



Mutual Learning Programme

DG Employment, Social Affairs and Inclusion

Peer Country Comments Paper - Belgium

***How Belgium has resisted the
proliferation of non-standard work.
Are there lessons to be learnt?***

**Peer Review on "The rise of precarious work (including
some forms of solo self-employment) - causes,
challenges and policy options"**

The Netherlands, 19-20 April 2018



EUROPEAN COMMISSION

Directorate-General for Employment, Social Affairs and Inclusion

Unit A1

Contact: Kim Henriksson

E-mail: EMPL-A1-UNIT@ec.europa.eu

Web site: <http://ec.europa.eu/social/mlp>

European Commission

B-1049 Brussels

Mutual Learning Programme

DG Employment, Social Affairs and Inclusion

Directorate-General for Employment, Social Affairs and Inclusion

Peer Review on "The rise of precarious work (including some forms of solo self-employment) - causes, challenges and policy options"

The Netherlands, 19-20 April 2018

April, 2018

**Europe Direct is a service to help you find answers
to your questions about the European Union.**

Freephone number (*):

00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

LEGAL NOTICE

The information contained in this publication does not necessarily reflect the official position of the European Commission

This document has received financial support from the European Union Programme for Employment and Social Innovation "EaSI" (2014-2020). For further information please consult:
<http://ec.europa.eu/social/easi>

© European Union, **2018**

Reproduction is authorised provided the source is acknowledged.

Table of Contents

1	Introduction	1
2	Labour market situation in the peer country	1
3	Assessment of the policy measure.....	3
4	Assessment of future policy development.....	5
5	Questions	8
6	List of references	9
	Annex 1 Summary table	11
	Annex 2 Example of relevant practice.....	13

1 Introduction

This paper has been prepared for the Peer Review on "The rise of precarious work (including some forms of solo self-employment) - causes, challenges and policy options" within the framework of the Mutual Learning Programme. It provides a comparative assessment of the policy example of the host country and the situation in Belgium. For information on the host country policy example, please refer to the Host Country Discussion Paper.

2 Labour market situation in the peer country

Belgium's overall employment rate remains comparatively low compared to other northern European countries. Unemployment is just below EU average, with strong variation by level of education and region; there is significant long-term unemployment. Older workers' employment rates remain especially low, owing to the extensive usage of early retirement schemes introduced to absorb job losses caused by deindustrialisation and outsourcing. Female employment rates are comparatively high, especially among prime working age women. Maternal employment rates are among the highest in the rich world, owing in part to extensive child care facilities. The employment rate of immigrants in Belgium is very low and the gap between migrants and natives is very high by international comparison.

Unlike the Netherlands, Belgium has no history of wage moderation. On the contrary, wage growth has been comparatively strong. The 'Competitiveness Law' of 1989 (which was extended in 1996 and modified in 2014) institutionalized government intervention in wage setting. A monitoring system was introduced, benchmarking wage developments in Belgium against those in main trading competitors and neighbouring countries being Germany, France and the Netherlands.

Part-time work, an important form of non-standard employment, as a share of total employment has risen substantially and steadily in Belgium, from less than one out of ten workers in the early 1980s to nearly one out of four in the late 2000s. The number of part-time employees was not strongly affected by the recession of 2008, while in most other countries this was the case. Women are clearly overrepresented among the part-time workers (about four out of 10 working women, compared to one out of 10 men). While men have caught up, part-time work remains dominated by women. The proliferation of part-time work in Belgium has not been associated with a rise in involuntary part-time work. On the contrary, Eurostat figures suggest a steady decline in the share of part-time workers that would prefer but cannot find full-time work, from approximately one third in the mid-1980s to 15 percent in 2006 and 10 percent in 2016. In contrast to many other countries, the recession did not increase the number of involuntary part-time workers.

As in most European countries, the share of employees with a temporary contract in Belgium is now higher than in the early 1980s, but it remains comparatively low. There has been some degree of fluctuation over time, but the share of temporary employment remains relatively low compared to the European average (7.4 percent in Belgium in 2016, as opposed to 11.2 percent for the EU28). Just as for part-time work, women are overrepresented among temporary employees. Their rates have, however, converged with those of men as well.

