



Brussels, 20.11.2017
C(2017) 7773 final

CONSULTATION DOCUMENT

of 20.11.2017

Second Phase Consultation of Social Partners under Article 154 TFEU on a possible 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

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1. INTRODUCTION

During the public consultation¹ on the European Pillar of Social Rights (hereafter 'the Pillar') many stakeholders expressed concerns regarding the obstacles faced by workers in non-standard forms of employment and by self-employed in accessing social protection such as unemployment benefits, sickness benefits, disability benefits, health insurance and pensions. An initiative on 'Access to social protection'² is included in the Commission's Work Programme for 2017 as a response to these concerns.

On 26 April 2017 the Commission, the Council and the European Parliament jointly proclaimed the Pillar³. The Pillar sets out 20 principles and rights to support fair and well-functioning labour markets and welfare systems. Social protection and inclusion principles and rights feature particularly high in the Pillar; 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'*.

The 'Access to social protection' initiative would aim at supporting access on the basis of contributions to all people who, due to their employment status, have insufficient access to social protection and related employment services and thus are exposed to higher economic uncertainty and lower protection against social risks. It would aim at implementing at Union level the Pillar principle 12 as well as at contributing to the implementation of other Pillar principles such as the principles on "active support to employment", "secure and adaptable employment", "unemployment benefits", "old-age income and pensions" and "access to healthcare".

In line with Treaty provisions, on 26 April 2017 the Commission launched the first phase of a consultation of social partners to request their views on the possible direction of European Union action to address the challenges of access to social protection and related employment services for workers in non-standard forms of employment. On a voluntary basis the Commission also invited social partners to share their views on how the challenges of access to social protection affecting self-employed could be addressed.

Following the responses received, **the Commission is now launching a second-stage consultation of social partners, in accordance with Article 154(3) of the Treaty on the Functioning of the European Union (TFEU). The goal of the second-stage consultation of social partners is to discuss the possible content of the envisaged Commission proposal aiming at ensuring access to social protection for workers in non-standard**

¹ SWD(2017) 206, available [online](#)

² See also inception impact assessment, http://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-2067870_en

³ COM(2017)250, available [online](#)

forms of employment and to ask whether they wish to enter into negotiations as provided for by Article 154(4) TFEU.

European Union action may also be pursued to address challenges of access to social protection for self-employed, based on Article 352 TFEU. Since Articles 154(2) and 154(3) do not apply in this case, it is therefore on a voluntary basis that the Commission also invites social partners to share their views on the content of a possible Commission proposal aiming at ensuring access to social protection for the self-employed.

This second-stage consultation document brings together the main results of the first-stage consultation and sets out potential avenues for EU-level action. It is accompanied by an analytical document⁴ which provides further background information on the problem that the Commission aims to address, a description of the current regulatory framework at EU level and the situation in the Member States as well as the added value, legal basis and possible instruments of an EU action.

In parallel, the Commission is launching an open public consultation⁵ to gather the views of other relevant stakeholders such as national, regional and local authorities, organisations of self-employed and civil society.

From 21 September 2017 to 3 November 2017, the Commission also conducted a consultation to social partners on the content of the envisaged Commission proposal concerning a revision of the Written Statement Directive (Directive 91/533/EEC) (see Consultation Document C(2017) 6121) and to ask whether they would wish to enter into negotiations as provided for by Article 154 TFEU.

2. THE FIRST-STAGE CONSULTATION OF THE SOCIAL PARTNERS

The first stage consultation of social partners was open from 26 April to 23 June 2017. The Commission received 16 replies from trade unions and employers⁶.

The trade unions that replied to the consultation were the European Trade Union Confederation (ETUC), Eurocadres and the European Confederation of Executives and Managerial Staff (CEC), the European Confederation of Independent Trade Unions (CESI), the European Arts and Entertainment Alliance (EAEA) and the European Federation of Journalists (EFJ).

On the side of the employers, replies to the consultation were sent by BusinessEurope, the European Centre of Employers and Enterprises providing Public Services (CEEP), Eurocommerce, the European Association of craft, small and medium-sized enterprises (UAPME), the Council of European Employers of the Metal, Engineering and Technology-Based Industries (CEEMET), the Council of European Municipalities and Regions (CEMR), the European Chemical Employers Group (ECEG), the Hotels, Restaurants and Cafés in Europe (HOTREC), the Retail, Wholesale and International Trade Representation to the EU (EuroCommerce), the Employers' Group of the Committee of Agricultural Organisations in the European Union (GEOPA-COPA) and the World Employment Confederation (WEC).

