# Mutual Learning on Access to social protection for workers and the self-employed

# 2nd Workshop: Effective coverage

**Thematic Discussion Paper**

DG Employment, Social Affairs and Inclusion

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## Table of Content

1 Introduction ..... 1
2 Defining the social risks and the conditions related to entitlement and duration ... 2
2.1 Introducing the underlying social risks: comparing standard work with non-standard work and self-employment ..... 2
2.2 Entitlement conditions in relation to insurance and work records ..... 6
3 Mapping what is in place ..... 8
3.1 Time-thresholds and income-thresholds affecting the contingencies ..... 9
3.2 Time-thresholds and income-thresholds affecting non-standard workers and self-employed ..... 10
4 Discussion ..... 11
4.1 Same rules or the need to redefine time and income thresholds in a fashion more aligned to non-standard and self-employed work ..... 12
4.2 Having different rules in place: possible justifications ..... 14
4.3 Different rules in support of non-standard work and/or self-employment ..... 16
4.4 Effective social protection: social policy considerations ..... 17
5 Conclusion ..... 19
6 List of references ..... 20
Annex ..... 23

# 1 Introduction

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

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

We have two objectives in this contribution: firstly, we want to highlight when and where entitlement conditions generate less effective coverage; secondly, we try to unravel the specific working situations underlying non-standard forms of work or self-employment that may serve as justification for deviating entitlement conditions.. In order to do so, the contribution is divided into the following parts:

- In the first part, we briefly introduce the contingencies at stake in the Recommendation and highlight to what extent non-standard work and self-employment may differ from standard work in addressing social risks in their work organisation. This overview is followed by an introduction to the main problematic entitlement conditions for non-standard workers and self-employed in getting effective protection: the main questions are 'What are these conditions about?' and 'Why have they been developed in the first place?'.
- The second part provides an overview, based on the MISSOC tables1, of the extent to which Member States in the EU still apply these entitlement conditions and how problematic they are for non-standard work and self-employment in their application. Where reported in the MISSOC tables, conditions that may be specifically designed for non-standard workers or self-employed will also be introduced. From the mapping it turns out that time and/or income thresholds are still widely used in the social protection systems of the states.
- In part three (discussion), with reference to the Recommendation, we investigate how these conditions could be better adapted to the needs of non-standard work forms and self-employment without ignoring the original reasons that justify the use of (minimum) qualifying records, waiting periods and minimum income thresholds. In addressing these strategies, examples of best practices applied in some Member States will be highlighted.

[1] Missoc or Mutual Information System on Social Protection (https://www.missoc.org/missoc-database/comparative-tables/) refers to comparative tables in the field of social protection covering 32 European countries (Member States of the EU, EFTA, and Switzerland). For this contribution only the Member States of the EU have been used as comparative basis.

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

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

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

Each of these schemes address a specific social risk, such as the loss of income or the fact that one faces exceptional costs. Compared to standard work – which has often been the basis for addressing the risk – non-standard work and self-employment may have been addressed differently (or even not addressed at all) when designing the scheme. Here we take a brief look at these different approaches to the specific risks and possible reasons for this difference. This approach may help us later in finding strategies to redesign entitlement conditions. The overview is to a large extent based upon the *MISSOC* tables, the guidelines for correspondents for these tables[2], and two books by *Pieters* introducing the social security policy options and the basic principles of social protection systems in Europe (2018, 121pp and 2006, 137pp.).

### 2.1.1 Old age and survivorship (pensions)

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

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

[2] These guidelines give additional information on correspondents to the comparative tables and on how to report and interpret the (social security) concepts used in the tables (https://www.missoc.org/missoc-database/comparative-tables/).

pension; however, if too many individuals have to rely upon these minimum pensions, financial sustainability may be at stake (to be covered by a later workshop on adequacy).

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

### 2.1.2 Sickness and healthcare

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

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

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

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

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

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

### 2.1.3 Invalidity

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

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

### 2.1.4 Maternity and paternity

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

(expecting) mother a replacement income which equals or is almost comparable to the previously earned net-income.