Table 1. Non-standard work in Belgium and the Netherlands, 2016

	EU15	BE	NL
Part-time employment (PTE)* (20-64y) (%)	22.2	24.4	46.6
Involuntary PTE as a % of total PTE (20-64y) (%)	28.1	8.8	11
Temporary employment*(20-64y) (%)	11.2	7.4	14.3
Temporary employment: agency workers (20-64y) (%)	1.9	2.0	4.2
Employees working on weekends*(20-64y) (%)	29.2	22.5	29.7
Employees working on Sundays (regularly)* (20-64y) (%)	15.5	12.1	19.7
Employees working in shift*(20-64y) (%)	16.4	7.1	13.6
Employees working at night (regularly)* (20-64y) (%)	6.5	3.2	8.8

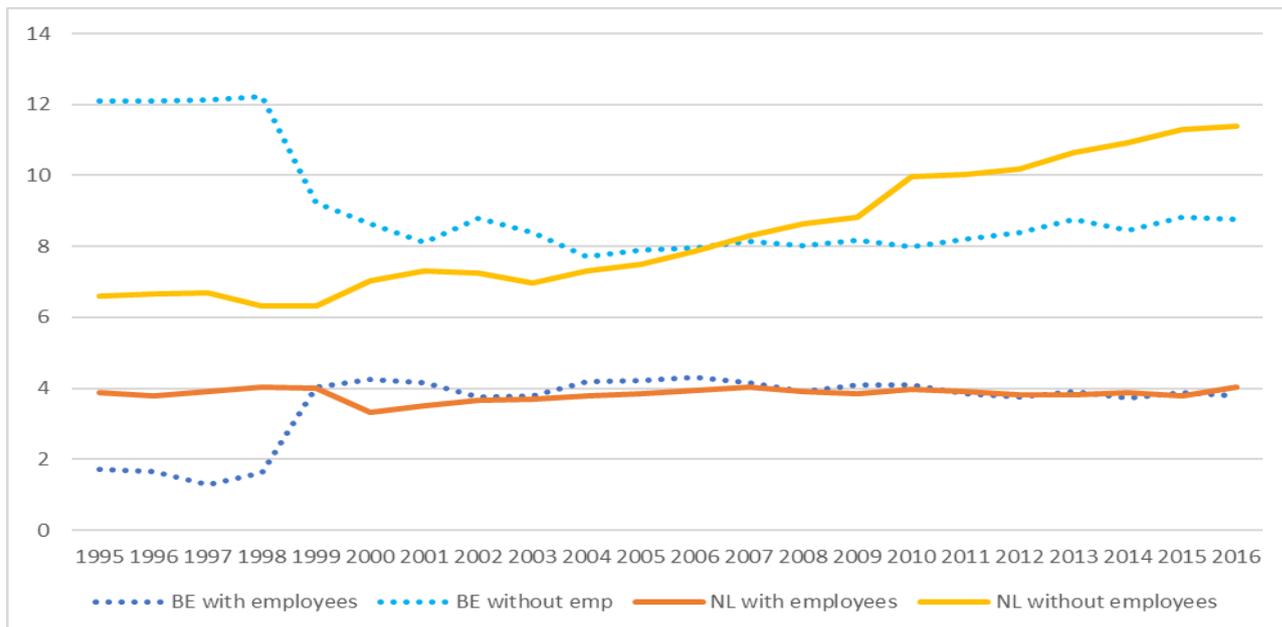
Source: Eurostat

The growth of non-standard employment is often related to the shift towards a service-based economy, where employers have more flexible staffing needs in order to cope with irregular demand and flexible opening hours. Yet night, weekend and shift work remain less widespread in Belgium than elsewhere in the EU. While Sunday-work has increased slightly, working in shifts and at night has decreased over the years. The figures for Belgium show a large gap with the average of the EU28 member states.

