that the income replacement benefit is now constituted by a low flat-rate benefit (instead of a replacement based upon the previous earnings) supported the idea of reducing the waiting period (European Commission, *Best practices*, 2018). Moreover, the payment of the benefit is only guaranteed from the first day of sickness, if the underlying health disorder requires from the outset a work absence of at least 7 days (based upon doctor's statement). If this is not the case, a waiting period of 7 days is applied. The entitlement conditions are thus still different from the ones that are applied upon wage earners. The main justification for this is the difficulty in assessing the risk (income loss or loss of manpower?) and the less developed financial basis from which contributions are paid (lower financial returns to the system). In the field of maternity, the self-employed have appropriate protection based on income replacement benefits combined with services to support the family in combining family life and work. This allows the self-employed to continue their business and retain their (part-time) earnings from the business. In Sweden, more efforts went into the development of temporary unemployment benefits

which are considered to better address the needs of the self-employed when they are confronted with an economic downturn (beyond their control).

Some differences in treatment between different work forms are not always justified, as we can learn from case law of the European Court of Justice (ECJ), for example. In two recent cases the Court had to deal with specific rules that were in place for part-time workers in the (Spanish) pension[23] and unemployment[24] schemes. Although the cases addresses first and foremost the potential discriminatory effect[25] of the entitlement conditions vis-à-vis (part-time working) women, some of the overall observations made by the Court in relation to part-time work, can be relevant here as well.

Both cases dealt with entitlement rules that condition the benefit level (relevant in both cases) and/or duration of benefit payment (unemployment case). In both cases, stricter conditions were in place for part-time workers in relation to the constitution of their work record, affecting in its turn the eventual benefit (level and/or duration). Although for the pension calculation, a positive correction was already applied for part-time work, periods of part-time work were not taken into account in their entirety, but in proportion to the extent to which the work is carried out part-time; to that purpose, a reduction factor was applied corresponding to the percentage represented by the ratio of the time of the workers engaged in part-time work to that of a comparable worker who is employed full time. The reduction factor essentially indicates the difference in the number of days for which contributions have been made. The correction was considered to be essential as the pension scheme relies on contributions. It thus reflects the underlying logics of equivalence: the (smaller) pension benefit is the direct consequence of less work carried out during the professional career and a smaller contribution paid to the system overall. However, the Court considered that the actual pension calculation for part-time workers was detrimental in a doubly manner: not only are part-time workers sanctioned by the lower income basis (due to the part-time occupation); moreover they are sanctioned a second time by the reduction factor (applied for the contribution period). The need for equivalence (justification ground) was already addressed sufficiently by the reduced income basis; as no specific reason could be given for the additional reduction measure, it was considered to be disproportionate to the overall objective (equivalence). And as mainly women were working in part-time work, the measure was indirectly discriminating female workers in the constitution of their pension.

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23 ECJ, 8 may 2019, Case nr. C-161/18, *Villar,* ECLI:EU:C:2019:382.

24 ECJ, 9 november 2017, Case nr. C-98/15, *Espadas Recio*, ECLI:EU:C:2017:833.

25 Council Directive 79/7/EEC 19 December 1978 on the progressive implementation of the principle of equal treatment men and women in matters of social security, *OJ L 6,* 1979 (in particular article 4 was under scrutiny: *'The principle of equal treatment means that there shall be no discrimination whatsoever on ground of sex either directly, or indirectly by reference to marital or family status, in particular as concerns [...] the calculation of benefits including increases [...] and the conditions governing the duration and retention of entitlement to benefit'*).

For the unemployment benefit, part-time workers suffered a stricter application of the calculation of the working periods to determine the length of benefit payment. The idea, reflecting somewhat the insurance logics of the scheme, was that the longer the prior work period was (number of worked days in a period six years prior to the unemployment), the longer the period during which unemployment benefit was to be paid. By doing so, the system reflected the insurance principle of proportionality: 'the longer one contributes, the longer one receives benefit'. However, although the underlying objective may be acceptable as such, it was not appropriately executed in the scheme at stake. First of all, the rule had another effect depending on the kind of (part-time) work: 'vertical' part-time workers (concentrating their work on some days during the work week) were hit more severely compared to 'horizontal' part-time workers (working every day during the work week, yet only for a limited number of hours). The latter group could take into account all the working days; the first only the days they effectively worked, although both groups of workers may have eventually worked a comparable total number of hours. Moreover, for the financing of the benefit, the scheme did not look at the number of working days but at the income earned on a monthly basis. So, in the end, the vertical part-time worker could work an equal share compared to their horizontal fellow and pay an equal amount of contributions, but was nevertheless sanctioned for the duration during which benefit was paid. Here, the objective of insurance proportionality is not effectively achieved by the rule at stake applying a prior work period; that correlation could have been better ensured if more emphasis would have been put on the total amount of contributions paid and/or the total hours worked during a certain period.

Although the case law has to be situated in the equal treatment directives (in relation to gender), it indicates more generally the need of sound objectives underlying time/income thresholds for workers and self-employed; especially if different rules are developed for certain groups of (non-standard) workers or self-employed. The Recommendation itself refers to financial sustainability and the combat of abuse as possible grounds (art. 9); yet other grounds may be as relevant, such as e.g. the insurance principle of proportionality. However, it remains to be seen whether justification grounds that were originally accepted for time/income thresholds, such as the reduction of administrative burden and/or the loyal attachment to a professional scheme (see chapter II), may still be accepted in the current times (of information technologies enabling better data handling). Furthermore, whatever accepted the justification ground, it must still be executed in an appropriate and effective manner to be considered as an acceptable measure.

4.3 Different rules in support of non-standard work and/or self-employment

For non-standard work and self-employment, deviating rules can also be applied in support of the worker or self-employed person. Specific measures may be needed to

avoid people contributing to overlapping schemes, for example when carrying out ancillary activities while already fully covered in their main job (Recommendation, Obs. 19). This inspired some countries to introduce specific rules for self-employment that is carried out as a second occupation next to a main job as a wage earner. As long as the income is considered to be marginal, lower (or no) contributions are applied, while at the same time no additional benefits are accrued. However, from a certain income level onwards, the income is nevertheless taken into account for the calculation of the contribution payment, allowing the accrual of benefits in the end. The situation of transferrable, preserved and/or accumulated social protection when different types of employment and self-employment are combined by a person will be addressed in the fourth chapter. Here, it suffices to mention that work and/or positions do not only change over time; a person can also combine work and professional occupations simultaneously. Consequently, entitlement conditions will have to be designed that address these combinations in a swift manner.

For non-standard workers or self-employed on low or even no income, some countries have decided to develop separate rules that also provide (in)direct financial support to the person in order to fulfil the necessary entitlement requirements. Giving support is then justified on the basis of the specific – precarious – work situation of those people. The underlying logic reflects a philosophy that it is better to support people up-front (in helping them to fulfil the requirements for social protection from the outset) rather than through systems which have not initially been designed for self-employed and non-standard workers (such as social assistance).

Different rules that support non-standard work and self-employment can be justified and acceptable as long as they reflect the individual situation of the non-standard worker or self-employed. Yet, these rules should not financially or structurally undermine the system of social protection in the long term: system sustainability must be preserved (art. 9, Recommendation). The relation between sustainability, equivalence and redistribution will be addressed more extensively when dealing with benefit adequacy and financing in the next chapter. Here it can be mentioned that a number of practices were already found in which systems give (additional) support to non-standard workers or self-employed so that they manage to fulfil the entitlement conditions. This can be done by applying more favourable ratios to meet the required income or time thresholds. In the Netherlands, social protection (excluding unemployment) has been extended to non-standard workers (in particular part-time workers) by introducing a more favourable way of calculating the contribution periods for contributory social security benefits (excluding unemployment). Instead of using full-time equivalents of days, the scheme starts from fixed part-time rates which are also more beneficial in order to reach the required minimum (European Commission, *Impact assessment*, 2018). In Denmark, more flexibility was built in for fixed-term work which is taken up during a period of unemployment. Normally, in order to re-open a new

entitlement to unemployment benefits, the worker has to fulfil a minimum work record of one year. This, however, turned out to be difficult to achieve for non-standard workers. Recipients of unemployment can now extend their existing receipt period based on hours of work completed (according to a 1:2 ratio). If they worked for one month during the period of benefit receipt, the benefit period can be extended by two months. The ratio is to give greater reward for all hours worked during the period of benefit receipt, even if workers are not able to complete the full year of work required to begin a new period of unemployment benefit receipt.

Support can also be guaranteed by establishing basic (minimum) benefits if thresholds are not reached by the worker or the self-employed. Another way is to support people by paying contributions or exempting them from contributions and so allowing non-remunerated work into the work-related schemes; this is often restricted to specific delineated situations (e.g. for activities considered to be relevant for society, such as providing care to relatives, volunteer work, etc.). A fictitious basis (minimum wage, basic income) is then used as reference income for the benefit calculation (see also the next chapter on financing and benefit adequacy). In Finland, specific rules have been designed to combine home-care allowances (maternity/paternity/parental care) in a flexible manner with non-standard work (part-time work or work for defined periods). For parents taking care of children below three years of age, the limitation to part-time work was dropped. This makes it possible to combine home-care allowances with all kinds of income from work, as long as the person does not work more than 30 hours a week (European Commission, *Impact assessment*, 2018). A similar system is now in place in Ireland.

In Finland, for the contingencies of sickness, maternity and paternity, benefits are guaranteed at a minimum rate for defined groups of non-standard workers with low income or no income at all (European Commission, *Best practices*, 2018). In Belgium and France, in order to guarantee universal access to health care insurance, persons who cannot be insured on the basis of work (or assimilated situations) will receive support in the payment of contributions.

4.4 Effective social protection: final considerations

Qualifying periods, (minimum) work records, waiting periods and other comparable eligibility conditions that create time or income thresholds, seem to be paramount in work related social protection schemes. They are often introduced with certain objectives in mind and – to a large extent – find their origin in the insurance logics that underlie many of the social protection insurance schemes in place for workers and self-employed persons. They reflect the need for sufficient equivalence, return to insurance loyalty and/or financial (system) sustainability. Entitlement conditions

introducing (minimum) waiting periods mainly target (potential) abusive claims from the socially insured persons. From the comparative overview, we noticed that these conditions are mainly to be found in income replacement schemes, and are less present in cost compensation schemes such as health care schemes and family benefits. The latter kind of social protection schemes have been slowly growing towards universal protection systems addressing the whole of the population and rather than the professionally active groups (only). Using entitlement conditions that affect the benefit composition (level and/or duration of the benefit) do not make much sense here. If qualifying periods or waiting periods are (still) used in these cost compensation schemes, they are mainly found in conditions governing access to the benefits. Overall though, we can agree that the entitlement conditions setting (minimum) time and/or income thresholds are mainly addressing work related social protection schemes. As they were originally designed with the standard worker in mind, in practice, they create disproportional problems for non-standard work forms (such as part-time and fixed-term work) and self-employment.

The Recommendation mainly addresses these unwanted – disproportional – effects hampering effective access to social protection. As such, though, entitlement conditions are not to banned; to safeguard a sound design of our social protection schemes, it is essential to have them in place. Yet, as the social protection schemes grew more mature and all kinds of new work forms have been introduced on the European labour market, it may be time to question their design again. First and foremost, the underlying grounds of justification can be scrutinised again. Why did we introduce these entitlement conditions in the first place? Are the reasons still valid? There has been a growing flexibilization in the labour market and a strong push to change between jobs or professions more frequently, and possibly to have several professional activities at the same time. Taking into account these evolutions, it becomes hard to defend the use of entitlement conditions that are created to enhance the loyalty to a certain profession (and hence to the related categorical professional scheme). Such conditions will inevitably hamper mobility on the labour market without justified cause. Likewise, qualifying conditions or minimum work periods that are designed to avoid scattered small insurance records because this creates too much administrative burden, are difficult to accept in an era where information technology can support better data management. In that sense, the Recommendation invites Member States to have another look at the entitlement conditions creating time/income thresholds: are they still valid nowadays?

Furthermore, States have to question whether the applied entitlement conditions are still proportional to the set objectives. Is it, for instance, still acceptable that the minimum qualifying insurance record needed to open pension entitlement amounts to long time periods (15 years or beyond)? And if these conditions are maintained, is there enough alternative protection foreseen for persons not reaching the imposed thresholds? States are legally invited by international standard setting instruments

(such as ILO Convention 102 and the European Code) to guarantee a minimum protection for workers who do not qualify for the minimum time periods, in proportion to the work periods they effectively fulfilled. This can now more generally be interpreted as a minimum protection in relation to the already fulfilled insurance periods; by doing so, it covers also non-standard work forms and self-employment with insurance records scattered over time.

Moreover, one should not lose out of sight that in the past persons who disqualified for social protection (because of limited insurance records), were often taken care of by the main social insurances of their partner; most of the work-related social protection schemes do indeed guarantee higher benefits in case the insured person has a partner at their charge. Yet family structures became less stable; hence the 'family guarantee' cannot function properly anymore. In case of a separation, the partner with the (most) restricted insurance record risks to fall short of social protection. Also, for this reason, these long qualifying records that are often applied in pension schemes may need some reconsideration.

The Recommendation is especially explicit in its invitation to revise the existing thresholds in terms of the flexible work forms presented by non-standard work and self-employment. The outcome and objectives should be the same, yet it is possible that the existing entitlement rules need to be redrafted in line with the specific work situation of non-standard workers and self-employed people. This can be done by deviating from the traditional workday pattern, typical to standard work. Conditions will then have to be rephrased in smaller time units (such as working hours); at the same time, longer time reference periods – within which the thresholds have to be reached – may apply. In order to address this, we may have to take the non-standard work as a reference framework in order to ensure that all existing work forms are encompassed.

Specific rules for non-standard workers and self-employed may still need to be formulated in so far their work is specific in nature (e.g. self-employment and formulation of entitlement conditions in the field of unemployment or part-time work incapacity). Yet, as we could see from the case law of the ECJ, States have to pay attention that non-standard workers are not penalised excessively by applying a multitude of entitlement conditions (double-up); this approach may sanction non-standard work in a disproportionate manner. To the same token, the applied rules have to be effective (pertinent) as to the objective they serve; otherwise unwanted forms of discrimination may emerge between groups of (non-)standard workers.

Looking more towards possible evolutions in the future, social protection may slowly evolve from a system organizing protection for the loss of income out of standard work, towards an overall income protection system (regardless the work form or source of income overall). Work will remain a major source of income guarantee for

many of us. If this trend increases, systems will have to rethink the thresholds in place: instead of the requirement of earning a minimum salary or the requirement of working a minimum amount of hours during a certain time frame, the emphasis will be shifting towards minimum income thresholds. Or, to push the idea somewhat further, we may have to drop the minimum thresholds overall and apply a logic where each contributed income will be used for the sake of building up the eventual social protection. Instead of focusing upon thresholds, entitlement conditions may then have to be redesigned to ensure the protection low-earning persons. To what extent can support be given to persons generating an income below defined minima? Should we support upfront (e.g. by supporting the payment of contributions) or at the moment of the provision of a benefit? These and other questions may become more relevant in future social protection.

In a concluding manner we can state that social protection systems in the EU set out strict conditions for benefit entitlement. Except for some contingencies, such as health care, all kinds of time and/or income thresholds are applied including qualifying, minimum work and/or waiting periods. They do not only condition the access but may also have an effect on the subsequent composition of the benefit (the longer the person has been insured or has paid contributions, the higher the benefit may be or the longer it will be paid). Most of these entitlement conditions have, or at least had, a clear goal at the time when the scheme was introduced: countering abusive use, guaranteeing financial equilibrium and creating a long-term bond of solidarity between co-workers are the most common grounds for justification. According to international standards of the ILO, they are allowed, provided they are not stipulated in an excessive manner and/or if minimum guarantees are foreseen for workers not reaching the required levels.

With the growing numbers of non-standard work and self-employment, many of the thresholds are under discussion as they are often an additional challenge to access benefits. The Recommendation can be seen as an invitation to reflect again upon the use of these thresholds. Member States should dare to reconsider why the threshold was originally introduced, whether it still serves a purpose, and if so, whether it can be reformulated to better address the specific work situation of non-standard work and self-employment (while maintaining the same rule in principle); finally countries should dare to ask whether deviations – more lenient or more strict – for non-standard work and self-employment can be accepted, and when they can be acceptable. The specific risks self-employed and non-standard workers face for the contingencies of invalidity, maternity and paternity, old age, sickness, unemployment or work accidents due to their work situation, need to be considered. This could be done by assessing income over longer periods of time, determining qualifying or waiting periods in smaller time periods (e.g. days), considering different types of jobs and time spent on informal care provision, and giving minimum support for people who do not meet

income or time thresholds. In addition, non-monetary or in-kind benefits may be a way to support the specific situation of self-employed for some risks, such as vouchers for personal and household services for self-employed parents or vocational training for self-employed who face a downturn in their economic activity.

Member States also need to review low take-up of benefits, for example when sick self-employed cannot stop working, even if they are entitled to benefits. In general, a review of existing social protection systems and the (re-)design of easily accessible, transparent and flexible social protection systems, including also different types of in-kind support, may be to the benefit of the entire workforce. It can support trust in the social protection systems, improving their political and financial sustainability.

Chapter III
Adequacy and financing

1. Introduction

In this chapter we will address the topic of adequacy as it is covered in articles 11 to 14 of the Council Recommendation on access to social protection. Taking a closer look, we notice that the section on adequacy in the Recommendation is divided into three sub-topics: the financing of social protection for non-standard workers and self-employed people, benefit adequacy and the interrelation between these two key elements. This chapter will address these elements.

In the following part (2. Financing and adequacy), we introduce the major issues at stake: what problems do we encounter when arranging the financing of social protection for the self-employed and for non-standard workers? What challenges do we meet when endeavouring to keep benefits at an adequate level for these two groups and what kind of relationship should there be between the contributory capacity and the (level of) entitlements?

In the next part (3. Mapping what is in place) we will first focus upon the existing techniques in place that organize the financing system for self-employed. With regard to non-standard workers, we indicate some current financing practices that are in place for these workers aimed at guaranteeing a decent level of protection. For both groups we give special attention to current approaches addressing problems of low income in the financing of social protection (support up-front for contribution payment; back support with regard to the benefit provision). Furthermore in this part we highlight existing international standards that outline what should be understood by adequate social protection and how it necessarily interrelates with other social security schemes outside the social protection scope, such as social assistance and family benefits. Finally, we indicate in this part which approaches are to be found when using minimum thresholds in financing social security: use of the threshold as minimum income basis for calculating benefits and use of the thresholds as an element of exemption from protection.

In the last part on policy and design options, (4. Policy and design options) we address again the main issues and centre them around the Recommendation provisions (articles 11 to 14). We discuss, for example, how far we should take the contributory capacity into account when dealing with self-employed and non-standard workers. Should we give protection up-front or rather later by guaranteeing minimum benefits? How can exemptions be designed without referring to specific groups?

2. Financing and adequacy: issues at stake

2.1 Financing and social protection of self-employed

In article 14, the Recommendation indicates some of the major challenges when organizing the financing of social protection for the self-employed: '*[m]ember states are recommended to ensure that the calculation of the social protection contribution and entitlements of the self-employed are based on an objective and transparent assessment of their income basis, taking account of their income fluctuations and reflect their actual earnings*'. About the entitlements – which are often provided on a flat-rate basis for the self-employed – more will be said later. Here we focus upon some problems that arise when arranging the financing of the social protection.