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

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

**Maternity and paternity schemes reflect to a large extent the risk underlying the sickness scheme; and even if the second layer reflecting family support is incorporated, they are comparable to sickness schemes. Therefore, comparable problems with the entitlement conditions may emerge for non-standard work and self-employment** with regard to the position of the employer in the organisation of the scheme and a risk which materialises rather as loss of manpower than as loss of income.

### 2.1.5 Work accidents and occupational diseases

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

Compared to the other contingencies, work accident and occupational disease schemes have a long tradition of broad application, covering both standard work and non-standard work, even if the latter is unpaid (such as in the case of apprentices, internships, volunteer work). Regardless of the type employment relationship or contract, workers face similar dangers when performing professional activities. Moreover, both types of workers are comparable in that they both perform work on the instruction of an employer or a similar person and have limited responsibility (under civil law) for their actions which follow the given orders. **Problems occur when there is no clear employer (instructor) for non-standard work (agency work, platform work) or in case of self-employment where there is no employer at all. Hence, some countries are reluctant to organise social protection for the eventualities of work accidents and occupational diseases for the self-employed.** Apart from this fundamental difference, there are some other

more practical application issues that are the consequence of the rather volatile work environment of the self-employed person (geographically and in time): **how can it be determined for a self-employed person whether, for example, the car accident took place during working hours?** Taking into account the number of work accident schemes that have been made available to self-employed persons, this demonstrates that it is possible to organise them for this group as well; yet, this calls for a rethinking of the organisation of the schemes in terms of the working situation of the self-employed.

### 2.1.6 Unemployment

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

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

## 2.2 Entitlement conditions in relation to insurance and work records

Not all **entitlement conditions** are problematic when applied to non-standard work forms or self-employment. However, those **regarding the prior insurance record**

**of the worker or the prior work period may be problematic if they are based overly on standard work situations (full-time work, wages, relation employee/employer)**. These conditions may limit the access to the benefit (minimum amount of work/income to be earned before entitlement can be opened) or they may have a decisive impact upon the amount of any benefit paid (the longer the insurance or work record, the higher the benefit and/or the longer the benefit will be paid). The latter entitlement conditions will affect the level of the benefit and are to be distinguished from the conditions governing access to the benefit. Furthermore, a distinction is to be made between conditions that refer to prior (minimum) periods which need to have been accomplished (time thresholds conditioning access to and/or level of benefit) and entitlement conditions that refer to (minimum) prior income (income thresholds monitoring access and/or level). Sometimes the income thresholds will be determined in relation to a certain time period (a certain level of income must be reached during a certain time before the risk occurs). The most relevant eligibility criteria are introduced, first in relation to their impact for access to benefits, then in relation to the composition of the level of benefits:

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

Sickness and invalidity qualifying periods mainly target possible fraudulent behaviour, such as hiring a person with the sole purpose of creating a benefit entitlement. Qualifying periods applied in sickness and invalidity schemes are traditionally short (expressed in months). According to the relevant minimum standards of the ILO[3] and the European Code of Social Security[4] (Council of Europe) these minimum periods are allowed in so far as they may be considered necessary to preclude abuse (Art. 17 of ILO Convention 102 and the Code). In line with the interpretation of the expert committee monitoring the legal application of the standards, six months is the reference for a maximum term.