Relative to its GDP, Belgium ranks among the biggest spenders on active labour market policies in Europe, much of it channelled towards employers in the form of effective wage subsidies and reductions in social security contributions. Various schemes were introduced as an alternative to what is seen as precarious and therefore undesirable service sector work in other rich economies, for example the service voucher scheme discussed in Annex 2.

As elsewhere in Europe, a significant number of people work as self-employed persons, either as their main and sole occupation, or as a second or side activity. The growth has been much weaker than in the Netherlands, as is illustrated in the Figure 1 below.

Figure 1. Self-employed persons as a percentage of active population, Belgium (BE) and the Netherlands (NL), people aged 20-64, 1995-2016



Source: own calculations on the basis of Eurostat

With just under 15 percent of its population at-risk-of poverty, Belgium takes an average position, which stands somewhat at odds with Belgium's remarkably low overall level of income inequality. However, Belgium's in-work poverty rate ranks consistently among the lowest of industrialized nations. EU-SILC data indicates that only one out of 20 employees lived in a household with an equivalent disposable income of less than 60 percent of the median household income, half the EU28 average rate. However, poverty rates for working-age households with little or no labour income are far worse. Poverty rates for part-time workers are also comparatively low, reflecting the role of part-time incomes in providing extra incomes to households who have multiple sources of income.

Belgium performs comparatively well when it comes to the perceived work-life balance of its workforce. In 2015, more than four workers in five (85%) reported a good fit between their work and family or social commitments, with just 15 percent reporting that the fit was poor. This is a favourable outcome judged by international standards since on average in the EU 81 percent reports to have a good, and 19 percent to have a poor, work-life balance.

3 Assessment of the policy measure

The gradual growth of non-standard employment is one of the most fundamental structural labour market changes in Western countries. While the Netherlands is a prime example of a country where non-standard work of all forms has proliferated, Belgium is one of the notable exceptions within the EU. On several measures of 'atypical' employment such as the incidence of fixed term contracts, temporary work, night work, weekend work, etc. Belgium is to be found at the lower end of EU country rankings each time. To the extent that there have been trends towards more flexibility in the sphere of contract type, working time and work organisation, these have been negotiated by the social partners rather than being the result of government-level policy.

In order to understand Belgium's relatively atypical position and trajectory within the European context when it comes to various forms of non-standard employment it is

crucial to understand that Belgium's model of social consultation and collective bargaining remains exceptionally strong comparatively speaking.

Belgium's multi-level political governance firmly embeds trade unions and employers' organizations - the social partners- in the institutional framework through multiple roles, including consultation, co-governance and bargaining. Social partners wield significant influence in social and economic policy and hold direct control over wage setting and the conditions of work. Trade union membership remains comparatively high and has not declined over recent decades, in marked contrast to trends in neighbouring countries, including the Netherlands.

Workers in Belgium have organized themselves by economic sector rather than by profession. The Belgian industrial relations landscape also features well-established employers' organisations. As is the case on the workers side, employers organize by sector as that is the main level of bargaining. Alongside these national and regional organisations there are a number of Small and Medium Enterprises (SME) confederations, interest groups, social profit confederations and other networks or platforms.

Collective bargaining is the most consequential activity of the social partners, especially since nearly all collective agreements are made generally binding by the Minister of Labour, greatly extending their impact and ensuring near to full coverage of the workforce. Collective bargaining is hierarchical and takes place at three levels. A national cross-sectoral agreement provides a framework within which social partners negotiate at the sectoral level. In their turn, the sectoral collective agreements set a framework for bargaining at the company level. Collective agreements concluded at a lower level cannot deviate for the worse from the agreements set at a higher level.

Despite increased government interventionism, especially in wage setting, the social partners retain a high degree of autonomy on wages and working conditions. On most matters there is a legal framework that sets out principles and limits but within that framework the social partners usually have significant degrees of freedom. As a general rule, flexibility can be exercised through collective agreement, but not through individual discretion on the part of individual employers or workers.

