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COM(2018) 132 final

2018/0059 (NLE)

Proposal for a

**COUNCIL RECOMMENDATION**

**on access to social protection for workers and the self-employed**

{SWD(2018) 70 final} - {SWD(2018) 71 final} - {SWD(2018) 79 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

Offering access to social protection is crucial for the economic and social safety of the workforce and well-functioning labour markets that create jobs and sustainable growth. Nevertheless, there is a growing number of people who, due to their type of employment relationship or form of self-employment, are left without sufficient access to social protection.

Social protection can be provided through in-kind or in-cash benefits. It is generally provided through social assistance schemes that protect all individuals (based on their citizenship/residency and financed through general taxation) and through social security schemes that protect people in the labour market, often based on contributions related to their work-income. Social security includes several branches, covering a variety of social risks ranging from unemployment to illness or old age.

The European Pillar of Social Rights<sup>1</sup> jointly proclaimed by the European Parliament, the Council and the Commission in November 2017, set out 20 principles and rights to support fair and well-functioning labour markets and welfare systems. Principle 12 of the Pillar in particular 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'*. This initiative aims at implementing this principle as well as at contributing to the implementation of other Pillar principles such as the principles on "secure and adaptable employment", "unemployment benefits", "access to healthcare" and "old-age income and pensions". The present Recommendation applies to the branches of social protection which are more closely related to the labour market status or type of employment relationship and mostly ensure protection from loss of work-related income upon the occurrence of a certain risk.

Welfare and social protection systems differ across the EU reflecting different national traditions, political preferences and budgets. Nevertheless, they are faced with similar, transformative challenges. Namely, in the past, work relationships were mainly characterised by full-time, open-ended contracts between a worker and a single employer. Over the last two decades however, globalisation, technology, changes in individual preferences and demographic changes have contributed to important changes in the labour markets. They have led to the growth of forms of employment other than full-time open-ended contracts such as temporary work, part-time work, and casual employment. Such forms of employment are providing more flexibility for companies to adjust work supply to their business needs and for workers to adjust their work patterns in line with personal preferences. Careers have also become less linear, with people more often transitioning between labour market statuses and/or combining salaried employment and self-employment.

More recently, digitalisation has increased significantly the pace of change. Companies and businesses need to adapt faster their economic activities to different markets, to implement new product cycles and seasonal activities, and to deal efficiently with fluctuations in business volumes and flows. In many circumstances, new forms of employment and contracts,

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<sup>1</sup> COM(2017)251

such as on-demand work, voucher-based work, and intermittent work, are being favoured by businesses in order to respond to these needs. Other new forms of self-employment or employment such as platform work are also creating new opportunities for people to enter or remain in the labour market or to supplement the income from their main job.

Likewise, and for similar reasons, self-employment has evolved over the last two decades in the EU. Importantly, the structural changes in the labour markets have blurred boundaries between labour market statuses. Alongside the traditional "entrepreneurs" and liberal professions, the self-employed status is being used more widely, in some cases even when de facto a subordinate employment relationship exists.

As the world of work evolves - with growing numbers of people in self-employment, in jobs not governed by standard contracts, or going through transitions between and combinations of dependent employment and self-employment - larger parts of the workforce are left without sufficient access to social protection due to their labour market status or the type of employment relationship.

These gaps increase risks to the welfare of the affected individuals and their families who endure greater economic uncertainty but also for the economy and society, in terms of domestic demand, investment in human capital and social cohesion. The accumulated effects of disparities in access to social protection overtime are likely to give rise to new inter- and intra-generational inequalities between those who have or manage to gain employment on contracts with full social rights and those who do not. They may constitute an indirect discrimination against young people, the foreign-born and women, who are more likely to be hired on non-standard contracts.

The gaps in access to social protection, due to labour market status and due to type of employment relationship, may hinder the take-up of opportunities to move from one labour market status to another, if this means losing entitlements, and ultimately may result in lower labour productivity growth. Thus, they may also not be supportive of entrepreneurship and hinder competitiveness and sustainable growth.

In the long run, it is the social and economic sustainability of national social protection systems that is at stake. Gaps in access to social protection for growing groups of the workforce will lead them to take recourse to tax-funded safety nets of last resort in case of social risk while the number of people contributing to social protection will be proportionately smaller. These gaps also may result in abuse of employment statuses and create unfair competition between companies that continue to contribute to social protection and those that do not contribute.

The 'Access to social protection for workers and the self-employed' initiative aims at supporting all self-employed and non-standard workers who, due to their contract type or labour market status, are not sufficiently protected by social protection schemes regarding unemployment, sickness, maternity or paternity, accidents at work and occupational diseases, disability and old-age. In particular the initiative aims to encourage Member States to:

- Allow all individuals in employment and self-employment to adhere to corresponding social protection systems (closing formal coverage gaps),
- Take measures allowing all individuals in employment and self-employment to build up and take up adequate entitlements as members of a scheme (adequate effective coverage) and facilitate transferability of social protection entitlements between schemes,

- Increasing transparency regarding social protection systems and rights.

This initiative is part of the Social Fairness Package, together with a proposal for a Regulation of the European Parliament and the Council establishing a European Labour Authority<sup>2</sup> and a Communication on the monitoring of the implementation of the European Pillar of Social Rights<sup>3</sup>

Other initiatives contributing to the implementation of the European Pillar of Social Rights are closely related to and complementary to this proposed Recommendation, notably the Commission's Proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union (see below section on consistency with existing policies).

The present Recommendation builds on and complements the ILO Social Protection Floors Recommendation<sup>4</sup>, which provides guidance to countries in extending social protection coverage by prioritizing the establishment of national floors of social protection accessible to all in need.

The challenge addressed by the Recommendation affects a significant number of people in the EU. Altogether self-employment and non-standard forms of work represent a significant share of the labour market. In 2016, 14% of the employed persons in the EU were self-employed, 8% were full-time temporary employees, 4% were part-time temporary employees, 13% were part-time permanent employees and 60% were employees with a full-time permanent contract.

The prevalence of non-standard work and of self-employment varies greatly across Member States, regions, sectors and generations. The proportion of younger workers aged between 20 to 30 years old in temporary contractual arrangements or with 'other or no contract' is twice that of the other age groups. A gender division is also evident, with a strong prevalence of men among the self-employed, and a strong prevalence of female workers in fixed-term and/or part-time situations.

The self-employed also form a heterogeneous group. Most individuals voluntarily choose to be self-employed, with or without employees, taking the risk to become entrepreneurs, while around 20% become self-employed because they cannot find a job as employees. Some enjoy a good level of job quality and autonomy; others, accounting for less than 10%, experience economic dependence and financial vulnerability. Among the companies being newly created every year in the EU, those created by self-employed account for 15% to 100% in the Member States where data allow performing this analysis<sup>5</sup>. Newly founded firms, created by the self-employed, have survival rates typically between 30% and 60% after the first five years.

In addition, a growing number of people is accumulating, in parallel, several employment contracts or combines employment with self-employment. In some cases, an identifiable main source of income is accompanied by marginal/ancillary activities; in other cases several activities allow to form a full income but no principal source of income can be identified.

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<sup>2</sup> COM(2018)131

<sup>3</sup> COM(2018)130

<sup>4</sup> ILO Social Protection Floors Recommendation, 2012 (N. 202).

