

# Public consultation on a possible EU action addressing the challenges of access to social protection for people in all forms of employment in the framework of the European Pillar of Social Rights

Top of Form

---

## Background document

### *Purpose of this public consultation*

During the public consultation on the European Pillar of Social Rights (EPSR)<sup>1</sup> many stakeholders have expressed concerns regarding the obstacles faced by people on non-standard employment and self-employment in accessing social protection (ex: unemployment benefits, sickness benefits, disability benefits, pensions, etc.) and employment services (ex: training, career counselling).

An initiative on 'Access to social protection'<sup>2</sup> is included in the Commission's Work Programme for 2017 as a response to these concerns. The purpose of the present consultation is to gather further views of interested stakeholders on the challenges, options, impacts and the development and implementation of a range of possible tools at EU-level that could be used in the design of such initiative.

In line with Treaty provisions, the Commission has launched a consultation with the European social partners<sup>3</sup> to obtain their views on the possible direction of European Union actions. The consultation closed on 23 June 2017. Social partners have not agreed to enter into direct negotiations on any of the issues raised during the consultation.

The public consultation is open to all stakeholders. However, the participation of organisations with an interest in social protection matters (e.g. governments, public authorities, companies, etc.) is particularly welcomed.

**It is suggested to read the context and glossary before filling in the questionnaire.**

### *Context*

Adequate access to social protection and employment services is crucial not just for the economic and social safety of the workforce, but also for well-functioning labour markets and resilient economies that create quality jobs and sustainable growth. Yet, in many Member States there are

---

<sup>1</sup> SWD(2017) 206, available online

<sup>2</sup> See also inception impact assessment, [http://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-2067870\\_en](http://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-2067870_en)

<sup>3</sup> Consultation document C(2017) 2610 final

groups of employed people, particularly in new forms of non-standard employment and in self-employment, who are left without sufficient effective access to social protection benefits and employment services or are even excluded. It is estimated that up to half of people in self-employment and in non –standard employment are left without sufficient access to social protection benefits and services.<sup>4</sup>

The link between the right and obligation to social protection and the form of employment or self-employment is becoming increasingly problematic. Historically, social protection has primarily been developed in relation to workers in standard employment (i.e full time permanent work). Other groups of employed people, like self-employed and people in non-standard work, have been more marginally covered.

While digitalisation brings new opportunities for jobs and innovation, the ongoing digital change further enables new flexible work arrangements as it breaks down many space, time and organizational boundaries of work and opens more options in terms of where and when to work. Different relationships between employer, employee and customer are emerging rapidly, blurring the boundaries of employment and self-employment known so far. In some cases the self-employed status is being used where de facto a subordinate employment relationship exists. In cases where the status of self-employment significantly changes the right to be covered and the obligation to pay social insurance contributions, people may be pushed to become formally self-employed to lower non-wage labour costs.

Since these forms of employment constitute a rising share of job-opportunities - notably for the young -, a growing part of the working population risks being left without the support of adequate social protection and employment services that they need in order to manage their working careers and lives in ever more rapidly changing labour markets, with increased transitions between employment forms and statuses. The accumulated effects of such disparities in entitlements are likely to give rise to new inter- and intra-generational inequalities between those that have or manage to gain employment on standard contracts with full social rights and those who do not.

Altogether self-employment and non-standard forms of work represent a significant share of the labour market. In 2015, 15% of the totally 221 million employed in the EU were self-employed, 12% were temporary employees, 14% were part-time employees and 58% were employees with a full-time permanent contract. All together, this initiative could potentially affect 41% of people in employment.

