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

3rd Workshop: Adequate coverage

Thematic Discussion Paper

Adequacy and financing

DG Employment, Social Affairs and Inclusion

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1 Introduction

In this contribution we will address the topic of adequacy as it is covered in articles 11 to 14 of the Council Recommendation on access to social protection[1]. Adequacy is the topic of the third of a series of workshops on the implementation of the Recommendation; the first workshop addressed the issue of extending formal access (mandatory versus voluntary approach)[2], the second dealt with effective protection[3]. Taking a closer look, we notice that the section on adequacy in the Recommendation is divided into three sub-topics: the financing of social protection for non-standard workers and self-employed people, benefit adequacy and the interrelation between these two key elements. This paper addresses these elements.

In the following part ('issues at stake'), we introduce the major questions at stake: what problems do we encounter when arranging the financing of social protection for the self-employed and for non-standard workers; what challenges do we meet when endeavouring to keep benefits at an adequate level for these two groups and what kind of relationship should there be between the contributory capacity and the (level of) entitlements? The initial problems are related to the absence of a stable (periodical) wage which traditionally serves as an income basis for financing the social protection of standard workers. We discuss what might be considered as the income basis for non-standard work and self-employment. How should we deal with the irregular pattern of income generation, which is so typical for self-employment and for some groups of non-standard workers? A second set of problems related to financing is linked to the absence of a stable employer. Is the income declaration provided by the self-employed or the non-standard worker a reliable enough instrument for providing a picture of the income being earned? Is there not a tendency to underreport income? And how should we address this tendency? How should we resolve the loss of financial contributions paid by the employer (employer contribution)? Should the self-employed pay the full amount of contributions themselves? Should we compare the level of the contribution paid by the self-employed solely to the employee contribution and does it make sense to make this comparison when the contribution basis (wage vs. income) is not always comparable from the outset? And finally, there are several questions regarding low-income groups that are strongly represented amongst non-standard workers and self-employed: what is the effect of minimum thresholds used in the financing of social protection? Do we partially exempt these groups from paying?

In relation to adequacy, the question will essentially boil down to how we should understand benefit adequacy when dealing with the social protection of non-standard workers and self-employed. What are the different policy objectives behind the benefits (poverty reduction and/or maintenance of standard of living)? How can adequacy be measured and which tools are available for this? And how should we deal with this adequacy when confronted with (large groups of) low-income earners?

In the third part ('mapping what is in place') we will focus upon the existing techniques to financing social protection systems for self-employed. With regard to non-standard workers, we indicate some current financing practices that are in place for these workers aimed at guaranteeing a decent level of protection. For both groups we single out some best practices in the field. We give special attention to low-income groups and the variety of approaches to be discerned in addressing low income in the financing of social protection (support up-front for contribution payment; back support with regard to the

[1] Coucil Recommendation of 8 November 2019 on access to social protection for workers and the self-employed. Accessible at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019H1115(01)&from=EN

[2] See for publication of the first workshop outcomes: https://ec.europa.eu/social/main.jsp?catId=88&furtherEvents=yes&eventsId=1536&langId=en

[3] See for publication of the second workshop outcomes: https://ec.europa.eu/social/main.jsp?langId=en&catId=1047&eventsId=1571&furtherEvents=yes&preview=cHJldkVtcGxQb3J0YWwhMjAxMjAyMTVwcmV2aWV3

benefit provision). What should we understand by adequacy when dealing with access to social protection schemes and to what extent should the larger setting of the whole social protection system play a role when dealing with the adequacy of a specific benefit or scheme? Finally, we indicate which approaches are to be found when using minimum thresholds in financing social security (use of the threshold as minimum income basis for calculating benefits and use of the thresholds as an element of exemption from protection).

In the fourth and last section, we address the main issues and centre them around the Recommendation provisions (articles 11 to 14). We discuss, for example, how far we should take the contributory capacity into account when dealing with self-employed and non-standard workers. Should we give protection up-front or rather later by guaranteeing minimum benefits? How can exemptions be designed without referring to specific groups?

2 Financing and adequacy: issues at stake

2.1 Financing and social protection of self-employed

In article 14, the Recommendation indicates some of the major challenges when organizing the financing of social protection for the self-employed: '*[m]ember states are recommended to ensure that the calculation of the social protection contribution and entitlements of the self-employed are based on an objective and transparent assessment of their income basis, taking account of their income fluctuations and reflect their actual earnings'*. About the entitlements – which are often provided on a flat-rate basis for the self-employed - more will be said later. Here we focus upon some problems that arise when arranging the financing of the social protection.

The self-employed declare their own income

Unlike workers, **self-employed persons declare their income themselves**. No fixed wages exist that can serve as a basis for calculating contributions or taxes (Whelan, 2000, pp. 153-155; Schoukens, 2000, pp; 77-81). Furthermore, there is **less possibility of control**. The self-employed, in contrast to workers, declare their own income, which can lead to an **undervaluation of the earned income**. This is especially true in a situation where the clients of the self-employed are so-called private end users, who do not need to declare the invoiced costs for tax purposes. Consequently, it is more difficult for fiscal authorities to check the income declared by the self-employed as no cross-comparisons with the cost declaration of the clients of the self-employed can be made. Although no hard figures are available, there is an assumption that the income declared by the self-employed for tax and/or social security purposes is lower than the income earned in reality (ISSA, 2012, PP. 31-33; Spasova, 2017, pp. 56). **This assumption of structural underreporting complicates in its turn the policy discussion on low-income self-employed earners: it is hard to define measures** that will help the self-employed on a low income, when no reliable data regarding their income are available. States that struggle to gain a clear picture of the income declared by their citizens, will thus struggle to address the recommendation on aligning the contributions to the contributory capacity of their (workers and) self-employed proportionally (article 12 Recommendation).

Structural income underreporting is a long-standing problem in many states. The problem of underreporting became even more diversified as self-employed started to organise their activities in legal entities, which they (co-)own themselves and from which they receive a fixed income unrelated to turnover or profit made by the legal entity. The self-employed activities are thus performed within the framework of the legal entity; the contracting of work is done by the entity whereas the work of carrying out the contract is done by the self-employed who works for the entity (owned by themselves). The remuneration is doubled: the entity is paid for the contract and the

self-employed is in turn paid a fixed remuneration. This remuneration is fictitious and may be kept low and/or disconnected from the entity's fiscal results (profit; turnover); in other words, income may stay within the entity's reserves. When the legal entity pays out profit through dividends or liquidates (in the end) the reserves to the (self-employed) shareholder, social security contributions are, traditionally, not levied upon this return. Many countries refrain from doing so as it is considered to be income from invested capital; social security levies traditionally address income from work. In some countries the integration of self-employed activities into legal entities is common practice; it turns out that the income of the self-employed working in these legal entities is kept fictitiously low, often because of para-fiscal considerations (Borstlap, 2020, pp. 48-55; see as well Workshop 1 presentation national practices).