<sup>5</sup> Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Hungary, Ireland, Lithuania, Luxembourg, Malta, Poland and the United Kingdom.

In a number of countries the self-employed were never fully included in social protection systems. In 2017, the self-employed did not have any access to unemployment protection in eleven Member States (MS). They were not insured against accidents at work and occupational injury in ten MS and were not covered by sickness benefits in three. In the countries where voluntary coverage is provided for the self-employed, the take up rates are low, ranging from 1% to 20%. By contrast, people in non-standard employment usually have the same statutory access to social protection schemes as those on standard contracts, with the important exception of certain categories of workers including casual and seasonal workers, apprentices or trainees, on-demand workers, and those on temporary agency contracts or with country-specific contracts.

Some non-standard workers and some self-employed face obstacles in building and taking up adequate entitlements to benefits due to the rules governing contributions and entitlements (minimum qualifying period, minimum working period, long waiting period or short duration of benefits), the way the income based is assessed or due to the insufficient adequacy of the benefits.

Moreover, while most Member States provide general information on rights and obligations related to the participation in social protection schemes, only half of them provide information on individual rights and obligations. Access to individualised information would help people to be aware of the entitlements they have accrued throughout their career and thus enable them to make informed decisions.

- **Consistency with existing policy provisions in the policy area**

The Recommendation is consistent and builds further upon the existing policies in the area of social protection.

In particular, the existing EU guidance in the area of access to social protection<sup>6</sup> in the context of the European Semester and the Social Open Method of Coordination, has established a consensus among Member States and the EU institutions that social protection systems need to be modernised<sup>7</sup>. In this context, policy guidance has been developed in key branches of social protection (pensions, unemployment insurance, etc.). The present initiative would therefore complement on-going cooperation on social protection, by examining the situation of the self-employed and non-standard workers across different branches of social protection.

Over the years, an EU legal framework for protection of rights in some areas of non-standard employment has been developed through the Directive on Temporary Agency Work<sup>8</sup> and through negotiated agreements between social partners and implemented via the Directives on

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<sup>6</sup> Council Recommendation of 27 July 1992 on the convergence of social protection objectives and policies (92/442/EEC), OJ L 245, 26.8.1992, p. 49–52, Commission Recommendation of 3 October 2008 on the active inclusion of people excluded from the labour market (C(2008) 5737), OJ L 307, 18.11.2008, p. 11–14, Commission Communication Towards Social Investment for Growth and Cohesion – including implementing the European Social Fund 2014-2020, COM (2013)83, A renewed commitment to social Europe: Reinforcing the Open Method of Coordination for Social Protection and Social Inclusion’, COM(2008) 418 final, Council Decision (EU) 2015/1848 of 5 October 2015 on guidelines for the employment policies of the Member States for 2015, OJ L 268, 15.10.2015, Country-specific recommendations.

<sup>7</sup> Modernising and improving social protection in the European Union, Communication from the Commission, COM (97) 102 final, 12 March 1997.

<sup>8</sup> Temporary Agency Work, available [online](#).

Part-Time Work and Fixed-Term Work<sup>9</sup>. But as the Directives apply to employment conditions, their impact on social protection is rather limited. They cover social protection rights that are closely linked to employment conditions and are considered as part of pay, such as occupational pensions<sup>10</sup> maternity pay and sickness pay. However, the Court of Justice has made clear in its case-law that the Directives do not apply to statutory social protection schemes<sup>11</sup>. In the preambles to their Agreements<sup>12</sup>, the social partners call on Member States to ensure that social protection arrangements are adapted to fit with evolving flexible forms of work. These preambles are not legally binding and, while Member States on several occasions have stated their commitment to make social protection more employment friendly, a recent review of the extent to which this has happened suggests that in several Member States there is still ample room for improvement<sup>13</sup>.

In the field of gender equality, a number of directives provides for some rights related to work-life balance. The Directive 2010/41/EU<sup>14</sup> on equal treatment between men and women engaged in self-employed activity foresees the possibility to grant women (including spouses of the self-employed) the right to be entitled to maternity leave and benefits for at least 14 weeks. Since this Directive leaves to Member States the decision if the right to such benefits should be granted on a mandatory or voluntary basis, levels of benefits and eligibility conditions vary widely among Member States. The Commission's proposal for a Directive on Work-Life Balance for Parents and Carers<sup>15</sup> provides for coverage by paternity and parental benefit and carers' benefit for all workers, including non-standard workers, with an employment contract or relationship.

Regarding transferability, there is no requirement in EU law to ensure the transferability of occupational pension rights but the Directive 2014/50/EU<sup>16</sup> on the portability of supplementary pension rights encourages Member States to improve it and in fact, all Member States have opted to extend the same legal treatment to all workers (the Directive does not apply to self-employed persons) who leave an occupational pension scheme.

Moreover, several recent EU initiatives will contribute to address the problem of transparency. First, this concerns old-age benefits in the context of occupational pensions. This will be addressed by the Directive on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights<sup>17</sup> (Portability Directive) and by the recast Directive on the activities and supervision of institutions for occupational retirement provision (IORP

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<sup>9</sup> Fixed-Term Work Directive 1999/70/EC, available [online](#); Part-time Work Directive 97/81/EC, available [online](#).

<sup>10</sup> See Joined Cases C-396/08 and 395/08 Bruno and others at para.41, available [online](#).

<sup>11</sup> Ibid and Case C-385/11 Moreno v INSS, available [online](#).

<sup>12</sup> Framework agreement on fixed-term contracts concluded on 18 March 1999 between the general cross-industry organisations (ETUC, UNICE and CEEP), Framework Agreement on part-time work concluded on 6 June 1997 between the general cross-industry organizations (UNICE, CEEP and the ETUC).

<sup>13</sup> ESPN (2017), Thematic Reports on *Access to social protection of people working as self-employed or on non-standard contracts*.

<sup>14</sup> Available [online](#).

<sup>15</sup> COM(2017)253/884003.

<sup>16</sup> See Annex 8 for more details.

<sup>17</sup> Directive 2014/50/EU on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights. Article 6 requires Member States to ensure that active scheme members can obtain, on request, information on how a termination of employment would affect their supplementary pension rights.

directive)<sup>18</sup>. Both directives improve the provision of information on the pension schemes. The Portability Directive also covers the protection of pension rights upon termination of employment<sup>19</sup>. The two directives should be transposed into national law by 21 May 2018 and 13 January 2019, respectively.

Second, the lack of transparency for other social protection areas for workers will be partially addressed by the Commission's proposal for a Directive on transparent and predictable working conditions in the European Union<sup>20</sup>, but the scope does not include the self-employed. According to the proposal, workers will receive information on the social protection institution(s) receiving the social contributions attached to an employment relationship and any protection relating to social protection provided by the employer. However, the proposed directive does not determine whether workers should have access to social protection. It limits itself to secure that information on acquired rights is available to employees.

- **Consistency with other Union policies**

The initiative is consistent with the political priority given to a fairer and deeper economic and monetary union. The EU economy as a whole could benefit from positive effects on labour market dynamism, and from reduced economic insecurity and social costs. Depending on financing choices, companies could experience an increase in the cost of managing fluctuations in production in line with some cost increase for non-standard employment and self-employment. However, they could also benefit from a possible increase in productivity of individuals in the newly protected forms of employment and from a fairer competition.