2.1.1 The self-employed declare their own income

Unlike workers, self-employed persons declare their income themselves. No fixed wages exist that can serve as a basis for calculating contributions or taxes (Whelan, 2000, pp. 153-155; Schoukens, 2000, pp. 77-81). Furthermore, there is less possibility of control. The self-employed, in contrast to workers, declare their own income, which can lead to an undervaluation of the earned income. This is especially true in a situation where the clients of the self-employed are so-called private end users, who do not need to declare the invoiced costs for tax purposes. Consequently, it is more difficult for fiscal authorities to check the income declared by the self-employed as no cross-comparisons with the cost declaration of the clients of the self-employed can be made. Although no hard figures are available, there is an assumption that the income declared by the self-employed for tax and/or social security purposes is lower than the income earned in reality (ISSA, 2012, pp. 31-33; Spasova, 2017, p. 56). This assumption of structural underreporting complicates in its turn the policy discussion on low-income self-employed earners: it is hard to define measures that will help the self-employed on a low income, when no reliable data regarding their income are available. States that struggle to gain a clear picture of the income declared by their citizens, will thus struggle to address the recommendation on aligning the contributions to the contributory capacity of their (workers and) self-employed proportionally (article 12 Recommendation).

Structural income underreporting is a long-standing problem in many states. The problem of underreporting became even more diversified as self-employed started to organise their activities in legal entities, which they (co-)own themselves and from which they receive a fixed income unrelated to turnover or profit made by the legal entity. The self-employed activities are thus performed within the framework of the legal entity; the contracting of work is done by the entity whereas the work of carrying

out the contract is done by the self-employed who works for the entity (owned by themselves). The remuneration is doubled: the entity is paid for the contract and the self-employed is in turn paid a fixed remuneration. This remuneration is fictitious and may be kept low and/or disconnected from the entity's fiscal results (profit; turnover); in other words, income may stay within the entity's reserves. When the legal entity pays out profit through dividends or liquidates (in the end) the reserves to the (self-employed) shareholder, social security contributions are, traditionally, not levied upon this return. Many countries refrain from doing so as it is considered to be income from invested capital; social security levies traditionally address income from work. In some countries the integration of self-employed activities into legal entities is common practice; it turns out that the income of the self-employed working in these legal entities is kept fictitiously low, often because of para-fiscal considerations (Borstlap, 2020, pp. 48-55).

This fictitious undervaluation is, however, legal and hence not to be considered as a fraudulent practice; yet, it may undermine the social protection system as much as the more traditional fraudulent undervaluation of income. Some countries have reacted by introducing alternative financing for companies and/or by encouraging the self-employed (para-)fiscally to declare a higher income, with no or with limited results, however. Essentially the practice touches upon an essential point in the financing of (work related) social protection: should the levy of contributions be restricted to income from professional activities or should it also extend to income from capital? In an era of growing importance of digital work and platform work, where it is increasingly difficult to delineate professional activities from other activities and where income is generated by various kinds of activities (regardless as to whether they have a professional nature or not), we are rather inclined towards the second option. However, this is still very much under discussion. The case of the growing integration of self-employed activities into legal entities shows it is very hard to keep the distinction between income from professional activities and income from capital.

2.1.2 Fluctuating income

Unlike workers, the self-employed do not receive a (stable or fixed) wage from their employer. Income earned by the self-employed has a tendency to fluctuate over periods; it is irregular in nature. Some years the self-employed person may have a higher income and profit; other years they may turn out to be less fortunate with regard to the financial return of the activities. Moreover, the income earned by the self-employed only becomes known after the consolidation of the fiscal year: during the year it may fluctuate, income earned at the start of the year might be very different (higher or lower) than that earned towards the end of the year. This irregular pattern in the income of the self-employed leads to two major challenges: how to organize a stable structure

on the basis of which contributions payable by the self-employed can be organized; and what should be done if, at a given moment, the income turns out to be far too low, making it impossible for the self-employed person to pay their contributions. The latter point will be discussed below under the heading of the self-employed on a low income.

The first challenge is more practical in nature and often leads to an approach in which a distinction is made between the provisional (income and) contributions and the actual (income and) contributions. Most systems will invite the self-employed to pay provisionally at certain intervals (every month or every quarter of the year) based upon the running activities and income flows; once the fiscal year is consolidated and hence the actual income is officially known, a positive or negative correction will be applied: the self-employed will receive a return if too much has been prepaid or alternatively will be invited to pay additional contributions if too little was advanced. The problem with this approach is that the final assessment of the due contributions takes quite some time and the process of levying contributions for a given year is only rounded up one to two years later. Therefore, some systems opt to use the past consolidated income as basis for the current contribution payment. The advantage of this approach is that the income basis is known to all parties (the consolidated past income of two or three years ago); the disadvantage is that the current income may deviate strongly from what was earned two or three years ago. There is also a problem for those just starting self-employment as no consolidated income from the past is known yet and hence – for these starting years – the system of provisional contributions must be applied. Whatever system is in place, in the spirit of article 14 of the Recommendation, processes have to be designed so that the corrective measures can be applied swiftly and the self-employed should be incited in a positive manner to provisionally declare their income as accurately as possible.

2.1.3 What is income?

The self-employed do not receive a wage. They earn income, partly as a direct return from their work, partly as a return from the (invested) capital. As was mentioned before (integration of self-employed work into legal entities), the income of the self-employed can be more varied in its kind compared to the remuneration of wage-earners ('wage'). Income for the purpose of social protection (and tax) law will have a defined legal meaning. Traditionally it is understood as the gross income of the self-employed, after deduction of the operational costs, in a given year, to be declared before taxes. However, income is very often the result of the fiscal concept of income and the fiscal approach in accepting (or not) certain operational costs. How far should the financing of security align to the fiscal concept? The fiscal policies deciding on the elements that can be considered as taxable income or on the costs that are deductible from the gross taxable income serve their own objectives, which do not necessarily serve the policy

goals of social protection. In some countries, this leads to the approach by which a distinction is made between the social income and the fiscal income, the former not accepting some costs which are deductible from taxable income; equally, social income could also refer to the introduction of some income elements which are not accepted for tax reasons (income from capital). Moreover, one should not underestimate the complexity of the income concept. In a survey conducted some years ago among (self-employed) farmers on how to understand (declarable) income for the application of tax and social law, the answer was rather surprising. A majority considered income to be the remaining income on the accounts after deduction of all expenses (both professional and private) (Whelan, 2000, pp. 155-157). An overly complicated legal concept of income may also push people to undervalue their resources.

One should be cautious in comparing self-employed income with wages paid to workers, especially when comparing the contribution levels of the self-employed and workers for the purpose of social protection. The question whether the self-employed have to pay as much contribution as workers has led to some fierce debates in the past. All kinds of wrong comparisons are used: for example, to determine the level of contribution the self-employed are to pay, the wage-earners' (and not the employers') contributions are being looked at. Others stress, however, that the division between employee and employer contribution is a fictitious one and hence both contributions are to be added in order to constitute a comparable contribution for the self-employed (Pieters, 2006, 102). In a recent case of the Greek Council of State (No. 1880/2019), the equalization of the contribution levels between the self-employed and wage-earners – on the occasion of the integration of the various categorical schemes into a unique professional system for all workers – was considered to infringe the non-discrimination principle. The self-employed and wage-earners are not comparable professional categories when it comes to the generating of income, hence they should not necessarily be made subject to the same rules. Interestingly, even in the setting of the Court discussions produce diverging opinions: there was the dissenting view within the Court which stated that both groups are to be considered comparable. We will come back to this element in the third part further below. Here it suffices to mention that in the discussion one should not forget the income basis upon which the contributions are levied. If this basis is very differently constituted for the self-employed and for the workers, it does not make much sense to claim equal contribution levels. More important is whether the contributions for the self-employed are such that they make a sustainable social protection possible.

2.2 Financing and non-standard workers

Contrary to the self-employed, (non-standard) workers have a labour relationship with an employer who is liable for the payment of contributions (paying the employer

contribution and deducting the employee contribution at the source). The main challenge for (remunerated) non-standard work is keeping track of the diverse origins from which contributions are to be levied when several kinds of work are being performed for various employers. States are increasingly starting to create structures, both for the financing and delivery of benefits, in which income and/or contributions can be aggregated (over a longer period, such as an insurance year). But even then, the aggregated income may still prove to be below the minimum thresholds of protection, which addresses the relation between the financing capacity of the concerned person and the guaranteed levels of protection (adequacy and equivalence). More about this below when talking about benefit adequacy.

For some categories of non-standard work, the problem is to find out who – in the labour relationship – is considered to be the employer and hence liable to pay the contributions. The issue is most problematic when the employer relationship is spread across various principals, as is the case in temporary agency work (workers are sent on a temporary basis by an agency to a user company). Traditional agency work is regulated strictly in most of the EU countries and, if conditions are not met, it is sanctioned severely: often by treating the end-user as the employer, who is subsequently liable for meeting all relevant labour and social law obligations (among which financing). However due to the growing flexibilization of the labour market and the intensive use of transnational posting of workers across the EU, all kinds of variations of agency work have started to emerge, blurring the distinction between traditional work and agency work even more. The call both at national and European level to curb this tendency is understandable (Borstlap, 2020, pp. 29-60; at EU level see, for example, the amended Directive on the posting of workers[26]) as often the sole objective of these constructions is to cut labour costs; in the field of the posting of workers, we see a growing number of cases where the construction no longer corresponds to the reality of work but is simply serving the interest of lowering costs for competitive reasons. The recent case law of the ECJ (C-610/18) does seem to address these fictitious constructions[27] and calls for a reality check: the employer is to be considered the entity from which the worker receives instruction and/or in whoms structure the worker is integrated in reality. Subsequentially, this entity should also be liable for financing purposes, by applying the legislation where the work effectively takes place. The problem of discerning the eventual employer also comes to the surface in the growing platform economy.

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26 Directive (EU) 2018/957 of the European Parliament and the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, *OJ L 173*, 9 July 2018 The 'new' posting directive makes it easier, for example, to have the labour regulations/standards of the country of temporary employment applied to the posted worker. In that way it attempts to reduce the application of posting constructions that are based only upon grounds to cut labour costs (social dumping).

27 See in this respect Conclusions of Advocate-General P. PIKAMÄE, ECJ, Case C-610/18, ECLI:EU:C:2019:1010.

Even if we consider these persons as workers (wage-earners), it remains a problem to find out which entity should be considered to be the employer of the worker and where that entity is located (Barrio and Schoukens, 2017, pp. 322-323).

Non-standard work is sometimes performed on a non-remunerated basis: this creates challenges for work related social protection. On which financial basis should the (income related) protection be arranged? Here we are entering the field of non-economically remunerated activities, such as traineeships, internships, care activities (for family or relatives) and so on. To what extent should these activities be included for social protection if, at the origin, they have not been contributing to the financing of the system? Exemptions can be due to the character of the activity, which is more related to study and/or education. In these situations, the protection (and related financing) will be restricted to a limited set of contingencies (traditionally work accidents and occupational diseases). The activity can be too marginal to be considered a genuine professional activity and hence exempted from social protection (see all kinds of exempted activities in the households, such as baby-sitting, cleaning, gardening). Some of the activities are exempted from social protection (financing) as they are considered to be relevant for society and are provided within the circle of family and/or relatives.

Although not always present, one of the (additional) justifying reasons to exempt the activity from social protection is the fact that the person is co-insured with another family member. In other words, it is not the person's own main activity which justifies the (partial) exemption from contribution (see above), but the activity of a relative upon whom they depend. The dependency relationship opens the way to co-insurance and allows the person to enjoy protection for a series of social risks, such as healthcare, family burden and part of the family pension. The scheme of helping spouses was a very popular scheme (in the past) applied by many self-employed entrepreneurs in order to have their partner working in the business exempted from paying social contributions while co-benefiting from the social protection of the principal self-employed person; at least as long as the marriage or partnership lasted. Partly because of EU-legislation[28] though, states started to turn these helping spouses into real self-employed persons applying the regular financing structures to them as well – partly for the sake of the helping spouse (to protect the spouse from loss of protection in case of divorce or break-up), partly for the sake of the system itself (why should this category of persons be exempted from financing?). The position regarding co-insurance as a ground for exempting activities from protection can thus change over time.

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28 In particular DIRECTIVE 2010/41/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, *OJ L 180/1*, 15 July 2010.

2.3 Adequacy

The Recommendation calls for an adequate level of protection (art. 11). Adequacy refers both to the level of the benefit (amount) and the timely delivery of the benefit. The latter element will be addressed in the next chapter, when dealing with transparency; here we focus upon the level of the benefit. Article 11 reaffirms the two functions of social protection: preventing poverty, but also smoothing income over the life-cycle: '*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.*'

The prior observation (17) in the Recommendation provides further guidance indicating what benefit adequacy could mean: '*... [s]ocial protection is considered to be adequate when it allows individuals to uphold a decent standard of living, replace their income loss in a reasonable manner and live with dignity, and prevents them from falling into poverty while contributing, where appropriate to activation and facilitating the return to work. When assessing the adequacy, the Member State's social protection system as a whole needs to be taken into account, which means that social protection benefits of a Member State need to be considered.*' However, the Recommendation remains vague about the level of benefits as no clear figures or references are to be found in the document: what is an 'appropriate income replacement' or 'a decent standard of living'? What is the minimum?

Moreover, the last line, recalling the need to take the whole system into account, adds a layer of complexity since Member States can refer to the additional protection guaranteed by related schemes or services. It also recognizes that one should not be myopic when addressing the adequacy of benefits. For example, the pension level of a state might be questioned as to its adequacy (is it high enough to live in dignity?). However, the fact that the pensioner is entitled to free housing, enjoys full access to health care, is exempted from any kind of personal contribution (because of the low pension) and enjoys reductions for the provision of gas and electricity, can be taken into account to assess the adequacy of the benefit. Consequently, the concept of social protection is not to be understood in a strict sense here (as defined in article 3 par. 2 of the Recommendation) but can also refer, for example, to social assistance benefits, child care benefits and possibly other social allowances. The reference to activation and return-to-work measures is also interesting. Adequacy of the benefits does not preclude the presence of obligations imposed upon the beneficiaries. In particular, measures aimed at activating persons on a benefit (such as unemployment and work incapacity) to resume some

kind of work are referred to here. Promoting the readiness of beneficiaries to take up work again should, however, not be done in a manner that takes away their dignity.

But what exactly are adequate benefits and how can adequacy be measured? In current international law practice, criteria have been developed that define minimum income replacement levels for benefits (ILO Convention 102 and European Code of Social Security; articles 65-67 and Figure 2); for its part, the EU has invested a lot in the development of indicators to test the outcomes of social policies. In part three, we take a further look at how these criteria could be of use to address benefit adequacy under the Recommendation.

Although general in its wording, the Recommendation nevertheless refers to some protection levels that must be respected by the systems. The bottom-line is that workers and the self-employed, when on benefits, should be kept out of poverty. Benefit levels should not fall below minimum subsistence levels as applied in the social assistance schemes. Likewise, the minimum social pension for a person having worked a full career should, for example, not fall below the minimum subsistence applied in social assistance. The starting principle for standard work is a reasonable income protection so that the beneficiary can live in dignity. In this way, the Recommendation strongly reflects the basic philosophy behind our European social security systems, in which social insurance schemes and social assistance schemes overlap when it comes to income protection. The latter schemes are designed to provide residual protection against poverty if labour market (policies) and social insurance fail to do so. Consequently, social protection schemes must do more than (only) protect against poverty: they must guarantee reasonable protection against loss of income (from work).

In Europe, this social insurance protection has mainly been organized along two lines, going back to the Bismarck-Beveridge division (Berghman, 1991, pp. 11-12; Pieters, 2006, pp. 7-8). Whereas the first refers to the protection of the workers, the latter kind of systems focus upon the protection of residents (universal social protection). In the traditional Bismarck system, protection focuses on guaranteeing the prior standard of living (at least for a defined period of time) enjoyed by a worker, whereas Beveridge systems focus more on uniform protection which is of an acceptable level. In other words, the (universal) schemes under this system do not refer to the previously earned income from work, but design the benefits around a fixed standard, which – by definition – is higher than the minimum subsistence level (such as the minimum wage, or average wage, or simply a standard fixed by the Parliament which should guarantee a decent level of protection).

Providing decent levels of social protection may work well when the vast majority of the professionally active population work in a standard work relationship. Guaranteeing adequacy becomes more problematic when a growing number of workers or

self-employed workers are on low incomes or do not have regular work. Although this obviously raises difficulties for professional social insurance schemes (the Bismarckian type) because these are based on 'standard' work, non-standard work also creates problems for universal social protection schemes. Universal protection schemes are heavily dependent on professional activities for sustaining the system financially as well. Furthermore, a fair balance will have to be drawn between professional income on the one hand and the basic benefit levels that are guaranteed to a country's residents on the other hand. A system will have broader societal support if benefit levels are not at the same level as the average incomes of the system's members; a large part of that income still comes from professional work.

However, not all persons manage to build up a full insurance record, nor are they (always) capable of building up this insurance record on the basis of decent incomes. In the past, often minimum protection levels were introduced (see second chapter on effective coverage). The same is true for persons who were not always capable of earning sufficient income. Yet, these minimum protection levels were first and foremost introduced for persons having built up a sufficient insurance record (full time or 2/3 of a full-time equivalent (FTE)), but who were not always in a position to have earned enough income (due to invalidity, caring duties). The Recommendation does not provide very much concrete guidance on what kind of minimum protection should be guaranteed. One can take into account the capacity of the non-standard workers and the self-employed when adapting the rules, but what does this mean in concrete terms?

The question at stake is double in dimension as it refers, on the one hand, to the formal (and effective) access to the schemes in place (exemption from protection, voluntary protection, limited protection: see chapter I and II on, respectively, formal and effective coverage) and, on the other hand, to the financial obligations of these low-income groups or groups with irregular insurance records. Should they pay the same contributions, or do we exempt them (partially) from financial participation? We will return to this issue later in the discussion later (see below).

3. Mapping what is in place

3.1 Determining the income basis for the self-employed: cooperation with tax authorities

For determining the basis for calculating contributions, we can discern two tendencies in the EU countries (Schoukens, 2000, pp. 77-81). Either the social security administration cooperates with the tax services or the social security institutions determine

the basis for contribution themselves. The latter strategy is sometimes used when tax collection does not function well or because cooperation with the tax authorities is considered to be too complicated.

The cooperation with tax authorities can take place in different ways. Some countries leave the financing of social security in the hands of the tax administration. This is not only the case when social security is financed from general means (such as in the (basic) universal social protection schemes in the Nordic states), but it can also be the case when the tax authorities collect the social security contributions (for example in the Netherlands). One of the advantages of this approach is that it allows personal income tax and social security contributions to be collected together. In both systems the self-employed make a provisional payment with any correction being made once their income is formally established. A disadvantage, however, is that the tax authorities rely too much on a tax perspective when collecting contributions and take insufficient account of the specific characteristics of social security financing (in particular, the relation that may exist between the income basis and the benefit basis, the exemption from payment for social reasons, etc.).

Other countries consider collection by the tax authorities to be too far-reaching and thus only use the income information collected and approved by the tax authorities as a basis to collect social security contributions. When the income has already been formally established by the tax authorities, it can be considered as a fixed income basis for the collection of social security contributions and hence no provisional payments have to be made. The disadvantage of this approach, however, is that a time gap emerges between the year the income has been reported for tax purposes and the year that it is used in its consolidated form for contribution collection (two to three years depending upon the particular system in place). The economic circumstances in which the self-employed person works may be different and the current income in the year of payment may be vary quite substantially from the income that once served as the basis for a tax declaration.