Overall, the Belgian social partners, and particularly the trade unions, have remained very conservative and reluctant when it comes to adopting new forms of work. In so far that atypical work exists, significant restrictions apply, especially aimed at maintaining minimum standards and ensuring equal treatment. Some examples are:

- Part-time work: The regulatory framework prevents the working conditions of part-time workers to be less favourable than for full-time workers. The remuneration, for example, of the part-time employee may, in proportion to hours worked, not be inferior to the remuneration of an employee on a full-time contract.
- Temporary work: The rather low share of temporary contracts can be linked to the strict legislation regarding this type of contract. Belgium remains among the more strongly regulated OECD countries according to some comparative studies (OECD, 2013; European Commission, 2014). The Law of 1987 on temporary employment, makes a clear distinction between regular fixed-term contracts (FTC) and temporary-work-agency employment (TWA) – the latter being more tightly regulated (OECD, 2013). The law requires equal pay and working conditions for regular workers in the user firm and TWA workers on assignment. Also, while the core provisions as regards temporary employment are codified in the Law of 1987, more detailed rules are laid down in collective agreements reached by bargaining between trade unions and employers' organisations.

- The growth of self-employment has been much weaker than in the Netherlands. One possible reason are regulatory and administrative barriers to entrepreneurship. Belgium has traditionally ranked among the most strongly regulated product and service markets in Europe. In cross-country comparisons of regulation, as produced by the OECD or the European Commission, Belgium and the Netherlands are often to be found on opposite sides of the spectrum. This is particularly when it comes to regulation of retail trade or the regulation of various professions, like accountants, architects, real estate agents etc. According to the OECD, Belgian entrepreneurs are also facing more regulatory barriers than their Dutch counterparts.

A second important and crucial difference with the Netherlands is that the self-employed are obliged to enrol in the social security schemes that exist for the self-employed, including health insurance. Hence, in contrast to the Netherlands, the self-employed are insured against social risks, be it at a lower level than employees. They also pay lower but compulsory social security contributions, and there is additional government funding.

4 Assessment of future policy development

As noted, the Belgian social partners, especially the trade unions, remain very reluctant when it comes to adopting non-standard forms of work. In part in response to this the current government has taken to a more activist stance.

A new law enables temporary work agencies to conclude permanent contracts with the people they send out to their clients. Permanent temporary work contracts are however only possible if a collective bargaining agreement is concluded within the joint committee for temporary agency work (JC n° 322) and the wage between two assignments is guaranteed by the temporary work agency.

Belgium's government moved to increase working time flexibility. The so-called law Peeters contains several measures such as the annualisation of working hours. This allows companies in internationally competitive sectors to develop customized work arrangements by spreading the calculation of the 38-hour week over several years (maximum six years). The concrete terms for application of the system needs to be laid down in a sectoral collective agreement. The law also develops a new concept of "voluntary overtime" in which each worker has a package of 100 voluntary hours of overtime. Other measures supporting labour market flexibility are, inter alia, the administrative simplification of part-time work and the reform of the employer grouping scheme.

The law, furthermore, enables workers themselves to increase flexibility regarding their working-time and place. Important measures in this respect are the establishment of a legal framework for both occasional telework and flexible working hours during which employees can determine the beginning and end of their working hours within certain limits. Finally, legal opportunities to adapt working time over the life course, through various forms of (paid) leave (parental leave and medical assistance) are further extended and a system of 'career saving' is put in place. The latter makes it possible for employees to save up additional holidays.

With respect to the self-employed there are relatively few recent developments.

Perhaps the most significant recent change was the regionalization of key regulatory competencies. As already noted, in international comparisons Belgium tends to come out as a country where services, businesses and professions are heavily regulated, creating barriers to entry.

In successive Country Specific Recommendations, Europe has urged Belgium to deregulate businesses and professions, as compliance with Single Market rules also requires. In the last Country Specific Recommendation (CSR), the Council notes that limited progress has been made to remove operational and establishment restrictions on retail. Following the last State Reform, which transferred competences on retail establishment to the regions, new regional laws have been put in place simplifying the administrative procedure for authorisation.