⁴ SWD(2017) 381

⁵ <http://ec.europa.eu/social/main.jsp?langId=en&catId=699&consultId=29&visib=0&furtherConsult=yes>

⁶ A detailed overview of the replies is provided in chapter 2 of the analytical document SWD(2017) 381

Social partners largely agreed with the Commission's *identification of the issues* related to access to social protection for workers in non-standard forms of employment and for self-employed. Trade unions mentioned that the analysis, whilst correct, could be improved by specifying that new forms of work can entail poor job quality and unsecure conditions and thus lead more to a lack of protection against life risks rather than to real job opportunities. Some also requested that the initiative is extended to a right to collective bargaining, fair remuneration for all and the right to freedom of association for all workers. On the other hand, employers stressed that grouping very different types of forms of employment together under the heading of 'non-standard' may not be appropriate as it ignores the diversity between these different forms and the needs and desires of those addressed, also in terms of access to social protection. They also highlighted the heterogeneity within the self-employed.

Regarding the *need for an EU initiative*, social partners provided significantly different replies. Trade unions are collectively in favour of an EU initiative and consider that improvements to EU legislation are necessary. They also stress that there is a need for better enforcement of existing legislation; that the administrative burden concerning an individual's employment situation should be reduced; and that transferability of all entitlements should be ensured. On the other hand, employers do not consider that changes to EU legislation in this field are needed or appropriate. They underline that social protection is an area of Member States competence and that the principles of subsidiarity and proportionality are to be respected. Employers stress that the aim of such an initiative should be to improve national policy responses by taking into account other relevant national practices and that the Open Method of Coordination and the European Semester process, including benchmarking, would be the right tools at EU level to support such reforms, and to foster mutual learning and exchanges of good practice.

Regarding the *material and personal scope* of an EU initiative, trade unions are in favour of a wide personal scope, which in their view should include all workers in non-standard forms of employment and the self-employed. Some consider all branches of social protection and employment services equally important, while others would focus on non-universal social security schemes, if a prioritisation has to be made. Employers were reluctant to reply to questions regarding the material and personal scope of the initiative. Some considered that the questions on those subjects pre-suppose that an EU initiative will be proposed, or they considered that the scope depends on the nature of the initiative. Nonetheless, some employers' organisations emphasised the need to make skills, education and training easily accessible to all citizens.

Finally, social partners expressed different views on the *willingness to enter into negotiations*. Employers' organisations indicated that they are not considering initiating a dialogue under Article 155 TFEU. In contrast, all trade unions have indicated their willingness to enter into negotiations. However, in the event that the EU social partners would not agree to negotiate, or in case negotiations would not lead to a successful outcome, trade unions urge the Commission to make a legislative proposal.

3. THE CHALLENGE AND THE NEED TO ACT

3.1. *The changing nature of work calls for adequate social protection*

The Commission Reflection Paper on the social dimension of Europe⁷ points out that today's social protection systems differ across the EU. The variety of welfare and social protection systems reflects different traditions, political preferences and budgets.

Nevertheless, across the EU social protection systems 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 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 employment 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, such as on-demand work, voucher-based work, and intermittent work, are being favoured by businesses in order to respond to these needs. New forms of work such as platform work are also creating new opportunities for people to enter or remain in the labour market and allow people to combine salaried employment and self-employment. **In general, crowd work seems to be used as a supplement to total income.**

Likewise, and for similar reasons, self-employment has evolved over the last two decades in the EU. Alongside the traditional "entrepreneurs" and liberal professions, the self-employed status is being used more widely when de facto a subordinate employment relationship exists. Self-employment is also diversely defined at national level; sometimes defined in labour law, other times in tax law, in trade law or even in civil law or social protection law. There is no single, unambiguous definition applicable in any of the countries drawing a clear-cut distinction between 'genuinely' self-employed, 'dependent' self-employed and 'bogus' self-employed⁸.

Importantly, the structural changes in the labour markets, driven by digitalisation, globalisation, ageing and the crisis-driven transformations have blurred boundaries between labour market statuses. The diversity of employment and self-employment forms is further detailed in the accompanying analytical document.⁹

⁷ https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-social-dimension-europe_en.pdf

⁸ See also accompanying analytical document, chapter 3.