The second main approach is to use a fictitious basis for the collection of contributions and hence there is no cooperation with the tax authorities; fictitious in the sense that one does not use the tax data but other criteria that directly or indirectly give an indication as to the amount of the self-employed person's income. The fixed basis for contributions is determined in various ways, including a reference minimum income used for tax or social law (minimum wage), the average income (of the workers) in the sector in question, the wages of a civil servant working in a similar sector (e.g. the wages of a judge at the court of appeal to determine the basis for contribution for lawyers), a parameter to estimate the income (like the number of beds to determine the basis for contribution for hotel operators, the size of the farm, the surface area of the fields that are used, the number of livestock or the volume of the crops that are

grown for the determination of the income of farmers). The problem here is that there is no real relation between the actual income and the basis for contribution payment. Furthermore, the fictitious basis for contributions often seems rather low, so that the system receives insufficient financial means and the financial support of the government becomes necessary. In order to prevent such organized underestimation, some countries use fixed income scales. The self-employed can choose from these scales (e.g. in Spain and Portugal). The scale that is chosen has consequences for any benefit, because that benefit is calculated on the basis of the income that is declared. A similar scheme is used in the Finnish supplementary pension scheme. The motive however is different here: one tries to estimate the real income that the self-employed person receives from their business. In the general business incomes, many other elements are included that do not play a role in the actual personal income of the self-employed person. However, the determination of the income is being 'assisted' when the scale that is chosen is continually very low or when there are large income fluctuations. In those cases, the reported income is compared to the standard income that is earned in the sector in question. The personal income does not always need to be lower than the income that is declared for tax purposes. For the determination of the personal income, a number of deductions are not counted if they are related to business activities.

The use of fixed parameters asks for our particular attention from the perspective of the Recommendation. Article 14 suggests that to calculate the contributions (and entitlements) an objective and transparent assessment of the income base, which reflects the actual earnings, must be used wherever possible. Some of these parameters are indicative enough for measuring the income, others however are not (for example minimum or average income earned by comparable professionals).

3.2 Addressing the assessment of income for the self-employed: some practices

A major concern is the undervaluation of income for the purposes of social security financing (see above 2.1 in this chapter). The causes can be manifold and can relate to a fraudulent underreporting, the (legal) use of a low fictitious income basis (for example when working in a legal entity), the complexity of the system causing misunderstandings about how to report income correctly. The reasons for underreporting can be equally manifold; they can relate to the social protection system itself (for example absence of equivalence – a clear link between income basis for financing and benefit – meaning that the levy is considered as mere tax), or more fundamental societal issues going beyond social protection as such (e.g. mistrust in the public service). The emergence of new forms of work (freelancers, platform workers), which can be organized in a very flexible manner, may complicate the issues even more in the future (Barrio and Schoukens, 2017, pp. 327-331).

Some states try to assure a correct assessment of the income by going to the source of the money flow wherever possible and/or by organizing a contribution levy which is kept simple in design. Especially with the growing group of freelancers who are organized in a flexible manner and want to have as much responsibility as possible for their own reporting processes (i.e. not outsourcing them to external service providers such as accountants or lawyers), it is paramount to have a system in place which is transparent, easy to handle and encourages people to declare correct (income) data.

The latter objectives inspired the recent reform in Estonia where a low-threshold income declaration system has been introduced for so-called small entrepreneurs with reduced cost structures. As of January 2019, entrepreneurs have the possibility to open a so-called 'entrepreneur account' at a bank (so far, only *LHV Pank* bank is offering the account for the time being). This system proposes an interesting new form of collecting taxes, especially because it enables informal workers, freelancers, etc. to easily declare and track their income. The account is especially for entrepreneurs who 'provide services to other natural persons in the areas of activity that do not involve any direct expenses, or for a person who sells self-produced goods or handicraft goods or the goods with low costs of materials or acquisition'. Examples of such activities are baby-sitting, housekeeping, gardening, and also the abovementioned 'new' forms of work, such as the sharing economy, e.g. Uber, Airbnb, etc. For persons whose costs are high and comprize a large part of the sales price, the account is not as suitable given the fact that it does not provide the possibility to deduct those expenses. The account is an interesting example of the interplay between a private institution (bank) and the state; income taxes and social contributions are namely collected at source. This leads to more transparency on both sides, as well as a simplification for the entrepreneurs themselves.

Outside the EU, simplified procedures to enhance contribution and tax collection among small entrepreneurs and freelancers have been reported in Argentina and Uruguay (ISSA), using a system of 'monotributo' (Arellano Ortiz, 2019, pp. 154-156) – essentially a unified tax payment scheme integrating the variety of social security contributions (in the different schemes in place) and taxes. Initially, the schemes focused upon small one-person businesses developing activities in the street or in public spaces, but slowly the system was modified in order to expand social protection coverage across all the self-employed. Part of the success to reconvert informal work into official (small scaled) self-employed work (where the self-employed register and pay for social protection) is also related to the use of a reduced contribution level, which was originally justified because of the relative small income generated from these one-person businesses (see below on using reduced contribution levels). Contribution payment is progressive in relation to the time: only after 36 months of activity is the full contribution paid.

Another interesting approach is the application of a 'third party' contribution which co-finances the social protection scheme of the self-employed (group). The approach addresses (partially) the lack of an 'employer contribution' in the self-employed system and has, for example, already been applied for some time in the German social protection system for artists (*Künstlersozialabgabe*). Clients purchasing artistic works have to pay a contribution to the social protection system directly to the social fund for artists. In particular, where self-employed groups are contracted though an interface institution – the client paying the interface for the purchased good or service –, the contribution is withheld directly at the source by the interface institution in this system and paid directly into the social protection scheme. Also, in constructions where the self-employed organize their activities in a legal entity, it is increasingly being suggested that the legal entity should co-finance social protection as a third party. The contribution from the legal entity would then be based on the turnover and/or profit of the company itself, whereas the self-employed person working in the entity would pay on the basis of their personal revenue.

3.3 Low income groups and financing: the self-employed facing financial problems of a temporary nature

Most systems have special schemes in place for self-employed people who are confronted with financial difficulties, exempting them partially or fully from contribution payment.[29] Normally this results in a (partial) loss of social security claims, in particular in relation to long-term income replacement schemes (such as pensions). In other words, the years for which the contributions were exempted will not generate pension entitlements; they are not considered as assimilated insurance records. Some schemes, however, grant the possibility to pay the contributions for these lost periods at a later stage when business picks up again.[30] Comparable as to the idea, but different in execution is a scheme where the self-employed person in financial difficulty can receive support for the payment of contributions (up-front). This support can be provided by a grant (or loan) or, alternatively, contributions might be paid by the social security agency for some risks (such as health care[31]). The self-employed person has the possibility to pay, on a voluntary basis, at a later stage. France will grant self-employed people in difficulties a postponement of payment or will have the sickness fund pay the contributions temporarily. Support up-front is gaining popularity in Latin-American systems.[32] In Colombia, for example, self-employed people (in difficulties) can receive

29 Not based upon a comprehensive comparative overview, yet as reported in ISSA-Database and/or MISSOC. See as well Schoukens, 2000, 77-81.

30 As applied for example in the Belgian system, having a specific Commission in place which the self-employed can apply to for exemption from payment.

31 As used to be the case in France for the payment of the sickness fund contributions.

32 As reported in ISSA-Database, in particular for Colombia.

a subsidy for a period of up to 750 weeks which should enable them to continue their social security payments. This policy is preferred over the former approach where no support was provided, and the activity consequently had to shut down eventually forcing the person to rely on social assistance. As a consequence, self-employed persons continued their activities, but in the informal sector. Generally, the policy is to bring informal work to the surface wherever possible, facilitated by registration procedures that are kept simple and transparent. Similarly, when business turns temporarily bad, support is provided aimed at keeping the self-employed under the protection of formal security for as long as possible. Help in paying contributions is one of the techniques deployed for this purpose.

It should be emphasized again that the techniques described are applied when there are financial problems of a temporary nature. Moreover, it must be remembered that these support schemes are based on a financing system where the self-employed would normally start to pay contributions from a defined minimum threshold income (see above) and are unable to fulfil their contributory duties as their actual income falls below this threshold. Another issue arises when the self-employed or non-standard workers have reduced income resources on a structural basis, due to the part-time or temporary nature of their activities, and/or the very low remuneration they receive from the activity. This will be dealt with in the following section.

3.4 Structural low-income from non-standard work and/or self-employment

States are confronted with a growing group of workers and self-employed people who structurally earn a low income. The overall income may fall below minimum wage levels (for FTE work) or even minimum subsistence level. In other words, the income is marginal. How should we deal with these groups of workers and self-employed people when shaping social protection? Many issues regarding access and protection have already been addressed in the previous chapters I and II (on formal and effective coverage). For the purpose of this seminar, we focus upon the financing aspect and its interrelation with adequacy. From the impact assessment (EU Commission, 2018) we notice that a growing group of states has introduced exemptions, specifically designed for groups working for a marginal income.[33] Essentially, the minimum thresholds to access the schemes or to enjoy protection are made more flexible (often lowered) and/or the protection provided is reduced, allowing the contribution rates to be reduced for these groups.[34] Sometimes the low-income groups are offered voluntary protection

33 As reported in ISSA-Database.

34 For instance, as reported for mini-jobs in Germany, casual work in Romania, civil law contracts in Poland, project workers in Italy, micro-entrepreneurs in France and as addressed in the two previous workshops.

(opt-in or opt-out mode), but in the first chapter (on extending social protection) we learned that the take-up of these insurances is rather low. So, essentially the policy is very much one of lowering contribution payments, which often goes hand in hand with restricting any social protection, whereas the Recommendation calls for ensuring formal, effective and adequate protection for these groups.

Justification for this policy is to increase the employment chances of these groups, or to combat the grey economy and informal sector (as lowering contributions makes formal employment as competitive as work contracted in the informal economy) and/or to increase the flexibility to hire and fire work-staff, especially for short-term work assignments needed in situations of sudden and/or temporary increase of economic activities. Some of these specific schemes are, however, bound to restrictions. For instance, they can only be applied for a certain period of time (for example while doing casual work in Romania) or they are bound to restrictive maximum income levels so that once the threshold is reached, the normal system starts to apply again. Sometimes the specific scheme is justified by the fact that the person is already sufficiently covered for social protection, either directly through their main activity (the marginal income activity is restricted to only a side activity) or indirectly (through their marital or cohabitation status, etc.).

This approach of reducing financing (and protection) is not without risks (Borstlap, 2020, pp. 29-60). If applied on a massive scale or if the boundaries of the application are not strictly monitored, an unequal playing field will be generated on the (labour) market: these categories of marginal work may become popular for the wrong reason (cheap employment) and other comparable groups, not enjoying the benefit of reduced cost employment, risk being pushed out of the labour market. Furthermore, sustainability may become an issue for the system when minimum protection levels are guaranteed which, comparatively speaking, are too high if we look at the contribution basis of these groups. In some countries, the application of these special schemes for flexible and/or marginal contribution payment is getting out of control (Borstlap, 2020, pp. 29-60). This is especially true if similarly flexible rules are applied in the field of labour law (protection).

Some countries are starting to move away from an overly liberal application of these specific exemption schemes for low income earners. This can be done by either specifying more clearly the application of the scheme (for groups or situations which do not compete so much with the general labour market) or by applying the schemes transversally to those on a low income, regardless of the type of professional activity. However, a bolder approach is the one where systems start to sanction flexible labour forms financially (Borstlap, 2020, pp. 64-85) by charging higher financial duties for flexible work forms that have a higher incidence of social risks (such as unemployment or work accidents). This might be done by increasing the level of the contribution or

by applying a minimum income threshold (e.g. minimum wage) from which contributions start to be calculated. By doing so, we come close to the minimum (financing) thresholds applied for the group of self-employed.

3.5 Adequacy of benefits

As mentioned earlier, the Recommendation does not define concrete yardsticks on the basis of which levels of social protection benefits can be tested on their outcomes (adequacy). The instrument remains vague when it comes to defining adequacy: '*maintaining a decent standard of living and providing appropriate income replacement*' (art 11). However, a clear distinction is made between the minimum level of income (poverty threshold) below which systems should not go and reasonable levels of protection (by definition going beyond the mere poverty threshold), that should be guaranteed by social protection systems. By doing so, the traditional design objectives of our European social protection systems are referred to, regardless of whether they are based on a Bismarck or Beveridge approach, which have the ambition to guarantee a decent standard of living when providing income replacement benefits.

Although no concrete measurement tool has been put forward, we can find indirect inspiration for how to understand adequacy in existing monitoring instruments applied both by the EU itself and by other international organisations, such as the ILO and Council of Europe. Within the scope of the European Semester, the Social Scoreboard has been launched to monitor the social progress in the Member States related to the implementation of the European Pillar of Social Rights.[35] As the Recommendation is one of the concrete outcomes of the Social Pillar (in particular principle 12), it makes sense to consult the Scoreboard on its adequacy indicators. The Social Pillar calls us to respect fundamental social rights and standards developed by leading international organizations. Hence, the criteria that monitor the level of benefits in the current standard setting instruments could also be inspirational for determining adequacy. Apart from these instruments, we will have a look at some recent Constitutional Court cases (of EU Member States) which have been addressing adequacy and may thus inspire our understanding of the concept. Finally, we highlight the interrelation between adequacy and other principles underlying social protection, in particular equivalence and redistribution.

35 See for the weblink of the scoreboard: https://ec.europa.eu/eurostat/web/european-pillar-of-social-rights/indicators/social-scoreboard-indicators

3.5.1 Adequacy as understood by international and European monitoring instruments

Minimum standard instruments developed by the ILO and the Council of Europe, in particular the ILO Convention 102 (1952) and the European Code of Social Security (1964), give specific attention to the minimum benefit levels that social protection systems have to guarantee. Minimum income replacement rates have been developed for that purpose, for each of the (income replacement) contingencies (see Figure 2). They amount to between 40% and 50% of the previously earned income of the standard beneficiary, and – in the case of the Revised Code of Social Security launched in 1990 by the Council of Europe[36] – the rates are defined from 65% to 80%. The 'standard beneficiary' is defined as a professionally active person with a (dependent) partner and two (dependent) children[37] (see schedule to Part XI ILO 102/Code). Depending on whether there is a professional social protection scheme in place or a universal scheme, the level of the professional income is determined in relation to skilled or (in average lower) unskilled work.[38] The minimum income replacement rates are thus related to the average professional income a (pre-defined) standard beneficiary is earning in the country.

Although rather concrete in their measurement, the standard-setting instruments have been subject to some major criticism (Pieters and Schoukens, 2015, pp. 534-560). Especially the old-fashioned approach in defining the standard beneficiary, the fact that standard work is the main focus of the standards and the sometimes overly flexible enforcement of the rules, are at the centre of the critical comments. However, the standards are the emanation of the traditional social security thinking, based upon repartition and intergenerational solidarity, in which benefits are defined in relation to the average labour income in the country, and in which benefits guarantee a living standard reflecting the one prior to the contingency. Much attention is given to minimum benefits that guarantee a basic protection when the person is not able to complete a full social insurance record due to sickness, invalidity or unemployment. Many of the standards are thus an emanation of an enhanced (both horizontal and vertical) solidarity, typical of social security systems that were shaped after World War II in Europe. They are in need of a modern interpretation and the Recommendation could create a momentum for this, especially in relation to some of the indicators the EU developed within the Social Scoreboard.

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36 But due to a lack of ratification, the convention did not become effective though.

37 In the Revised Code a variety of standard beneficiaries are used, with the intention to reflect better the diversity of living forms in European societies. The standard beneficiary originally defined for the purposes of the ILO and Code are not considered to reflect anymore our modern societies.

38 The reference standard workers and in particular their income are defined in detail in the conventions (see articles 65, 66 and 67). This is crucial in the monitoring of the adequacy as the income of the standard worker is the reference against which the benefit is compared.

The EU itself developed a very extensive list of social indicators. As mentioned above, the most recent initiative in this field is the Social Scoreboard proposed along with the European Pillar of Social Rights in 2017. Yet, these indicators already have some long-standing tradition emanating from the (non-legal) monitoring of the social protection systems, in particular through the policy process of the Open Method of Coordination in the fields of social protection and social inclusion. A diverse set of indicators are applied to measure the outcomes of national social policies and, with the establishment of the Social Scoreboard, indicators are being further developed, some of them also touching upon benefit adequacy. Although poverty can be defined in different manners (UNECE, 2017, p. 207) generally within the EU, people are considered to be at risk-of-poverty when they have an equivalized disposable income below the risk-of-poverty threshold (which is at 60% of the national median equivalized disposable income after social transfers). It sets a relevant (underlying) reference for the application of the Recommendation on benefit adequacy when it calls Member States to guarantee decent protection for their members of social protection schemes, *while always preventing those members from falling into poverty* (art. 11). Other indicators targeting benefit adequacy could be useful as well, such as the indicator for the accrual rate for pensions (based upon a full insurance record), used recently in the pension adequacy benchmarking framework[39]; or the indicator in relation to the net replacement rate of unemployment benefits.[40] Compared to the income replacement ratios used by the international standard setting instruments, the EU indicators seem to be more 'dynamic' and multidisciplinary in design: they do not focus upon the income replacement guaranteed by the law at a given moment, but can measure the effect over a longer period (or even in the future). Some indicators are also disaggregated by different income levels and household types. For instance, the triennial Pension Adequacy Reports provide an analysis on theoretical replacement rates for different work records and household types. In that way they are complementary to the criteria applied by the international standard setting instruments. However, if we want to give the Recommendations some concrete relevance as to the measurement of adequacy, we will have to come up with a coherent framework against which benefit outcomes could be assessed. This could eventually also help in making the 'European social model' more concrete in its appearance (Schoukens, 2016, pp. 41-44).

3.5.2 Adequacy in case law of national High Courts

In some recent Higher Court cases (in the Member States) more attention is now being paid to the adequacy of benefits, in particular in relation to pensions. The cases

39 Of which outcome and performance indicators have already been agreed.

40 See for an application: EUROPEAN COMMISSION AND COUNCIL OF THE EU, Draft Joint Employment Report from the Commission and the Council accompanying the Communication from the Commission on the Annual Growth Survey, COM/2018/761, Brussels, 2019, p.87.

challenged some pension reforms which were on the verge of being implemented. On questions on the constitutional protection of the pension (rights), the Slovenian Constitutional Court (U-II-1/11) mentioned – in relation to adequacy (among others) – that '*the right to a pension must be primarily based on the insurance principle, and in that sense it relates as well to the protection of property [...]. This entails that it must to a certain degree ensure the continuity of a standard of living which the insured person had in their active period (i.e. income security) as a pension substitutes in a proportional manner for the income from which contributions were paid for the pension insurance. [...] However the constitutional right to a pension does not go so far that the persons are to be guaranteed at a pre-defined amount*'. Pension benefits can thus be made subject to adaptations or reductions, for instance because of demographic and/or public finance needs. However, in such circumstances these constraints or needs have to be specified and well documented; the mere reference to such needs in general cannot be sufficient to invoke the adaptations in amount (Strban, 2016, p. 251).