In pension schemes much longer qualifying periods are applied, often counted in a minimum number of years in the scheme before entitlement can be opened. A maximum term of 15 years[5] is established by the ILO and Council of Europe (Art. 29, ILO Convention 102/Code); however **countries have to provide a (reduced) minimum benefit for those who do not satisfy the qualifying period** and who have accomplished a period of at least 10 years of work (or five years of residence)[6]. Systems which require a minimum insurance record to be fulfilled on a yearly basis, must guarantee the minimum benefit to those who have fulfilled at least half of the (yearly) record (Art. 29, ILO Convention 102/Code). **Qualifying periods have been mainly introduced to avoid marginal low benefit payments to persons with a reduced insurance record (for financial and administrative reasons)**. Moreover, in a number of systems such persons are considered to be sufficiently

[3] International Labour Organisation, C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102) https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312247
[4] Council of Europe, European Code of Social Security https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/048
[5] Comparable provisions are applied in case of invalidity and survivorship, yet of a somewhat shorter time period (5 years).
[6] Ibidem.

protected already by alternative benefits, either in the system (protection in a universal basic scheme, under social assistance) or through family situations (person is dependent upon a family member and entitlement to a higher (family) benefit can be claimed).

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

Waiting periods apply after the insured person has acquired entitlement. **When the risk occurs, the person still has to wait for a period of time before a benefit can be paid.** The technique is most often applied in the sickness scheme and **counters possible fraudulent use** by the worker of sickness periods which – because of their short duration (e.g. 1 day) – are difficult to check by the employer or the social security institution. In other words, the main consequence of the waiting period is that the risk of sickness in the initial period is co-shared by the employee. For self-employed persons this period is often defined over a longer time-span (first weeks or even months of sickness), as it refers to the period during which it is hard to assess the real income loss of the self-employed person due to sickness. Waiting periods are also applied for unemployment; here, they are mainly used to sanction the worker if unemployment is (partially) caused by their own actions (voluntary unemployment). In terms of international standards, waiting periods of up to seven days can be applied for unemployment (Art. 24, ILO Convention 102/Code).

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

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

# 3 Mapping what is in place

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

## 3.1 Time-thresholds and income-thresholds affecting the contingencies

*Health care* benefits are easily accessible regardless of the type of work performed or the form in which the person performs the work. In many systems, the scheme is universal (residence based)[7]. Neither do work-related health care schemes require many time or income thresholds. Rather exceptionally some countries[8] do, however, apply a qualifying period or impose a minimum-income threshold[9].

*Sickness* on the other hand is often made subject to a number of time thresholds. To start with, **most countries apply a minimum qualifying period** (normally below the maximum standard of six months). Moreover, every country applies **some form of a waiting period**. In a number of countries[10], the waiting period is even significantly longer for self-employed than for employees (see below). The duration of the benefit is mostly the same for all categories of workers, except in some countries[11], although **self-employed workers do face shorter benefit durations; this however is explained by the longer waiting period which consequently leads to a shorter period in between the (possible) start of the sickness period and the beginning of invalidity**. Aligned to what is in place for sickness, *maternit*y (and paternity) apply similar qualifying periods to open entitlement[12]. Waiting periods however are rarer; compared to sickness, the occurrence of maternity cannot be deliberately restricted to a very short time period of a couple of days. It is as work incapacity, that is easier to control.

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

*Accidents at work and occupational disease* schemes are often restricted to the group of (standard and non-standard) workers. In 14 countries, this scheme is not accessible at all for the self-employed[13] (problem of formal access). **Qualifying periods are not applied, only in exceptional cases a short waiting period is applied.**

Regarding *old-age* and *survivor's* pensions, a (first) major distinction is made between systems[14] where pensions are residence based, and systems where the pension scheme is linked to gainful employment/payment of contributions[15]. Whereas waiting periods are less present here, pensions on the other hand are **regularly determined based on a qualifying period** (sometimes in combination with minimum working periods). Qualifying periods can have a dual nature: either they condition the entitlement to access the benefit (e.g. the person should have fulfilled a minimum qualifying period of at least 15 years) and/or the amount of the pension benefit depends upon the number of insurance years (or work record).