⁹ See also accompanying analytical document, chapter 3

In 2016, 60% of the 219 million employed in the EU were employees with a full-time permanent contract, 14% were self-employed, 8% were full time temporary employees, 4% were part-time temporary employees, and 13% were part-time permanent employees. Altogether self-employment and non-standard forms of work represent 39% of the employed population, a significant share of the labour market. It is estimated that up to half of people in non-standard work and self-employment in EU Member States are at risk of not having sufficient access to social protection and/or employment services.

In 2016, 71.5% of the self-employed in the EU were self-employed without employees; 28.5% of the self-employed without employees were registered as managers, professionals or associate professionals, while around 21.4% were agricultural or elementary workers. 16.2% were reported to be sales or service workers and 21% skilled or semi-skilled manual workers such as craft and related trade workers. The occupations of the self-employed vary considerably across countries. For example, in Belgium, Germany, and Luxembourg and Sweden, well over 50% of the self-employed without employees worked as managers, professionals or associate professionals in 2016, while in Romania they were just 3%.

The proportion of younger workers in temporary contractual arrangements or with 'other or no contract' is twice that of the other age groups. A gender division is also evident in all age groups, with a strong prevalence of men among the self-employed, while among female workers there is a higher proportion of part-time, fixed-term and 'other or no contract' situations (with the exception, in the latter category, of the under-35). Workers with only primary education are more likely to be found among the self-employed without employees (19%) or employees with 'other or no contract' (21%) and merely 16% of people with this level of education have a fixed-term contract¹⁰.

Evidence shows that the crisis has led to a rise in involuntary temporary and part-time work and overall to increased perceptions of job insecurity¹¹. Between 2007 and 2014, the share of the working poor has risen in the entire population, but especially amongst the self-employed and amongst those in non-standard forms of work or in low-wage work. Cyclical shocks, such as the labour market effects of the last crisis, may have long-lasting consequences for more vulnerable workers, effectively "locking them" into non-standard employment status for a protracted period of time.

Social protection serves to protect people against the financial implications of social risks, such as ill health, old age or job loss, and it contributes to prevent and alleviate poverty. Social protection can take the form of in-cash benefits which replace or supplement work income (unemployment benefits, pensions, sickness benefits, child benefits) and/or in-kind benefits which provide support through the supply of goods and of services (healthcare, child care, training or job search assistance. Well-designed social protection systems are also important to facilitate labour market participation in a world of rapid and growing labour market transformations. Adequate social protection contributes to the development of human capital and to a better allocation of the labour force by providing workers opportunities and incentives to participate in education and training and devote time to search for a job matching their skills. It helps people feel secure in order to fully embrace the opportunities

¹⁰ European Working Conditions Survey 2016.

¹¹ See accompanying analytical document, chapter 4

created by new forms and patterns of work, new working relationships with employers, growing career transitions as well as self-employment.

3.2. Faster changes in social protection systems are needed across the EU

Adequate and financially sustainable social protection systems can strengthen the resilience of our economies by better enabling people to harness the opportunities offered by globalisation and technology whilst alleviating their negative effects of globalisation and technology on work and employment relations. The mapping of the national regulatory frameworks of Member States' social protection schemes carried out by the Commission¹² confirms that some Member States have begun to adapt their labour market institutions and social protection systems to these new developments.

For instance most Member States have introduced gradual, and in some cases, substantial pension reforms in the last decades altering the pension system rules and parameters in order to enhance fiscal sustainability while maintaining adequate pension income. Also 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'

The deficiencies identified in the regulatory framework concern **coverage, transferability and transparency**. Most deficiencies identified relate to insurance-based schemes and affect a majority of the Member States.

While people in non-standard employment mostly have *formal access* (or formal coverage) to social protection, i.e. the national legislative framework provides for 'de iure' access in a social protection scheme, 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-demand and zero-hour workers in the Netherlands) or only have partial access (e.g. mini-jobbers in Germany).

For the self-employed, formal coverage of social protection 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 access to 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). Crucially, however, they may be excluded from some major insurance-based schemes such as sickness, unemployment and/or occupational injury benefits.

For example, while self-employed are compulsorily insured against unemployment in eleven countries (Czech Republic, Greece, Croatia, Hungary, Finland, Luxembourg, Poland, Portugal¹³, Sweden, Slovenia and Slovakia), they are excluded from any access to unemployment protection in ten countries (Belgium, Bulgaria, Cyprus, Germany, France, Italy, Latvia, Lithuania, Malta and the Netherlands). In four other countries, they can join voluntarily (Austria, Denmark, Spain and Romania).