In a recent Greek case of the Council of State (1891/2019), benefit adequacy was further defined in relation to the previous contributory record of the insured person. The Court acknowledged that the benefit level can depend upon the prior (length) of the insurance (principle of proportionality). The Court first recalls that pension benefits are to guarantee a decent protection, aiming to guarantee a standard of living that reflects the one which the worker had before. However, boundaries can be set to the level because of redistribution needs (which are essential to social protection systems: principle of solidarity), but also because of needs of proportionality (reflecting what the person contributed before: principle of proportionality). The implementation of the latter principle should, however, not be done in a too rudimentary manner, as was the case in the opinion of the Court for the scheme brought under investigation. Proportionality should be reflected in a gradual manner, meaning, for example, that income replacement can incrementally grow in accordance with the insurance record.

3.5.3 Concluding on benefit adequacy

Article 11 of the Recommendation, which calls upon the Member States to guarantee adequate benefits, is (deliberately) an openly formulated article. No concrete indicators are to be found as to the required (minimum) levels of protection. That being said, the article strongly reflects the protection logics underlying the traditional social security thinking in Europe. Social protection benefits should guarantee to workers and the self-employed a decent standard of living, and when social protection is work based, preferably reflect the previously earned income. The underlying intention is to prevent those persons, in any event, from falling into poverty**.** However, when dealing with non-standard situations of work and self-employment, insurance records may become irregular, earnings may often be limited and fall below minimum wage

levels. From a proportionality principle this may be translated into the benefit composition, leading to lower benefit amounts. However, from the principle of solidarity, this proportional adaptation should be cushioned (for example progressively applied). Although the Recommendation as such does not give any concrete indication in this respect,[41] these social corrections normally take place through minimum benefits and/or social assistance schemes.

However, in the backyard quite some work has been done to measure benefit adequacy in relation to social policy monitoring as well as within the framework of international standard setting instruments. The Recommendation could use a coherent measurement framework with regard to adequacy and in that way article 11 can be seen as an invitation to coherently bring together these indicators in order to provide some guidance on benefit adequacy and on the positioning of social protection benefits, minimum benefits and social assistance schemes when it comes to providing social protection. Especially in relation to non-standard work and self-employment, some concrete guidance would be welcome as to where to put the division lines of the relevant schemes providing social security. In this regard, reference must be made to some other open positions: when looking at benefit adequacy, article 11 refers to the overall social protection system and the national circumstances that have to be taken into account. It is thus an invitation to have a further look beyond the social protection schemes in the narrow sense and to see the interplay with other social schemes, such as social assistance. In order to keep these references to other protection schemes manageable, it would be helpful to make them somewhat more concrete in the monitoring of the instrument.

4. Policy and design options

The section on adequacy in the Recommendation (articles 11-14) refers to the benefit level, the financing of social protection and the relation between both financing and benefit levels. It addresses thus more than only the benefit levels as such, which must be guaranteed in the case of social protection. Let us now deduce some policy conclusions starting from what has been mentioned above and group them around the consecutive provisions of the Recommendation.

41 Compare for example with the standard setting instruments ILO Convention 102 and European Code of Social Security article 29 (old age), 57 (invalidity) and 63 (survivorship).

4.1 Adequate protection, respecting proportionality and solidarity

Article 11 of the Recommendation calls for an adequate level of protection, maintaining a decent standard of living and providing appropriate income replacement, while, when protecting people, preventing them from falling into poverty. Although an open approach is applied, not referring to concrete benefit level indicators, the provision clearly calls for a coherent approach in the design of social protection when setting benefit levels. It indicates that the social protection for workers and the self-employed should aim to maintain the standard of living (in particular for the work-related protection schemes) and ensure a fixed protection of decent living standards (notably when the schemes are of a universal design, addressing the whole population). The targeted levels in social protection should thus be distinguished clearly from the minimum subsistence level on which poverty-reducing schemes are based. The latter ones indicate the minimum level for all, meaning that if a social protection benefit falls below this minimum (for example in the case of persons having had a limited or irregular insurance record), social assistance has to intervene by guaranteeing the minimum subsistence level (for example by providing additional protection on top of the one provided by the benefits guaranteed on the basis of social protection).

The reference to adequate protection in article 11 refers in the first place to workers and self-employed who were able to build up a decent work or insurance record.[42] Social protection schemes traditionally apply a principle of proportionality, meaning that any benefit will be calculated based on income and/or insurance record periods. Benefits might thus be proportionally lower as the work record is more limited. Because of the principle of solidarity, inherent to any social protection scheme, this proportionality is not to be applied in a strictly linear manner but can be applied at the lower income levels more progressively and, conversely, be applied in a more restricted manner at the higher levels. An example of cushioning proportionality is the guarantee of minimum benefits in social protection schemes. If insured persons have participated long enough in the scheme, systems guarantee a minimum benefit from the social protection scheme (thus not on the basis of social assistance). Again, the benefit level systematics will have to be respected. Minimum benefits should be sufficiently distinguishable from social assistance benefits: it does not make much sense to guarantee, for example, a benefit below the poverty level for people with a full-time work record. Conversely there should be enough leeway between the minimum benefit and the potential (highest) benefit which one can receive from the social protection: in

42 This is not specified either in the Recommendation. In the minimum standard instruments, the pension calculations are for example based upon a work insurance record of 30 years (professional schemes) or upon a residence period of 20 years. For the calculation one thus does not make use of fully completed insurance record as in most states the reference insurance record goes beyond the applied 20/30 years.

a work-related scheme, from the perspective of equivalence, it does not make much sense to have a minimum benefit in place which comes too close to the maximum benefit provided in the social protection scheme. An approach where minimum and maximum benefit levels come too close does not encourage workers to pay on their higher income; especially for the self-employed this may become problematic (see disclosing of income discussion above).

One has to give enough consideration to reverse effects within the social protection system, when introducing minimum protection levels in the benefit delivery. Consequently it is sometimes advocated not to have minimum protection in place (Pieters, 2009, p. 36-38 and p. 101-103) if a decent social assistance scheme is in place. It may help to reduce the complexity in the system design overall; furthermore, the logic of equivalence will be reflected better, which can incite non-standard workers and self-employed to declare better their income for the financing of social protection schemes.

4.2 Contributory capacity and applying exemptions in a restricted and/or neutral manner

Articles 12 and 13 of the Recommendation pay more attention to cases in which workers or the self-employed do not have a standard full-time occupation. When arranging the financing, attention might be focused on the contributory capacity of the worker or the self-employed person (article 12). Any exemptions or reductions in social contributions, including those for low-income groups, are preferably to be designed in a neutral manner, applying to all types of employment relationship and labour market status (article 13). Articles 12 and 13 thus essentially address low-income groups or workers and self-employed people facing financial problems making it hard for them to pay their contributions in due time. Before addressing this more in detail, first some attention must be paid to the concept of 'contribution'. Strictly speaking contributions refer to earmarked taxes that are directed (directly or indirectly) to the institution or field for which they have been enacted in the first place. Most often they are levied upon the professional income, such as the employee contribution, the employer contribution or the contribution paid by the self-employed (Pieters, 2006, pp. 101-105). Contrary to taxes, they are thus not initially collected as part of the general tax budget from which they are further distributed to the main policy fields in society (justice, health, education welfare, etc.) according to political or administrative decisions. Traditionally, social protection schemes are either financed on the basis of contribution (Bismarck-type systems) or through the general budget (Beveridge-type systems); however the reality shows us that most systems in place have a combined financing, integrating both contributions and state subsidies coming from the general budget (Pieters, 2006, 101-102). Hence, when talking about contributory capacity in the Recommendation, it would make little sense to refer only to ear-marked contribution in the strict

sense. Workers and self-employed finance social protection schemes, through general taxes, such as personal income tax and possible other 'alternative' taxes that are not levied upon the professional income but are – for example – based upon their consumption. When addressing social protection financing, it makes more sense to have an approach integrating the various levies (direct or indirect) that may weigh upon a person's income.

The underlying starting point from articles 12 and 13 is that social protection systems start from a minimum professional income. For wage-earners this is traditionally the minimum wage (for a FTE under labour law); for the self-employed, many systems apply (minimum) income thresholds from where contributions start to be calculated (even if in reality the self-employed person may have earned less). Logically these financial minima should find their counterparts in the benefits, where minimum benefits are sometimes guaranteed to workers and self-employed people who have participated long enough in the system. If we do not start from the minimum financing level, then it is equivalently difficult to sustain a minimum on the benefit side. In such an approach, social protection is essentially guaranteeing benefits in strict accordance with what the insured person contributed during the years of activity. If this is based upon a marginal income, then the benefit will be marginal, and possibly it will be up to social assistance to beef up the (low) benefit to the minimum subsistence level.

What should we do when workers, in particular non-standard workers, and the self-employed have an income (far) below the reference minimum income? The Recommendation calls for taking into account the contributory capacity. For example, measures to provide assistance for self-employed facing financial difficulties can be foreseen (exemption of payment with possibility of referral of payment to a better period; providing up-front financial support, etc.). However, if the low-income status is more structural in nature, other approaches will need to be adopted. Essentially the same measures can be taken as for temporary problems, e.g. (partial) exemption, financial support up front; yet, one has to pay attention to the undesired effects on the labour market. By exempting these groups (partially) from their financial obligations, these groups may gain a competitive advantage over other regular workers which, in turn, may lead to a situation where employers give precedence to (partially) exempted groups. So, either one restricts the application of these exemptions to strictly defined terms (time, income) or to strictly defined groups which do not compete as much with other regular workers; or, one applies the financial reduction in a more linear fashion (in terms of income, which potentially is applicable to all types of employment relationships and labour market status). The Recommendation calls for ensuring a level playing field (art. 13), where exemptions, reductions and progressivity measures could benefit both workers and self-employed (observation 21), while allowing these measures to tackle segmentation and promote transitions to less precarious forms of employment (observation 21). In fact, some systems start to apply contributions that

are relatively higher if it turns out that such non-standard work is creating more reliance on social benefits (such as unemployment).

As such, the approach should not be very different if the marginal worker is already well covered through their main activity (marginal work is then the side activity), or because of their social status (they already enjoy a benefit such as a pension) or marital status (indirect coverage due to dependency on their partner). Some argue that this kind of marginal work can be exempted easily from social protection, as (sufficient) protection is already available. However, this does not take away the negative side-effects on the rest of the labour market. The Belgian Constitutional Court recently concluded that it is contrary to the principle of equal treatment when a specific scheme for side activities exempts defined groups who already have a main insurance activity from paying social contributions (art. 10 Belgian Constitution; see further 2.2 in chapter IV. Transparency).

Moreover, the simple fact that one conducts a marginal activity cannot justify on its own an exemption from the payment of contributions. Each income coming from an activity – how marginal may be – can be made subject for the financing of social protection, especially as a growing number of people start to combine a series of small marginal activities (such as in platform work). Reductions can, of course, be accepted here too but they should be justified, for example, by having the contribution payment calculated on the basis of the real income and not on the basis of the minimum income threshold (see above in this chapter under 4.1).

To what extent should the contribution level be the same for workers and the self-employed? Contributory capacity also refers to this question. Do these two groups have a similar contributory capacity? Some consider they do not as the self-employed have no employer and hence can only be expected to pay the equivalence of the employee contribution; others say that the division between employee and employer contribution is fictitious as, in the end, one always has to add both of them together to find out what the labour cost of employment is; moreover, the employee does not pay the employee contribution directly, it is being withheld at the source by the employer together with the employer contribution. So, the self-employed should pay the sum of both contributions. This discussion is somewhat false. First of all, it assumes the same protection in the end (same cost). But it assumes as well a comparable income basis and this depends heavily upon the (national) tax and social contributory system and the interrelation between them. If the income is comparably constituted for workers and the self-employed and subject to comparable protection, there is a case for applying comparable contribution levels. If not (see also the discussed Greek case), the groups are not comparable, and the focus should be more on the financial needs which are required to keep each of the systems sustainable (into the future). As discussed earlier, there is something to be said to use a broader (and thus an own) income concept for

self-employed, which can relate as well to (income out of) capital. Finally, referring to the contributory capacity can also justify the application of a simpler method of registration and contribution payment systems for small-scale self-employed activities or freelance work (see for example the Estonian small business registration as explained in this chapter under 3.2).

4.3 Objective and transparent income assessment

The last article (14) focuses upon the group of self-employed people. The Recommendation calls for the use of financing techniques that reflect the actual earnings of the self-employed person. The strategies deployed in the European states are quite different; some are based upon the fiscal (income) data or simply leave the levy of social contributions to the tax authorities; others do not work with the tax authorities or date and apply a fictitious income basis or use parameters indirectly constituting the size of the income. It is clear that article 14 is to a large extent focusing on the second type of financing organization, especially when the income basis is for example flat-rate and/or is based upon the average income of a similar profession. If no real income data are used, obtained from the self-employed, the use of alternative indicators will have to be justified. It is however not forbidden to use these, as for some professions they are even a much better indication of the income than the income declared by the self-employed for tax reasons.[43]

Moreover, the system should be designed in such a way that it can cope with fluctuations that are inherent to the self-employed activities. This can mean that one works with a division of provisional and final payments (see above), but also the application of temporary exemptions if the self-employed person faces problems. Moreover, the system should not be unnecessarily complicated in its use.

Article 14 does not only refer to contributions but suggests the real income of the self-employed be used as a basis for the benefit (calculation) wherever possible. In a way, the article subscribes to the importance of building sufficient equivalence into the social protection of the self-employed. Using (only) flat-rate benefits, not related to the previously earned income of the self-employed person might be detrimental for the sustainability of the system. The self-employed (especially those earning higher incomes) may consider the contribution as merely a tax with no (direct) return for their social protection and reduce their contribution to the bare minimum. Flat-rate benefits can of course be justified when, for example, it is difficult to address the social risk (see second on effective coverage) and/or when being part of the larger approach of the

43 Even in tax systems, comparable income indicators are applied, as they are more reliable and give a better insight.

national social protection (focusing for example, in a first pillar, on universal protection); however, for work related income replacement schemes, it may make more sense to introduce enough equivalence in the design of social protection.

4.4 Concluding remarks on policy and design

The provisions dealing with adequacy relate both to the financing and the level of the benefits. Workers (regardless whether they are standard or not-standard workers) and self-employed should indeed be guaranteed income replacement protection that is of a decent level; to the same token they should sufficiently contribute to social protection schemes to make adequate protection happen. In a third dimension the Recommendation also asks to pay enough attention to the relation between the income basis (financing) and the basis on which benefits are calculated (adequacy). Benefits should be high enough to guarantee a decent protection to workers and self-employed, yet at the same time should pay enough attention to the weaker groups in society (solidarity), whereas from a sustainability perspective, they are to be proportional in relation to what has been contributed in the past (contribution records) and attractive enough for workers and self-employed to pay enough for social protection (equivalence). The challenge will be in finding a well-proportioned balance between these principles underlying our social protection schemes. Together they serve as a compass for the development of our social protection systems; yet, at the same time, the principles should be sufficiently calibrated among themselves.

This means as well that systems will have to develop along new evolutions in the labour market. Non-standard work and self-employment do challenge this balance and call for new approaches in defining professional income and in establishing the income basis from which contributions are to be paid. At the same time these evolutions ask for a further rethinking of the fundamental principles. To make social protection more understandable again, more attention should be paid to equivalence in benefit protection as well as to the relation between minimum protection and the minimum income basis for financing. Low-income groups should not be excluded from protection: from a solidarity perspective, it is justified to provide them proportionally with some better protection. This, however, does not exclude them from contributing to social protection nor does it undermine the principle that normally one starts contributing as of a defined minimum; otherwise, this will eventually lead to a lower level of protection. In other words, we have to accept that the balance in the design of social protection systems also has its limits and that – at a certain moment – other means of protection (such as social assistance or welfare services) will have to be called in to guarantee a minimum subsistence protection to all of our citizens.

Chapter IV
Transparency and transferability

1. Introduction

What is the use of having rights if – at the end of the day – one cannot exercise them or have them exercised? Setting up a social protection system with extensive entitlements on paper is one thing; having it implemented in reality is another. In legal literature, this tension is often labelled as the tension between the law in the books and the law in reality. Transparency in law (application) can bridge that tension. The need to guarantee enough transparency, however, is often overlooked by policy makers as it is assumed that once the system is in place, its implementation will follow automatically. A lack of transparency, though, can affect access to social protection: (i) up to 20% of people are unaware of their social security entitlements, (ii) only 50% of the Member States provide personalized information including an overview of rights and obligations and online tools and services, and (iii) some Member States still do not publish generic information about social security schemes (EU Commission, Impact assessment, 2018, p. 24). Hence, we should not be surprised that the Recommendation emphasises the need for transparency in social protection.

In articles 15 and 16, the Recommendation calls for both transparent rules and their accessible administrative application (Figure 3). The Recommendation also asks for the transferability of rights (article 10) when people move from one system to another, for instance when they change job or occupational status. Transferability rules, although technical by nature, add to transparency in the building of social protection rights over the lifespan of a career: individuals know from the outset that they will not lose entitlements to social protection. This consequently supports mobility on the labour market.

Transparency refers to the characteristic of '*being easy to see through*' or the '*quality of being done in an open way without secrets*' (Transparency, Cambridge Dictionary). When translated to social protection law it refers to legislation that is clear in its design and/or wording; the system overall and the legislation, in particular, clearly describe the underlying policy objectives. Transparency requires that, even though it may be of a certain complexity, the underlying reality is translated coherently into a set of rules that can be applied easily and as was intended and do not – from the outset – lead to misunderstanding and wrong applications.

Transparency refers thus in the first place to the design of rules (article 15), but at the same time also to access to judicial protection, if the rights of the socially insured person are infringed upon. Additionally, it requires information to be provided about the rules (article 15): citizens should be aware of their rights and entitlements and the duties related to the entitlements should also be clearly explained. This could also entail some broader strategies to inform the population (again) about the relevance

and added value of social protection, e.g. education. In order to have the system implemented, application rules should be in place; they should also be clear and, where possible, kept simple and accessible in their design (article 16); moreover, in their application they should not overburden enterprises. Information technology (IT) can be of use for guaranteeing a swift application and administration of social protection; in some countries, for example, IT has helped to improve access and combat non-take up of benefits, by making it easier to track down potential beneficiaries and making it possible to grant benefits automatically. Finally, these application rules should also guarantee a swift change from one social protection scheme to another when individuals change their work or occupational position (article 10).

We will first highlight the challenges that are related to a transparent and transferable social protection in order to improve accessibility for non-standard work and self-employment (2. Issues at stake). Then we will have a closer look at some situations in reality; the main focus here will be on best practices (3. What is in place) followed by a discussion on what transparency and transferability can mean to make social protection more accessible in practice (what should be considered? 4. Policy and design options).

2. Issues at stake

2.1 Transparency

2.1.1 Legal language and system design

In order to make systems transparent we need clearly designed (social protection) rules**.** Each legal system requires that the techniques to draft proper legislation ('legislative technique') are respected (Mousmouti, 2019). This is even more true for social protection as it guarantees the weaker segments in our population access to income protection (benefits). When the laws shaping this access are not designed properly, legal uncertainty is created which, in turn, will affect people's trust in the system and eventually in the democratic decision-making processes that are at the origin of the social protection system (Ibid). This in its turn may affect the confidence of the population in the rule of law; persons will be less inclined to follow the rules and respect their obligations (e.g. in relation to financing and informing public authorities about changing situations in their personal life).

Proper legislative technique means more than the use of accessible language. Equally important is the guiding principle that rules should clearly translate the underlying

realities or objectives, facilitating a proper application and avoiding that from the outset all kinds of misinterpretations emerge. The Recommendation can thus also be understood as a call for improving the legal design of the social protection system.