[7] DK, FI, SE, CY, IT, MT, PT, IE, LV, UK, NL
[8] BE, CY, EE, EL
[9] AT, CY, EE, MT
[10] AT, BE, HR, CY, CZ, DK, EE, LU, SE
[11] AT, IT, PT
[12] AT, BG, CY, EE, DE, IT, IE, PT, RO, SI, ES, NL
[13] BE, BG, CY, CZ, EE, FR, EL, IE, LV, LT, RO, SK, NL, UK
[14] BG, DK, EE, FI, NL
[15] AT, BE, BG, HR, CY, CZ, DE, FR, HU, IE, IT, LV, LT, LU, MT, PL, PT, RO, SK, SI, ES, SE, UK

The *unemployment* scheme is often organised only for the group of workers, thus excluding self-employed from (formal) access[16]. In countries **where the self-employed are included in the scope, they regularly face stricter entitlement conditions in relation to qualifying and waiting periods** (see below). Work related unemployment schemes apply minimum work periods that must be fulfilled by the insured worker to open entitlement[17]; all schemes (regardless of whether they are work related or not) have waiting periods thus 'sanctioning' situations of voluntary unemployment.

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

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

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

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

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

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

character of the risk (is the self-employed worker to be blamed?) and that the risk which is addressed for self-employed is fundamentally different and thus needs to be organised and conditioned in a specific way, different to the scheme in place for workers.

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

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

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

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

# 4 Discussion

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

Member States should thus pay attention when using these time and income thresholds, especially in relation to the effect these eligibility conditions may have on non-standard work and self-employment. **Most of these conditions were originally designed with the full-time worker in mind - employed on the basis of an open-ended labour contract - and can become detrimental in their application upon work forms that deviate from this type of work.** From the recent EU Commission Draft Joint Employment Report (2019, p. 104) we can learn, for instance, that the share of short-term unemployed people covered by unemployment benefits amounts to around one third on average; non-standard workers are especially hit as they often do not qualify for a benefit due to non-adapted entitlement conditions. To the same token, people in non-standard work or self-employment often face less favourable conditions for accessing and accruing pension rights than those in open-ended, full-time job contracts (Draft Joint Employment Report, 2019, p. 146). Similar figures indicating the gap in social protection coverage can be found in the recent OECD Employment Outlook (2019, 23-26).

In principle, the Recommendation allows the use of eligibility conditions such as minimum qualifying periods, work periods or waiting periods. Yet such rules should serve an objective, such as preserving the sustainability of the scheme or combating abuse (article 9, par. 1). Moreover, in their objective and outcome, **these rules should stay neutral with regard to employment relationship or the labour market status the person has for the organisation of the professional activity.** The kind of work or the labour market status should thus not be the reason for introducing the entitlement condition (Art. 9, par. 1, sub a); the reason for having the rules introduced should be justified based on a clear objective (e.g. financial sustainability, insurance logics such as the respect of equivalence and/or the combat of abuse).

As to the concrete entitlement conditions and their possible effects on non-standard work and self-employment, the Recommendation calls for two-fold attention. First of all, **if rules are differently designed across workers and professional groups, they should not penalise a group unnecessarily** (Recommendation, Obs. 19): '*differences in the rules governing the schemes between labour market statutes or types of employment relationships should be proportionate and reflect the specific situation of beneficiaries*' (Ar. 9, par. 1, sub b). However**, one should also be aware of applying the rules (as designed originally for standard workers) to groups of non-standard work and self-employment: '*[t]he same rules applied to all groups could lead to poorer outcomes for people outside standard employment and might not be adapted to the situation of the self-employed'*** (Recommendation, Obs. 19). Member States are thus invited to check both eventualities when going through the entitlement conditions in the current social protection legislation: different rules across the groups should be examined on their differences (see 4.2); if similar rules are applied, the undesired effects of these rules for non-standard work and/or self-employed should be assessed and where possible reformulated in a manner more adapted to the specific work/professional groups (see 4.1). Finally, it can be justified to apply specific rules in support of non-standard work situations, e.g. to address undesired overlapping of protection schemes or to guarantee a basic protection (see 4.3).