The provision of benefits to previously uncovered groups through public social protection systems could lead to a rise in public expenditure. The initial budgetary costs could be nevertheless reduced due to increased social protection contributions and to tax revenues related to household consumption given the positive effect on the disposable household income, especially for poorer households. Moreover, in cases where previously uncovered groups currently rely on safety nets of last resort such as social assistance, expenditure for other parts of the budget could be reduced. Some costs for provision of personalised information would also arise. However, this cost is judged to be considerably lower than the expected benefits both for the individuals over a life-time and for the social protection systems over the medium to long-term.

This initiative is consistent with the Commission Communication on 'A European agenda for the collaborative economy', which highlighted that whether or not an employment relationship exists between a platform and the provider of the underlying service must be established on the basis of a case-by-case assessment looking cumulatively in particular at whether the services provider acts under the direction of the platform determining the choice of activity, remuneration and working conditions; whether the services provider receives remuneration; and the nature of work.<sup>21</sup>

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<sup>18</sup> Directive 2016/2341/EU on the activities and supervision of institutions for occupational retirement provision (IORPs).

<sup>19</sup> Article 37 (1,j) of Directive 2016/2341 on general information on the pension scheme has provision on transferability. In case a member has the right to transfer pension rights, further information about the arrangements relating to such a transfer must be provided.

<sup>20</sup> COM(2017) 797 final, available [online](#).

<sup>21</sup> COM(2016)356

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The initiative "Access to social protection for workers and the self-employed" will support the Union's aims recognised in Article 3 of the Treaty on the EU: to promote the well-being of its peoples, the sustainable development of Europe aiming at full employment and social progress, but also the aim to promote social justice and protection, equality between women and men and solidarity between generations. Pursuant to Article 9 of the Treaty on the Functioning of the European Union, the Union, in defining and implementing its policies and activities, shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion and a high level of education, training and protection of human health.

The Council Recommendation would be based on Article 292 TFEU in combination with Articles 153(1)(c) and 153(2), third subparagraph, as well as with Article 352 TFEU.

Article 153(1)(c) and (2) TFEU enables the EU legislator to adopt measures in the field of social protection and social protection of workers as long as it (i) avoids imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small- and medium-sized undertakings, ii) does not affect the right of Member States to define fundamental principles of their social protection systems; (iii) does not significantly affect the financial equilibrium of these systems. This legal basis can be used to address the challenges of access to social protection for persons in non-standard employment. The Council is required to act by unanimity.

Article 352 TFEU can provide the legal basis of an initiative related to the challenges of access to social protection for people in different forms of self-employment. In this case the Council is also required to act by unanimity.

- **Subsidiarity (for non-exclusive competence)**

Employment and social protection policy remain primarily a responsibility of the Member States.

The problem of insufficient access to social protection for a growing number of people in the labour market and its negative consequences for social cohesion, labour market dynamism and sustainable growth are wide-spread across Member States. While several have adopted reforms or are carrying out national debates on the subject, evidence shows that these reforms, while being steps in the right direction, are not comprehensive and systematic, i.e. they are not closing gaps in access for all groups and all branches of social protection. Nor do current debates imply that all Member States necessarily plan to take action. Single Member States may hesitate to regulate in this area on their own, as they may fear that such action could put their own companies at a disadvantage relative to companies from other Member States.

EU action can be a springboard for further national reforms and ensure that progress is not partial or uneven but is instead secured across groups, social protection branches and Member States. EU action can also avoid a "race to the bottom" and ensure that all Member States move in the same direction at the same time, promoting upward convergence within and between Member States, to the benefit of the EU economy as a whole.

EU action can also diminish the obstacles that the problem poses to the pursuit of the Union's objectives. Differences between types of employment relationships or between labour market statuses in access to social protection can be detrimental to the EU's fundamental objective of promoting full employment by hampering occupational labour mobility including towards higher productivity sectors. It can discourage workers to undertake certain type of



employment or deter people from taking on the risks associated with self-employment, thus hindering entrepreneurship and innovation. The problem can also be an obstacle to the achievement of the Union's objectives in relation to quality of jobs and the fight against poverty and social exclusion.

By enhancing convergence towards robust labour market institutions, EU action can facilitate resilient economic structure and foster social cohesion in the Union.

The measures proposed in this Recommendation aim at eliminating or reducing obstacles which impair social protection systems from providing people with adequate social protection regardless of their type of employment relationships or labour market status, while respecting Member States' competences in designing their social protection systems. A number of choices are left to Member States' discretion, in particular: i) the level of protection provided, ii) whether to extend coverage under existing schemes or by the creation of new schemes, iii) the way to finance the protection, and iv) combinations of schemes to be used (public, occupational or private). These issues are beyond the scope of the current initiative. Member States are best placed to decide about these dimensions in ensuring effective protection in the most efficient way, given the diversity of existing social protection systems across the Union.

- **Proportionality**

The proportionality principle is fully respected as the scope of the proposal is limited to ensuring minimum standards in access to social protection.

Moreover, the proposal leaves the Member States the option of keeping or setting more favourable standards and taking into account features specific to their national situations. As a consequence, it leaves room for flexibility as regards the choice of actual implementing measures.

Proportionality also plays a key role in guiding the choice of instrument (see section below).

As documented in Annex 7 of the Impact Assessment, several Member States have started national debates and are undertaking some reforms. This Recommendation will further support these efforts at national level, by building on good practices, experience and evidence gathered from across the Union and fostering actions to address gaps in data collection.

As indicated in the Impact Assessment (Chapters 5 and 6), available quantifications indicate that the costs implied by extending formal and effective access and improving transparency are reasonable and justified in light of the accrued and longer-term benefits in terms of more secure employment, increased productivity and social cohesion, matching the wider social ambitions of the EU.

- **Choice of the instrument**

The instrument preferred for the initiative is a Council Recommendation, providing guidance to Member States on how to achieve access to social protection for all people in employment and self-employment.

The Commission considers a Council Recommendation to be the most proportionate approach at this point in time for an EU action to address the challenges related to access to social protection. Compared to a Directive which would impose binding outcomes, the Recommendation allows the EU level and the Member States to work further together to address the different dimensions of the problem and anticipate how they will evolve, including its implications at national level and possible spill-overs in the internal market, to stimulate and guide national reforms and ensure that progress is not partial or uneven across target groups and social protection branches. The Recommendation responds to the need to

act at EU level, while taking into account the lack of political consensus, at this point in time, on the direction of the reforms. Indeed, the stakeholders' consultations (see below) reveal substantial divergence on the best instrument, as well as the direction of reforms. Furthermore, it can support the efforts to strengthen the statistical and knowledge-base necessary to monitor the situation at EU level.

The key added value of a Recommendation is therefore to create momentum supporting and complementing national debates and reforms, guide Member States in their efforts and create consensus on the best reform options, which would also steer the position of the EU and its Member States in all relevant international fora. A Council Recommendation also allows the EU to leave flexibility to Member States on the way to achieve the goals, depending on the point of departure, national history and practices.

At the same time, a stand-alone Council Recommendation has significant value added compared to addressing the issue only through existing processes such as the European Semester or through the Social Open Method of Coordination. A focused approach is needed to give the issue the necessary political visibility, raise awareness and build momentum. Also, efforts are needed from all Member States in a coherent way and also in a somewhat co-ordinated fashion to dispel doubts about possible first mover disadvantages.