However, the rules themselves are nothing more than a tool to translate the system behind them. In other words, the social protection itself should be coherently designed from the outset. Over time, systems have grown complex and the emergence of new working groups (non-standard workers and self-employed) demanding proper attention in social protection has not helped to keep systems simple in terms of design. As already addressed in previous workshops (on formal and effective access), it will be essential to differentiate here between the basic principles of social protection, which are common to all working groups involved, and the adaptation of these principles to some working situations, specific to non-standard work or self-employment. The underlying general principles of social protection may need a proper adaptation in wording and organization, adding to complexity in the system. Yet, as will be highlighted in the practices (see further?), the specific rules can be restricted when – from the outset – the system is designed, wherever possible, in generic terms (e.g. regulating in terms of professional activity rather than working hours typical to standard work but difficult to apply to self-employment: see for example the recent reform of the Danish unemployment scheme based upon activities rather than upon wage-earner and self-employed work: see above in chapter I under 3.1.1).

Apart from extending the protection to new groups, there is also the fact that systems have undergone significant changes, and over time many exceptions for specific groups and/or life situations have arisen; for some of these, we may have already forgotten the original justification for their introduction. As it is more difficult to abolish what once has been introduced, complexity started to grow. When interviewing social security CEOs across Europe on future challenges, we noted that: '*[t]he evolution where citizens want to have more individual treatment and freedom of choice in the social security system, leads, in a somewhat contradictory way, to a more complex system in which transparency is lost and consequently the public support for the system is decreasing*' (EISS, Social Security Quo Vadis, 2006, p. 30); '*the systems have become more and more complicated, partly in order to make for every special case an adapted solution. Simplification is today more than ever desperately needed, but can only be realized when the population understands the basics of social security and is ready to get away from a consumerist approach*' (Ibid, p. 84). Although this goes beyond the scope of the Recommendation, access to social protection also calls for the political courage to revisit the system on a regular basis, and to make sure that the original objectives remain in place.

2.1.2 Judicial protection

Transparency in relation to access to social protection demands a proper system of judicial protection. First and foremost, the socially insured person should have access to judicial protection. A good, yet somewhat contradictory, indicator is the high number of court cases. Although it may also reflect the inherent flaws of the scheme, generating (too?) much litigation, a high number of court cases also indicates that people do effectively have access to judicial protection.

Social protection litigation is, due to its interlinkage with administrative law and labour law, often specific in its kind. In most countries, the first phase of judicial protection consists of an internal control of checks by the administration that has taken the decision in dispute. The appeal against the decision may even be launched within the administration itself (or at least a higher echelon within this administration). Whatever the administrative ruling within the judicial protection procedure, it should be possible for a person to launch an appeal to another authority not directly involved as a party in the decision (under litigation); most often this will be the court (administrative, civil or social court).

The composition of courts competent for social security matters is quite often specific**,** too. In some countries, this has even resulted in the development of own social (security) courts. Whatever the competent court for matters of social protection, a mixed composition consisting of both professional and laypeople appointed as judges is generally accepted; the latter are often nominated by the social partners or by representative NGOs. Lay judges are considered to be better accustomed to the social realities in which social protection legislation is to be applied; it also diminishes the distance between the Court and the socially insured person, reflecting a more informal approach in applied procedures (see below). Finally, lay judges represent social partners and/or organizations that have been involved in the original law making. However, at the same time this generates a number of challenges for non-standard workers and the self-employed, as these groups do not always feel adequately represented by the (traditional) social partners. Inevitably, this will lead to some restructuring within the courts: either trade and employers' unions will have to be reorganized so that they also accommodate these new working groups or the composition of the courts will have to be reconsidered, allowing for representatives of these new groups to deal with 'their' cases (see also 2.1.3 below).

Procedures in social security litigation are simpler (compared to other legal branches). The idea is to keep thresholds low, as we are often dealing with the weakest segments of society here. This also calls for low procedural costs, leading to somewhat deviating rules in cost settlement. Many systems apply the rule that the socially insured person is not required to pay the procedural costs if they lose the case, even though that party

may have started the litigation. Another example of accessible jurisdiction is the right to be protected by persons other than professional lawyers (advocates). Wage earners are often represented in court by trade union representatives; this will create problems for non-standard working groups and the self-employed. Here too, one may have to reconsider the right of representation in litigation to groups other than trade unions, especially as many of the non-standard workers and/or self-employed are known to be economically weak.

Finally, it must be noted that judicial protection cannot accomplish much when citizens are not informed of the legal remedies available. It is necessary, therefore, to provide information about all possibilities of legal protection. Consequently, the legal remedies in terms of social security protection should be mentioned in the decision notifications themselves, so that the person concerned can invoke these remedies should they disagree with the decision. A clear indication of the judicial remedies is also part of a policy on clear information in relation to a person's social security rights. It goes without saying that court judgements should be written in understandable and user-friendly language; for judgements, which are often more bound to pre-set legal formalities, this could imply an accompanying summary of the final decision in lay-people's terms for the individual.

2.1.3 Information policies

Individuals need to have access to updated, comprehensive, accessible, user-friendly and clearly understandable information about their individual entitlements and obligations; this should be provided free of charge (article 16).

The need to have clear information is thus multidimensional. It refers to, among other things, comprehensive overviews, which can explain and clarify the legal system of social protection in a more accessible language, while also providing information that reflects the individual situation**.** A website or booklet with a description of the system is thus not enough: tools that enable individuals to follow their own financing and current and/or future entitlement situation should also be made available (see also use of IT below under 2.1.4).

Many countries have launched multidimensional information websites (see below under 3.1) where insured persons have easy access to their social security accounts, giving overviews of what they have contributed so far and indicating possible future entitlements to social protection. Especially concerning pension schemes, such forecasting of rights seems to be a popular tool. Quite evidently, however, this technique is more difficult to apply to schemes dealing with unemployment, decease and work incapacity as the uncertainty with regard to risk occurrence is bigger than in the case

of old age. Interestingly, these tools do not only have an informative function; when well designed, insured persons can see the equivalence and proportionality behind the pension scheme as participating and/or contributing more and longer affects the eventual entitlement.

Providing good information thus not only supports the individual rights of the citizen; it can also be considered as a tool to enhance the general public support for the system. When the insured persons understand the system and its underlying principles more clearly, they will become more supportive of the system. This is even more true in the case of non-standard workers and the self-employed, and was also reflected in our interviews with social security CEOs. In their opinion, one of the main challenges is to explain to the population (again) what social protection is actually about: '*a system of solidarity implying that one is not only to receive from social security, but also to contribute to it*' (EISS, Social Security Quo Vadis, 2016, p. 26).

Finally, we stress here again the relevance of social partners[44] with regard to their role in providing information. It is often one of their core responsibilities to inform their members about their rights and obligation in the field of social protection in an understandable manner. Yet, with a growing diversity in work forms and self-employment, we must consider the role of groups representing non-standard workers and self-employed people in this regard: the intermediary level between public authorities and citizens has traditionally played a crucial role in informing and the clarification of rights, and the emerging groups of such workers should not be forgotten.

2.1.4 IT

IT tools can address the need to develop transparency in social protection. As will be shown below in some practices, IT has definitely helped to activate and personalize information provision. It can help to speed up application procedures and, in some cases, due to the extensive information exchange between administrations, can lead to the automatic provision of benefits without prior application by the individual. Especially from the viewpoint of non-take up and the combatting of poverty, this potential development of low-threshold provision of benefits has been warmly welcomed by many. Yet the growing use of IT tools in the delivery of social protection benefits has also raised some growing concerns.

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44 In a complementary way Directive 2019/1152 on Transparent and predictable working conditions requires that the employer inform their employees on the identity of the social security institutions receiving the contributions (art 4.2, sub o). This duty does not go so far that the contents of the social protection coverage is to be explained by the employer. This remains the responsibility of the social protection institutions.

First of all, the design of the tools themselves should not be overly complicated as this could ultimately lead to social exclusion. Much is technologically possible, but not everybody has the means to follow and apply the latest evolutions when it comes to devices and software needed to upload information and use IT applications. The Recommendation calls for user-friendly information applications (article 15). The often low digital skills of some income and age groups require simple and user-friendly tools; their needs should be considered when setting up electronic application forms and other IT tools. On the other hand, new work forms – such as platform workers – often organize their work in a more automatized manner. Income flows are digitalized giving new opportunities to organize a more swift collection of contributions which can be better monitored and controlled.

A more pro-active granting of benefits may lead to a further alienation of citizens unable to understand the world of social protection (i.e. a balanced system of rights and duties; contributions and benefits). A system based on automatic entitlements may overly stress the side of the rights and benefits while the need to contribute and to comply with the obligations related to benefits may be forgotten (EISS, Social Security Quo Vadis, 2016). Here as well new work forms may create some challenges. Platform work challenges the traditional work forms (wage earnership – self-employment), especially when they are performed on an online basis; often it combines work characteristics of both labour statuses and hence may create confusion about their eventual social protection rights if different levels of protection are in place. More effective delimitation between the labour groups will be required then (see also chapter II on effective protection).

Another problem related to increased automatisation is the risk of increasing litigation (EISS, Social Security Quo Vadis, 2006). Web applications in particular, where individuals can forecast their future entitlements to benefits, may generate expectations that cannot always be fulfilled in reality (as the tool may not be sophisticated enough to incorporate each single event that is of relevance for the benefit calculation); this could frustrate the expectations of the insured person when they find out that their actual benefit is somewhat below the amount that was forecasted. It calls for a clear policy on how the information coming from these tools should be understood.

Finally, the use of IT often implies the (massive) exchange of information between social protection carriers. IT tools use a lot of data on individuals and the data are shared between organizations in order to provide swift access to benefits (but also to check applications by the insured persons for correctness). Evidently, citizens should be protected against the potential abuse of data and it should be verified that not more institutions and persons can consult the data than are strictly necessary. In other words, there is significant tension in the (legal) relationship between privacy protection and data sharing for the purpose of social protection.

2.2 Transferability or the need for internal coordination

The emergence of new work forms and self-employment creates some challenges to the transferability of rights. Article 10 calls upon Member States to ensure that entitlements – regardless as to whether they are acquired through mandatory or voluntary schemes – are preserved, accumulated and/or transferable across all types of employment and self-employment statuses and across economic sectors. The social protection of workers and the self-employed may indeed be organized in separate schemes (so called categorical schemes based upon professional schemes; Schoukens, 1999). This is true for both Bismarckian (traditionally organized around work) and Beveridgean schemes (especially in the 2nd occupational pillar). When a person stops their job or activity and moves to another job, they may have to change the social protection scheme; there is a risk that they will then lose existing entitlement in the scheme they leave behind.

To address this, technical rules will have to be designed guaranteeing the transferability of rights from one scheme to another. The set of rules dealing with this transferability are sometimes combined under the label of internal coordination,[45] as they refer to the coordination of the schemes within a given country as opposed to the international coordination rules that address cross-border mobility (Regulation 883/2004). Both types of coordination bear some similarities as to the techniques used.

The issues of transferability refer to different types of situations: they might address situations where persons simultaneously combine different professional activities (different wage-earner or self-employed activities or combination of wage-earner activities with self-employed activities). They will have to give practical answers to questions such as whether all activities are to be made subject to social insurance or not; and if so, whether a distinction is to be made between the main activity and the side activity as to the financing and benefit entitlement. If social insurance is to be built up for every activity, often the issue of anti-cumulation will pop up: what is the (maximum) level for joint entitlement to benefits? These anti-cumulation rules, in particular, are known (and even feared) to make social protection legislation extremely detailed and technical.

Important is that policy makers clarify the underlying objectives of the anti-cumulation rules: traditionally these rules were introduced to cap the eventual level of the benefit. As social protection presupposes that redistribution takes place in the system,

45 Apart from the rules coordinating the occupational schemes they also encompass the rules coordinating the different regional schemes; the latter however will not be addressed here taking into account the scope of the Recommendation (See more on this D. PIETERS (ed.), "Special Issue on Coordination of social security within European States", *European Journal of Social Security,* 2019, Vol 21(2), 95-2016 and P. SCHOUKENS and G. VONK (eds.), *Devolution and Decentralization in Social Security. A European Comparative Perspective*, Den Haag, Eleven International Publishing, 2019, p. 302)

it is legitimized to apply maximum benefits (see chapter III on adequacy: balance between equivalence and solidarity). To the same token if a person combines several activities it is acceptable to apply anti-cumulation provisions, allowing to limit the joint entitlement of benefits, finding their origin in different schemes (for example partially from the wage earner scheme and partially from the self-employed scheme). Most social protection scheme will allow a joint entitlement of benefits (from an equivalence perspective) but at the same time will make this subject to a maximum level (from a solidarity point of view). Anti-cumulation rules will indicate in the end in which scheme the benefit can be topped off. In practice this is often the scheme of the 'minor' or 'side' activity. As it becomes more difficult to define what is main and what is side activity, some countries decided to use social insurance accounts integrating the various activities of a person (see below). Anti-cumulation rules are less relevant here, simplifying somewhat the design of the system.

Anti-cumulation rules can also have a reference to the financing side when activities are combined, distinguishing between the financing consequences for each of the activities. From the point of view of sustainability it is normally required that similar financial duties are applied on each of the activities. However, quite some systems introduced specific rules for minor or side activities exempting the activity from contribution. Recent case law called the legislator to be transparent when designing such exemption rules; clarifying clearly why some groups can benefit from it and others not; if the distinction has not justified clearly it may be considered as rule discriminating certain groups (Belgian Constitutional Court 23 April 2020, Nr. 53/2020). In similar line of reasoning the French Supreme Court called the legislator to apply clear and transparent rules in order to qualify professional activities (as wage earnership or self-employment), especially when the social protection is of a different level (Court of Cassation, 4 March 2020, nr. 374). The Court made it clear that the labour status is not to be left at the negotiation or choice of parties, but that the legislator should play its full role in using clear criteria to distinguish between labour statuses. In the field of platform work, it is often difficult to make the assessment under which labour status a person is working; this new sector where work is organised in an extreme flexible manner asks for a clear labour qualification (Gilson, 2017; Controuris, 2018; Rocca, 2019). As it was mentioned already in the three previous chapters, an effective approach could consist in providing equal levels of social protection across the various groups of workers and self-employed (labour status neutral).

A different situation, yet coming close to the one referred to in the case of simultaneous performance of activities, is that of family units where the two partners each perform (different) professional activities. Here too, a collision between the respective schemes may emerge when opening entitlement to family benefits and health care (for the dependent relatives) or when pension benefits are accumulated (own old age pension and survivorship benefits).

Finally, the situation of combining professional activities over time is also addressed under the issue of transferability. Change of work/occupational position can imply a change in social protection regime (from the workers' system to the one for the self-employed, for example). This change may result in a loss of benefits or rights acquired in the first regime (to which you would have been entitled had you stayed in that regime). It may also create problems in the new scheme if one's insurance record is not sufficient to open entitlements to a benefit; an issue of effective protection which seems to be particularly problematic for non-standard workers and the self-employed (see chapter II).

In some occupational schemes the policy of 'sanctioning' the entitlements when changing job or occupation is justified from the perspective of loyalty to the enterprise or occupational group. However, in our European societies where a frequent change of job and occupation is strongly advocated, such a policy is difficult to maintain. Hence, measures of internal coordination between the different schemes in place are needed. Specific techniques have been developed for this purpose, such as the status of 'dormant participants' (keeping the person on the record of the 'old' scheme), transfer of rights and entitlements to the new scheme (principle of export) and/or adding together insurance periods in the different (old and new) scheme to open entitlement and/or to define which scheme is to pay which part of the eventual benefit (pro-rata calculations). More about these techniques in the next section (see below under 3.2).

3. Mapping what is in place

3.1 Transparency

Developing transparency in social protection schemes can relate to various interventions as we discussed in section 2. It can relate to the adaptation or simplification of the schemes or their (underlying) structures; or to informing the population of their rights and obligations; as well as to the smart use of IT applications to improve existing information channels or to adapt existing application procedures. Along these lines we will give some examples that countries developed in the past in order to make their system more transparent.

3.1.1 Adapting underlying structures of social protection

As we addressed in the previous workshops, non-standard work forms and self-employment change the concrete work organization; it has been stressed that the emphasis in the concrete organization of social protection schemes is changing from a work driven environment to a more income-based organization of the schemes. To keep

systems transparent, countries have redesigned the income monitoring for the calculation of (future) benefit entitlements, which are also applied for the contribution levy.

In Latvia for instance, the social insurance system is now fully individualised, in the sense that each person's contributions are registered on a separate account. Personal social security accounts make it possible to attach acquired rights to the individual, rather than the work contract. This way of working is more adapted to an increasing number of non-standard work forms and self-employment. Differences between contribution collection and contribution amounts can and do still exist between employment statuses, but when shifting from being an employee to being self-employed, previous rights will not be lost (EU Commission, Impact assessment, annex 7, 2018). In Lithuania, the pension scheme was reformed in that regard in 2018. One of the aspects of the reforms was to increase transparency by introducing a simplified pension formula for the earnings-related part: it is now a points system that reflects the ratio of individual contributions paid in the past and the average contributions paid overall into the system (EU Commission, Pension adequacy report [Vol 2], 2018, p.144).

In a complementary fashion

A somewhat different approach is the one where systems launch new structures alongside the existing (complex) system in order to improve transparency. This was a strategy applied by Belgium. The system is composed of different professional schemes, each having different administrative entities competent for the respective risks. This categorical approach to the social protection insurance schemes created complexity when insured person applied for benefits; moreover, a labyrinth of information channels was created within the administrative structures when benefits were to be calculated. This posed a challenge to the protection of private data. In response, a Charter for insured persons[46] was launched, clearly mapping their rights and duties as well as those of the administrative authorities across the benefit schemes; apart from defining the time frames within which applications had to be handled, this Charter also outlined the administrative duty to provide clear information to the insured person when requested and the consequences when applications were wrongly addressed. Alongside this Charter, the Cross Roads Bank[47] was launched, tasked with organizing the data flows between the different social security administrations involved in the management of social protection. Contrary to what is often believed, the Bank is not a central data deposit; its main task is to control the data flows with a view to privacy.

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46 Loi du 1 avril 1995 visant à instituer "la charte" de l'assuré – Wet van 11 april 1995 tot invoering van het "handvest" van de sociaal verzekerde.

47 "Kruispuntbank – Banque Carrefour de la Sécurité Sociale" https://www.ksz-bcss.fgov.be/fr – https://www.ksz-bcss.fgov.be/nl

Data are collected and stored by the respective administrations themselves on the basis of clear protocols (ISSA, Good Practices database).

Along similar lines, in Ireland, an (individualized) Public Service Card (PSC) was introduced in 2011 in order to increase the exchange of data between different public services departments, allowing for increased transferability of information related to social rights. The PSC is linked to an individual's Personal Public Service Number (PPSN), which is linked to essential information such as tax, employment, social welfare, etc. The PSC enhances transitions between different types of employment and is based on the idea of improving access to social protection and creating more transparency in order to increase social cohesion (EU Commission, Access to social protection for all forms of employment: assessing the options for a possible EU initiative, 2018).

We will come back to these structures for data transfer when dealing with the relation between transparency and privacy protection (section 4).

3.1.2 Information policies

The provision of information can be organized on several levels. It can be done in a general manner (campaigns), in a more targeted fashion or on an individual basis. For each of these approaches some practices are provided below.