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

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

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

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

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

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

The possibility to add several income sources from different work positions has also been reported in Bulgaria, extending in this manner the coverage for sickness, maternity and unemployment for self-employed and non-standard workers (see annex 1). France reported the implementation of a personal activity account which integrates different types of earnings into one unique account (European Commission, *Best practices*, 2018). The earnings are translated into points, regardless of the labour status. This does not only create more flexibility to take earnings (from work time) into account, integrating non-standard work more easily, but also considers different labour status and the combination of different types of jobs. In addition, in Greece and Latvia similar practices of integrated insurance accounts have been reported; in

Greece it has been reported as one of the outcomes of the integration of the various professional social protection systems into one general system (European Commission, *Impact assessment*, 2018). In Ireland, at the occasion of the launch of the new unemployment scheme for self-employed, specific rules have been developed for situations where persons perform both employed and self-employed activities, allowing workers to add the insurance record of the side-activity to the main activity (European Commission, *Impact assessment*, 2018).

## 4.2 Having different rules in place: possible justifications

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

Some social protection systems moved away from the protection developed for standard workers, creating a separate form of protection, adapted to non-standard work or self-employment. **The protection may be designed concretely in different ways, yet overall a comparable protection is guaranteed across the workers and self-employed**. This approach allows for the reconsideration of the (stricter) threshold conditions and alignment to the rules in place for standard workers. In Belgium, for instance, the waiting period in the case of sickness for self-employed people has been reduced from two weeks to one day (after it was originally reduced from three months). The waiting period of three months was originally launched as it was considered impossible to determine the real income loss for self-employed people in the case of sickness. However, the fact that the income replacement benefit is now constituted by a low flat-rate benefit (instead of a replacement based upon the previous earnings) supported the idea of reducing the waiting period to one day (European Commission, *Best practices*, 2018). In the field of maternity, the self-employed have appropriate protection based on income replacement benefits combined with services to support the family in combining family life and work. This allows the self-employed to continue their business and retain their (part-time) earnings from the business. In Sweden, more efforts went into the development of temporary unemployment benefits which are considered to better address the needs of the self-employed when they are confronted with an economic downturn (beyond their control).

**Some differences in treatment between different work forms are not always justified**, as we can learn from case law of the European Court of Justice (ECJ), for example. In two recent cases the Court had to deal with specific rules that were in place for part-time workers in the (Spanish) pension[18] and unemployment[19] schemes. Although the cases address first and foremost the potential discriminatory effect[20] of

[18] Case C-161/18*, Villar,* EU:C:2019:382.
[19] Case C-98/15, Espadas Recio, EU:C:2017:833.
[20] Council Directive 79/7/EEC 19 December 1978 equal treatment men and women in matters of social security, *OJ* 1979 *L* 6 (in particular article 4 was under scrutiny: *"The principle of equal treatment means that there shall be no discrimination whatsoever on ground of sex either directly, or indirectly by reference to marital or family status, in particular as concerns […] the calculation of benefits including increases […] and the conditions governing the duration and retention of entitlement to benefit"*).

the entitlement conditions vis-à-vis (part-time working) women, some of the overall observations made by the Court in relation to part-time work, can be relevant here as well.

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

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

**Although the case law has to be situated in the equal treatment directives (in relation to gender), it indicates more generally the need of sound objectives underlying time/income thresholds for workers and self-employed; especially if different rules are developed for certain groups of (non-standard) workers or self-employed.** The Recommendation itself refers to financial sustainability and

the combat of abuse as possible grounds (Art. 9); yet other grounds may be as relevant, such as e.g. the insurance principle of proportionality. However, it remains to be seen whether justification grounds that were originally accepted for time/income thresholds, such as the reduction of administrative burden and/or the loyal attachment to a professional scheme (see chapter 2), may still be accepted in the current times (of information technologies enabling better data handling). **Furthermore, whatever accepted the justification ground, it must still be executed in an appropriate and effective manner to be considered as an acceptable measure**.