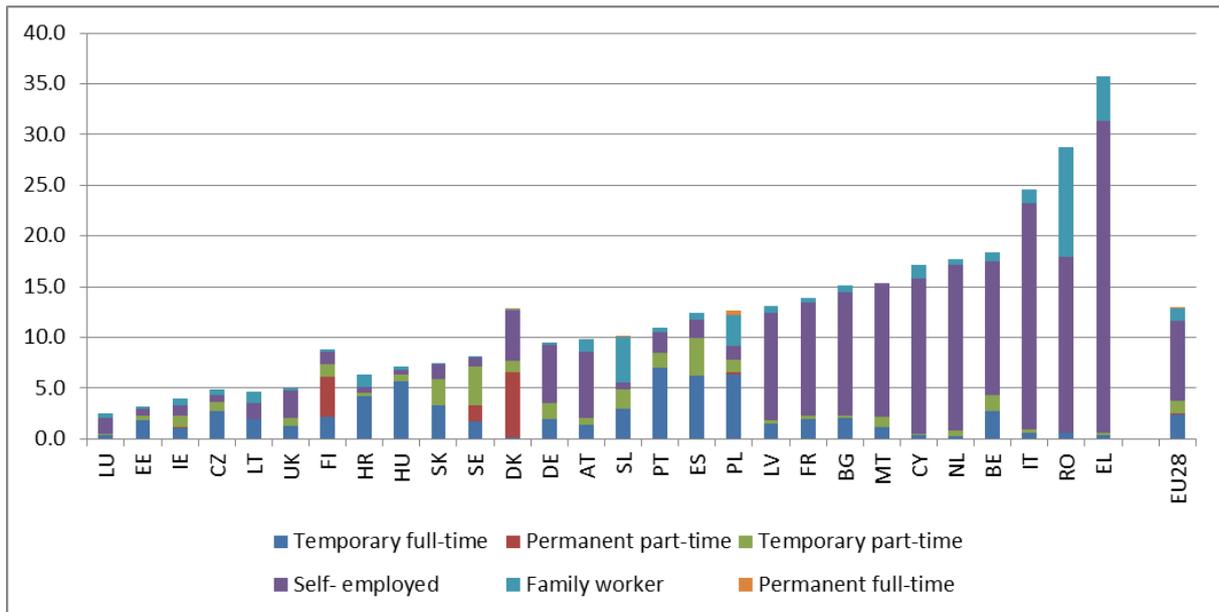
The situation differs across Member States. Some Member States have begun to adapt their labour market institutions and social protection systems to these new developments. Some reforms have been introduced to ensure access to social protection of workers in non-standard forms of employment and, more recently, to regulate the new forms of self-employment. But most Member States are still struggling to find an adequate response to the 'changing nature of work'. For example, unemployment insurance is not accessible for the self-employed in 10 Member States. Almost a third of people on temporary full-time contracts in the EU do not qualify for unemployment benefits with variation between Member States ranging from 3% to 70%.<sup>5</sup>

Percentage of people in employment with risk of not being entitled to unemployment benefits (aged 15-64, 2014 figures)