This fictitious undervaluation is, however, legal and hence not to be considered as a fraudulent practice; yet, it may undermine the social protection system as much as the more traditional fraudulent undervaluation of income. Some countries have reacted by introducing alternative financing for companies and/or by encouraging the self-employed (para)fiscally to declare a higher income, with no or with limited results, however. Essentially the practice touches upon an essential point in the financing of (work related) social protection: should the levy of contributions be restricted to income from professional activities or should it also extend to income from capital? In an era of growing importance of digital work and platform work, where it is increasingly difficult to delineate professional activities from other activities and where income is generated by various kinds of activities (regardless as to whether they have a professional nature or not), we are rather inclined towards the second option. However, this is still very much under discussion. The case of the growing integration of self-employed activities into legal entities shows it is very hard to keep the distinction between income from professional activities and income from capital.

Fluctuating income

Unlike workers, the self-employed do not receive a (stable or fixed) wage from their employer. Income earned by the self-employed has a tendency to fluctuate over periods; it is irregular in nature. Some years the self-employed person may have a higher income and profit; other years they may turn out to be less fortunate with regard to the financial return of the activities. Moreover**, the income earned by the self-employed only becomes known after the consolidation of the fiscal year: during the year it may fluctuate, income earned at the start of the year might be very different (higher or lower) than that earned towards the end of the year**. This irregular pattern in the income of the self-employed leads to two major challenges: how to organise a stable structure on the basis of which contributions payable by the self-employed can be organised; and what should be done if, at a given moment, the income turns out to be far too low, making it impossible for the self-employed person to pay their contributions. The latter point will be discussed below under the heading of the self-employed on a low income.

The first challenge is more practical in nature and often leads to an approach in which a distinction is made between the provisional (income and) contributions and the actual (income and) contributions. Most systems will invite the self-employed to pay provisionally at certain intervals (every month or every quarter of the year) based upon the running activities and income flows; once the fiscal year is consolidated and hence the actual income is officially known, a positive or negative correction will be applied: the self-employed will receive a return if too much has been prepaid or alternatively will be invited to pay additional contributions if too little was advanced. The problem with this approach is that the final assessment of the due contributions takes quite some time and the process of levying contributions for a given year is only rounded up one to two years later. Therefore, some systems opt to use the past consolidated income as basis for the current contribution payment. The advantage of this approach is that the income basis is known to all parties (the consolidated past income of two or three years

ago); the disadvantage is that the current income may deviate strongly from what was earned two or three years ago. There is also a problem for those just starting self-employment as no consolidated income from the past is known yet and hence - for these starting years - the system of provisional contributions must be applied. Whatever system is in place, in the spirit of article 14 of the Recommendation, processes have to be designed so that the corrective measures can be applied swiftly and the self-employed should be incited in a positive manner to provisionally declare their income as accurately as possible.

What is income?

The self-employed do not receive a wage. They earn income, partly as a direct return from their work, partly as a return from the (invested) capital. As was mentioned before (integration of self-employed work into legal entities), the income of the self-employed can be more varied in its kind compared to the remuneration of wage-earners (‘wage’). Income for the purpose of social protection (and tax) law will have a defined legal meaning. Traditionally it is understood as the gross income of the self-employed, after deduction of the operational costs, in a given year, to be declared before taxes. However, income is very often the result of the fiscal concept of income and the fiscal approach in accepting (or not) certain operational costs. How far should the financing of security align to the fiscal concept? The fiscal policies deciding on the elements that can be considered as taxable income or on the costs that are deductible from the gross taxable income serve their own objectives, which do not necessarily serve the policy goals of social protection. In some countries, **this leads to the approach by which a distinction is made between the social income and the fiscal income, the former not accepting some costs which are deductible from taxable income; equally, social income could also refer to the introduction of some income elements which are not accepted for tax reasons (income from capital)**. Moreover, one should not underestimate the complexity of the income concept. In a survey conducted some years ago among (self-employed) farmers on how to understand (declarable) income for the application of tax and social law, the answer was rather surprising. A majority considered income to be the remaining income on the accounts after deduction of all expenses (both professional and private) (Whelan, 2000, pp. 155-157). An overly complicated legal concept of income may also push people to undervalue their resources.

One should be cautious in comparing self-employed income with wages paid to workers, especially when comparing the contribution levels of the self-employed and workers for the purpose of social protection. The question whether the self-employed have to pay as much contribution as workers has led to some fierce debates in the past. All kinds of wrong comparisons are used: for example, to determine the level of contribution the self-employed are to pay, the wage-earners' (and not the employer') contributions are being looked at. Others stress, however, that the division between employee and employer contribution is a fictitious one and hence both contributions are to be added in order to constitute a comparable contribution for the self-employed (Pieters, 2006, 102). In a recent case of the Greek Council of State (No. 1880/2019), the equalization of the contribution levels between the self-employed and wage-earners - on the occasion of the integration of the various categorical schemes into a unique professional system for all workers - was considered to infringe the non-discrimination principle. The self-employed and wage-earners are not comparable professional categories when it comes to the generating of income, hence they should not necessarily be made subject to the same rules. Interestingly, even in the setting of the Court discussions produce diverging opinions: there was the dissent opinion within the Court which stated that both groups are to be considered comparable. We will come back to this element in the third part further below. Here it suffices to mention that **in the discussion one should not forget the income basis upon which the contributions are levied. If this basis is very differently constituted for the self-employed and for the workers, it**

does not make much sense to claim equal contribution levels. More important is whether the contributions for the self-employed are such that they make a sustainable social protection possible.

2.2 Financing and non-standard workers

Contrary to the self-employed, (non-standard) workers have a labour relationship with an employer who is liable for the payment of contributions (paying the employer contribution and deducting the employee contribution at the source). **The main challenge for (remunerated) non-standard work is keeping track of the diverse origins from which contributions are to be levied when several kinds of work are being performed for various employers**. States are increasingly starting to create structures (see Workshop on effective protection[4]), both for the financing and delivery of benefits, in which income and/or contributions can be aggregated (over a longer period, such as an insurance year). But even then, the aggregated income may still prove to be below the minimum thresholds of protection, which addresses the relation between the financing capacity of the concerned person and the guaranteed levels of protection (adequacy and equivalence). More about this below when talking about benefit adequacy.

For some categories of non-standard work, the problem is to find out who - in the labour relationship - is considered to be the employer and hence liable to pay the contributions. The issue is most problematic when the employer relationship is spread across various principals, as is the case in temporary agency work (workers are sent on a temporary basis by an agency to a user company). Traditional agency work is regulated strictly in most of the EU countries and, if conditions are not met, it is sanctioned severely: often by treating the end-user as the employer, who is subsequently liable for meeting all relevant labour and social law obligations (among which financing). However due to the growing flexibilisation of the labour market and the intensive use of transnational posting of workers across the EU, all kinds of variations of agency work have started to emerge, blurring the distinction between traditional work and agency work even more. The call both at national and European level to curb this tendency is understandable (Borstlap, 2020, pp. 29-60; at EU level see, for example, the amended Directive on the posting of workers[5]) as often the sole objective of these constructions is to cut labour costs; in the field of the posting of workers, we see a growing number of cases where the construction no longer corresponds to the reality of work but is simply serving the interest of lowering costs for competitive reasons. **The recent case law of the ECJ (C-610/18) does seem to address these fictitious constructions[6] and calls for a reality check: the employer is to be considered the entity from which the worker receives instruction and/or in whose structure the worker is integrated in reality. Subsequentially, this entity should also be liable for financing purposes, by applying the legislation where the work effectively takes place**. The problem of discerning the eventual employer also comes to the surface in the growing platform economy. Even if we consider these persons as workers (wage-earners), it remains a

[4] See for publication of the workshop outcomes: https://ec.europa.eu/social/main.jsp?langId=en&catId=1047&eventsId=1571&furtherEvents=yes&preview=cHJldkVtcGxQb3J0YWwhMjAxMjAyMTVwcmV2aWV3

[5] DIRECTIVE (EU) 2018/957 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, OJ, 9 July 2018, L 173/16. The 'new' posting directive makes it easier, for example, to have the labour regulations/standards of the country of temporary employment applied to the posted worker. In that way it attempts to reduce the application of posting constructions that are based only upon grounds to cut labour costs (social dumping).