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

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

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

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

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

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

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

## 4.4 Effective social protection: social policy considerations

Qualifying periods, (minimum) work records, waiting periods and other comparable eligibility conditions that create time or income thresholds, seem to be paramount in work related social protection schemes. They are often introduced with certain objectives in mind and - to a large extent - find their origin in the insurance logics that underlie many of the social protection insurance schemes in place for workers and self-employed persons. They reflect the need for sufficient equivalence, return to insurance loyalty and/or financial (system) sustainability. Entitlement conditions introducing (minimum) waiting periods mainly target (potential) abusive claims from the socially insured persons. From the comparative overview, we noticed that these conditions are mainly to be found in income replacement schemes, and are less present in cost compensation schemes such as health care schemes and family benefits. The latter kind of social protection schemes have been slowly growing towards universal protection systems addressing the whole of the population and rather than the professionally active groups (only). Using entitlement conditions that affect the benefit composition (level and/or duration of the benefit) do not make much sense here. If qualifying periods or waiting periods are (still) used in these cost compensation schemes, they are mainly found in conditions governing access to the benefits. **Overall though, we can agree that the entitlement conditions setting (minimum) time and/or income thresholds are mainly addressing work related social protection schemes.** As they were originally designed with the standard worker in mind, in practice, they create disproportional problems for non-standard work forms (such as part-time and fixed-term work) and self-employment.

The Recommendation mainly addresses these unwanted – disproportional – effects hampering effective access to social protection. As such, though, **entitlement**

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

Furthermore, **States have to question whether the applied entitlement conditions are still proportional to the set objectives**. Is it, for instance, still acceptable that the minimum qualifying insurance record needed to open pension entitlement amounts to long time periods (15 years or beyond)? And if these conditions are maintained, is there enough alternative protection foreseen for persons not reaching the imposed thresholds? States are legally invited by international standard setting instruments (such as ILO Convention 102 and the European Code) to guarantee a minimum protection for workers who do not qualify for the minimum time periods, in proportion to the work periods they effectively fulfilled. This can now more generally be interpreted as a minimum protection in relation to the already fulfilled insurance periods; by doing so, it covers also non-standard work forms and self-employment with insurance records scattered over time.

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

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

Specific rules for non-standard workers and self-employed may still need to be formulated in so far their work is specific in nature (e.g. self-employment and formulation of entitlement conditions in the field of unemployment or part-time work incapacity). Yet, as we could see from the case law of the ECJ, States have to pay

attention that non-standard workers are not penalised excessively by applying a multitude of entitlement conditions (double-up); this approach may sanction non-standard work in a disproportionate manner. To the same token, the applied rules have to be effective (pertinent) as to the objective they serve; otherwise unwanted forms of discrimination may emerge between groups of (non-)standard workers.

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

# 5 Conclusion

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

With the growing numbers of non-standard work and self-employment, many of the thresholds are under discussion as they are often an additional challenge to access benefits. The Recommendation can be seen as an invitation to reflect again upon the use of these thresholds. Member States should dare to reconsider why the threshold was originally introduced, whether it still serves a purpose, and if so, whether it can be reformulated to better address the specific work situation of non-standard work and self-employment (while maintaining the same rule in principle); finally countries should dare to ask whether deviations - more lenient or more strict - for non-standard work and self-employment can be accepted, and when they can be acceptable. Hopefully, this thematic paper and the workshop can contribute to this reflection and discussion.

# 6 List of references

BARRIO, A., MONTEBOVI, S. and SCHOUKENS, P. (2018). 'The EU social pillar: An answer to the challenge of the social protection of platform workers?', European Journal of Social Security, N°3, Vol.20, pp. 219-241.

BARRIO, A. and SCHOUKENS, P. (2017). 'The changing concept of work: when does typical work become atypical?', European Labour Law Journal, Issue 4, pp. 1-28.

BEHRENDT, A. and QUYNH, A.N., (2018). Innovative approaches for ensuring universal social protection for the future of work. Geneva: International Labour Organisation, pp. 36.

COUNCIL OF THE EU. (2019). Council Recommendation 12753/19 on access to social protection for workers and the self-employed. October 2019.