¹² See accompanying analytical document, chapter 4

¹³ Only applicable to dependent-self-employed

Both non-standard workers and the self-employed face difficulties in *effective coverage*, i.e. not sufficient possibilities to de facto exercise their rights, for two main reasons. Firstly, eligibility conditions tailored to permanent full time salaried employment (e.g. contributory periods, cessation of activity requirements, etc.) are difficult to meet in other employment relationships. The take-up of benefits is often hindered for part-time and temporary workers by high hourly and contributory period thresholds.

Secondly, the methods of calculation and, especially, the income assessment base – related to several elements like 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. can be a disincentive to properly contribute or to legally declare income.

For these reasons in some countries self-employed receive, for example, lower benefits and for shorter periods than salaried workers for unemployment (e.g. Denmark, Estonia, Greece, Finland), sickness (e.g. Belgium, Bulgaria, Czech Republic, Finland) and maternity (e.g. Croatia, Poland).

17 million self-employed and about 8 million people employed on non-standard contracts are at risk of not being covered by unemployment benefits.

Similarly, 12 million self-employed and 2 million people employed on non-standard contracts are at risk of not being covered by sickness benefits.

Another example of lack of effective access is healthcare. Healthcare services that go beyond the breadth and scope of the baskets guaranteed in tax-based systems may be out of reach for some non-standard workers and self-employed. Indeed in 2015 self-employed reported a rate of unmet medical needs that was 55% higher than the one reported by employees. While self-employed generally have formal access to certain healthcare in non-insurance based systems, they suffer from limited effective access to healthcare in insurance based-schemes systems due to the coverage being limited to a subset of self-employed, problems with meeting eligibility criteria, lack of affiliation even in compulsory insurance schemes or financial hardship which only allows insurance at the minimum threshold.

There are increasingly diverse and irregular working patterns and working conditions. More and more workers have an intermittent career, consisting of several fixed-term contracts, periods of self-employment or jobs under other non-standard contracts. *Transferability* of rights and entitlements between different schemes and job statuses, including problems with their preservation is an obstacle in such situations. 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 a particularly problematic issue in some countries (e.g. Germany, Denmark, and the Netherlands).

Regulatory complexity and lack of *transparency* in many Member States are often hampering awareness of rights and obligations and possibilities of exercising them. Many Member States do not offer regular updates of entitlements or a channel for accessing information. In many Member States it is also quite difficult to access and combine information about the benefits and services to which one is entitled, accrued under the different schemes and job statuses in one's career.

The accompanying analytical document provides a detailed overview of the existing gaps across the EU¹⁴.

Over time, disparities in access to social protection are deepening inequalities between those who manage to gain employment on standard, i.e. full-time, open-ended contracts with full effective social rights and those who do not. Safeguarding job creation and growth coming from self-employment and non-standard work while avoiding widening precariousness requires closing the gaps in access to social protection and employment services for self-employed and non-standard workers.

An EU framework can provide a common canvas to support Member States in addressing the national gaps, both in terms of social protection entitlements and contributions. Coordinated action would contribute to improving transparency of labour markets, promoting investment in people, strengthening economic and social resilience. As a result, Member States can support self-employment and non-standard forms of work while upholding upward economic and social convergence within the single market as a whole.

4. POSSIBLE AVENUES FOR EU ACTION

4.1. *Proposed objectives of an EU initiative*

The Commission has identified common deficiencies in national social protection systems that cause difficulties for the access of non-standard workers and the self-employed to social protection. Firstly, as presented in the previous section, not all types of benefits and protection are formally accessible to non-standard workers or the self-employed, and if they are, de facto access may be problematic. For instance, non-standard workers and the self-employed may receive considerably lower benefits than standard workers because the income basis on which benefits are calculated is more volatile¹⁵. Therefore, the Commission would propose formal and effective **coverage** of non-standard workers and self-employed to social protection; on the basis of contributions, as one of the objectives of an EU initiative.

In addition, transferability of rights and entitlements is not always guaranteed when workers transition between different types of employment or between employment and self-employment. This puts workers transitioning from standard work to non-standard work or self-employment in a less favourable situation. **Transferability** would thus also be an objective proposed by the Commission.

Lastly, transparency and administrative simplicity are crucial in helping people to manage their working careers. If people are to transition easily between employment statuses, they must be well-informed of their rights and obligations. As a result, **transparency** would be another objective proposed by the Commission.