[6] See in this respect Conclusions of Advocate-General P. PIKAMÄE, Case C-610/18, ECLI:EU:C:2019:1010. Final decision of the ECJ in case is still pending.

problem to find out which entity should be considered to be the employer of the worker and where that entity is located (Barrio and Schoukens, 2017, pp. 322-323).

Non-standard work is sometimes performed on a non-remunerated basis: this creates challenges for work related social protection. On which financial basis should the (income related) protection be arranged? Here we are entering the field of non-economically remunerated activities, such as traineeships, internships, care activities (for family or relatives) and so on. To what extent should these activities be included for social protection if, at the origin, they have not been contributing to the financing of the system? Exemptions can be due to the character of the activity, which is more related to study and/or education. In these situations, the protection (and related financing) will be restricted to a limited set of contingencies (traditionally work accidents and occupational diseases). The activity can be too marginal to be considered a genuine professional activity and hence exempted from social protection (see all kinds of exempted activities in the households, such as baby-sitting, cleaning, gardening; see first workshop on formal access[7]). Some of the activities are exempted from social protection (financing) as they are considered to be relevant for society and are provided within the circle of family and/or relatives.

Although not always present, one of the (additional) justifying reasons to exempt the activity from social protection is the fact that the person is co-insured with another family member. In other words, **it is not the person's own main activity which justifies the (partial) exemption from contribution (see above), but the activity of a relative upon whom they depend. The dependency relationship opens the way to co-insurance and allows the person to enjoy protection for a series of social risks, such as healthcare, family burden and part of the family pension**. The scheme of helping spouses was a very popular scheme (in the past) applied by many self-employed entrepreneurs in order to have their partner working in the business exempted from paying social contributions while co-benefiting from the social protection of the principal self-employed person; at least as long as the marriage or partnership lasted. Partly because of EU-legislation[8] though, states started to turn these helping spouses into real self-employed persons applying the regular financing structures to them as well - partly for the sake of the helping spouse (to protect the spouse from loss of protection in case of divorce or break-up), partly for the sake of the system itself (why should this category of persons be exempted from financing?). The position regarding co-insurance as a ground for exempting activities from protection can thus change over time.

2.3 Adequacy

The Recommendation calls for an adequate level of protection (art. 11). Adequacy refers both to the level of the benefit (amount) and the timely delivery of the benefit. The latter element will be addressed when dealing with the workshop on transparency; here we focus upon the level of the benefit. Article 11 reaffirms the two functions of social protection: preventing poverty, but also smoothing income over the life-cycle: ***'Where a risk insured by social protection schemes for workers and for the self-employed occurs, Member States are recommended to ensure that schemes provide an adequate level of protection to their members in timely manner and in line with national circumstances, maintaining a decent standard of living and providing appropriate income replacement, while always preventing those members from falling into poverty. When assessing adequacy, the Member State's social protection system needs to be taken into account as a whole.'***

[7] See for publication of the first workshop outcomes: https://ec.europa.eu/social/main.jsp?catId=88&furtherEvents=yes&eventsId=1536&langId=en

[8] In particular DIRECTIVE 2010/41/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, OJ, 15 July 2010, L 180/1.

The prior observation (17) in the Recommendation provides further guidance indicating what benefit adequacy could mean: '… *[s]ocial protection is considered to be adequate when it allows individuals to uphold a decent standard of living, replace their income loss in a reasonable manner and live with dignity, and prevents them from falling into poverty while contributing, where appropriate to activation and facilitating the return to work. When assessing the adequacy, the Member State's social protection system as a whole needs to be taken into account, which means that social protection benefits of a Member State need to be considered.'* However, the Recommendation remains vague about the level of benefits as no clear figures or references are to be found in the document: what is an 'appropriate income replacement' or 'a decent standard of living'? What is the minimum?

Moreover, the last line, recalling the need to take the whole system into account, adds a layer of complexity since Member States can refer to **the additional protection guaranteed by related schemes or services**. It also recognizes that one should not be myopic when addressing the adequacy of benefits. For example, the pension level of a state might be questioned as to its adequacy (is it high enough to live in dignity?). However, the fact that the pensioner is entitled to free housing, enjoys full access to health care, is exempted from any kind of personal contribution (because of the low pension) and enjoys reductions for the provision of gas and electricity, can be taken into account to assess the adequacy of the benefit. Consequently, the concept of social protection is not to be understood in a strict sense here (as defined in article 3.2.) but can also refer, for example, to social assistance benefits, child care benefits and possibly other social allowances. The reference to activation and return-to-work measures is also interesting. **Adequacy of the benefits does not preclude the presence of obligations imposed upon the beneficiaries**. In particular, measures aimed at activating persons on a benefit (such as unemployment and work incapacity) to resume some kind of work are referred to here. Promoting the readiness of beneficiaries to take up work again should, however, not be done in a manner that takes away their dignity.

But what exactly are adequate benefits and how can adequacy be measured? In current international law practice, criteria have been developed that define minimum income replacement levels for benefits (ILO Convention 102 and European Code of Social Security; articles 65-67 and Annex 1); for its part, the EU has invested a lot in the development of indicators to test the outcomes of social policies. In part three, we take a further look at how these criteria could be of use to address benefit adequacy under the Recommendation.

Although general in its wording, the Recommendation nevertheless refers to some protection levels that must be respected by the systems. **The bottom-line is that workers and the self-employed, when on benefits, should be kept out of poverty. Benefit levels should not fall below minimum subsistence levels as applied in the social assistance schemes**. Likewise, the minimum social pension for a person having worked a full career should, for example, not fall below the minimum subsistence applied in social assistance. **The starting principle for standard work is a reasonable income protection so that the beneficiary can live in dignity. In this way, the Recommendation strongly reflects the basic philosophy behind our European social security systems**, in which social insurance schemes and social assistance schemes overlap when it comes to income protection. The latter schemes are designed to provide residual protection against poverty if labour market (policies) and social insurance fail to do so. Consequently, social protection schemes must do more than (only) protect against poverty: they must guarantee reasonable protection against loss of income (from work).