Awareness raising campaigns

The State Social Insurance Agency (SSIA) and State Revenue Service (SRS) in Latvia launched an information campaign on financial literacy and a more personalized approach to contribution payment (i.e. Why do we pay contributions and why is unveiling correct income data important for our individual social security?). Personalized letters containing information on salary, contributions paid, length of social insurance, etc. were sent out and followed up with a more general information campaign on tax and social protection. Furthermore, digital online training was made available to the population in order to improve financial literacy skills and to increase individuals' understanding of the importance of social security by providing basic information on the system, the importance of paying taxes and the impact on pensions (ISSA, Good practices database).

Similarly, in order to raise awareness among the population about the relevance of declared income for pensions, several initiatives were taken in Lithuania. This campaign followed a survey that was conducted by the State Social Insurance Fund Board (Sodra). In the survey it was estimated that, on average, socially insured persons were declaring too low incomes for social protection purposes; this in turn was having a

detrimental effect on the individual pension entitlement. Prior to the campaign, *Sodra* sent letters known as 'cherry envelopes' to 138 000 employees and 84 000 self-employed individuals who had earned less than the minimum wage over the previous 12 months. These were intended to remind workers that their future pension depends on their current insurance contributions and supported them in negotiating higher salaries with their employers, as well as highlighting the possible consequences of the shadow economy. It was followed by a change in legislation requiring employers to pay social insurance contributions based on at least the minimum wage, irrespective of the employee's working hours (EU Commission, Access to social protection for workers and the self-employed, 2018, p. 27).

Targeted campaigns through social media

In 2017 the '*Kela Tips*' were launched, a structured format for social media articles, developed by the Social Security Institution of Finland (Kansaneläkelaitos – Kela). The format is intended to ensure that relevant social protection content reaches specific groups of insured persons, by being interesting and understandable enough to be read and shared in social media channels. Apart from having a clear target group and customer-oriented content, the Kela Tips work on the basis of a headline that catches the attention in social media (ISSA, Good Practices database). This kind of approach can lead to tailor-made information to specific groups of non-standard work and the self-employed.

Making individualised information accessible

The individuals' portals on social protection websites, where insured persons can retrieve information on their benefits, are probably best known. These portals provide general information on the system and the related rights and duties. They can be used to launch applications and to give personalized information on the social security status of the concerned persons. Moreover, some of the tools can provide simulations of future entitlements when parameters, relevant for the benefit calculation, are entered by the insured person. Such portals are common place in many of the social protection systems in the EU and have e.g. been reported by Belgium (for career break programmes), the Netherlands ("Mijn UWV"), Spain ("Tu Seguridad Social"), Portugal and Sweden (ISSA, Good Practices Database). In Sweden, a joint cooperation between pension, social insurance and tax authorities launched an integrated webtool to inform surviving family members about rights and duties after the decease of a relative (Efterlevandeguiden.se). The interesting element of this approach is that it is life-event driven and cross-sectoral (tax and social protection). Such events generate claims across several law fields and administrative authorities; instead of a vertically pillared approach, portals have the advantage of being constructed around their occurrence

(EU Commission, Access to social protection for workers and the self-employed, Luxembourg, 2018, p. 28; ISSA, Europe: Strategic Approaches to improve social security, 2016, p. 15).

3.1.3 Automated applications and benefit granting

As was mentioned before, IT can be helpful in dynamizing the application procedures; pro-active tracking of (potential) beneficiaries and even automatic granting of benefits have become possible due to the massive availability of data at administrative organisations. These data can be shared and algorythms can be applied to improve the predictability of benefit applications in a given country. More automatization in the applications has been reported by countries such as Belgium, Bulgaria and Croatia highlighting advantages, such as the reduction in the number of declarations and related administrative burden for citizens and companies (ISSA, Good Practices Database). But digitalization and automatization also raise new challenges, not the least in relation to the protection of privacy as will be discussed further in section 4.

In France, the national fund responsible for family allowances (Caisse d'allocations familiales – CAF) developed structures that allow the paperless provision of services: online benefit applications, access to and monitoring of personal files, electronic mail, access to child-care facilities, entitlement simulation tools, service provider porting to smartphones and tablets, and automatic information exchange with partners. However, the electronic development goes together with local support services, especially for people who are less IT-literate. In alignment with these developments, online appointments have been facilitated. The CAF launched 'Visiocont@ct', a video-conference appointment service that allows users to discuss their situation with an advisor from the Family Allowance Fund without having to travel to a CAF office. The appointment can also be held at the premises of a CAF partner organization for people who do not have the equipment or are not at ease with IT technology (ISSA Good Practices database).

3.2 Transferability (internal coordination)

A categorical design of social protection schemes, providing different regulations for each of the work categories or occupational groups, creates problems of transferability. This happens when the insured persons change their job or occupation or when they combine several professional activities at the same time. As was mentioned before (section 2), people risk losing part of the entitlement due to interrupted insurance records. These problems are not new as they find their origin in the categorical design of social protection. Technical rules have been developed to address these issues of a lack of transferability for many years. The Recommendation itself makes reference

to a series of them (article 10) and asks that at least within a given social protection branch transferability of rights is guaranteed. We can think then of transfer of rights and accumulated entitlements and the adding up of insurance records in order to open entitlement in a new scheme that uses minimum thresholds. Moreover, the issue of interrupted insurance records is linked to the free movement of workers and the self-employed in the EU, as it is often accompanied with social protection insurances spread across various member states. Here, the EU regulations 883/2004 and 987/2009 suggest a comprehensive approach in coordinating the various national systems with each other: the fundamental principles underlying this coordination, such as the export of benefits (art. 7), the protection of rights in the course of acquisition (art. 6), non-discrimination and respect of assimilated facts (art. 4 and 5) and administrative cooperation (art. 76ff), are similar to the measures we will discuss below. After outlining the traditional techniques in place (3.2.1), we will go one step further and indicate how a policy of further aligning the protection across the various work forms and occupation groups may ultimately facilitate transferability (3.2.2). It is easier to design transparent and clear technical rules of transferability when the underlying systems, that need to be coordinated, are already pretty well harmonized as to their contents.

3.2.1 Internal coordination of categorical schemes

For many years, systems that have categorized the contents of their social protection schemes along professional groups have been forced to develop rules of internal coordination; they should enable the swift transfer from one scheme to another, so that the insured persons would not lose out on entitlement to any protection. As was mentioned before, a differentiation has to be made between the situation in which activities are simultaneously combined (involving several schemes at the same time) and the situation where persons have had several consecutive occupational positions (where systems followed each other up, but could collide in the case of entitlement to long-term benefits involving a great deal if not all previous insurance records). Of course, both situations could coincide (persons with several positions, changing over time as well) and in some situations distinctions will have to be made depending upon whether the combining of schemes is based upon one person or the family situation. With regard to the latter, it is possible that two working partners open entitlements in different schemes which eventuality may collide (for example to open entitlement for the dependent child or parent living in the family).

Traditionally we distinguish the following techniques:

- **Rules with 'after-effect'**: these rules guarantee that benefits will be continued to be paid even though the person is no longer insured in the scheme. A pensioner who stops working and, in a professional scheme, risks losing entitlements as they no longer participate in the workers' scheme, will nevertheless still receive the benefit payment, possibly with the related protection for health care and family burden for dependent family members. Nevertheless, the benefit payment

continues to be guaranteed, and possibly with the related protection for health care and family burden for dependent family members. In other words, the termination of the social insurance does not mean at all that entitlements to benefits will stop. As a rule, current benefits will be continued, but entitlement might also be opened even though the risk occurred after the person left the insurance scheme. Most professional schemes apply an 'after-period' (of some months) during which entitlements can still be opened; very often this period coincides with the waiting period in the new scheme to which the insured person became affiliated due to their new work or occupation. However, very popular too is the use of longer periods in unemployment schemes, especially when the change of occupation is towards a self-employed activity that does not open rights to unemployment benefits. In Belgium, for example, this mechanism of vested rights allows a self-employed person to use the contribution record of a previous employment for opening and calculating the unemployment benefit (from the wage earner scheme) after the self-employed worker had to close business. The use of former vested rights, built up in the wage-earner scheme, can go back as far as 15 years. The unemployment benefits are calculated on the income earned as a salaried employee (EU Commission, Impact assessment, annex 7, 2018).

- **Protection of rights in course of acquisition**: the possibility to add the insurance record of the previous scheme to the insurance record of the current scheme to open entitlement. This makes it possible to reach the minimum periods required by the thresholds applied by the latter scheme, in particular.
- **Dormant participants** (often applied in pension schemes): these are the persons who participated in a pension scheme for a given period and who then left the scheme (as a consequence of a change of job or occupation). Their (pension) claims will not be lost: they will be able to enjoy the benefit of the scheme once they meet the entitlement conditions (pensionable age) pro rata to their participation in the scheme. When the person has been part of several pension schemes, the eventual benefit will be a combination of several pro-rata pension parts (to which entitlement is still guaranteed as a consequence of the status of dormant participant in each of these schemes).
- **Transfer of (previously) accrued rights**: (often used as an alternative to the status of dormant participant) when moving to a new scheme, the person transfers their accrued rights from the previous scheme to the new one, where the periods fulfilled previous receive similar legal value in line with the new scheme.
- **Rules governing the simultaneous performance of several activities**: A person can practice several professional activities simultaneously, which can lead to rights in diverse professional social insurance systems. Sometimes, the person may only be covered in the system of the main activity and the side-activity exempted from coverage. However, in most cases, a cumulation of the professional social insurance systems is undertaken, at least as far as the contributions are concerned; a specific (more favourable) contribution arrangement for the

side-activity may then apply. As to the benefit side, normally entitlement can be acquired in both systems, but it can also happen that no benefit or only reduced benefits are granted in the system applied to the side activity.

– The last set refers to the **use of anti-cumulation rules**, in which benefits can be enjoyed together up to a defined level. To what extent this is possible, is very much a policy decision at the end of the day as it translates the principles of redistribution as applied in the system. In chapter I, we could see that anti-cumulation became a major issue again due to resurrection of all kinds of mini-jobs or smaller side activities.

3.2.2 Transferability leading to harmonization of schemes

Changing systems to accommodate professional activities more easily

The technical rules of internal coordination have their relevance in practice; they prevent people losing social protection entitlements when changing job or occupation. However, they may have their limits too, especially when situations such as changes occur often. To some extent, the rules of internal coordination may themselves generate a certain degree of complexity in the system. Originally, these rules where designed with a once-in-a-lifteime change of scheme in mind. When applied to high job flexibility, they may not be up to the situation anymore.

This may push countries to integrate the separate schemes in one scheme for all working people, regardless of their professional or occupational activities; or, alternatively, drafting new relevant legislation on more common grounds and terminology, keeping the deviating rules specific to some groups of non-standard workers or self-employed to the bare essential. Rather than building coordination bridges between separate schemes, the policy is here to align the contents or even integrate several schemes in one general scheme for all professional groups. In the latter case, it is still possible to have group specific rules, but they are kept to the minimum and are mainly found at the executive and administrative levels.

In line with that approach, we can refer to the recent changes in the Danish unemployment scheme: by designing the rules around activities rather than around the labour agreement and the self-employed business, it has become easier to deal with situations where the insured person combines several activities as one (see chapter I and ESPN flash report 2017/45, KVIST). Along similar lines, the Irish unemployment scheme has been opened up to the self-employed. Here, the rules were designed so that the insurance records built up for each of the involved activities can be added together to open benefit entitlements (see chapter I). Similar rules in the unemployment schemes have been reported by Luxembourg, Sweden and Portugal (EU Commission, Impact assessment, annex 7, 2018).

4. Design options

A more transparent approach to social protection should, in the end, be beneficial for the access to social security rights. Transparency in relation to social protection access implies several dimensions that should be taken care of by member states. These dimensions address certain evolutions, such as:

- the growing flexibility in labour organization and the different social protection schemes responding to different labour forms;
- the tendency for social protection to be increasingly built around income (protection) rather than work protection;
- the fact that people start to combine more activities simultaneously and/or over time;
- the fact that working persons may have several employers and hence the need for more effective techniques to raise contributions and to define benefits;
- the opportunities generated by a growing presence of IT tools;
- the fact that systems have grown complex and that citizens no longer or not always understand the underlying fabrics of social protection.

All of these evolutions require a coherent approach by countries when addressing transparency in social protection; among others, the need to:

- have a good information strategy (to explain the system);
- start from a logically built-up system and to keep the protection structures, as well as the relation systems of judicial protection and administration, accessible in design;
- respect other fundamental rights and principles (in relation to privacy and profiling) when making systems more transparent.

4.1 Transparency requires a clear and comprehensive information strategy

Article 15 requires access to updated, comprehensive, accessible, user-friendly and clearly understandable information about the individual entitlements and obligations. Complementary to a (transparent!) system, it is crucial to inform socially insured persons properly about their rights and entitlements. This presupposes not only access to the information tools, but also access to these professionals. New groups such as non-standard workers and the self-employed should feel represented by the traditional interest groups (such as trade unions); if this is not the case, it is upon the government to look for new representation channels.

Apart from the representation, the diversity of information channels can be a challenge too. As mentioned in the previous sections, the approaches to providing clear

information are manifold, ranging from overviews of the systems to tailor-made pro-actively designed simulations. The tools available are diverse, from the more traditional paper forms to websites and moving towards more smart interactive tools using smartphone apps and social media channels. Information can be provided passively to the population or in a more interactive setting; it can be even pro-actively designed to make it adaptable to the needs of the insured individual. A new challenge may arise due to the presence of different (administrative) players in the systems and the enormous choice of tools and techniques that are present.

Apart from different information carriers, the social protection system itself can still be diversified in its design, each of the schemes in place using their own approaches to information provision. From the perspective of an individual, this can become problematic as they may not always be familiar with the diversity within the social protection system. When faced with a risk such as a health disorder or unemployment, the person wants to receive treatment and/or guaranteed income protection. They may not be reached by the different information channels, each explaining in different ways the rights and obligations that are related to the respective schemes in place. This has already inspired some systems to set up common desks (one-stop shops) for insured persons for all social protection related questions and problems; it is upon the desk to transfer the issue to the competent authorities or regulations. Today, this desk is often an IT interface (accessible via a computer or other smart mobile device), which works as a gateway to the overall system.

Consequently, an information strategy, common to all schemes, should be in place. Apart from how the insured person can access the system for information, the different information layers should be considered, how these could interrelate and what their respective functions are. There should, in other words, be a clear vision on how the provision of information can support the access to social protection at the end of the day, from providing information to benefit delivery.

Apart from supporting persons in exercising their individual rights and fulfilling their obligations, this requirement for clear information should also be understood as a way of explaining to the population once more what social protection is (educational aspect of information). Therefore, the (sometimes rather complex) system will have to be outlined in its bare essentials: what does solidarity mean and what does it require from the individual (EISS, Social Security Quo Vadis, 2006)? Information tools, such as interactive webpages, can play a role here, but also more uncommon tools, such as building in story lines related to social protection in popular TV-soaps, can serve this goal (as reported by several social security CEOs when questioned about their view on future challenges: EISS, Social Security Quo Vadis, 2006). In other words, countries will have to be creative and use the vast range of communication tools to get the message of what social protection stands for across. Given the latest evolution in

work forms, it might be recommendable to have non-standard workers and the self-employed play a more prominent role in these information campaigns.

4.2 Transparency requires a simplification of the underlying schemes and structures of social protection

Article 15 calls upon member states to ensure that the conditions and the rules for all social protection schemes are transparent. Moreover, member states are recommended to ensure that the entitlements are preserved and accumulated and/or transferable across all types of employment and self-employment statuses (article 10). Not only the system should be well documented towards the population, the rights and entitlements foreseen in the system should themselves be clear and transparent in design. This is also true for the rather technical rules that should guarantee the transferability of rights.

From the previous sections, we learn that there are plenty of techniques available to make access to social protection more effective. In addition, transparency can also be created when the system behind is simple in philosophy and design. This is not the same as requiring that the system should be universal and unique to all active citizens in the country. Harmonizing social protection contents across schemes can take several forms, one being complete unification; however, this is not always aspired to nor does the Recommendation require a unified approach in the design of social protection. What should be guaranteed, is a similar level of protection across the different professional groups. Ultimately, the system will have to find the proper balance between the same rules for all and the adaptation of some of these rules for specific situations or categories of insured persons. The example of the recent reforms in the Danish and Irish unemployment schemes is tantamount in this respect: entitlement conditions are now rather based upon the activity (regardless whether this is done as a self-employed person or as a worker) instead of elements typical for a standard work status (e.g. working hours that automatically refer to the labour contract and hence are more difficult to be achieved by the self-employed in order to open entitlement). This will not exclude that specific rules will continue to exist (e.g. assessment of unemployment based upon closing down the business for the self-employed and dismissal for the wage-earners). However, by phrasing the majority of the conditions in terms that are understandable by all the degree of transparency will grow, which in its turn will lead to a more accessible social protection.

In addition to system design, transparency is also required in the related structures that create access to social protection in reality: judicial protection and administrative (case) management are as important as the system. With regard to the administration, the front office towards the insured population is crucial, even though the back-end

interface of the system may be complex. Existing structures should not necessarily have to change fundamentally, as long as the access to the system is transparent and easy at its forefront while catering for the diversity of social risks in the background. Examples of such administrative systems that manage to translate the complexity into transparent case-by-case situations are manifold (the Belgian Cross Roads Bank being one of them). As mentioned before, alongside administration, the access to judiciary is a key element in turning the law in the books into reality. For the emerging groups of non-standard workers and the self-employed, this calls for a reconsideration of the composition of social courts, in which these new working groups should be sufficiently represented so that their social realities are taken into account during dispute settlement.

4.3 Transparency requires respect for other fundamental protection rights

Member states are required to simplify, where necessary, the administrative requirements, of social protection schemes (article 15). From the previous sections, we see that IT plays a crucial role in this regard: pro-active information-based tools can drastically simplify numerous administrative applications, guaranteeing in some circumstances automatic benefit delivery. Not only does this simplify the life of many of the concerned actors (individuals, employers, administrations and alike), it may even be a very effective tool in combating the non-take up of benefits. In societies where work patterns are changing into more flexible work forms such as non-standard work and self-employment, this seems a very promising evolution as it is precisely these categories of workers that are often confronted with benefit exclusion. Pro-active data systems, however, presuppose a massive collection of (personal) data and their transfer amid various administration. These IT-driven administrative practices may come into conflict with the rules governing data and privacy protection (such as recently the General Data Protection Regulation 2016/679, GDPR). Although not specifically mentioned in the Recommendation, it is clear that policies aiming at more transparency should respect the fundamental rights of privacy and data protection.

Although separate in their scope – the right to data protection is to be distinguished from the right to privacy. In reality, both rights are often taken together (as unveiling of personal data may affect your privacy). The right to privacy includes the right to protection of 'privacy sensitive' personal data (not of all personal data). By virtue of the theory of 'the expectation of privacy', also public information on a person can be protected when the information is systematically collected and stored by authorities. The right to data protection protects all personal data and considers all fundamental freedoms including freedom of expression, of association and non-discrimination. In relation to transparency, the right to data protection is thus more relevant. It regulates the collection and processing of data, the rights of data subjects, and sets out the duties

for data processors and providers. It includes special protection for special categories of data, so-called 'sensitive' data. The processing of personal data is allowed when meeting set legal conditions; however, the processing of 'sensitive' data is forbidden unless exceptions are set forth.

These principles are confirmed even more clearly now in the recent GDPR. It does not forbid data transfer or automatization of delivery of rights as it is often (wrongly) believed. Yet the Regulation asks for a clear policy in the protection of personal data when administrations introduce data exchange structures, for instance to provide swifter access to social protection. The main principles to be followed (cf. articles 5-9) can be summarized in the following way:

- the collection and/or transfer of data should serve a clear and specified goal of public interest (legitimate purpose, for example improving access to social protection);
- the techniques deployed should not be disproportional;
- the data cannot be used for applications other than the ones they were originally intended for and should not be retained longer than is necessary.