---

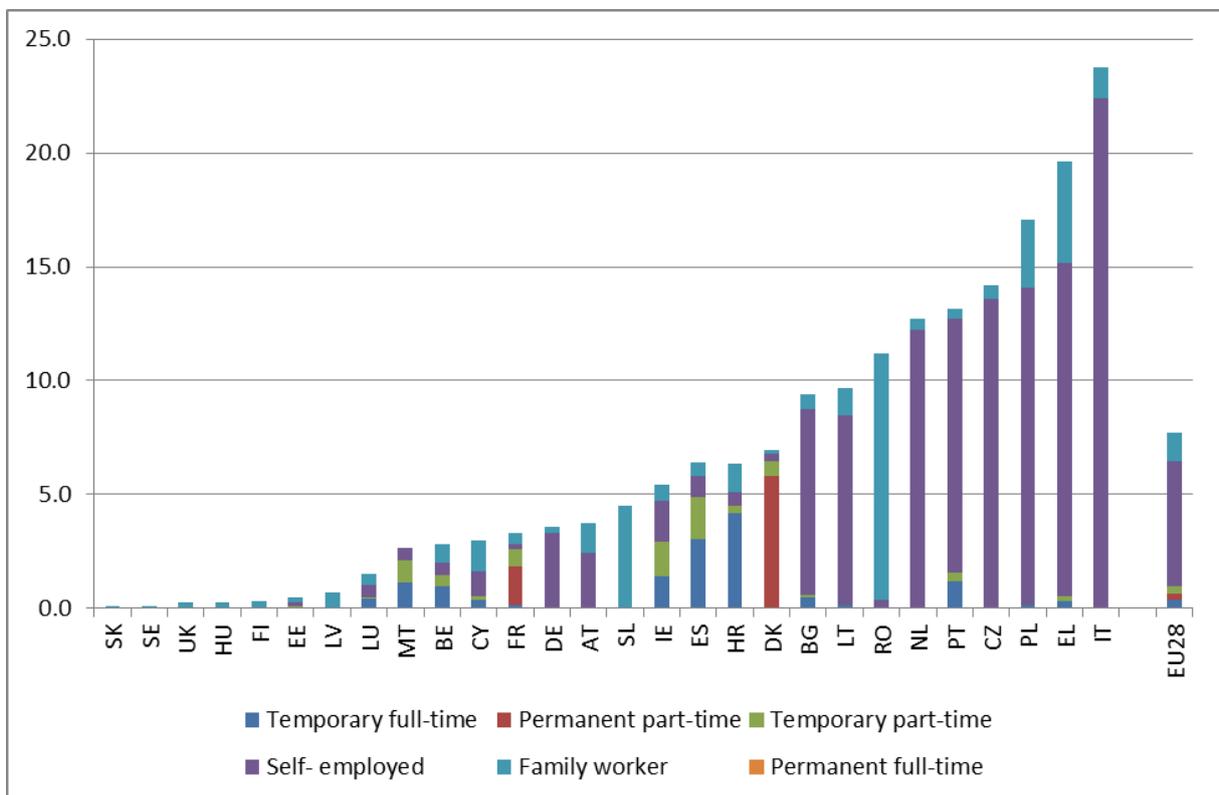
<sup>4</sup> Matsanganis et al. (2016): Non-standard employment and access to social security benefits

<sup>5</sup> Matsanganis et al. (2016): Non-standard employment and access to social security benefits



As for sickness benefits, approximately 40% of the self-employed do not qualify, whereas about 10% of workers on fixed term contracts are in this situation.<sup>6</sup>

Percentage of people in employment with risk of not being entitled to sickness benefits (aged 15-64, 2014 figures)



Employment services for self-employed, such as training, mentoring and advice are only available in a small number of Member States.

<sup>6</sup> Idem

Relative poverty risk for self-employed in 2015 in the EU28 was three times higher than that of workers. Similarly, poverty risks for non-standard workers in 2015 were markedly higher than those for workers with a permanent and full time job. Moreover, on average in Europe (EU28) around 15% of temporary and part-time workers are income poor.<sup>7</sup>

The problems are to a large extent driven by deficiencies in the regulatory framework governing the accessibility, the transferability and transparency of social protection and employment services that do not (sufficiently) take into account these new labour market developments. In particular, the following **challenges** can be identified:

- **Gaps in formal coverage**

*Gaps in formal coverage relate to the statutory obstacles existing in national legislations that prevent people in non-standard forms of employment or self-employed to have effective access to social protection and employment services.*

While people *in non-standard employment* mostly have formal social protection coverage, certain categories of non-standard employment are excluded (e.g. casual and seasonal workers in Bulgaria, Hungary and Romania; temporary agency workers in the Netherlands and UK; on-call and zero-hour workers in the Netherlands) or only have partial formal coverage (e.g. mini-jobbers in Germany).

For *self-employed*, formal social protection coverage varies widely among European countries, not only between schemes but also across categories of self-employed people within the same country. The self-employed generally have formal coverage in the case of non-insurance based schemes, i.e. universal schemes (e.g. family benefits, certain healthcare and maternity benefits) and certain means-tested schemes (e.g. social assistance, some long-term care services, basic old-age pensions). They are also covered through several insurance-based benefits. Typically, they are formally covered by healthcare, maternity/ paternity benefits, pensions, long-term care and invalidity schemes. Crucially, however, they may be excluded from some major insurance-based schemes such as sickness, unemployment and/or occupational injury benefits.