In Europe, this social insurance protection has mainly been organised along two lines, going back to the Bismarck-Beveridge division (Berghman, 1991, pp. 11-12; Pieters, 2016, pp. 7-8). Whereas the first refers to the protection of the workers, the latter kind of systems focus upon the protection of residents (universal social protection). In the

traditional Bismarck system, protection focuses on guaranteeing the prior standard of living (at least for a defined period of time) enjoyed by a worker, whereas Beveridge systems focus more on uniform protection which is of an acceptable level. In other words, the (universal) schemes under this system do not refer to the previously earned income from work, but design the benefits around a fixed standard, which - by definition - is higher than the minimum subsistence level (such as the minimum wage, or average wage, or simply a standard fixed by the Parliament which should guarantee a decent level of protection).

Providing decent levels of social protection may work well when the vast majority of the professionally active population work in a standard work relationship. **Guaranteeing adequacy becomes more problematic when a growing number of workers or self-employed are on low incomes or do not have regular work.** Although this obviously raises difficulties for professional social insurance schemes (the Bismarckian type) because these are based on 'standard' work, non-standard work also creates problems for universal social protection schemes. Universal protection schemes are heavily dependent on professional activities for sustaining the system financially as well. Furthermore, a fair balance will have to be drawn between professional income on the one hand and the basic benefit levels that are guaranteed to a country's residents on the other hand. A system will have broader societal support if benefit levels are not at the same level as the average incomes of the system's members; a large part of that income still comes from professional work.

However, not all persons manage to build up a full insurance record, nor are they (always) capable of building up this insurance record on the basis of decent incomes. In the past, often minimum protection levels were introduced (see second Workshop on effective coverage). The same is true for persons who were not always capable of earning sufficient income. Yet, these minimum protection levels were first and foremost introduced for persons having built up a sufficient insurance record (full time or 2/3 of a full-time equivalent (FTE)), but who were not always in a position to have earned enough income (due to invalidity, caring duties). The Recommendation does not provide very much concrete guidance on what kind of minimum protection should be guaranteed. One can take into account the capacity of the non-standard workers and the self-employed when adapting the rules, but what does this mean in concrete terms?

The question at stake is double in dimension as it refers, on the one hand, to the formal (and effective) access to the schemes in place (exemption from protection, voluntary protection, limited protection: see workshops one and two on formal and effective coverage) and, on the other hand, to the financial obligations of these low-income groups or groups with irregular insurance records. Should they pay the same contributions, or do we exempt them (partially) from financial participation? We will return to this issue in the discussion (part three).

3 Mapping what is in place

3.1 Determining the income basis for the self-employed: cooperation with tax authorities

For determining the basis for calculating contributions, we can discern **two tendencies in the EU** countries (Schoukens, 2000, pp. 77-81). **Either the social security administration cooperates with the tax services or the social security institutions determine the basis for contribution themselves.** The latter strategy is sometimes used when tax collection does not function well or because cooperation with the tax authorities is considered to be too complicated.

The cooperation with tax authorities can take place in different ways. Some countries leave the financing of social security in the hands of the tax administration. This is not

only the case when social security is financed from general means (such as in the (basic) universal social protection schemes in the Nordic states), but it can also be the case when the tax authorities collect the social security contributions (for example in the Netherlands). One of the advantages of this approach is that it allows personal income tax and social security contributions to be collected together. In both systems the self-employed make a provisional payment with any correction being made once their income is formally established. A disadvantage, however, is that the tax authorities rely too much on a tax perspective when collecting contributions and take insufficient account of the specific characteristics of social security financing (in particular, the relation that may exist between the income basis and the benefit basis, the exemption from payment for social reasons, etc.).

Other countries consider collection by the tax authorities to be too far-reaching and thus only use the income information collected and approved by the tax authorities as a basis to collect social security contributions. When the income has already been formally established by the tax authorities, it can be considered as a fixed income basis for the collection of social security contributions and hence no provisional payments have to be made. The disadvantage of this approach, however, is that a time gap emerges between the year the income has been reported for tax purposes and the year that it is used in its consolidated form for contribution collection (two to three years depending upon the particular system in place). The economic circumstances in which the self-employed person works may be different and the current income in the year of payment may be vary quite substantially from the income that once served as the basis for a tax declaration.

The second main approach is to use a fictitious basis for the collection of contributions and hence there is no cooperation with the tax authorities; fictitious in the sense that one does not use the tax data but other criteria that directly or indirectly give an indication as to the amount of the self-employed person's income. The fixed basis for contributions is determined in various ways, including a reference minimum income used for tax or social law (minimum wage), the average income (of the workers) in the sector in question, the wages of a civil servant working in a similar sector (e.g. the wages of a judge at the court of appeal to determine the basis for contribution for lawyers), a parameter to estimate the income (like the number of beds to determine the basis for contribution for hotel operators, the size of the farm, the surface area of the fields that are used, the number of livestock or the volume of the crops that are grown for the determination of the income of farmers). The problem here is that there is no real relation between the actual income and the basis for contribution payment. Furthermore, the fictitious basis for contributions often seems rather low, so that the system receives insufficient financial means and the financial support of the government becomes necessary. In order to prevent such organised underestimation, some countries use fixed income scales. The self-employed can choose from these scales (e.g. in Spain and Portugal). The scale that is chosen has consequences for any benefit, because that benefit is calculated on the basis of the income that is declared. A similar scheme is used in the Finnish supplementary pension scheme. The motive however is different here: one tries to estimate the real income that the self-employed person receives from their business. In the general business incomes, many other elements are included that do not play a role in the actual personal income of the self-employed person. However, the determination of the income is being 'assisted' when the scale that is chosen is continually very low or when there are large income fluctuations. In those cases, the reported income is compared to the standard income that is earned in the sector in question. The personal income does not always need to be lower than the income that is declared for tax purposes. For the determination of the personal income, a number of deductions are not counted if they are related to business activities.

The use of fixed parameters asks for our particular attention from the perspective of the Recommendation. Article 14 suggests that to calculate the contributions (and entitlements) an objective and transparent assessment of the income base, which reflects the actual earnings, must be used wherever possible. Some of these parameters are indicative enough for measuring the income, others however are not (for example minimum or average income earned by comparable professionals).

3.2 Addressing the assessment of income for the self-employed: some practices

A major concern is the **undervaluation of income** for the purposes of social security financing (see above). The **causes can be manifold** and can relate to a fraudulent underreporting, the (legal) use of a low fictitious income basis (for example when working in a legal entity), the complexity of the system causing misunderstandings about how to report income correctly. The reasons for underreporting can be equally manifold; they can relate to the social protection system itself (for example absence of equivalence – a clear link between income basis for financing and benefit – meaning that the levy is considered as mere tax), or more fundamental societal issues going beyond social protection as such (e.g. mistrust in the public service). The emergence of new forms of work (freelancers, platform workers), which can be organised in a very flexible manner, may complicate the issues even more in the future (Barrio and Schoukens, 2017, pp. 327-331).

Some states **try to assure a correct assessment of the income by going to the source of the money flow wherever possible and/or by organizing a contribution levy which is kept simple in design**. Especially with the growing group of freelancers who are organised in a flexible manner and want to have as much responsibility as possible for their own reporting processes (i.e. not outsourcing them to external service providers such as accountants or lawyers), it is paramount to have a system in place which is transparent, easy to handle and encourages people to declare correct (income) data.