Yet the Council also notes that high regulation in some professional services is still restricting competition in Belgium, in particular for real estate agents, architects and accountants. Examples of barriers include company form restrictions for architects, in addition to the other requirements; limitations on real estate agents' access to the profession; and shareholding and voting rights restrictions. The Council states that reducing such barriers could generate more intensive competition, resulting in more firms entering the market. The European Commission has presented a package of various reform recommendations to tackle these challenges.

In terms of social protection of the self-employed there are relatively few recent developments. Minimum contributions to social security have been made more progressive (through lower contributions for starting self-employed persons), sickness benefits are now paid out after two weeks of sickness (previously after a month) and the minimum pension for self-employed persons with a full career has been increased.

It is unlikely that there will be structural changes in the near future. That is not to say that none are needed. On the one hand, studies suggest serious levels of in-work poverty among the self-employed (Marx et al., 2009; Horemans en Marx, 2017). While measures of poverty show significant rates of poverty amongst non-active and retired self-employed workers, these measures do not accurately reflect actual living standards. Therefore, the perception is that this group does not have a need for (increased) social transfers. This is stifling any movement in the direction of more adequate protection provisions. The perceived number of "false positives" is generally seen to be too high. This not merely a perception, empirical analysis on EU SILC data brings to light massive and unaccountable gaps between registered incomes and material living standards for the self-employed. At the same time, this analysis also shows that there appear pockets of real and severe poverty among the self-employed, especially small business owners.

Another factor holding back moves towards more extensive (compulsory) social protection for the self-employed is the very high level of inequality within this group. (This is also the case in the Netherlands, as evidenced by Table 1 in the Host Country Paper.) The gap between the lowest earning and the highest earning self-employed is very large indeed, creating inherent difficulties for institutionalized solidarity as within the framework of a compulsory social insurance scheme.

Bogus self-employment is an issue and a topic in public and political debate. In large part this is because a high-profile cases like the delivery firm Deliveroo which forced its workers to become self-employed. Uber would count as another example. But no new measures have been announced to add to a legal framework that already sanctions bogus self-employment. The most significant addition to that framework happened in 2006. Before the so-called Program Act of 27 December 2006, case law by the Court of Cassation qualified bogus self-employment. In this case law, the Court of Cassation established certain rules in order to distinguish between direct employment and self-employment. Essentially it ruled that in addition to the terms of the formal agreement, indications of economic dependence were not enough. There has to be subordination. The Program Act 2006 specifies four indicators which are specified with the purpose of establishing the link of subordination: a) the will of the parties as expressed in the agreement, when this corresponds to the concrete execution of the employment agreement; b) the freedom to organise the working time; c) the freedom to organise

the work; d) the possibility to execute hierarchic control. However, these four criteria need not be applied cumulatively and each criterion is not crucial in itself.

There are extensive learning and training facilities for (aspiring) entrepreneurs. These are offered at the regional level, by SYNTRA in Flanders, EFP in Brussels, IFAPME in Wallonia and IAWM in German-speaking Belgium. These facilities are government subsidized and offer training both in general skills (business management) as well as specific professional skills.

5 Questions

- Does the host country not feel that its success compared to other EU countries is underplayed in the host country paper? The Netherlands has been remarkably successful in boosting employment, redistributing work and reducing unemployment while maintaining relatively low levels of poverty, including in-work poverty. In addition to having a fiscally sound welfare state, Dutch worker's express levels of work and life satisfaction that are among the highest in the world. What does the host country consider to be the main positive lessons there are to be learnt from the Dutch experience?
- Is it not the case that despite the legitimate issues highlighted in this host country papers, the vast majority of the (solo) self-employed express satisfaction with their career choice, as was also highlighted by a recent WRR report? Is there enough critical mass of dissatisfaction for major reform in the regulations governing self-employed work?
- On indicators of financial distress, the self-employed are found to be at a higher risk (be it still far below the EU28 average). How valid does the host country consider the underlying data to be, given the inherent difficulties in establishing personal incomes as opposed to total incomes? In Belgium, underreporting of incomes is certainly an issue and results in significant discrepancies between income and measures of material deprivation.
- While compulsory membership of social insurance schemes would certainly offer a partial solution to the problem of relatively well-off self-employed workers not buying into non-compulsory schemes, the fundamental obstacle to more adequate insurance arguably remains the fact that inequality remains so much higher among the self-employed. It is in other words inherently difficult to establish levels of solidarity that are more easily achieved among salaried workers. Does the host country agree?