Non-standard and self-employment may also suffer from inadequate access to training and career development. Whereas workers in non-standard employment can often access public employment services on a par with workers in standard employment, they have much less access to on the job training. In most Member States self-employed have little to no access to guidance, training and life-long learning or mentoring. Still, in about a third of Member States entrepreneurial start-up incentives can include training, information and advisory services, but they rarely offer anything beyond the start-up phase.

- **Gaps in effective coverage**

*Even if non-standard workers or self-employed are formally covered by a social protection scheme and thus formally have access to the related benefit, they may not have effective access to it because eligibility criteria may be set in such a way that they have major difficulties meeting them.*

---

<sup>7</sup> Eurostat data

People in non-standard employment or self-employment often have difficulties in fulfilling the qualification conditions for contributory benefits (e.g. duration of contribution periods). When included, their social insurance contributions are often voluntary, flat-rate or the income basis on which they are calculated is self-declared (subject to minima). Moreover, in cases of low income the level of earnings-related contributions may not allow for an adequate level of benefits. Individual myopia may also play a role in securing sufficient social protection during one's working life. Those with low and/or irregular income, in particular self-employed without employees and people working on short-term non-standard contracts, are more likely to forego or reduce contributions. This leads to frequent under-insurance against social and health risks and results in a tendency to fall back on safety nets of last resort.

Self-employed may encounter similar problems as non-standard workers. *Effective* coverage or effective entitlement accrual for them depends on eligibility conditions and in particular on the income assessment base taken into account for the calculation of benefits. In general, *self-employed* receive lower benefits and for shorter periods than salaried workers. This is often the case for unemployment benefits (e.g. Denmark, Estonia, Greece, Finland), sickness benefits (e.g. Belgium, Bulgaria, Czech Republic, Finland) and maternity benefits (e.g. Croatia, Poland).

The difficulties in building up entitlements and the inadequacy of the benefits are due to two main elements:

- a) eligibility conditions which are hard to meet, often because they have been tailored to salaried employment (e.g. contributory periods, cessation of activity requirements, etc.) The take-up of benefits is often hindered for part-time and temporary workers by high hourly and contributory period thresholds ; and
- b) contribution rates/lump sums and, especially, the income assessment base, which can be related to several issues: income paid on long previous periods of earnings, upfront payments (advance social security payments), payments of arrears, under- or non-reporting of income-streams, etc.

- **Insufficient transferability of rights**

Working an intermittent career, consisting of several fixed-term contracts, periods of self-employment or jobs under other non-standard contracts, can be a way of matching the changing requirements in labour markets with one's skills, aspirations and preferences related to work-life balance. But if Europe's workers are to adapt to an increasing number of career transitions and to fast changing forms and patterns of employment as a result of technology and globalisation, the rights to social protection and related employment services they have accumulated need to be preserved and transferable. *Transferability of rights and entitlements between different schemes and job statuses, including problems with their preservation and portability, constitutes an obstacle for non-standard workers and self-employed.*

Typically, a self-employed person who used to be in salaried employment and who ceases his/her self-employed activity, cannot access unemployment benefits based on his/her previous status. Transferability of occupational entitlements is also particularly problematic issue in some countries (e.g. Germany, Denmark, the Netherlands).

Only some countries have implemented mechanisms allowing a person to include contribution periods from previous employment in the calculation of unemployment benefits (e.g. Belgium, France, Croatia, Luxembourg, Sweden). Only a few countries are progressing towards integrating

different types of entitlements into one unique account (ex. Latvia, France). Individual social security accounts, for example, may be an important instrument for the preservation and the portability of rights and entitlements and for the information for individuals.

- **Insufficient transparency of rights and regulatory complexity**

*The current regulatory complexity and lack of transparency in many Member States often hampers people's ability to be aware of their rights and obligations and their possibilities of exercising them. This is particularly relevant in a context of frequent transitions between different jobs and employment statuses.*

In several Member States people are neither offered regular updates of their entitlements nor a properly clear channel for accessing information about these. In many Member States it is for reasons of regulatory complexity quite difficult to access and combine information about the benefits and services one may have built an entitlement to or have the right to claim, accrued under the different schemes and job statuses in one's career.