COUNCIL OF THE EU and EUROPEAN COMMISSION. (2019). Draft Joint Employment Report accompanying the Communication from the Commission on the Annual Growth Survey COM/2018/761 final

COURT OF JUSTICE OF THE EU. Case C-161/18*, Villar,* EU:C:2019:382

COURT OF JUSTICE OF THE EU. Case C-98/15, Espadas Recio, EU:C:2017:833.

EUROPEAN COMMISSION. (2018). Commission Staff Working Document Impact Assessment Accompanying the document Proposal for a Council Recommendation on access to social protection for workers and the self-employed, COM(2018) 123 final – SWD(2018) 71 final, Strasbourg, pp. 167.

MISSOC, Mutual Information System on Social Protection. (2019). Comparative tables, Brussels: Commission EU, (Accessed: October-November 2019)

ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT. (2019). Employment Outlook: The future of work. pp 339.

PIETERS, D. (2018). Navigating Social Security Options. Cham: Palgrave, pp. 121.

PIETERS, D. (2014). Social security: an introduction to the basic principles. The Hague: Kluwer Law International, pp. 135.

SCHOUKENS, P. (2000). 'Comparison of the social security law for self-employed persons in the Member-States of the European Union in' in PIETERS, D. (ed.) Changing work patters and social security. The Hague: Springer, pp. 63-98.

**ESPN THEMATIC REPORTS**

ALBERT, F., GASPAR, K., GAL, R. I. and TARKI Social Research Institute. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Hungary, pp. 19.

BÄCKER, G. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Germany, pp. 41.

BRADSHAW, J. and BENNETT, F. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – United Kingdom, pp. 30.

CHLON-DOMINCZAK, A., SOWA, A. and TOPINSKA, I. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Poland, pp. 25.

DE WISPELAERE, F. and PACOLET, J. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Belgium, pp. 22.

FINK, M. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Austria, pp. 21.

GERBERY, D. and BEDNARIK, R. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Slovakia, pp. 20.

HUGHES, G. and DALY, M. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Ireland, pp. 21.

HUTEAU, G. and BONNAND, G. (2016). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – France, pp. 25.

JESSOULA, M., PAVOLINI, E. and STRATI, F. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Italy, pp. 11.

KALLIOMAA-PUHA, L. and KANGAS, O. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Finland, pp. 23.

KVIST, J. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Denmark, pp. 19.

LAZUTKA, R., POVILIUNAS, A. and ZALIMIENE, L. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Lithuania, pp. 26.

LUANA POP, A. and URSE, D. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Romania, pp. 37.

MASSO, M. and KADARIK, I. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Estonia, pp. 25.

MEVISSEN, J.W.M. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Netherlands, pp. 25.

NELSON, K., PALME, J., BURMAN, S. and ENEROTH, M. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Sweden, pp. 21.

PACOLET, J. and OP DE BEECK, L. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Luxembourg, pp. 24.

PASHARDES, P. and KOUTSAMPELAS, C. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Cyprus, pp. 25.

PERISTA, P. and BAPTISTA, I. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Portugal, pp. 20.

RAJESKA, F. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Latvia, pp. 27.

RODRIGUEZ-CABRERO, ARRIBA, MARBAN, MONTSERRAT and MORENO FUENTES (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Spain, pp. 38.

SIROVATKA, T., JAHODA, R. and MALY, I. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Czech Republic, pp. 23.

STROPNIK, N., MAJCEN, B. and RUPEL, V. P. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Slovenia, pp. 31.

THEODOROULAKIS, M., SAKELLIS, I. and ZIOMAS, D. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Greece, pp. 30.

VASSALLO, M. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Malta, pp. 29.

VUKOREPA, I., TOMIC, I. and STUBBS, P. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Croatia, pp. 25.

ZAHARIEV, B. (2017). ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts – Bulgaria, pp. 22.

## Annex

Annex of comparative tables on social protection for (non-standard) workers and the self-employed are provided in a separate document.


Publications Office