The proposed objectives of the initiative would thus be:

- **Coverage**: ensuring that everyone in employment or self-employment has formal and effective access to social protection

¹⁴ See accompanying analytical document, chapter 4

¹⁵ See analytical document for detailed figures

- **Transferability:** preserving social protection rights when workers change jobs, sectors of activity, forms of employment, move to or from self-employment
- **Transparency:** ensuring access to user-friendly information on rights and obligations to social protection, irrespective of employment situation

These objectives improve labour market dynamism by reducing asymmetries in social protection obligations and rights for different forms of employment. They contribute to strengthening competitiveness and growth output by better supporting investment in human capital. They facilitate transitions between jobs, contracts and labour law statuses by ensuring better preservation and transferability of acquired rights. They increase intergenerational fairness by improving adequate access to social protection, including many categories of the self-employed, currently occupied mainly by the young. Lastly, they promote a wider fiscal basis of social protection, long-term sustainability of social welfare systems by ensuring that more people contribute to the financing of social protection systems.

In the framework of this initiative and in line with the relevant rulings of the European Court of Justice, a worker would be understood as any person who for a certain period of time performs services for and under the direction of any other natural or legal person(s) in return for which he/she received remuneration.

The Commission seeks the views of social partners on these objectives.

4.2. Policy options in addressing gaps in coverage

Addressing the gaps of formal and effective coverage would allow countries to achieve a level playing field among workers in different forms of employment and make it less risky to change forms of employment or to become self-employed.

The EU initiative could take **formal coverage** as **mandatory or voluntary**. The mandatory or voluntary character of extensions of formal access to social protection for people currently not covered strongly influences the number of people that will be covered in practice.

The rights (i.e. entitlements to benefits and services) and obligations (i.e. social security contributions) can be *mandatory*, which has the advantage of setting the same type of protection as for standard workers and is expected to be more efficient in ensuring protection. It may dispel fears of insecurity that people may have vis-à-vis self-employment or non-standard forms of employment, hence improving labour market dynamism.

Accompanying the granting of rights with the duty of paying contributions would ensure that the impact on public budgets financial equilibrium would be minimal. Furthermore, if more people finance their future needs for social protection through their own contributions, public expenditure on social assistance may be reduced. Mandatory coverage is also likely to be a deterrent to bogus self-employment and to the use of non-standard forms of employment where a standard contract would also be a possibility, since the cost difference between standard and non-standard work will be reduced.

An increase in social contributions may however increase labour costs or increase the difference between total labour costs and the remuneration received with potential negative effects on the cost of the marginal worker, on labour demand and supply and on the workers present purchasing power. Also, this choice may be contentious with certain groups of self-employed and with employers, both of whom may see this as a mandatory increase in their

labour costs and a risk to their competitiveness. Consequently the budgetary implications of this option as well as the effects in employment need to be carefully quantified.

Voluntary access for those not currently protected would give to the individual the ultimate choice of being protected or not. Voluntary access could be introduced via opt-in or opt-out clauses and could be promoted through awareness-raising, provision of fiscal incentives and/or removal of disincentives. This would cater for and reflect the heterogeneity of the self-employed and of the non-standard forms of employment as well as for their diverse preferences and needs for protection against future risks.

However, there is evidence that voluntary insurance/saving schemes are underused, because individuals tend to under-estimate the probability of occurrence of bad events and their associated costs.

Regarding **effective coverage** in particular, the Commission's analysis¹⁶ shows that changes in contributions and entitlement thresholds would be key to address current gaps in effective access of non-standard workers and the self-employed. While, in line with the principle of subsidiarity, EU action would not detail the eligibility conditions and thresholds themselves, it would support measures that ensure effective coverage for people in all forms of employment and in self-employment.

This would still leave room to the Member States to determine the fundamental parameters of their social protection system, including

- The choice of extending coverage through extension of existing schemes or creating new schemes.
- The way of financing insurance and the design of possible contributions of employers and workers, including possible tax incentives and/or removal of disincentives
- The types and combination of schemes to be used (public, occupational, private)
- The eligibility, thresholds and calculation rules of each scheme

4.3. Policy options in addressing gaps in transferability and transparency

Making rights *transferable* for all workers regardless of their form of employment and for all self-employed would allow people to contribute and benefit from social protection coverage from the day they start working (with limited waiting and vesting time) and accumulate and preserve rights when changing employers or contract type, moving to and from self-employment or taking a career break. This would support people throughout their careers, and would foster more dynamic and fluid labour markets.