Only very few Member States offer easy access to information about the employment services that people may access in case of unemployment, job shifts or transitions between (or combination of) dependent employment and self-employment.

Altogether the current situation calls for a strong effort of simplification so that each individual can more easily accumulate, preserve, transfer and even convert his/her rights and have clear and accessible information about them. Challenges in access to social protection are related to lack of formal or limited effective access for certain forms of employment and self-employment due to voluntary, flat-rate or self-declared contributions, and insufficient qualifying periods. Moreover, the lack of transferability of social protection rights from one form of employment to another, and the lack of transparency of such rights call for swift action.

## ***Current EU acquis and instruments***

The EU acquis related to the rights and obligations in relation to social protection and employment services is implemented through a variety of legislative and non-legislative provisions. However, none of these fully addresses the rights and obligations of people in non-standard employment and forms of self-employment.

In the area of social protection, two Council recommendations adopted in the nineties<sup>8</sup> have brought to life a concerted strategy on social protection – the Social open method of coordination – with the creation of the Social Protection Committee (SPC) and the use of guidelines and indicators, benchmarking and sharing of best practice. These instruments have constituted for the last two decades essential vehicles to address, in a coordinated manner, some of the most pressing challenges of social inclusion and social protection across the Member States.

Over the years, however, the challenges related to social protection for self-employed and people in non-standard work have not received strong attention in the framework of such strategy. Given societal trends and changes in the world of work and the growing number of people who risk not

---

<sup>8</sup> Council Recommendation on the convergence of social protection objectives and policies (92/442/EEC), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31992H0442&from=EN>

having access to social protection thereafter, such soft coordination mechanisms remain essential to stimulate a Member States coordinated response to the problem, but might not to be sufficient.

In the last decades an EU legal framework for protection of labour rights has also been put in place. Regarding non-standard employment the Temporary Agency Work Directive has been implemented and several negotiated agreements between social partners have been developed and implemented via the Directives on Part-Time Work and Fixed-Time Work, and have ensured the protection of some rights.<sup>9</sup> But as the Directives apply to employment conditions, their impact on social protection was and remains rather limited. As regards self-employed, the Directive 2010/41/EU on equal treatment between men and women engaged in self-employed activity is a step towards improving the protection of individuals engaged in self-employment and the access to social protection for spouses of the self-employed.

Finally guidance on access to training and employment services is agreed in the guidelines for Member States' employment policies, which inform the European Employment Strategy and the European Semester. The European funds, in particular the European Social Fund (ESF), provide financial support to training and activation measures.

### ***International dimension***

ILO developed a two-dimensional approach which aims at the rapid implementation of national social protection floors containing basic social security guarantees that ensure universal access to essential health care and income security at least at a nationally defined minimum level (horizontal dimension), in line with the Social Protection Floors Recommendation, 2012 (No. 202), and the progressive achievement of higher levels of protection (vertical dimension) within comprehensive social security systems according to the Social Security (Minimum Standards) Convention, 1952 (No. 102).

---

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

## **Glossary**

**Casual work:** Eurofound distinguishes between two types of casual work:

- *Intermittent work:* this involves an employer approaching workers on a regular or irregular basis to conduct a specific task, often related to an individual project or seasonally occurring jobs. The employment is characterised by a fixed-term period, which either involves fulfilling a task or completing a specific number of days' work. This employment form was found in Belgium, Croatia, France, Hungary, Italy, Romania, Slovakia and Slovenia.
- *On-call work:* this involves an on-going employment relationship between an employer and an employee, but the employer does not continuously provide work for the employee. Rather, the employer has the option of calling the employee in when needed. This employment form has emerged or has been of increasing importance over the past decade in Ireland, Italy, the Netherlands, Sweden and the UK.

Eurofound notes that casual work may overlap with other new employment forms, such as voucher-based work.

**Dependent self-employed:** Under dependent self-employment, for instance, the worker performs services for a business under a contract different from a contract of employment but depends on one or a small number of clients for their income and may receive direction regarding how the work is to be done (ILO).