6 List of references

- Eurofound. (2016). *Sixth European Working Conditions Survey*. Luxembourg: Publications Office of the European Union.
- European Commission. (2014). *Industrial Relations in Europe 2014*. Luxembourg: Publications Office of the European European Commission. (2016a). *European semester thematic fiche wage developments and wage setting systems*
- European Commission. (2016). *Second-stage consultation of the social partners at European level under Article 154 TFEU on possible action addressing the challenges of work-life balance faced by working parents and caregivers*. Brussels.
- Eurostat. (2016). *Gender pay gap statistics*. Available at http://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics
- Horemans, J. (2016). *Half a job, twice as poor: Empirical investigations into the role of earnings, family composition, and institutions as factors underlying the poverty risk of part-timers across Europe*. Faculty of Social Sciences: University of Antwerp.
- ILO (International Labour Organisation). (2016). *Non-standard employment around the world: Understanding challenges, shaping prospects*. International Labour Office – Geneva: ILO.
- Marx, I. & Kuypers, S. (2015). Social concertation and middle class stability in Belgium. In D. Vaughan-Whitehead (Eds.), *Europe's disappearing middle class? Evidence from the world of work*. Genève: International Labour Organisation.
- Marx, I., & Vandelannoote, D. (2015). Matthew runs amok: The Belgian service voucher scheme. In C. Carbonnier, & N. Morel, *The political economy of household services in Europe*. Basing-stoke, UK: Palgrave-Macmillan.
- Nationale Arbeidsraad. (2016). *Cao's per thema*. Available at <http://www.cnt-nar.be/Cao-thema.htm>
- OECD. (2013). *Employment Outlook 2013: Protecting jobs, enhancing flexibility: A new look at employment protection legislation in OECD*. Paris: OECD Publishing.
- OECD. (2015). *Employment Outlook 2015: Activation policies for more inclusive labour markets*. Paris: OECD Publishing.
- Pecinovsky, P. & Van den Bergh, P. (2014). *Comparative Labour law dossier: temporary employment contracts in Belgium*. KU Leuven: Institute of Labour Law.
- Perin, E. & Ajzen, M. (2015). *Belgium: Working life country profile*. Available at <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/national-contributions/belgium/belgium-working-life-country-profile>
- Vandekerckhove, S. & Van Gyes, G. (2012). *Collective agreed wages in Belgium: indicators and trends*. Leuven: HIVA –Research Institute for Work and Society.
- Tim Van Rie, Ive Marx. "Belgium: when growing background inequalities meet resilient institutions", in *Changing inequalities and societal impacts in rich countries: thirty countries' experiences / Nolan, Brian [edit.]; Oxford University Press, 2014-p.126-151*

- Vaughan-Whitehead, D. (2012). *Work Inequalities in the Crisis: Evidence from Europe*. Geneva: International Labor Office.
- Visser, J. (2015), 'Institutional characteristics of trade unions, wage-setting, state intervention and social pacts (ICTWSS), an international database', Amsterdam Institute for Advanced Labour Studies (AIAS), Amsterdam.

Annex 1 Summary table

The main points covered by the paper are summarised below.