This suggests a clear vision and modus operandi on the goal and the deployed system to reach that goal.

If automated benefit delivery is applied, one should also provide guarantees in relation to profiling. Eligible persons will indeed be selected for assessing a potential benefit delivery on the basis of personal data available to the administrations. The GDPR, however, demands that '[p]*ersons have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or significantly affects him or her*' (article 22). Thus, the insured person should have the option to turn down the possibility of receiving the benefit in an automated way. Moreover, when profiling is applied to support automated benefit delivery, it should be expressly authorized by a member state government, in support of a specific (public) policy goal (such as the organization of social protection). Moreover, it should be based upon a clear and transparent procedure safeguarding the personal rights and freedoms of the insured persons. Furthermore, a person still has the right to obtain human intervention if they want to contest the decision (article 22; recitals 71 and 73).

Although the technique of profiling is not overall forbidden, in reality, the number of procedures to be followed may outweigh the projected outcome of automatic benefit delivery. Taking into account the other adverse consequences these automatic procedures may generate (e.g. loss of support of the social protection system by the covered population), one wonders whether this is the right track to follow when pursuing transparent access. A swift delivery of benefits can still be guaranteed with less far

reaching data-based procedures: insured persons could for instance be warned or informed that they have a right to benefits or applications could be kept simple by using files that are already rather comprehensive on the basis of data known to social protection authorities.

5. Concluding observations on policy and design

If we want to guarantee access to social protection, the system should be transparent. This principle is too often overlooked and considered to be self-evident and intrinsic to every system, once it is put in place. Nevertheless, transparency is crucial to turn the system in the books into reality and should be given enough consideration, especially for groups of non-standard workers and self-employed persons – not only because these groups are often made subject to deviating and specific rules and hence more complicated applications of existing rules, but also because they are left without the traditional messengers that make transparency happen, the social partners. They often lack one stable employer and do not always feel adequately represented by the traditional trade unions. This lack of traditional messengers should thus be addressed by introducing complementary tools and by creating new channels.

Transparency is multidimensional and starts from the system being kept simple and coherent in design, using clear language. It is also the responsibility of administrations and judiciaries that make access to social protection happen. Essentially, it relates to information exchange but can go so far as to create automated access. This multidimensional approach requires caution: there should be a clear policy integrating the multifaceted information approach in a coherent vision. Moreover, transparency as a principle has limits, too, and has to respect and guarantee other fundamental rights, not the least the protection of data and privacy. The latter principle should not be considered as an impediment to making systems more transparent, but rather as an indicator that invites us to reflect on the final objective: transparency should help people to understand the systems better and to have their rights enforced, yet at the same time – by understanding the underlying logics better – encouraging them to support the system. However, as the application of automatic benefit delivery is teaching us, the ambition to build in transparency should not undermine the goal of social protection; rather, it should provide support in making systems achieve their end as transparency as such it is not a goal in itself.

In order to improve the preservation, accumulation and transfer of entitlements, universal social protection schemes can prevent the issues outlined above. If coverage is not universal in all schemes, social protection schemes can start considering income

from all activity, no matter what the employment status is. When different schemes exist, it is important to coordinate internally to outline and capture individual rights and to make the management of the different schemes simple, for example by a single access point. Here, personal accounts or one social security number make it possible to attach acquired rights to the individual, rather than to the work status or a life event.

Transparency in social protection entails different dimensions. Firstly, access to social protection needs to be based on clear and relevant legislation that ensures access for all income groups. Rules in legislation need to be applied and a proper system of judicial protection needs to guarantee the protection of these rights.

Targeted information policies on social protection need to be intensified across Member States, including outreach to self-employed and people in non-standard work. A proactive approaches to target certain groups (e.g. those at risk of not having sufficient coverage or entitlements, self-employed, young people or people at certain life events such as before retirement) is important. When interacting, a simple, accessible, coherent language and multiple communication channels (online and in person) can contribute to a better outreach. Here, the coordination of IT systems can also provide more personalised information and contribute to increased transparency on different entitlements.

Moreover, long-term communication increases awareness, for example via wider campaigns or an integration of social protection in the school curriculum, in order to engrain the principles of social security in society and to build trust in its administration among citizens.

General conclusions

In this publication we addressed the question of how states can accommodate new work forms in their social protection schemes more swiftly. As a reference we used the recently launched EU Recommendation on access to social protection (2019).

In addressing the topic of access to social protection, we divided our book into four key topics in line with the major chapters of the EU Recommendation. We addressed consecutively:

- how to extend formal coverage of non-standard workers and the self-employed and to what extent voluntary coverage can have a role in this regard (article 8 of the Recommendation);
- how effective coverage could be improved and to what extent income and time thresholds can be overcome to guarantee access to non-standard workers and the self-employed while at the same time respecting other major principles underlying our social insurance protection schemes, such as equivalence, proportionality and financial sustainability (article 9 and 10 of the Recommendation);
- how to safeguard adequate coverage while at the same ensuring proportionate contributions, assessing income levels correctly and avoiding loopholes in social protection records (articles 11 to 14 of the Recommendation);
- how to keep systems transparent and make sure that rights are transferable when people change their professional situation (articles 10, 14 and 15 of the Recommendation).

Although in each of these chapters we have touched upon a variety of topics and come up with concrete suggestions, some basic findings can be summarized here.

Overall, the aim should be to introduce basic rules wherever possible, which are neutral in relation to the labour or professional status of the professionally active persons. In their application these rules can then be further finetuned to the specific working situation of the worker or self-employed person in question, as their respective work situation requires such. In other words: we strongly defend the idea that the level of social protection should remain equal regardless of the professional or labour status of the worker. The bottom line is that people may have different approaches to generating the means that are required to sustain their livelihood. Social protection is to safeguard loss of income when workers are hit by a social risk; this should be neutral with regard to the kind of work they are performing. The systems need to be sufficiently transversal to accommodate the (growing) variety of work forms that are used by our citizens to generate income. This also means that where costs are concerned, at the end of the day it should not matter too much whether the one or the other type of work is used.

While formal coverage should be extended to include non-standard workers and the self-employed in a mandatory approach with few exceptions – also to foster solidarity, financial sustainability and public trust in the system –, voluntary approaches can help

to incentivize take-up. In particular with regard to social risks, such as unemployment and labour accidents, which create a number of complications for the group of self-employed workers, an extension based on voluntary insurance could be an acceptable approach in the short term. However, in order for this to be done successfully, the voluntary scheme will also have to be redesigned sufficiently to take into account the specific work situation of the self-employed. An approach that simply consists of opening up the scheme to the self-employed will not suffice.

Eligibility criteria and thresholds challenge effective social protection for non-standard workers and the self-employed. Member States could consider more universal systems, which seem better equipped to cope with labour market diversity; moreover, they might reconsider eligibility conditions in order to better respond to the volatile evolution of the income levels of non-standard workers and the self-employed. Systems should be aligned more to the non-standard and self-employed activity helping to ensure accumulation, preservation and transferability of rights to social protection, particularly for low-income earners. Yet eligibility criteria cannot be banned completely as they translate other major principles typical to social protection schemes, such as proportionality, equivalence and financial sustainability. However, in order to have these principles fully reflected in the design of social protection for non-standard work and self-employment, enough attention should go to the neutral wording of the criteria so that they do not exclude from the outset one or the other professional group. Eligibility criteria should be justifiable and should not be applied further than is required, taking into account the justification ground they serve.

Even if income or time thresholds are addressed, adequacy remains a challenge for people who structurally generate low or marginal income. Although there was originally a tendency to bar small income earners from participation in the system, states are starting to move away from using minimum income thresholds. Social protection should be inclusive and incorporate all activities that aim to generate income, even though this may be of a marginal level. The main idea should be that to make social protection happen at the end of the day, all persons that generate income should participate. Exempting low-income earners from social protection systems is not in line with this idea. The extension of social protection to accommodate self-employed and non-standard workers creates a level playing field, making those types of employment less precarious and allowing people to switch between forms of employment. However, higher income earners should also be encouraged to remain in the social protection system to foster solidarity and to ensure sustainability. As to the financing it is, however, crucial to review how income is assessed in view of the often unstable work situation of self-employed and non-standard workers, by, for instance, taking into account the individual's 'total' income from various working arrangement and sources, including assets. In this vein, systems should invest more to ensure correct income

assessment by looking more at the source of the money flow in order to keep better track of income declarations.

The system should be transparent so that it has sufficient support from the population it aims to protect. Generating solidarity among members of society will only be possible if these members understand the underlying fabric of the solidarity system. Insufficient knowledge about social protection as well as administrative complexities can be barriers to access to social protection. To improve the preservation, accumulation and transfer of entitlements, universal social protection schemes are generally more effective. However, when different schemes do exist, coordination is key to capture individual rights and to make the management of the different schemes simple, for instance by attributing acquired rights to the individual, rather than to the work status or a life event. As a prerequisite, legislation should be clear and judicial protection adequate and accessible to guarantee rights; on this basis, targeted information on social protection and outreach to non-standard workers and the self-employed should be intensified across Member States. Social partners can play an important role here.

Ultimately, providing access is all about inclusiveness, yet at the same time about finding the right balance between the principles that underly each social protection system: the system should be sufficiently redistributive but remain financially sustainable. Benefits should be adequate to guarantee livelihood yet at the same time should reflect prior participation in the system (equivalence and proportionality). From an individual point of view this balance is also reflected in the relation between rights and obligations.

Finally, we should be aware that work related social protection schemes should incorporate new societal evolutions. This will become even more true as we slowly evolve from a work based society towards an income driven society. Persons generate income to live upon; this traditionally happened on the basis of standard work, yet we may face a situation in which the income source becomes more diversified. Next to traditional work persons start up other activities or combine a series of activities that generate income sufficient to safeguard their livelihood. If we want social protection to play a role in the future it will be essential to accommodate these 'other non-traditional activities'. Not only must we safeguard the financing of our systems, but we must also rethink how benefits should be designed in line with these new evolutions. We may have to rethink the design of the social security risks (unemployment and work incapacity in particular); access to benefits may have to be reconditioned, benefits may have to be calculated in another way. When, for instance, income is assessed more broadly for financing social security, the question will arise of how to deal with capital related income for the accrual of benefits. From an equivalence point of view most of our work related schemes will use the professional income as a determining factor for the calculation of the benefit. This may become more challenging if capital return can

also be used for the financing of social security. To what extent can the capital basis be used as a determining basis for the benefit composition? Will this push social security benefits into a kind of saving system in which contributions are accrued and which can be used for certain life events? How can work incapacity be determined if part of the benefit is based upon capital sources and thus no longer exclusively upon income from work activities? Making more extensive use of capital returns may be the way forward in the future of social security but it will inevitably challenge policy makers to recalibrate our current social protection schemes. If we want our social protection to continue to play the essential role of redistribution in our societies, we had better be prepared to accommodate this upcoming (r)evolution. We can only hope that this contribution may also add to the upcoming reflection on guaranteeing access to social protection in a more income driven society.

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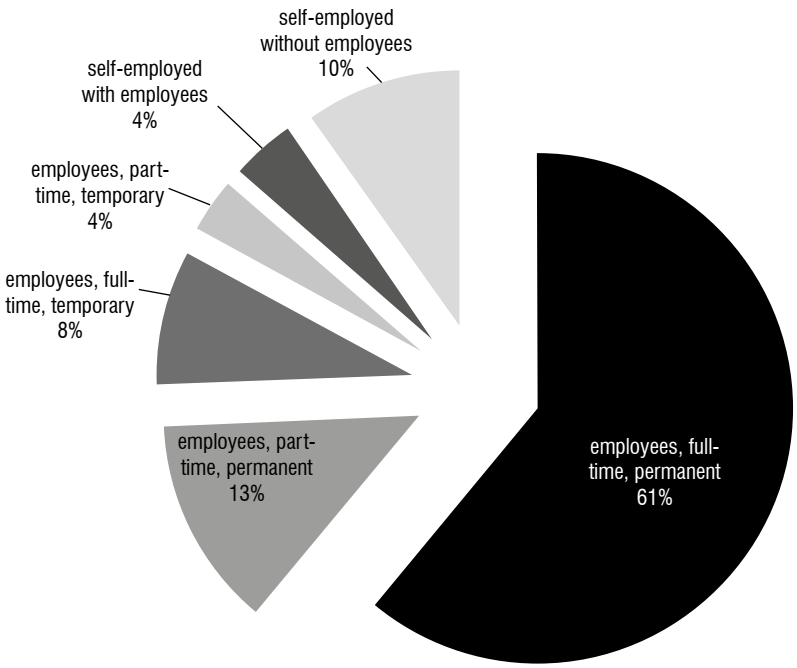
Annexes

Figure 1. Division standard and non-standard work and the protection of non-standard workers/self-employed for unemployment and sickness
Extent of different types of employment relationship in the EU28 in 2018



Source: Eurostat, Labour Force Survey

Figure 2 (Adequacy). Minimum income replacement rates (ILO Convention 102 and European Code 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	Employment injury:		
	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

Figure 3 (Transparency). External and internal drivers for insufficient protection (EU Commission, Impact assessment)

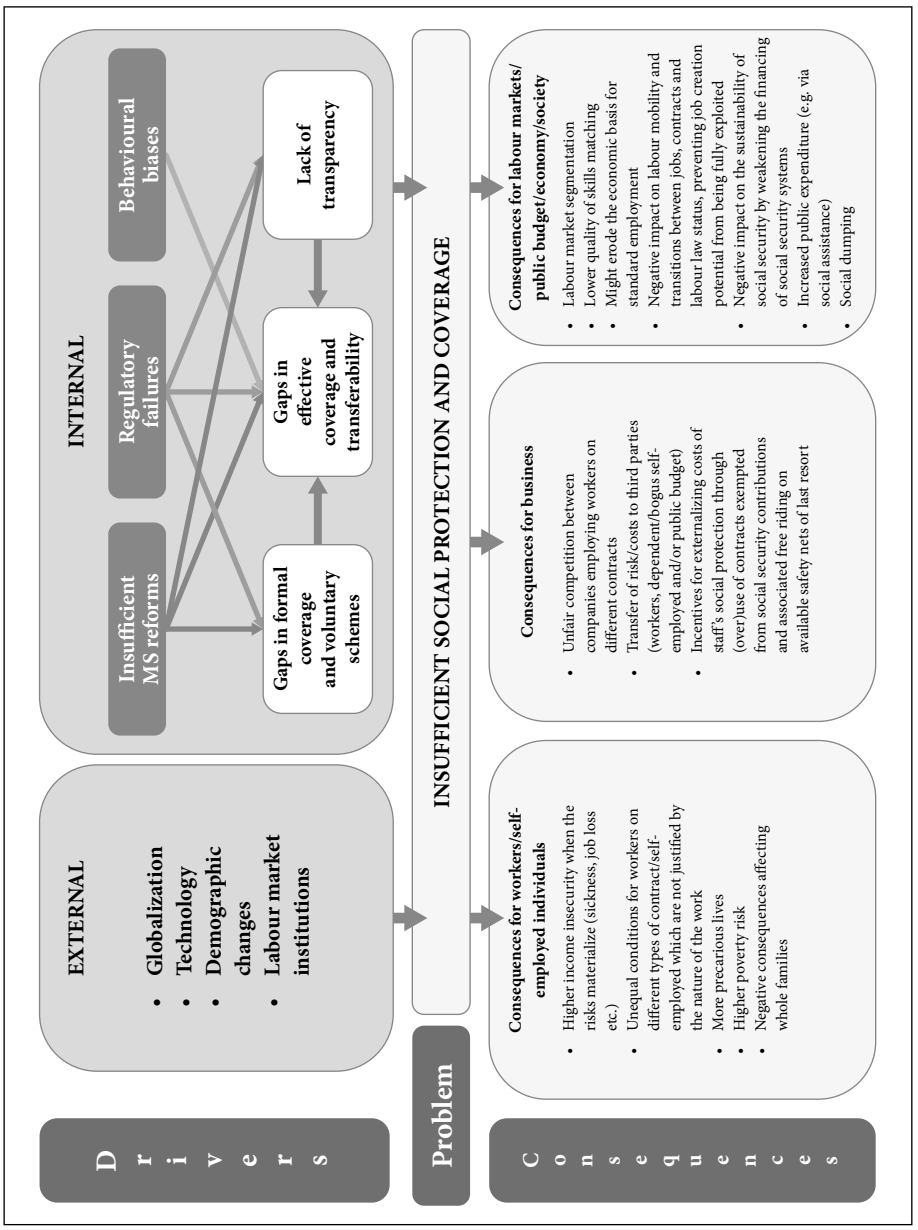


Table 1. System typology self-employed – Paul Schoukens

Universal/general	General for all self-employed	Categorical
A (basic) social protection is organized in the same system for all working groups of the population or even for the whole population. The system does not distinguish structurally or in terms of organization between the different (professional) groups. The system provides, regardless of the group that is insured, an equal (basic) cover, the same administrative structure and a uniform financial scheme.	A system where all professional categories of self-employed people are compiled into one social security system. The system has its own administrative structure with representatives of the self-employed and the government; it collects and manages the financial means itself. With regard to cover and financing, the system does not distinguish according to professional groups of self-employed.	Specific systems for different professional categories of self-employed persons. Having own administrative structures and financing in place. Benefits may differ across the categorical systems.

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

Table 2. Statutory access to insurance-based schemes for self-employed – 35 European countries grouped into three clusters (Classification from Spasova, Bouget, Ghailani, Vanhercke – 2017)

'Inclusive systems'	'Access à la carte systems'	'Exclusive systems'
HR, HU, IS LU, RS, SI	AT, CZ, DK, ES, EE, FI, PL, PT, RO, SE	BE, BG, CH, CY, DE, EL, FR, IE, IT, LI, LT, LV, MK, MT, NO, NL, SK, TR, UK

Table 3. Statutory access to social protection for self-employed – contributory and non-contributory schemes (Classification from Spasova, Bouget, Ghailani, Vanhercke – 2017)

Non-contributory social protection schemes	Statutory access		
	Available		Not available
Social assistance	Statutory access for SE in all 35 countries		N/A
Child benefits	Statutory access for SE in all 35 countries		N/A
Long-term care benefits	Statutory access for SE in all 35 countries		N/A
Insurance-based social protection schemes	**Statutory access**		
	Available		**Not available**
	Mandatory	**Voluntary**	
Unemployment	CZ, HR, HU, LU, SI, SK[c], PL	AT[c], DK, ES, FI, RO, SE	BE, BG, CY, DE, EEa, ELb, FR, IEa, IT, MTa, NL, LTb, LV, PTb, UKa
Accidents at work... occupational injuries	EE, EL, HR, HU, IT, PL, LU, MT, SE, SI	AT[c], ES[d], FI[d], FR[b], PT, RO[d]	BE, BG, CY, CZ, DE, DK, IE, LT, LV, NLb, SK, UK
Sickness benefits	AT[c], BE, CY, DE[c], DK, ES[d], FI, FR, HR, HU,	BG, CZ, EE, NL, PL, RO[d]	EL[b], IE[a], IT
Pensions	AT[c], BE, BG, CY, CZ, DE, DK, EE, EL, ES[d], FI, FR, HR, HU, IE, IT, LU, LT, LV, MT, NL, PL, PT, RO, SE, SK, UK	DE	
Healthcare	AT[c], BE, BG, CY[a], CZ, DE, DK, EE, EL, ES[d], FI, FR, HR, HU[b], IE, IT, LU, LT, LV, MT, NL, PL, PT, RO[c], SE, SK, UK		
Maternity benefits	AT[c], BE, BG, CY, DE, DK, EE, EL, ES[d], FI, FR, HR, HU, IE, IT, LU, LV, MT, NL, PL, PT[c], SE, SK, UK	CZ, LT, PL, RO[d]	
Invalidity	AT[c], BE, BG, CY, CZ, DE[d] DK, EE, EL, ES[d], FI, FR, HR, HU, IE, IT, LU, LT, LV, MT, PL, PT[c], RO, SE, SK[c], UK[c]	NL	

Notes: a) Access only to means-tested benefits; b) Access only for certain categories of SE; c) OPT-OUT and exemptions; d) Compulsory/voluntary access depending on the category of SE.
Source: This table is based on previous research: Spasova et al (2017), European Commission (2017 and 2018) and MISSOC database 2018. This table does not claim to be exhaustive.