**Employment guidelines:** The [employment guidelines](#), proposed by the Commission and approved by the Council, present common priorities and targets for the national employment policies. They have been integrated in the package with the Broad Economic Policy Guidelines since 2005. In March 2015, the Commission adopted a proposal for a new package of integrated policy guidelines to support the achievement of smart, sustainable and inclusive growth, and the aims of the [European Semester](#) of economic policy coordination.

**European Semester:** provides a framework for the coordination of economic policies across the European Union. It allows EU countries to discuss their economic and budget plans and monitor progress at specific times throughout the year.

**ICT-based mobile work:** Work patterns characterised by the worker (whether employee or self-employed) operating from various possible locations outside the premises of their employer (for example, at home, at a client's premises or 'on the road'), supported by modern technologies such as laptop and tablet computers. This is different from traditional teleworking in the sense of being even less 'place-bound'.

**Individual accounts:** During the consultation on a European Pillar of Social Rights, the system of web-based, personal accounts with employment-related rights (compte personnel d'activité, CPA) presently being introduced in France was often mentioned as an example. These CPAs will allow people to use "points" accrued on past jobs for training, sabbatical/family leave, salary

top-up, and more. Moving to a non-standard contract might entail accruing no further or fewer points, but the acquired "points" are not lost; conceivably these could even be used to finance a start-up into self-employment. Such personal accounts ensure more continuity in rights across job types and enhancing mobility. They would achieve a fuller take-up of social rights and to empower people to choose the benefits and services that fit best with their needs. Several Member States have indicated they consider introducing similar systems of personal accounts.

**New forms of employment** are characterised by unconventional work patterns and places of work, or by the irregular provision of work. They can be based on non-standard contractual arrangements or on self-employment status. Eurofound<sup>7</sup> identifies nine employment forms as new — or of increasing importance — since 2000: employee sharing, job sharing, interim management, casual work, ICT-based mobile work; voucher-based work; portfolio work; crowd employment; and collaborative employment.

**Non-standard employment** refers to all forms of work other than full time, open-ended employment in a subordinate and bilateral employment relationship<sup>6</sup>.

**Portfolio work:** a self-employed individual works for a large number of clients, carrying out small-scale jobs for each of them.

**Related employment services** encompass benefits in kind included in active labour market policies such as guidance, counselling and placement, training and updating, rehabilitation and re-insertion measures, typically facilitated by public employment services.

**Self-employment** refers to employment in which persons pursue a gainful activity for their own account. It includes self-employed with and without employees;

**Social open method of coordination:** The Commission works together with EU countries through the Social Protection Committee using the Open Method of Co-ordination in the areas of social inclusion, health care and long-term care and pensions (social OMC). The social OMC is a voluntary process for political cooperation based on agreeing common objectives and measuring progress towards these goals using common indicators. The process also involves close co-operation with stakeholders, including Social Partners and civil society.

**Social protection** encompasses all social benefits in cash and kind, with typical ones being benefits in case of: unemployment, sickness, accidents at work and occupational diseases, invalidity, old-age, pre-retirement, death (i.e. survivors' pensions and death grants), maternity/paternity, parental and family obligations, and need for health care or long-term care.

**Social protection obligations:** Compulsory payments made to the social protection system and related employment services that confer entitlement to receive a (contingent) future social benefit. They include: unemployment insurance benefits and supplements, accident, injury and sickness benefits, old-age, disability and survivors' pensions, family allowances, reimbursements for medical and hospital expenses or provision of hospital or medical services. Contributions may be levied on both employees and employers.

**Social protection rights:** The right to access social protection and to built entitlements against contributions

**Soft law:** is the term applied to EU measures, such as guidelines, recommendations, declarations and opinions, which – in contrast to regulations, directives, and decisions – are not binding on those to whom they are addressed.

**Temporary agency work:** A worker with a contract of employment or/and employment relationship with a temporary-work agency with a view to being assigned to a user undertaking to work temporarily under its supervision and direction.

**Voucher-based work:** The employment relationship and related payment is based on a voucher rather than an employment contract. In most cases, the workers then have a status somewhere between employees and self-employed.