In Estonia, as of January 2019, entrepreneurs have the possibility to open a so-called ‘entrepreneur account’ at a bank (so far, only LHV Pank is offering the account). This system proposes an interesting new form of collecting taxes, especially because it enables informal workers, freelancers, etc. to easily declare and track their income. The account is especially for entrepreneurs who ‘provide services to other natural persons in the areas of activity that do not involve any direct expenses, or for a person who sells self-produced goods or handicraft goods or the goods with low costs of materials or acquisition’. Examples of such activities are baby-sitting, housekeeping, gardening, and also the abovementioned ‘new’ forms of work, such as the sharing economy, e.g. Uber, Airbnb, etc. For persons whose costs are high and comprise a large part of the sales price, the account is not as suitable given the fact that it does not provide the possibility to deduct those expenses. The account is an interesting example of the interplay between a private institution (bank) and the state; income taxes and social contributions are namely collected at source. This leads to more transparency on both sides, as well as a simplification for the entrepreneurs themselves.

In the first place, the Entrepreneur Account is intended to make the collection of income taxes easier. The entrepreneur can open an account and does not have to worry about the payment of his taxes, monthly tax returns, etc.

Outside the EU, simplified procedures to enhance contribution and tax collection among small entrepreneurs and freelancers have been reported in Argentina and Uruguay (ISSA), using a system of ‘monotributo’ (Arellano Ortiz, 2019, 154-156) - essentially a unified tax payment scheme integrating the variety of social security contributions (in the different schemes in place) and taxes. Initially, the schemes focused upon small one-person businesses developing activities in the street or in public spaces, but slowly

the system was modified in order to expand social protection coverage across all the self-employed. Part of the success to reconvert informal work into official (small scaled) self-employed work (where the self-employed register and pay for social protection) is also related to the use of a reduced contribution level, which was originally justified because of the relative small income generated from these one-person businesses (see below on using reduced contribution levels). Contribution payment is progressive in relation to the time: only after 36 months of activity is the full contribution paid.

Another interesting approach **is the application of a 'third party' contribution which co-finances the social protection scheme of the self-employed (group)**. The approach addresses (partially) the lack of an 'employer contribution' in the self-employed system and has, for example, already been applied for some time in the German social protection system for artists (*Künstlersozialabgabe*). Clients purchasing artistic works have to pay a contribution to the social protection system directly to the social fund for artists. In particular, where self-employed groups are contracted though an interface institution – the client paying the interface for the purchased good or service –, the contribution is withheld directly at the source by the interface institution in this system and paid directly into the social protection scheme. Also, in constructions where the self-employed organise their activities in a legal entity, it is increasingly being suggested that the legal entity should co-finance social protection as a third party. The contribution from the legal entity would then be based on the turnover and/or profit of the company itself, whereas the self-employed person working in the entity would pay on the basis of their personal revenue.

3.3 Low income groups and financing: the self-employed facing financial problems of a temporary nature

Most systems have **special schemes in place for self-employed people who are confronted with financial difficulties, exempting them partially or fully from contribution payment**[9]. Normally this results in a (partial) loss of social security claims, in particular in relation to long-term income replacement schemes (such as pensions). In other words, the years for which the contributions were exempted will not generate pension entitlements; they are not considered as assimilated insurance records. Some schemes, however, grant the possibility to pay the contributions for these lost periods at a later stage when business picks up again[10]. Comparable as to the idea, but different in execution is a scheme where the self-employed person in financial difficulty can receive support for the payment of contributions (up-front). This support can be provided by a grant (or loan) or, alternatively, contributions might be paid by the social security agency for some risks (such as health care[11]). The self-employed person has the possibility to pay, on a voluntary basis, at a later stage. France will grant self-employed people in difficulties a postponement of payment or will have the sickness fund pay the contributions temporarily. Support up-front is gaining popularity in Latin-American systems[12]. In Colombia, for example, self-employed people (in difficulties) can receive a subsidy for a period of up to 750 weeks which should enable them to continue their social security payments. This policy is preferred over the former approach where no support was provided, and the activity consequently had to shut down eventually forcing the person to rely on social assistance. As a consequence, self-employed persons continued their activities, but in the informal sector. Generally, the policy is to bring informal work to the surface wherever possible, facilitated by registration procedures that are kept simple and transparent. Similarly, when business turns temporarily bad, support is provided aimed at keeping the self-employed under the protection of formal

[9] Not based upon a comprehensive comparative overview, yet as reported in ISSA-Database and/or MISSOC. See as well Schoukens, 2000, 77-81.
[10] As applied for example in the Belgian system, having a specific Commission in place which the self-employed can apply to for exemption from payment.
[11] As used to be the case in France for the payment of the sickness fund contributions.
[12] As reported in ISSA-Database, in particular for Colombia

security for as long as possible. Help in paying contributions is one of the techniques deployed for this purpose.

It should be emphasized again that the techniques described are applied when there are **financial problems of a temporary nature**. Moreover, it must be remembered that these support schemes are based on a financing system where the self-employed would normally start to pay contributions from a defined minimum threshold income (see above) and are unable to fulfil their contributory duties as their actual income falls below this threshold. Another issue arises when the self-employed or non-standard workers have reduced income resources on a structural basis, due to the part-time or temporary nature of their activities, and/or the very low remuneration they receive from the activity. This will be dealt with in the following section.

3.4 Structural low-income from non-standard work and/or self-employment

States are confronted with a **growing group of workers and self-employed people who structurally earn a low income.** The overall income may fall below minimum wage levels (for FTE work) or even minimum subsistence level. In other words, the income is marginal. How should we deal with these groups of workers and self-employed people when shaping social protection? Many issues regarding access and protection have already been addressed in the previous workshops (on formal and effective coverage). For the purpose of this seminar, we focus upon the financing aspect and its interrelation with adequacy. From the impact assessment (EU Commission, 2018) we notice that a growing group of states has **introduced exemptions, specifically designed for groups working for a marginal income**[13]. Essentially, the minimum thresholds to access the schemes or to enjoy protection are made more flexible (often lowered) and/or the protection provided is reduced, allowing the contribution rates to be reduced for these groups[14]. Sometimes the low-income groups are offered voluntary protection (opt-in or opt-out mode), but in the first workshop we learned that the take-up of these insurances is rather low. So, essentially the policy is very much one of lowering contribution payments, which often goes hand in hand with restricting any social protection, whereas the Recommendation calls for ensuring formal, effective and adequate protection for these groups.

Justification for this policy is to increase the employment chances of these groups, or to combat the grey economy and informal sector (as lowering contributions makes formal employment as competitive as work contracted in the informal economy) and/or **to increase the flexibility to hire and fire work-staff**, especially for short-term work assignments needed in situations of sudden and/or temporary increase of economic activities. Some of these specific schemes are, however, bound to restrictions. For instance, they can only be applied for a certain period of time (for example while doing casual work in Romania) or they are bound to restrictive maximum income levels so that once the threshold is reached, the normal system starts to apply again. **Sometimes the specific scheme is justified by the fact that the person is already sufficiently covered for social protection, either directly through their main activity** (the marginal income activity is restricted to only a side activity) **or indirectly** (through their marital or cohabitation status, etc.).