The EU support in implementing and monitoring the Recommendation can be fully embedded in the on-going processes of the European Semester and of the Open Method of Coordination on Social Protection and Social Inclusion. The uptake of the Recommendation can be promoted by a number of flanking measures, notably through mutual learning programmes and funding supporting experimentations and reforms in Member States.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

#### **• Ex-post evaluations/fitness checks of existing legislation**

The Commission has not yet published the evaluation of the Directive 2010/41/EU on equal treatment between men and women engaged in self-employed activity, the Directive 2014/50/EU on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights (Portability directive) and the Directive 2016/2341/EU on the activities and supervision of institutions for occupational retirement provision (IORP directive). However, an independent expert evaluation concluded that the Directive 2010/41/EU on equal treatment between men and women engaged in self-employed activity was unsuccessful in delivering improved maternity and social benefits to the self-employed<sup>22</sup>.

**Moreover, the Commission's proposal for a Directive on transparent and predictable working conditions in the European Union<sup>23</sup> is based on the Commission's REFIT evaluation of the Written Statement Directive (91/533/EEC). • Stakeholder consultations**

Several stakeholder consultations have been conducted to inform this initiative over the course of 2017 and in early 2018. This includes a two-stage consultation procedure of

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<sup>22</sup> Barnard C. and Blackham A. (2015), The implementation of Directive 2010/41 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity, report of the European network of legal experts in the field of gender equality, commissioned by the Directorate-General Justice of the European Commission.

<sup>23</sup> COM(2017) 797 final, available [online](#).

European social partners as stipulated in Article 154 TFEU, an open public consultation, targeted hearings with key stakeholders and with representatives of Member States within the Social Protection Committee.

The consultations provided indications on the degree of divergence between different stakeholders' views.

All stakeholders agreed, largely, that there are problems related to access to social protection for workers in non-standard forms of employment and for the self-employed.

The consultations carried out showed that there is no general consensus on the best instrument to be used. In particular, the feedback from the Member States in discussions in the Social Protection Committee and through position papers submitted in the context of the open public consultation signalled the lack of general Member State support for a legislative proposal in relation to all the objectives presented. The European Parliament also called for a recommendation enabling all people in all employment forms and self-employment to accumulate entitlements for social insurance in its resolution (2016/2095(INI)) on a European Pillar of Social Rights. Social partners expressed diverging views. Trade unions consider that improvements should be made to EU legislation, while cautioning that it should not undermine existing EU acquis, nor lower existing national standards, nor lead to downward harmonisation of rights. By contrast, some employers organisation consider that the open method of coordination and the European Semester process, including benchmarks, would be the right tools to facilitate mutual learning and exchanges of good practice.

All trade unions favour mandatory formal coverage, equalised to that of standard workers but taking into account national traditions. Employers held different views regarding the coverage. Some agree that social protection should be mandatory, but employees should have the right to choose the form of coverage (public or private), whilst the freedom of choice for the self-employed is particularly highlighted. Other employers favour voluntary formal coverage to take into account the diversity of forms of employment and the heterogeneity within the self-employed. All social partners agreed on the need for higher transparency.

Whereas trade unions call for full transferability, employers would like to limit it to minimum social protection rights and stress that there should be no associated additional burden or cost.

Choices regarding policy options and the legal instrument strike a balance between divergent stakeholder views.

- **Collection and use of expertise**

The Impact Assessment relies on a thorough mapping of policies in Member States, a review of literature, an analysis of current trends, derived from comparative data and the results of a social partners' consultation and a public consultation. The estimation of social and economic impacts includes several sets of microeconomic simulations, quantifying the likely social impacts and impact on public budgets, as well as more qualitative analysis, allowing to better understand behavioural reactions and attitudes (through a dedicated survey) and country specific context (through case studies).

- **Impact assessment**

In line with its policy on Better Regulation, the Commission carried out an Impact Assessment of potential policy and governance options. This work was supported by structured consultation within the Commission via an Inter-Service Steering Group<sup>24</sup>. The

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<sup>24</sup> Including DG GROW, DG SANTE, DG ECFIN, DG TAXUD, DG JUST, Legal Service.

Impact Assessment was discussed with the Regulatory Scrutiny Board (RSB) on 7 February 2018. On 9 February 2018, the RSB issued a positive opinion with reservations, which have been addressed by further substantiating the rationale for the choice of a recommendation and further clarifying and underpinning the scope of the initiative and its expected benefits and economic effects<sup>25</sup>.

The Impact Assessment examined different policy options, which combine measures addressing the objectives of the initiative. The policy option preferred in the context of the Impact Assessment is:

- Mandatory coverage for all workers in non-standard forms of employment not yet covered and voluntary for the self-employed;
- Adjustment of time thresholds; mandatory transferability of accumulated entitlements; aggregation of periods;
- Provision of generic and personalised information.

This would lead to high effectiveness regarding protection and thus pronounced positive social impacts, including reductions in income uncertainty and poverty, while entailing corresponding costs for public authorities and for employers. The differentiated approach fully takes into account the nature of self-employment while reflecting the significant heterogeneity among the concerned group. The provision of generic and personalised information improving transparency could stimulate higher voluntary enrolment, at a relatively small cost for public authorities.

However, it was decided that this proposal should adopt a more refined approach regarding formal coverage for the self-employed, notably based on further differentiation between social protection branches to better reflect the nature of self-employed work. For the unemployment risk, which is more difficult to evaluate and control in case of self-employment and is more intimately related to the entrepreneurial risk, more flexibility is given to Member States in the design of the scheme through the possibility to extend coverage to the self-employed on a voluntary basis. This also reflects the heterogeneity of the self-employed and would respect their freedom of choice. For other risks such as old-age, invalidity, sickness and maternity, mandatory coverage is recommended for both the self-employed and the workers. These risks are less difficult to evaluate than the unemployment risk and more similar for the two groups; a differentiated approach by labour market status are therefore more difficult to justify. The differentiated approach for people in self-employment is likely to increase the effectiveness of the EU action. For Member States where voluntary schemes exist for the self-employed, low rates of enrolment are observed (less than 1% to 20%), which would be explained by individual myopic behaviour and preferences, lack of awareness and financial disincentives. The higher resulting enrolment rates under a mandatory approach can be expected to lead to higher social benefits, including the reduction of income uncertainty and poverty, compared to a voluntary approach. Establishing mandatory coverage for the self-employed is a realistic option, as the mapping presented in the Impact Assessment shows that mandatory schemes for this group exist for each social protection branch in at least a few Member States. The proposal is thus in line with realities in the Member States and it sets a high level of ambition in terms of formal coverage. It may thus also be even more effective in reducing incentives for unfair competition which exploits differentiated social protection rights, as reflected e.g. in bogus self-employment.

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<sup>25</sup> See Annex I of the Impact Assessment.

The material scope of the initiative has also been adjusted compared to the Impact Assessment to include healthcare. Healthcare is a particular area that mixes social assistance provisions (ensured to all citizens/legal residents) with health insurance related to social contributions. In a few countries, non-standard workers and the self-employed may face gaps in access to healthcare, due to their type of employment relationship or to their labour market status. In line with the European Pillar of Social Rights and its Principle on healthcare, the initiative should therefore call on Member States to ensure access to healthcare for all people in employment and self-employment.