Table 4. Lack of formal social security coverage for the self-employed – EU Commission Mapping Impact Assessment 2019

Social security branch	Member State
Unemployment benefits	BE[a], BG, CY, DE, FR, IT, LV, MT[b], NL, UK[b]
Sickness benefit	EL[a], IE[b], IT[a]
Accident and occupational injuries	BE[a], BG, CY, CZ, IE, LT, LV, NL, SK, UK

Note: The table reports in which branches and in which Member States at least one sub-group of the self-employed is excluded from formal overage in the sense that they have no mandatory coverage and cannot opt-into voluntary schemes either.
a) Only one or more sub-groups of the self-employed are not formally covered.
b) In these Member States only means-tested benefits are available to the self-employed while they are excluded from contributory schemes.

Table 5. Voluntary social security schemes for the self-employed – EU Commission Mapping Impact Assessment 2019

Social policy area/types of employment	Opt-in	Opt-out[c]
Unemployment benefits	AT, DE[c], DK, ES, FI[a], FR[c], RO[c], SE[a], SK	RO
Sickness benefit	AT[c], BE[a], BG, CZ, DK, EE[c], IE, IT, LU[c], FI[a], NL, PL	AT[b], RO[b], SK[b], UK[b]
Maternity benefit	AT[c], BG, CZ, DK[a], LT, PL, RO[c]	AT[b]
Accident and occupational injuries	AT[c], DE, DK, ES[c], FI, FR, LT, PT, RO	
Old age/survivors' pensions	AT[c], BE[a], DE[c], DK, EL[c], FI[a], LU[c], NL	AT[b], IE[b], FI, RO[b], SK[b], UK[b]
Invalidity	AT[c], DE[c], NL	AT[b], IE, RO[b], SK[b], UK[b]

Note: a) Voluntary scheme on top of mandatory scheme; b) If income below a certain threshold; c) For specific categories of the self-employed.

Table 6. Low take-up of voluntary insurance for self-employed. Overview % opt-in as reported in Spasova (2017), Impact assessment (2018), OECD (2018), ESPN Thematic reports (2017) (RO, ES)

	Sickness	**%**
AT	Opt-in system for beginning self-employed who do not reach a certain income threshold	22,4% opts in
BG	Voluntary opt-in system	15,7% opts in
CZ	Voluntary opt-in system	15,37% opts in
RO	Voluntary opt-in system	Opt-in rate almost 0%
SK	Opt-in system for self-employed who do not reach a certain income threshold	Opt-in rate almost 0%
	Old-age pensions	**%**
RO	Self-employed are mandatorily insured if they have a taxable income of at least 35% of the average gross salary/month (=minimum insurance base). If this threshold is not met, they have the possibility to opt in at the minimum insurance base.	20% opts-in
	Invalidity	**%**
NL	Voluntary opt-in system	25% opts-in
	Unemployment	%
AT	The decision to opt in has to be made within 6 months of starting the business activity and is valid for eight years. Self-employed can chose between three contribution amounts (low-medium-high).	0,3% opts in 66% opts in at lowest amount
DK	The unemployment scheme is voluntary for self-employed and employees.	
FI	Basic allowance is mandatory. Supplementary, self-employed can join an earnings-related unemployment insurance scheme as member of special unemployment funds.	20% of self-employed without employees opts in 10% of the self-employed with employees opts in
DE	Voluntary opt-in system for all self-employed	
IE	Self-employed share-fishermen/women can opt in. Other self-employed are excluded.	

RO	Voluntary opt-in system for all self-employed	A little over 1% opts in
SK	Voluntary opt-in system for all self-employed	
ES	Voluntary opt-in system for all self-employed	A little under 25% opts in

Table 7. Gaps social protection and voluntary insurances – Non-standard workers

Table 7.1. Lack of formal coverage to social security for people in non-standard employment – EU Commission Mapping Impact Assessment 2019

Social policy area/ types of employment	Casual workers	Seasonal workers	National specificities	Freelance	Apprentices	Trainees	Vocational trainees
Unemployment benefits	RO, MT, LT	RO, LV, MT, LT, PT	AT[a], CZ[b], DE[c], PL[d], PT[f], SK[e]		EL, HR, MT, NL, PL	EL, FR, IT, LT, MT, NL, PL, PT, RO	
Sickness benefit	HU, LT, LV, RO	HU, LT, LV, PT, RO	CZ[b], SI[d]		NL, PL	DK, FR, HU, LT, NL, PL, PT	DK, EL, FR, HU, PL
Maternity benefit	LT, RO	LT, LV, PT, RO	CZ[b], PL[d], UK[h]	FR	MT	FR, HU, IT, LT, PT	EL, FR, HU, IT
Accident and occupational injuries	RO, HR, LT	LT, LV, PT, RO	CZ[b], ES[f]			PT	
Old age/survivors' pensions	MT, LT	RO, LT	CZ[b], HU[g], LU[g], MT[h], PL[d]		BE[i], HR, MT	EL, FR, HU, IT, LT, MT, PT	
Invalidity	HU, LT	HU, LT	AT[a], PL[d]			PT	

Note: a) Marginal part-timers; b) Agreement to perform a job; c) Mini-jobbers; d) Civil law contracts; e) Employees on "work agreement" with irregular income; f) Domestic workers; g) On call jobs; h) Temporary agency work; i) Only below the age 19.

Table 7.2. Voluntary social security schemes for people in non-standard employment

Social policy area/types of employment	Opt-in	Opt-out
Unemployment benefits	LV[a], SE[a], DK, FI[a]	
Sickness benefit	AT[b], PL[c], PT[c]	
Maternity benefit	AT[b], PL[c], PT[c]	
Accident and occupational injuries	PT[c]	
Old age/survivors' pensions	AT[b], LT[a], PT[c], RO[c]	DE[b], NL[c]
Invalidity	AT[b], PT, RO[c]	

Note: a) Voluntary scheme on top of mandatory scheme; b) If income below a certain threshold; c) For specific categories of non-standard employees.

Table 8. Minimum income/work time requirements for participation in the scheme (final update July 2020 as reported in MISSOC tables)

	Healthcare: Self-employed	Opt-in possibility if threshold not reached?
AT	Beginning self-employed are exempted if their income does not exceed 5.527,92 EUR/year Farmers are exempted if the value of the land of the farm is less than 1.500 EUR	Yes
LU	Self-employed whose professional activity does not exceed 3 months/year are exempted if their working time is determined in advance	Yes
	Healthcare: Non-standard workers	**Opt-in possibility if threshold not reached?**
AT	Marginal part-time workers are exempted if income does not exceed 460,66 EUR/month	Yes
LU	Non-standard workers whose professional activity does not exceed 3 months/year are exempted if their working time is determined in advance	Yes
CZ	Two types of supplementary work agreements are exempted if monthly earnings do not exceed CZK 3.000 (EUR 114)/ CZK 10.000 (EUR 381)	No

	Sickness: Self-employed	Opt-in possibility if threshold not reached?
AT	Beginning self-employed are exempted if their income does not exceed 5.527,92 EUR/year Farmers are exempted if the value of the land of the farm is less than 1.500 EUR	Yes
IT	Self-employed who are registered with the separate pensions scheme are exempted if their income does not exceed 5.000 EUR/year	No
LU	Self-employed whose professional activity does not exceed 3 months/year are exempted if their working time is determined in advance	Yes
SK	Self-employed are exempted if their income does not exceed 6.078 EUR/year	Yes
ES	Farmers are exempted	No
	Sickness: Non-standard workers	**Opt-in possibility if threshold not reached?**
AT	Marginal part-time workers are exempted if their income does not exceed 460,66 EUR/month	Yes
CZ	Workers under an agreement to complete a job (=marginal employment; max 300 hours/year) are exempted if their income does not exceed 10.000 CZK/ month (381 EUR). Employees earning less than CZK 3.000 per month (EUR 114) cannot be insured	No
DE	Marginal part-time workers are exempted if their income does not exceed 450 EUR/month (threshold of a mini-job) Short-term employees (up to 3 months or 70 working days/year) are exempted	No
HU	Seasonal and casual workers (max. 15 days/months or 90 days/year) are exempted	Yes
LV	Seasonal and casual workers are exempted	No
LT	Seasonal and casual workers are exempted	No
LU	Non-standard workers whose professional activity does not exceed 3 months/year are exempted if their working time is determined in advance	Yes

PL	Workers under a civil law contract are exempted	Civil law contracts for a specific task: No Civil law commission contracts: Yes
RO	Casual and seasonal workers are exempted	No
SK	Non-standard workers on work agreements with irregular income are exempted	No
SI	Temporary agency workers with a contract for less than 3 months are exempted	No
UK	Non-standard workers are exempted if their income does not exceed 116 GBP/week (129 EUR)	No
	Maternity/Paternity: Self-employed	**Opt-in possibility if threshold not reached?**
AT	Beginning self-employed are exempted if their income does not exceed 5.527,92 EUR/year Farmers are exempted if the value of the land of the farm is less than 1.500 EUR	Yes
LU	Self-employed whose professional activity does not exceed 3 months/year are exempted if their working time is determined in advance	Yes
SK	Self-employed are exempted if their income does not exceed 6.078 EUR/year	Yes
UK	Self-employed are exempted if their income does not exceed 6.205 GBP/year	No
	Maternity/Paternity: Self-employed	**Opt-in possibility if threshold not reached?**
AT	Beginning self-employed are exempted if their income does not exceed 5.527,92 EUR/year Farmers are exempted if the value of the land of the farm is less than 1.500 EUR	Yes
LU	Self-employed whose professional activity does not exceed 3 months/year are exempted if their working time is determined in advance	Yes
SK	Self-employed are exempted if their income does not exceed 6.078 EUR/year	Yes
UK	Self-employed are exempted if their income does not exceed 6.205 GBP/year	No

	Maternity/Paternity: Non-standard workers	Opt-in possibility if threshold not reached?
AT	Marginal part-time workers are exempted if their income does not exceed 460,66 EUR/month	Yes
CZ	Workers under an agreement to complete a job (=marginal employment; max 300 hours/year) are exempted if their income does not exceed 10.000 CZK/ month (381 EUR). Employees earning less than CZK 3.000 per month (EUR 114) cannot be insured	No
LV	Casual workers are exempted	No
LT	Casual and seasonal workers are exempted	No
LU	Non-standard workers whose professional activity does not exceed 3 months/year are exempted if their working time is determined in advance	Yes
PL	Workers under a civil law contract are exempted	Civil law contracts for a specific task: No Civil law commission contracts: Yes
PT	Seasonal workers with a contract of less than 15 days are exempted	No
RO	Casual and seasonal workers are exempted	No
SI	Workers under a civil contract are exempted	No
UK	Non-standard workers are exempted if their income does not exceed 116 GBP/week (129 EUR)	No
	Old-age pensions: Self-employed	**Opt-in possibility if threshold not reached?**
AT	Beginning self-employed are exempted if their income does not exceed 5.527,92 EUR/year Farmers are exempted if the value of the land of the farm is less than 1.500 EUR	Yes
LU	Self-employed whose professional activity does not exceed 3 months/year are exempted if their working time is determined in advance	Yes

RO	Self-employed whose taxable income is below 35% of the average wage are exempted	Yes
SK	Self-employed are exempted if their income does not exceed 6.078 EUR/year	Yes
UK	Self-employed are exempted if their income does not exceed 6.205 GBP/year	No
	Old-age pensions: Non-standard workers	**Opt-in possibility if threshold not reached?**
AT	Marginal part-time workers are exempted if their income does not exceed 460,66 EUR/month	Yes
CZ	Workers under an agreement to complete a job (=marginal employment; max 300 hours/year) are exempted if their income does not exceed 10.000 CZK/ month (381 EUR). Employees earning less than CZK 3.000 per month (EUR 114) cannot be insured	No
LT	Casual and seasonal workers are exempted	No
LU	Non-standard workers whose professional activity does not exceed 3 months/year are exempted if their working time is determined in advance	Yes
PL	Workers under a civil law contract are exempted	No
UK	Non-standard workers are exempted if their income does not exceed 116 GBP/week (129 EUR)	No
	Survivors' pensions: Self-employed	**Opt-in possibility if threshold not reached?**
AT	Beginning self-employed are exempted if their income does not exceed 5.527,92 EUR/year Farmers are exempted if the value of the land of the farm is less than 1.500 EUR	Yes
LU	Self-employed whose professional activity does not exceed 3 months/year are exempted if their working time is determined in advance	Yes
RO	Self-employed whose taxable income is below 35% of the average wage are exempted	Yes
UK	Self-employed are exempted if their income does not exceed 6.205 GBP/year	No

	Survivors' pensions: Non-standard workers	Opt-in possibility if threshold not reached?
AT	Marginal part-time workers are exempted if their income does not exceed 460,66 EUR/month	Yes
IE	Non-standard workers are exempted if their income does not exceed 38 EUR/week	No
LT	Casual and seasonal workers are exempted	No
LU	Non-standard workers whose professional activity does not exceed 3 months/year are exempted if their working time is determined in advance	Yes
PL	Workers under a civil law contract for a specific task are exempted	No
UK	Non-standard workers are exempted if their income does not exceed 116 GBP/week (129 EUR)	No
	Unemployment: Self-employed	**Opt-in possibility if threshold not reached?**
AT	Self-employed are exempted	Yes, if decision taken within 6 months of starting the business
DE	Self-employed are exempted if they work less than 15 hours/week	No
EL	Farmers are exempted	No
PL	Farmers are exempted	No
	Unemployment: Non-standard workers	**Opt-in possibility if threshold not reached?**
AT	Marginal part-time workers are exempted if their income does not exceed 460,66 EUR/month	No
CZ	Non-standard workers who earn less than ½ of the minimum wage are exempted	No
DE	Non-standard workers who earn less than 450/month (mini-jobbers) are exempted	No
LV	Casual and seasonal workers are exempted	No

LT	Casual and seasonal workers are exempted	No
MT	Workers not gainfully employed are exempted	Yes
PL	Workers under a civil law contract for a specific task are exempted	No
PT	Non-standard workers who worked for less than 360 days in the 24 months previous to unemployment are exempted	No
RO	Casual and seasonal workers are exempted	No
SK	Workers on work agreements with irregular income are exempted	No
	Invalidity: Self-employed	**Opt-in possibility if threshold not reached?**
AT	Beginning self-employed are exempted if their income does not exceed 5.527,92 EUR/year Farmers are exempted if the value of the land of the farm is less than 1.500 EUR	Yes
LU	Self-employed whose professional activity does not exceed 3 months/year are exempted if their working time is determined in advance	Yes
RO	Self-employed whose taxable income is below 35% of the average wage are exempted	Yes
SK	Self-employed are exempted if their income does not exceed 6.078 EUR/year	Yes
UK	Self-employed are exempted if their income does not exceed 6.205 GBP/year	No
	Invalidity: Non-standard workers	**Opt-in possibility if threshold not reached?**
AT	Marginal part-time workers are exempted if their income does not exceed 460,66 EUR/month	Yes
HU	Casual workers are exempted	No
LV	Seasonal workers are exempted	No
LT	Casual and seasonal workers are exempted	No
LU	Non-standard workers whose professional activity does not exceed 3 months/year are exempted if their working time is determined in advance	Yes

PL	Workers on a civil law contract for a specific task are exempted	No
UK	Non-standard workers are exempted if their income does not exceed 116 GBP/week (129 EUR)	No
	Labour accidents: Self-employed	**Opt-in possibility if threshold not reached?**
AT	Beginning self-employed are exempted if their income does not exceed 5.527,92 EUR/year Farmers are exempted if the value of the land of the farm is less than 1.500 EUR	Yes
	Labour accidents: Non-standard workers	**Opt-in possibility if threshold not reached?**
HR	Casual workers under a contract for service or authors' contract are exempted	No
CZ	Workers under an agreement to complete a job (=marginal employment; max 300 hours/year) are exempted if their income does not exceed 10.000 CZK/ month (381 EUR). Employees earning less than CZK 3.000 per month (EUR 114) cannot be insured	No
LV	Seasonal workers are exempted	No
LT	Casual and seasonal workers are exempted	No
MT	Workers not gainfully employed are exempted	No
PL	Workers on a civil law contract for a specific task are exempted	No

Table 9. Option to enter all contingencies/limited to defined contingencies

		All contingencies/ limited to defined contingencies
AT	Beginning self-employed are exempted if their income does not exceed 5.527,92 EUR/year Farmers are exempted if the value of the land of the farm is less than 1.500 EUR Marginal part-time workers are exempted if their income does not exceed 460,66 EUR/month	Possibility to enter all contingencies
BG	Self-employed are exempted from sickness, maternity, unemployment and labour accidents	Opt-in limited to defined contingencies (Sickness and maternity/paternity)
CY	Self-employed are exempted from healthcare, unemployment benefits, long term care, labour accidents and family benefits	Opt-in limited to defined contingencies (healthcare, long term care, family benefits)
DK	Self-employed are exempted from unemployment and labour accidents Non-standard workers are exempted from unemployment	Possibility to enter both contingencies
FI	Self-employed are exempted from labour accidents	Possibility to enter contingency
FR	Self-employed are exempted from labour accidents	Possibility to enter contingency
DE	Self-employed are exempted from sickness, maternity/ paternity, pensions, unemployment, invalidity, accidents at work	Possibility to enter all contingencies (minor exception for those who work less than 15 hours/ week, they have limited access and cannot opt in to unemployment benefits)

		All contingencies/ limited to defined contingencies
IT	Self-employed are exempted from sickness	New self-employed insured under the separate pension scheme: possibility to enter contingency if income exceeds 5.000/year
LU	When professional activity does not exceed 3 months/year and working time is determined in advance, workers are exempted but do have the possibility to opt-in	Possibility to enter all contingencies
MT	Casual and seasonal workers are exempted from unemployment and labour accidents	Possibility to enter both contingencies
PL	Non-standard employees who work under a civil law contract are exempted from healthcare, sickness, maternity/paternity, pensions, unemployment benefits, invalidity	Opt-in limited to defined contingencies: civil law contracts for a specific task can enter healthcare but no other contingency. Civil law commission contracts can enter all contingencies.
SK	Self-employed who earn less than 6.078/year are exempted from sickness, maternity/paternity, unemployment, invalidity, labour accidents	Possibility to enter all contingencies except for labour accidents
ES	Self-employed are exempted from unemployment and labour accidents	Possibility to enter both contingencies
NL	Self-employed exempted are from sickness, unemployment, invalidity and labour accidents	Possibility to enter sickness, invalidity and labour accidents