This approach of reducing financing (and protection) is not without risks (Borstlap, 2020, pp. 29-60). If applied on a massive scale or if the boundaries of the application are not strictly monitored, an unequal playing field will be generated on the (labour) market: these categories of marginal work may become popular for the wrong reason (cheap employment) and other comparable groups, not enjoying the benefit of

[13] As reported in ISSA-Database.
[14] For instance, as reported for mini-jobs in Germany, casual work in Romania, civil law contracts in Poland, project workers in Italy, micro-entrepreneurs in France and as addressed in the two previous workshops.

reduced cost employment, risk being pushed out of the labour market. Furthermore, sustainability may become an issue for the system when minimum protection levels are guaranteed which, comparatively speaking, are too high if we look at the contribution basis of these groups. In some countries, the application of these special schemes for flexible and/or marginal contribution payment is getting out of control (Borstlap, 2020, pp. 29-60). This is especially true if similarly flexible rules are applied in the field of labour law (protection).

Some countries are starting to move away from an overly liberal application of these specific exemption schemes for low income earners. This can be done by either specifying more clearly the application of the scheme (for groups or situations which do not compete so much with the general labour market) or by applying the schemes transversally to those on a low income, regardless of the type of professional activity. However, a bolder approach is the one where systems start to sanction flexible labour forms financially (Borstlap, 2020, pp. 64-85) by charging higher financial duties for flexible work forms that have a higher incidence of social risks (such as unemployment or work accidents). This might be done by increasing the level of the contribution or by applying a minimum income threshold (e.g. minimum wage) from which contributions start to be calculated. By doing so, we come close to the minimum (financing) thresholds applied for the group of self-employed.

3.5 Adequacy of benefits

As mentioned earlier, **the Recommendation does not define concrete yardsticks on the basis of which levels of social protection benefits can be tested on their outcomes** (adequacy). The instrument remains vague when it comes to defining adequacy: '*maintaining a decent standard of living and providing appropriate income replacement*' (art 11). However, **a clear distinction is made between the minimum level of income (poverty threshold) below which systems should not go and reasonable levels of protection** (by definition going beyond the mere poverty threshold), that should be guaranteed by social protection systems. By doing so, **the Recommendation refers to the traditional design objectives of our European social protection systems,** which - regardless of whether they are based on a Bismarck or Beverigde approach - have the ambition to guarantee a decent standard of living when providing income replacement benefits.

Although no concrete measurement tool has been put forward, we can **find indirect inspiration for how to understand adequacy in existing monitoring instruments applied both by the EU itself and by other international organisations, such as the ILO and Council of Europe**. Within the scope of the European Semester, the Social Scoreboad has been launched to monitor the social progress in the Member States related to the implementation of the European Pillar of Social Rights[15] (Social Pillar). As the Recommendation is one of the concrete outcomes of the Social Pillar (in particular principle 12), it makes sense to consult the Scoreboard on its adequacy indicators. The Social Pillar calls us to respect fundamental social rights and standards developed by leading international organizations. Hence, the criteria that monitor the level of benefits in the current standard setting instruments could also be inspirational for determining adequacy. Apart from these instruments, we will have a look at some recent Constitutional Court cases (of EU Member States) which have been addressing adequacy and may thus inspire our understanding of the concept. Finally, we highlight the interrelation between adequacy and other principles underlying social protection, in particular equivalence and redistribution.

Adequacy as understood by international and European monitoring instruments

[15] https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en

Minimum standard instruments developed by the ILO and the Council of Europe, in particular the ILO Convention 102 (1952) and the European Code of Social Security (1964), give specific attention to the minimum benefit levels that social protection systems have to guarantee. **Minimum income replacement rates have been developed for that purpose, for each of the (income replacement) contingencies (see annex 1).** They amount to between 40% and 50% of the previously earned income of the standard beneficiary, and - in the case of the Revised Code of Social Security launched in 1990 by the Council of Europe[16] - the rates are defined from 65% to 80%. The 'standard beneficiary' is defined as a professionally active person with a (dependent) partner and two (dependent) children[17] (see schedule to Part XI ILO 102/Code). Depending on whether there is a professional social protection scheme in place or a universal scheme, the level of the professional income is determined in relation to skilled or (in average lower) unskilled work[18]. The minimum income replacement rates are thus related to the average professional income a (pre-defined) standard beneficiary is earning in the country.

Although rather concrete in their measurement, the standard-setting instruments have been subject to some major criticism (Pieters and Schoukens, 2015, pp. 534-560). Especially the old-fashioned approach in defining the standard beneficiary, the fact that standard work is the main focus of the standards and the sometimes overly flexible enforcement of the rules, are at the centre of the critical comments. However, the standards are the emanation of the traditional social security thinking, based upon repartition and intergenerational solidarity, in which benefits are defined in relation to the average labour income in the country, and in which benefits guarantee a living standard reflecting the one prior to the contingency. Much attention is given to minimum benefits that guarantee a basic protection when the person is not able to complete a full social insurance record due to sickness, invalidity or unemployment. Many of the standards are thus an emanation of an enhanced (both horizontal and vertical) solidarity, typical of social security systems that were shaped after World War II in Europe. They are in need of a modern interpretation and the Recommendation could create a momentum for this, especially in relation to some of the indicators the EU developed within the Social Scoreboard.

The EU itself developed a very extensive list of social indicators. As mentioned above, the most recent initiative in this field is the Social Scoreboard proposed along with the European Pillar of Social Rights in 2017. Yet, these indicators already have some long-standing tradition emanating from the (non-legal) monitoring of the social protection systems, in particular through the policy process of the Open Method of Coordination in the fields of social protection and social inclusion. A diverse set of indicators are applied to measure the outcomes of national social policies and, with the establishment of the Social Scoreboard, indicators are being further developed, some of them also touching upon benefit adequacy. Although poverty can be defined in different manners (UNECE, 2017, pp. 207) generally within the EU, people are considered to be at risk-of-poverty when they have an equivalised disposable income below the risk-of-poverty threshold (which is at 60% of the national median equivalised disposable income after social transfers). It sets a relevant (underlying) reference for the application of the Recommendation on benefit adequacy when it calls Member States to guarantee decent protection for their members of social protection schemes, *while always preventing those members from falling into poverty* (art. 11). Other indicators targeting benefit adequacy could be useful as well, such as the indicator for the accrual

[16] But due to a lack of ratification, the convention did not become effective though.
[17] In the Revised Code a variety of standard beneficiaries are used, with the intention to reflect better the diversity of living forms in European societies. The standard beneficiary originally defined for the purposes of the ILO and Code are not considered to reflect anymore our modern societies.
[18] The reference standard workers and in particular their income are defined in detail in the conventions (see articles 65, 66 and 67). This is crucial in the monitoring of the adequacy as the income of the standard worker is the reference against which the benefit is compared.

rate for pensions (based upon a full insurance record), used recently in the pension adequacy benchmarking framework[19]; or the indicator in relation to the net replacement rate of unemployment benefits[20]. Compared to the income replacement ratios used by the international standard setting instruments, the EU indicators seem to be more 'dynamic' and multidisciplinary in design: they do not focus upon the income replacement guaranteed by the law at a given moment, but can measure the effect over a longer period (or even in the future). Some indicators are also disaggregated by different income levels and household types. For instance, the triennial Pension Adequacy Reports provide an analysis on theoretical replacement rates for different work records and household types. In that way they are complementary to the criteria applied by the international standard setting instruments. However, if we want to give the Recommendations some concrete relevance as to the measurement of adequacy, we will have to come up with a coherent framework against which benefit outcomes could be assessed. This could eventually also help in making the 'European social model' more concrete in its appearance (Schoukens, 2016, pp. 41-44).