Overall, if the measures proposed in the Recommendation are fully implemented by Member States, non-standard workers and the self-employed, who represent all together 39% of the employed population, will benefit from better protection. This is set to entail a reduction in the individualisation of risk, income uncertainty, precariousness and notably a reduction in these groups' risk of poverty to levels closer to those of standard workers. Currently, non-standard workers face a much higher risk of poverty (16% compared to 6% for standard workers in 2016) as a result of low income and gaps in coverage. Similarly, social protection systems play a much weaker role in reducing the poverty risk for the self-employed compared to salaried workers on average in the EU.

Reducing differences in access to social protection is also expected to encourage transitions between contract types and labour market statuses, promoting labour market dynamism. Reducing the possibility of over-reliance on contracts exempted from social protection contributions is set to create a more level playing field between firms. Stemming the trend of an increasing share of people outside social protection systems avoids weakening their role including for labour markets and the stabilisation of economic cycles and may have positive effects on their fiscal sustainability.

Businesses could benefit from reduced unfair competition, a possible increase in productivity of individuals in the newly protected forms of employment and self-employment and from positive effects on labour market dynamism. Depending on financing choices, companies could experience an increase in the cost of managing fluctuations in production in line with some cost increase for non-standard employment and working with self-employed people.

The level of costs and their distribution between public budgets, insurance providers, employees and the self-employed and taxpayers strongly depend on key decisions left to Member States for subsidiarity reasons, including on the organisation of schemes, their financing and the level of protection provided. Direct costs are mainly related to the provision of benefits, with exemplary simulations on the extension of coverage by unemployment and sickness benefits to the self-employed suggesting a limited cost, which varies inter alia with the number of self-employed in the country, the unemployment risk they face as well as on the generosity of the system. Indirect costs could result from behavioural changes in response to the increased social protection coverage.

It is important to note that the wide scope of the initiative addressing simultaneously different branches of social protection, the differences in the organisation of social security schemes among Member States, in conjunction with the limitations in data available seriously constrains the possibility to provide a comprehensive quantitative picture in the Impact Assessment. The limited nature of the quantification equally reflects the uncertainty related to the key decisions on protection levels, design and financing of social protection systems, which are left to the Member States for subsidiarity reasons.

- **Regulatory fitness and simplification**

The key expected impacts stemming from the improved protection would be an increase in the mutualisation of risk, increase of income security resulting in less precariousness and poverty for individuals. The initiative is also expected to contribute to increased labour market dynamism and a better allocation of resources and to strengthen the well-established key role of automatic stabilisers of social protection, dampening business cycle fluctuations. The companies will also benefit from a well-functioning labour market and from resilient economic structures.

Companies could benefit from an increase in productivity of individuals in the newly protected forms of employment, from reduced unfair competition and from the positive effects of social protection systems on labour markets and on domestic demand. Depending on financing choices, companies are expected to experience an increase in the cost of managing fluctuations in production, in line with some labour cost increase related to non-standard employment and the self-employment.

The initiative will apply to all employers. It will, however, particularly affect all employers of non-standard employees and, to a slightly lesser extent, companies working with the self-employed. The data presented in the Impact Assessment allow determining to which extent the companies use these typologies of contracts. The self-employed with and without employees work mainly with micro-enterprises (1-9 employees), and much less with SMEs and large companies. Exempting micro-enterprises thus would unduly reduce the effectiveness of the initiative. Non-standard employees work particularly in the public administration (28%) and in SMEs and to a less extent also in large and micro enterprises.

- **Fundamental rights**

No negative impact has been identified on fundamental rights. On the contrary, the initiative promotes the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in line with article 34 of the EU Charter of fundamental rights.

#### **4. BUDGETARY IMPLICATIONS**

This Recommendation has no financial implications to the EU budget.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will monitor implementation in the Member States and review the Recommendation in cooperation with the Member States and after consulting the concerned stakeholders, ensuring a sufficiently long period to evaluate the effects of the initiative after it has been fully implemented. The effectiveness of the Recommendation could be measured on the basis of existing and new data and of information gathered through Member States' reporting.

A mapping of existing gaps of social protection has been done for the purposes of this Impact Assessment (see Annex 6) and will be repeated in some years. The comparison of the two mappings – ex-ante and ex-post - will provide a picture of the evolution of the social protection scheme, their coverage and their eligibility conditions.

At the same time, one of the current limitations in the analysis of the problem pertains to the lack of a good statistical base allowing to fully quantify the size of affected groups. For this purpose, statistical reporting commitments will be included in the Recommendation itself. This will encourage Member States to collect and publish reliable statistics on access to social protection broken down by labour market status (self-employed/employee), type of employment relationship (temporary/permanent, part-time/full-time, new forms of work/standard employment), gender, age and citizenship.

Moreover, reinforced cooperation will be established with Eurostat to create indicators appropriate for this area. Although long-time series would not be available, it should be possible to track progress towards formal coverage, effective coverage and transparency since the publication of the Recommendation. Work on improving indicators has already started and they could be available at the same time as the Member States start implementing the Recommendation.

Further, work would be undertaken by the Commission in the context of the Social Protection Committee to establish a benchmarking framework for social protection.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

§ 1 to 6 indicate the subject matter of the Recommendation and its objectives. They also define the personal scope (who are the individuals to be covered) and the material scope (what are the branches of social protection that are concerned) of the Recommendation.

§ 7 contains definitions which are to be applied for the purpose of the Proposal.

§ 8 and 9 recommend to Member States to extend formal coverage to all workers, regardless of the type and duration of their employment relationship, and to the self-employed.

§ 10 recommends to Member States to ensure effective coverage, regardless of type of employment relationship and labour market status, by reviewing the rules governing contributions and entitlements. § 11 introduces the principle of transferability of entitlements, which should contribute to an effective coverage.

§ 12 to 15 encourage Member States to ensure the adequacy of social protection and to better tailor the schemes to the situation of beneficiaries.

§ 16 and 17 introduce the principle of transparency by encouraging Member States to improve access to information on social protection rights and obligations and to simplify administrative requirements.

§ 18 to 23 establish the maximum period that Member States have in order to implement the principles set out in the Recommendation and to publish regular data. They invite the Commission to propose a benchmarking framework within a year after the publication of the Recommendation, to review the implementation of the Recommendation within three years, and to support Member States through funding and mutual learning exchanges.

Proposal for a

## **COUNCIL RECOMMENDATION**

### **on access to social protection for workers and the self-employed**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292, in conjunction with Articles 153 and 352 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Pursuant to Article 3 TEU, the aims of the Union are *inter alia* to promote the well-being of its peoples and to work for the sustainable development of Europe based on a highly competitive social market economy, aiming at full employment and social progress. The Union combats social exclusion and discrimination, promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.
- (2) Pursuant to Article 9 TFEU, the Union, in defining and implementing its policies and activities, takes into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion and a high level of education, training and protection of human health.
- (3) Point (c) of Article 153(1) TFEU enables the Union to support and complement the activities of the Member States in the field of social security and social protection of workers. The Union action may also be pursued to address challenges of access to social protection for people in self-employment based on Article 352 TFEU, which contains a provision allowing the Union to adopt an act necessary to attain objectives laid down by the Treaties when the latter have not provided the powers of action necessary to attain them.
- (4) The European Parliament, the Council and the Commission solemnly proclaimed the European Pillar of Social Rights in their Interinstitutional proclamation of 17 November 2017<sup>26</sup>. Principle 12 of the Pillar 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.
- (5) The social partners have committed to continue contributing to a Europe that delivers for its workers and enterprises<sup>27</sup>.
- (6) In its Resolution on a European Pillar of Social Rights<sup>28</sup> the European Parliament underlined the need for adequate social protection and social investment throughout

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<sup>26</sup> OJ C 428, 13.12.2017, p. 10–15.