Different minimum requirements or objectives on transferability can be set for different types of social protection, such as old-age pensions, unemployment benefits, rights to active labour market policies etc.

A *transparent* social protection system would allow people to be well-informed through easily accessible information about their accrued entitlements. In the short run, public

¹⁶ See analytical document for more details

authorities are likely to incur some financial burden to introduce administrative reforms to secure transparency of rights. In the medium to long-run, these costs should be offset by savings achieved with simpler and more efficient systems. Companies and employers would also be more likely to achieve savings because administrative handling would be faster and more cost-effective.

5. RELEVANT EU INSTRUMENTS

As referred to in the first stage consultation of the social partners, several legislative and non-legislative instruments are at the disposal of the Union to close the gaps of access to social protection for workers in non-standard forms of employment and for self-employed.

In full respect of subsidiarity and proportionality, a possible EU initiative shall not seek to harmonise social protection, nor would it interfere with the way Member States organise their national systems. Possible avenues for EU action are identified below. The Commission seeks the views of social partners on these options and the possible initiation of negotiations between them.

a) Non legislative instruments

Adequacy, quality and efficiency of social protection systems are fundamental cornerstones of the Social Open Method of Coordination, allowing Member States to identify common issues and exchange good practices. Given the transformations that globalisation and digitalisation are bringing to the labour markets and the speed at which new forms of work are emerging, reinforced attention to the employment-friendliness of social protection systems and their capacity to efficiently invest in human capital is necessary in the context of the Social Open Method of Coordination.

The Employment Guidelines and the European Semester for economic and employment policy coordination will continue to mainstream social considerations. The analysis and recommendations will be relevant instruments to assess, monitor and compare the progress made by Member States in providing access to social protection to all.

b) Council Recommendation

The Commission may adopt a proposal for a Council Recommendation inviting Member States to adhere to a common set of building blocks for the design of their social protection systems. Although such building blocks would not be binding, they can nonetheless provide a sound basis for a level playing field between Member States on the way they will address the gaps of access to social protection. A Council Recommendation would be based on Article 292 TFEU which, in combination with Articles 153(1)(c) and 153(2), third subparagraph, as well as with Article 352 TFEU, would require unanimity of the Council. The implementation could be monitored through the European Semester, including with the help of benchmarking, and supported through the exchange of good practices.

c) Directive

Article 153 (2) TFEU provides the possibility of adopting a Directive in the area of 'social security and social protection of workers' to set binding minimum requirements for gradual

implementation in the Member States, 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 security systems; (iii) does not significantly affect the financial equilibrium of these systems.

Article 352 TFEU could provide the legal basis of an initiative related to self-employment.

The Commission may therefore submit a legislative proposal (or proposals) for a Directive requiring Member States, where necessary, to undertake reforms to guarantee the achievement of the objectives outlined in section 4. This approach would focus primarily on the results to be achieved and would leave room to the Member States to decide on all the parameters of design of national social protection systems.

6. NEXT STEPS

According to Article 154(2) of the TFEU, before submitting proposals in the social policy field, the Commission must consult management and labour on the possible direction of Union action. Such Union action could address the challenges related to access to social protection of workers in non-standard forms of employment. The questions on which the Commission would be grateful for the views of the social partners at this second stage are stated below.

Union action could also be pursued to address the challenges of access to social protection for people in forms of self-employment on the basis of Article 352 TFEU, for which the procedure of Article 154(2) TFEU is not as such applicable. It is therefore on a voluntary basis that the Commission invites the social partners to share their views on the questions below as regards the self-employed.

1. What are your views on the possible avenues for EU action set out in section 4 of this document regarding non-standard workers and the self-employed, including
 - a. The objectives of coverage, transferability and transparency;
 - b. The options of mandatory or voluntary formal coverage;
 - c. The appropriate action to ensure effective coverage;
 - d. The minimum requirements appropriate to ensure transferability and transparency .

2. Are the EU social partners willing to enter into negotiations with a view to concluding an agreement under Article 155 TFEU with regard to any of the elements set out in section 4 of this document?

The Commission will take into account the results of this consultation for its further work on the "Access to social protection" initiative. In particular, it will suspend such work if the social partners decide to negotiate between themselves on these matters. Otherwise, the Commission will proceed towards a legislative/non legislative proposal, supported by an impact assessment and a public consultation.