Adequacy in case law of national High Courts

In some recent Higher Court cases (in the Member States) more attention is now being paid to the adequacy of benefits, in particular in relation to pensions. The cases challenged some pension reforms which were on the verge of being implemented. On questions on the constitutional protection of the pension (rights), the Slovenian Constitutional Court (U-II-1/11) mentioned - in relation to adequacy (among others) - that '*the right to a pension must be primarily based on the insurance principle, and in that sense it relates as well to the protection of property […]. This entails that it must* ***to a certain degree ensure the continuity of a standard of living which the insured person had in their active period*** *(i.e. income security) as a pension substitutes in a proportional manner for the income from which contributions were paid for the pension insurance. […] However the constitutional right to a pension does not go so far that the persons are to be guaranteed at a pre-defined amount*. Pension benefits can thus be made subject to adaptations or reductions, for instance because of demographic and/or public finance needs. However, in such circumstances these constraints or needs have to be specified and well documented; the mere reference to such needs in general cannot be sufficient to invoke the adaptations in amount (Strban, 2016, p. 251).

In a recent Greek case of the Council of State (1891/2019), benefit adequacy was further defined in relation to the previous contributory record of the insured person. The Court acknowledged that the benefit level can depend upon the prior (length) of the insurance (principle of proportionality). The Court first recalls that pension benefits are to guarantee a decent protection, **aiming to guarantee a standard of living that reflects the one which the worker had before. However, boundaries can be set to the level because of redistribution needs (which are essential to social protection systems: principle of solidarity), but also because of needs of proportionality (reflecting what the person contributed before: principle of proportionality)**. The implementation of the latter principle should, however, not be done in a too rudimentary manner, as was the case in the opinion of the Court for the scheme brought under investigation. Proportionality should be reflected in a gradual manner, meaning, for example, that income replacement can incrementally grow in accordance with the insurance record.

Concluding on benefit adequacy

[19] Of which outcome and performance indicators have already been agreed.
[20] See for an application: 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, p.87

Article 11 of the Recommendation, which calls upon the Member States to guarantee adequate benefits, is (deliberately) an openly formulated article. No concrete indicators are to be found as to the required (minimum) levels of protection. That being said, the article strongly reflects the protection logics underlying the traditional social security thinking in Europe. Social protection benefits should guarantee to workers and the self-employed a decent standard of living, and when social protection is work based, preferably reflect the previously earned income. The underlying intention is to prevent those persons, in any event, from falling into poverty**. However, when dealing with non-standard situations of work and self-employment, insurance records may become irregular, earnings may often be limited and fall below minimum wage levels. From a proportionality principle this may be translated into the benefit composition, leading to lower benefit amounts. However, from the principle of solidarity, this proportional adaptation should be cushioned (for example progressively applied). Although the Recommendation as such does not give any concrete indication in this respect[21], these social corrections normally take place through minimum benefits and/or social assistance schemes.**

However, in the backyard quite some work has been done to measure benefit adequacy in relation to social policy monitoring as well as within the framework of international standard setting instruments. The Recommendation could use a coherent measurement framework with regard to adequacy and in that way article 11 can be seen as an invitation to coherently bring together these indicators in order to provide some guidance on benefit adequacy and on the positioning of social protection benefits, minimum benefits and social assistance schemes when it comes to providing social protection. Especially in relation to non-standard work and self-employment, some concrete guidance would be welcome as to where to put the division lines of the relevant schemes providing social security. In this regard, reference must be made to some other open positions: when looking at benefit adequacy, article 11 refers to the overall social protection system and the national circumstances that have to be taken into account. It is thus an invitation to have a further look beyond the social protection schemes in the narrow sense and to see the interplay with other social schemes, such as social assistance. In order to keep these references to other protection schemes manageable, it would be helpful to make them somewhat more concrete in the monitoring of the instrument.

4 Discussion

The section on adequacy in the Recommendation (articles 11-14) refers to the benefit level, the financing of social protection and the relation between both financing and benefit levels. It addresses thus more than only the benefit levels as such, which must be guaranteed in the case of social protection. Let us now deduce some policy conclusions starting from what has been mentioned above and group them around the consecutive provisions of the Recommendation.

4.1 Adequate protection, respecting proportionality and solidarity

Article 11 of the Recommendation calls for an adequate level of protection, maintaining a decent standard of living and providing appropriate income replacement, while, when protecting people, preventing them from falling into poverty. Although an open approach is applied, not referring to concrete benefit level indicators, **the provision clearly calls for a coherent approach in the design of social protection when setting benefit levels**. It indicates that the social protection for workers and the self-employed should aim to maintain the standard of living (in particular for the work-related protection schemes) and ensure a fixed protection of decent living

[21] Compare for example with the standard setting instruments ILO Convention 102 and European Code of Social Security article 29 (old age), 57 (invalidity) and 63 (survivorship).

standards (notably when the schemes are of a universal design, addressing the whole population). The targeted levels in social protection should thus be distinguished clearly from the minimum subsistence level on which poverty-reducing schemes are based. The latter ones indicate the minimum level for all, meaning that if a social protection benefit falls below this minimum (for example in the case of persons having had a limited or irregular insurance record), social assistance has to intervene by guaranteeing the minimum subsistence level (for example by providing additional protection on top of the one provided by the benefits guaranteed on the basis of social protection).

The reference to adequate protection in article 11 refers in the first place to workers and self-employed who were able to build up a decent work or insurance record[22]. Social protection schemes traditionally apply a principle of proportionality, meaning that any benefit will be calculated based on income and/or insurance record periods. Benefits might thus be proportionally lower as the work record is more limited. Because of the principle of solidarity, inherent to any social protection scheme, this proportionality is not to be applied in a strict linear manner but can be applied at the lower income levels more progressively and, conversely, be applied in a more restricted manner at the higher levels. An example of cushioning proportionality is the guarantee of minimum benefits in social protection schemes. If insured persons have participated long enough in the scheme, systems guarantee a minimum benefit from the social protection scheme (thus not on the basis of social assistance). Again, **the benefit level systematics will have to be respected. Minimum benefits should be sufficiently distinguishable from social assistance benefits: it does not make much sense to guarantee, for example, a benefit below the poverty level for people with a full- time work record. Conversely there should be enough leeway between the minimum benefit and the potential (highest) benefit which one can receive from the social protection**: in a work-related scheme, from the perspective of equivalence, it does not make much sense to have a minimum benefit in place which comes too close to the maximum benefit provided in the social protection scheme. An approach where minimum and maximum benefit levels come too close does not encourage workers to pay on their higher income; especially for the self-employed this may become problematic (see disclosing of income discussion above).