<sup>27</sup> Joint statement of the social partners of 24 March 2017.



people's lives, enabling everyone to participate fully in society and the economy and sustaining decent living standards. In its opinion on a European Pillar of Social Rights, the European Economic and Social Committee emphasised the need to ensure that all workers are covered by fundamental labour standards and adequate social protection.

- (7) Social protection systems are the cornerstone of the Union social model and of a well-functioning social market economy. The key function of social protection is to protect people against the financial implications of social risks, such as illness, old age, accidents at work, or job loss, to prevent and alleviate poverty and uphold a decent standard of living. Well-designed social protection systems may also facilitate participation in the labour market by supporting labour market transition for individuals who switch jobs, move in or out of work, start a company or close it down. They contribute to competitiveness and sustainable growth as they support investment in human capital and as they may help to reallocate human resources towards emerging and dynamic sectors of the economy. They also have a role to play as automatic stabilisers by smoothing consumption over the course of the business cycle.
- (8) Social protection can be provided through in-kind or in-cash benefits. It is generally provided through social assistance schemes that protect all individuals (based on their citizenship or residency and financed through general taxation) and through social security schemes that protect people in the labour market, often based on contributions related to their work-income. Social protection includes several branches, covering a variety of social risks ranging from unemployment to illness or old age. This Recommendation applies to the branches of social protection which are more closely related to the labour market status or type of employment relationship and mostly ensure protection from loss of work-related income upon the occurrence of a certain risk. It complements existing guidance, at the Union level, on social services and assistance, and more broadly on the active inclusion of people excluded from the labour market<sup>29</sup>.
- (9) Globalisation, technological developments, changes in individual preferences, and demographic ageing have driven changes in the European labour markets for the last two decades and will continue to do so in the future. Employment will increasingly be more diverse and careers will be less and less linear.
- (10) A variety of employment relationships and forms of self-employment exist in Union labour markets alongside full-time open-ended employment contracts. Some of them have already been known in the labour market for a long time (such as fixed, temporary, part-time, domestic work, or traineeships); others developed more recently and increased in importance since the 2000s: on-demand work, voucher-based work, platform work, etc.
- (11) The self-employed in particular also form a heterogeneous group. Most individuals voluntarily choose to be self-employed, with or without employees, taking the risk to become entrepreneurs, while one out of five self-employed is self-employed because he or she cannot find a job as an employee.

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<sup>28</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0010+0+DOC+XML+V0//EN>

<sup>29</sup> Commission Recommendation of 3 October 2008 on the active inclusion of people excluded from the labour market (2008/867/EC).

- (12) As labour markets evolve, social protection systems need to evolve too, to ensure that the European social model is future-proof and that it enables Union societies and economies to make the most of the future world of work. However, in most Member States, the rules governing contributions and entitlements of social protection schemes are still largely based on full-time open-ended contracts between a worker and a single employer while other groups of workers and the self-employed have been more marginally covered. Evidence shows that some non-standard workers and some self-employed have insufficient access to the branches of social protection which are more closely related to the labour market status or type of employment relationship. Only a few Member States have undertaken reforms to adapt social protection systems to the changing nature of work to better protect affected workers and the self-employed. Improvements have been uneven across countries and across branches of social protection.
- (13) In the long run, the gaps in access to social protection may put at risk the welfare and health of individuals, contribute to increasing economic uncertainty, poverty risk and inequalities, and may also lead to suboptimal investment in human capital, reduce trust in institutions and limit inclusive economic growth.
- (14) Workers and self-employed people can be identified as *formally covered* by a specific social protection branch if the existing legislation or collective agreement set out that they are entitled to participate in a social protection scheme in that specific branch. Formal coverage can be provided via mandatory or voluntary schemes. The latter give the opportunity to individuals to adhere to a scheme (opt-in clauses) or cover all individuals of the target group by default giving them the opportunity to leave the scheme if they so wish (opt-out clauses). Evidence shows that voluntary schemes with opt-out clauses have higher rates of adherence and therefore provide better coverage.
- (15) Workers and self-employed people can be identified as *effectively covered* in a specific social protection branch if they have the opportunity to accrue adequate benefits and the ability, in case of materialisation of the corresponding risk, to access a given level of benefits. A person may be granted formal access without de facto being able to build and take up entitlements to benefits.
- (16) Social protection is considered as *adequate* when it allows individuals to uphold a decent standard of living, to replace their income loss in a reasonable manner and to live with dignity and prevents them from falling into poverty.
- (17) In some Member States, certain categories of workers such as short part-time workers, seasonal workers, on-demand workers, platform workers and those on temporary agency contracts or traineeships are excluded from social protection schemes. Moreover, workers who do not have full-time, open-ended contracts can encounter difficulties in being effectively covered by social protection, because they may not fulfil entitlements criteria for receiving benefits from contributions-based social protection schemes. The self-employed are completely excluded from formal access to key social protection schemes in some Member States; in other Member States they are able to adhere to them on a voluntary basis. Voluntary coverage may be a suitable solution in the case of unemployment insurance, which is more closely associated to the entrepreneurial risk; it is less justifiable for other risks such as illness, which are largely independent from their status in the labour market.
- (18) The rules governing entitlements may work to the disadvantage of non-standard workers and the self-employed. In particular, income and time thresholds (qualifying

periods, waiting periods, minimum working periods, duration of benefits) may constitute an unduly high obstacle to access social protection for some groups of non-standard workers and for the self-employed. In general, two sets of issues have been identified: firstly, existing differences in rules between standard employees and people in non-standard employment or self-employed may unnecessarily penalise one group; secondly, the same rules applied to all groups may lead to poorer outcomes for people outside standard employment and may not be adapted to the situation of the self-employed. In both cases, there may be scope to better tailor the rules to the situation of the specific groups while maintaining a general principle of universality so that no-one in the labour market is left uncovered upon the materialisation of a social risk. Specific measures may be needed to avoid people contributing to overlapping schemes, for example when exercising ancillary activities while already fully covered in their main job.