Labour market situation in the peer country

- While the Netherlands is an example of a country where non-standard work of various kinds has proliferated, Belgium is one of the notable exceptions in the EU;
- On several measures of 'atypical' employment such as the incidence of fixed term contracts, temporary work, night work, weekend work, etc. Belgium is to be found at the lower end of EU country rankings each time;
- Part-time work as a share of total employment has risen substantially and steadily in Belgium, but involuntary part-time employment has declined;
- A significant number of Belgian workers are (solo) self-employed, either as their main occupation, or as a second activity. Growth has been weaker than in the Netherlands;
- On measures of in-work poverty, the quality of work and work-life balance, Belgium is a comparatively good performer.

Assessment of the policy measure

- The social partners retain a high degree of autonomy on wages and working conditions. A legal framework sets out principles and limits but within that framework the social partners have significant degrees of freedom;
- As a general rule, flexibility can be exercised through collective agreement, but not through individual discretion on the part of individual employers or workers;
- Generally speaking, the Belgian social partners have remained very reluctant when it comes to adopting new forms of work. Significant restrictions apply, especially aimed at maintaining minimum standards and ensuring equal treatment;
- In international comparisons Belgium tends to come out as a country where services, professions and businesses are heavily regulated, creating barriers to entry for aspiring self-employed entrepreneurs.
- Another important difference with the Netherlands is that the self-employed are obliged to enrol in the social security schemes that exist for the self-employed.

Assessment of future policy development

- The Belgian social partners, especially the unions, remain very reluctant when it comes to adopting new forms of work. Significant restrictions still apply, especially aimed at maintaining minimum standards and ensuring equal treatment;
- Recently, Belgium's government moved to increase working time flexibility. The law Peeters contains several measures such as the annualisation of working hours and establishes a legal framework for telework and flexible working hours.
- A significant recent change was the regionalization of competencies regulating self-employment. Steps have been taken towards less regulation and bureaucracy.
- Incremental but relatively minor steps have been taken to strengthen social protection for the self-employed.

Questions

- What does the host country consider to be the main positive lessons for other countries with respect to the extensive use of non-standards work forms, especially in view of its success in combining comparatively high levels of employment with low levels of poverty, in the context of a fiscally sustainable welfare state?
- Is it not the case that the vast majority of the (solo) self-employed express satisfaction with their career choices and their present situation? Is there enough "critical mass" of dissatisfaction for major reforms?
- On indicators of financial distress, do the self-employed come out as being at higher risk? How valid does the host country consider the underlying data to be?
- Is it not that case that the high level of inequality among the self-employed is an obstacle to more adequate income protection provisions, even if compulsory insurance were to neutralize the problem of only the "bad risks" of joining?

Annex 2 Example of relevant practice

Name of the practice:	Service Voucher Scheme
Year of implementation:	2004
Coordinating authority:	Until 2015 the Federal Employment Agency. Now the competent regional authorities.
Objectives:	A first objective was to reduce informal sector activity and to ensure proper labour and social security rights to workers in often badly protected, precarious domestic service jobs. A second objective was the creation of extra jobs with full social rights and proper wages, especially for people with no or few formal qualifications. Less skilled women were the primary target group.
Main activities:	Consumers use the service vouchers to pay for a limited range of domestic services, including cleaning, washing and ironing. Within the European context it is probably the most heavily subsidized scheme of its kind - more than 70 per cent of the cost of the services rendered to consumers is state subsidized.
Results so far:	<p>The Belgian Service Voucher Scheme was originally targeted to employ 20,000 people. With more than 150,000 people employed, the scheme has vastly exceeded expectations.</p> <p>By all available accounts Belgium had and still has a large informal sector. It is very difficult to get an anywhere near accurate picture how far the service voucher scheme has made inroads into informal work.</p> <p>The net employment impact of the scheme is probably much lower than the number of people employed in it. Increasing shares of entrants have come out of another paid regular job before entering the Scheme. In Flanders this percentage is as high as 40 per cent. Another third of workers have come from other EU countries to work in the scheme. The last figures for Flanders suggest that only 23 per cent of entrants entered the scheme from unemployment or social assistance.</p> <p>Employers find it increasingly hard to recruit new workers despite service voucher workers expressing high levels of satisfaction with working conditions.</p>