- (19) Social protection rights are not always preserved and transferred when individuals are transiting between different labour market statuses, for instance going from employment to self-employment or unemployment, combining salaried employment and self-employment, starting or closing down a business. The transferability of rights across schemes and their aggregation is also crucial to allow people who combine or change jobs or pass from a worker status to a self-employed status and vice versa to effectively access benefits in contributory schemes and to have adequate coverage, but also in order to encourage their participation in case of voluntary social protection schemes.
- (20) Benefits may be inadequate, i.e. insufficient or untimely to uphold the standard of living, to live with dignity and prevent individuals from falling into poverty. In this case, there may be scope to improve adequacy, while also being attentive to enabling measures that facilitate the return to work. The rules governing contributions may skew the level playing field and work to the disadvantage of some categories of workers and the self-employed. For instance, social protection contributions for self-employed may include contributions independent of income, or be set based on past incomes or assumptions about future income. This can create cash flows problems for the individual when their income drops below the estimates. Moreover, progressivity and reductions in social contributions for low-income groups could apply more equally to workers and the self-employed, while also ensuring that such exemptions do not induce under-reporting of income.
- (21) The current regulatory complexity and lack of transparency regarding social protection rules in many Member States hamper people's ability to be aware of their rights and obligations and their possibilities of exercising them. They may also contribute to a low take-up rate, or low participation in social protection schemes, especially in the case of a voluntary scheme.
- (22) Lack of statistics on coverage by social protection broken down by type of employment relationship, age, sex and citizenship may limit the possibilities of improving the capacity of social protection systems to adapt and respond to the changing world of work.
- (23) The gaps in access to social protection may have detrimental effects, in terms of economic and fiscal impacts, which are felt across the Union. They are a matter of common interest for the Member States and they potentially present obstacles to the achievement of key objectives of the Union.

- (24) Union legislation already ensures the principle of equal treatment between various types of employment relationships, prohibits any direct or indirect discrimination based on sex in matters of employment, occupation, social protection and access to goods and services, ensures portability and preservation of rights in case of mobility between Member States and guarantees minimum requirements for the acquisition and preservation of supplementary pension rights across borders, as well as minimum requirements in terms of transparency of occupational schemes. This Recommendation should be without prejudice to the provisions of the directives and regulations already setting out some rights to social protection<sup>30</sup>.
- (25) In its case law<sup>31</sup> the Court of Justice of the European Union has established criteria for determining the status of a worker. The definition of worker in point 7 is based on these criteria.
- (26) Council Recommendation 92/442/EEC<sup>32</sup> identified commonly held objectives in the area of social protection and invited Member States to 'examine the possibility of introducing and/or developing appropriate social protection for self-employed persons'. Those commonly defined objectives have opened room for the Open Method of Coordination in the field of social protection and social inclusion, an essential instrument to support the definition, implementation and evaluation of national social protection frameworks and to foster Member States' mutual cooperation in this area.

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<sup>30</sup> Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC - Annex : Framework agreement on part-time work (OJ L 14, 20.1.1998, p. 9), Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ L 175, 10.7.1999, p. 43), Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9), Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (OJ L 283, 28.10.2008, p. 36), Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (OJ L 354, 23.12.2016, p. 37), Directive 2010/41/EC 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, 15.7.2010, p. 1), Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23), Council Directive 1979/7/EC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ L 6, 10.1.1979, p. 24), Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004, p. 37), Council Directive 2010/18/EC of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (OJ L 68, 18.3.2010, p. 13) and proposal of 16 April 2017 repealing it (COM(2017) 253 final), Council Directive 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels (thirteenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) (OJ L 307, 13.12.1993, p. 1), Regulation (EC) 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1) and proposal for a Directive on transparent and predictable working conditions in the European Union, COM/2017/0797 final of 21 December 2017.

<sup>31</sup> See Judgments of 3 July 1986, Deborah Lawrie-Blum, Case 66/85; 14 October 2010, Union Syndicale Solidaires Isère, Case C-428/09; 9 July 2015, Balkaya, Case C-229/14; 4 December 2014, FNV Kunsten, Case C-413/13; and 17 November 2016, Ruhrlandklinik, Case C-216/15.

<sup>32</sup> Council Recommendation 92/442/EEC of 27 July 1992 on the convergence of social protection objectives and policies (OJ L 245, 26.8.1992, p. 49).

- (27) In the framework of the European Semester, the Annual Growth Survey 2018 recalls that improving the adequacy and coverage of social protection is crucial to prevent social exclusion while the 2018 Guidelines for the employment policies call on the Member States to modernise social protection systems.
- (28) In its Social Protection Floors Recommendation of 2012, the International Labour Organisation recommends its members, in accordance with national circumstances, to establish as quickly as possible and maintain their social protection floors comprising basic social protection guarantees.
- (29) The Commission has undertaken a two-stage consultation with the social partners<sup>33</sup> on access to social protection for people in all forms of employment, in accordance with Article 154(2) TFEU. The procedure of Article 154(2) TFEU is not as such applicable to Union action to address the challenges related to the self-employed on the basis of Article 352 TFEU. The Commission invited the social partners to share their views as regards persons in self-employment on a voluntary basis.
- (30) The Commission also carried out a public consultation to seek the views of various stakeholders and citizens and gathered evidence to assess the socio-economic impacts to this Recommendation<sup>34</sup>.
- (31) The implementation of this Recommendation should not be used to reduce existing rights set out in existing Union legislation in this field nor should it constitute valid grounds for reducing the general level of protection afforded to workers in the field covered by this Recommendation.
- (32) This Recommendation should avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small- and medium-sized undertakings (SMEs). Member States are therefore invited to assess the impact of their reforms on SMEs in order to make sure that SMEs are not disproportionately affected, with specific attention for micro-enterprises and for administrative burden, and to publish the results of such assessments.
- (33) This Recommendation should not aggravate further the liquidity of undertakings – and especially of SMEs – when their financial situation has been negatively affected by late payments from public authorities.
- (34) The Member States may involve stakeholders, including social partners, in the design of reforms. This Recommendation should not limit the autonomy of the social partners where they are responsible for setting up and managing social protection schemes.
- (35) This Recommendation should be without prejudice to the powers of the Member States to organise their social protection systems. The exclusive competence of the Member States with regard to the organisation of their social protection systems includes inter alia decisions on the setting up, financing and management of such systems and related institutions as well as on the substance and delivery of benefits, the level of contributions and the conditions for access. This Recommendation should not prevent Member States from maintaining or establishing more advanced provisions on social protection than the ones recommended here.

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<sup>33</sup> C(2017)7773  
<sup>34</sup> SWD(2018)70

- (36) This Recommendation should duly observe, reinforce and enhance fundamental rights, in particular as established by Articles 29 and 34 of the Charter of Fundamental Rights of the European Union.
- (37) The financial sustainability of social protection schemes is essential for the resilience, efficiency and effectiveness of the schemes. The implementation of this Recommendation should not significantly affect the financial equilibrium of Member States' social protection systems,

HAS ADOPTED THIS RECOMMENDATION:

### **Objective and scope**

1. This Recommendation aims to provide access to adequate social protection to all workers and the self-employed in Member States.
2. This Recommendation aims to establish minimum standards in the field of social protection of workers and the self-employed. Social protection can be provided through a combination of schemes, including public, occupational and private schemes and can involve contributions, in accordance with the fundamental principles of national social protection systems. Member States are competent to define the level of contributions and decide which combination of schemes is appropriate, in accordance with Article 153(4) TFEU.
3. This Recommendation covers the right to participate in a scheme as well as the build-up and take-up of entitlements. It aims in particular to ensure the following for all workers and the self-employed:
  - (a) formal coverage of social protection;
  - (b) effective coverage, adequacy and transferability of social protection;
  - (c) transparency of social protection entitlements.
4. This Recommendation applies to workers and the self-employed, including people transitioning between either status or having both statuses, as well as people whose work is interrupted due to the occurrence of one of the risks covered by social protection.
5. This Recommendation applies to the following branches of social protection, insofar provided in the Member States:
  - (a) unemployment benefits;
  - (b) sickness and health care benefits;
  - (c) maternity and equivalent paternity benefits;
  - (d) invalidity benefits;
  - (e) old-age benefits;
  - (f) benefits in respect of accidents at work and occupational diseases;
6. The principles of accessibility, transferability, adequacy and transparency defined in this Recommendation apply to all workers and to the self-employed, whilst acknowledging that different rules may apply for workers and for the self-employed.

## Definitions

7. For the purposes of this Recommendation, the following definitions apply:
- (a) 'worker' means a natural person who for a certain period of time performs services for and under the direction of another person in return for remuneration;
  - (b) 'employment relationship' means the work relationship between a worker and employer(s);
  - (c) 'type of employment relationship' means one of the various types of relationships between a worker and employer(s) that can differ regarding the duration of employment, the number of working hours or other terms of the employment relationship;
  - (d) 'labour market status' means the statuses of a person as either working in the framework of an employment relationship (worker) or working on their own behalf (self-employed);
  - (e) 'social protection scheme' means a distinct framework of rules to provide benefits to entitled beneficiaries. Such rules specify the personal scope of the programme, entitlement conditions, the type of benefits, benefit amounts, benefits duration and other benefit characteristics, as well as the financing (contributions, general taxation, other sources), governance and administration of the programme. The social protection branches referred to in paragraph 5 of this Recommendation are defined in accordance with Regulation (EC) No 883/2004 of the European Parliament and of the Council;
  - (f) 'benefit' means a transfer in cash made by a public or private entity to someone entitled to receive it as part of a social protection scheme;
  - (g) 'formal coverage' of a group means a situation in a specific social protection branch (e.g. old age, unemployment protection, maternity/paternity protection) where the existing legislation or collective agreement sets out that the individuals of this group are entitled to participate in a social protection scheme covering a specific branch;
  - (h) 'effective coverage' of a group means a situation in a specific social protection branch where the individuals in this group have an opportunity to accrue benefits and the ability; in case of materialisation of the corresponding risk, to access a given level of benefits;
  - (i) 'duration of benefits' means the period of time during which an insured or the insured's dependents can avail of the benefits of the social protection scheme;
  - (j) 'qualifying period' means the period of membership of a scheme, required under national law or by the rules of a scheme, in order to trigger entitlements to the accumulated social protection rights;
  - (k) 'minimum working period' means that the person is required to have worked a minimum of hours/months/years before being eligible to receive the benefit in case of materialisation of risk;

- (l) 'economic sectors' means sectors of the economy, grouped according to the kind of products or services they produced;
- (m) 'transferability' means the possibility of i) transferring accumulated entitlements to another scheme, ii) making qualifying periods in a previous labour market status (or in concomitant labour market statuses) count towards the qualifying periods in the new status;
- (n) 'transparency' means the provision of available, accessible, comprehensive and clearly understandable information to the general public, potential scheme members, schemes members and beneficiaries about the scheme's rules and/or about the individual obligations and entitlements.

### **Formal coverage**

- 8. Member States should ensure that workers have access to social protection by extending formal coverage on a mandatory basis to all workers, regardless of the type of their employment relationship;
- 9. Member States should ensure that the self-employed have access to social protection by extending their formal coverage:
  - (a) on a mandatory basis for sickness and healthcare benefits, maternity/paternity benefits, old age and invalidity benefits as well as benefits in respect of accidents at work and occupational diseases;
  - (b) on a voluntary basis for unemployment benefits.

### **Effective coverage and transferability**

- 10. Member States should ensure effective coverage to all workers, regardless of the type of the employment relationship, and to the self-employed, under the conditions set out in paragraphs 7 and 8, while also preserving the sustainability of the system and implementing safeguards to avoid abuse. To that end:
  - (a) rules governing contributions (e.g. qualifying periods, minimum working periods) and rules governing entitlements (e.g. waiting periods, calculation rules and duration) should not hinder the possibility of accruing and accessing benefits due to the type of the employment relationship or of the labour market status;
  - (b) differences in the rules governing the schemes between labour market statuses or types of employment relationships should be proportionate and reflect the specific situation of beneficiaries.
- 11. In accordance with the national arrangements on social dialogue, Member States should ensure that entitlements - whether they are acquired through mandatory or voluntary schemes - are accumulated, preserved and transferable across all types of employment and self-employment statuses and across economic sectors. This may include:
  - (a) aggregating all contributions and preserving all entitlements accumulated throughout the person's career or during a certain reference period;



- (b) making all entitlements transferable between different schemes within a given social protection branch.

### **Adequacy**

- 12. Where a risk insured by social protection schemes for workers and for the self-employed occurs, Member States should ensure that schemes provide an adequate level of protection to their members, i.e. sufficient and timely to uphold the standard of living, provide appropriate income replacement, while always preventing those members from falling into poverty.
- 13. Member States should ensure that the contributions to social protection are proportionate to the contributory capacity of workers and the self-employed.
- 14. Member States should ensure that any exemptions or reductions in social contributions for low-income groups apply, regardless of the type of employment relationship and labour market status.
- 15. Member States should ensure that the calculation of social protection contributions and entitlements of the self-employed are based on an objective and transparent assessment of their income base, including taking account of their income fluctuations, and reflect their actual earnings.

### **Transparency**

- 16. Member States should ensure that the conditions and rules of all social schemes are transparent and that individuals are given regularly updated, comprehensive, accessible, user-friendly, and clearly understandable information free of charge about their individual entitlements and obligations by, for example:
  - (a) sending regular updates on individual entitlements;
  - (b) setting up online simulation tools regarding benefit entitlements;
  - (c) creating online and off-line one-stop information centres or personal accounts.
- 17. Member States should simplify the administrative requirements of social protection schemes for workers, the self-employed and employers, notably micro-, small- and medium-sized enterprises.

### **Implementation, reporting and evaluation**

- 18. Member States and the Commission should jointly work on improving the scope and relevance of data collection at the Union level on labour force and access to social protection, with a particular view to informing policy making on social protection of new forms of work. In this context, Member States should collect and publish reliable national statistics on access to the various forms of social protection broken down by labour market status (self-employed/employee), the type of employment relationship (temporary/permanent, part-time/full-time, new forms of work/standard employment), gender, age and citizenship by [ADD date 18 months from the publication of the Recommendation].

19. The Commission should, jointly with the Social Protection Committee, establish a benchmarking framework, and develop agreed common quantitative and qualitative indicators to monitor the implementation of this Recommendation by [ADD date 12 months from the publication of the Recommendation] and enabling its evaluation.
20. Member States should implement the principles set out in this Recommendation as soon as possible and submit action plans reporting on the corresponding measures taken at the national level by [ADD date 12 months from the publication of the Recommendation]. The progress in the implementation of the action plans should be monitored in the context of the multilateral surveillance tools in line with the European Semester and the Open Method of Coordination for Social Inclusion and Social Protection.
21. The Commission should evaluate progress in the implementation of this Recommendation, also taking into account the impact on small- and medium-sized enterprises, in cooperation with the Member States and after consulting the stakeholders concerned, and report to the Council by [ADD date 3 years from the publication of the Recommendation]. On the basis of the results of the review, the Commission may consider making further proposals.
22. The Commission should ensure that the implementation of this Recommendation is supported through actions funded by the relevant Union programmes.
23. The Commission should facilitate mutual learning and the exchange of best practices between Member States and with stakeholders.

Done at Strasbourg,

*For the Council*  
*The President*