4.2 Contributory capacity and applying exemptions in a restricted and/or neutral manner

Articles 12 and 13 of the Recommendation pay more attention to cases in which workers or the self-employed do not have a standard full-time occupation. When **arranging the financing, attention might be focused on the contributory capacity of the worker or the self-employed person** (article 12). Any exemptions or reductions in social contributions, including those for low-income groups, are preferably to be designed in a neutral manner, applying to all types of employment relationship and labour market status (article 13). Articles 12 and 13 thus essentially address low-income groups or workers and self-employed people facing financial problems making it hard for them to pay their contributions in due time**.** Before addressing this more in detail, first some attention must be paid to the concept of ‘contribution’. Strictly speaking contributions refer to earmarked taxes that are directed (directly or indirectly) to the institution or field for which they have been enacted in the first place. Most often they are levied upon the professional income, such as the employee contribution, the employer contribution or the contribution paid by the self-employed (Pieters, 2006, pp. 101-105). Contrary to taxes, they are thus not initially collected as part of the general tax budget from which they are further distributed to the main policy fields in society

[22] This is not specified either in the Recommendation. In the minimum standard instruments, the pension calculations are for example based upon a work insurance record of 30 years (professional schemes) or upon a residence period of 20 years. For the calculation one thus does not make use of fully completed insurance record as in most states the reference insurance record goes beyond the applied 20/30 years.

(justice, health, education welfare, etc.) according to political or administrative decisions. Traditionally, social protection schemes are either financed on the basis of contribution (Bismarck-type systems) or through the general budget (Beveridge-type systems); however the reality shows us that most systems in place have a combined financing, integrating both contributions and state subsidies coming from the general budget (Pieters,, 2006, 101-102). **Hence, when talking about contributory capacity in the Recommendation, it would make little sense to refer only to ear-marked contribution in the strict sense. Workers and self-employed finance social protection schemes, through general taxes, such as personal income tax and possible other 'alternative' taxes that are not levied upon the professional income but are - for example - based upon their consumption. When addressing social protection financing, it makes more sense to have an approach integrating the various levies (direct or indirect) that may weigh upon a person's income.**

The underlying starting point from articles 12 and 13 is that social protection systems start from a minimum professional income. For wage-earners this is traditionally the minimum wage (for a FTE under labour law); for the self-employed, many systems apply (minimum) income thresholds from where contributions start to be calculated (even if in reality the self-employed person may have earned less). Logically these financial minima should find their counterparts in the benefits, where minimum benefits are sometimes guaranteed to workers and self-employed people who have participated long enough in the system. If we do not start from the minimum financing level, then it is equivalently difficult to sustain a minimum on the benefit side. In such an approach, social protection is essentially guaranteeing benefits in strict accordance with what the insured person contributed during the years of activity. If this is based upon a marginal income, then the benefit will be marginal, and possibly it will be up to social assistance to beef up the (low) benefit to the minimum subsistence level.

What should we do when workers, in particular non-standard workers, and the self-employed have an income (far) below the reference minimum income? The Recommendation calls for taking into account the contributory capacity. For example, measures to provide assistance for self-employed facing financial difficulties can be foreseen (exemption of payment with possibility of referral of payment to a better period; providing up-front financial support, etc.). However, **if the low-income status is more structural in nature, other approaches will need to be adopted.** Essentially the same measures can be taken as for temporary problems, e.g. (partial) exemption, financial support up front; **yet, one has to pay attention to the undesired effects on the labour market**. By exempting these groups (partially) from their financial obligations, these groups may gain a competitive advantage over other regular workers which, in turn, may lead to a situation where employers give precedence to (partially) exempted groups. So, either one restricts the application of these exemptions to strictly defined terms (time, income) or to strictly defined groups which do not compete as much with other regular workers; or, one applies the financial reduction in a more linear fashion (in terms of income, which potentially is applicable to all types of employment relationships and labour market status). The Recommendation calls for ensuring a level playing field (art. 13), where exemptions, reductions and progressivity measures could benefit both workers and self-employed (observation 21), while allowing these measures to tackle segmentation and promote transitions to less precarious forms of employment (observation 21). In fact, some systems start to apply contributions that are relatively higher if it turns out that such non-standard work is creating more reliance on social benefits (such as unemployment).

As such, the approach should not be very different if the marginal worker is already well covered through their main activity (marginal work is then the side activity), or because of their social status (they already enjoy a benefit such as a pension) or marital status (indirect coverage due to dependency on their partner). Some argue that this kind of

marginal work can be exempted easily from social protection, as (sufficient) protection is already available. However, this does not take away the negative side-effects on the rest of the labour market, nor does it justify an exemption from the payment of contributions. Reductions can, of course, be justified here too but they should be justified, for example, by having the contribution payment calculated on the basis of the real income and not on the basis of the minimum income threshold (see above under cooperating spouse).

To what extent should the contribution level be the same for workers and the self-employed? Contributory capacity also refers to this question. **Do these two groups have a similar contributory capacity? Some consider they do not as the self-employed have no employer and hence can only be expected to pay the equivalence of the employee contribution; others say that the division between employee and employer contribution is fictitious as, in the end, one always has to add both of them together to find out what the labour cost of employment is**; moreover, the employee does not pay the employee contribution directly, it is being withheld at the source by the employer together with the employer contribution. So, the self-employed should pay the sum of both contributions. This discussion is somewhat false. First of all, it assumes the same protection in the end (same cost). **But it assumes as well a comparable income basis and this depends heavily upon the (national) tax and social contributory system and the interrelation between them.** If the income is comparably constituted for workers and the self-employed and subject to comparable protection, there is a case for applying comparable contribution levels. If not (see also the discussed Greek case), the groups are not comparable, and the focus should be more on the financial needs which are required to keep each of the systems sustainable (into the future). As discussed earlier, there is something to be said to use a broader (and thus an own) income concept for self-employed, which can relate as well to (income out of) capital. Finally, referring to the contributory capacity can also justify the application of a simpler method of registration and contribution payment systems for small-scale self-employed activities or freelance work (see for example the Estonian small business registration).

4.3 Objective and transparent income assessment

The last article (14) focuses upon the group of self-employed people. The Recommendation calls for the use of financing techniques that reflect the actual earnings of the self-employed person. The strategies deployed in the European states are quite different; some are based upon the fiscal (income) data or simply leave the levy of social contributions to the tax authorities; others do not work with the tax authorities or date and apply a fictitious income basis or use parameters indirectly constituting the size of the income. It is clear that article 14 is to a large extent focusing on the second type of financing organisation, especially when the income basis is for example flat-rate and/or is based upon the average income of a similar profession. **If no real income data are used, obtained from the self-employed, the use of alternative indicators will have to be justified**. It is however not forbidden to use these, as for some professions they are even a much better indication of the income than the income declared by the self-employed for tax reasons[23].

Moreover, the system should be designed in such a way **that it can cope with fluctuations that are inherent to the self-employed activities**. This can mean that one works with a division of provisional and final payments (see above), but also the application of temporary exemptions if the self-employed person faces problems. Moreover, the system should not be unnecessarily complicated in its use.

[23] Even in tax systems, comparable income indicators are applied, as they are more reliable and give a better insight.

Article 14 does not only refer to contributions but suggests the real income of the self-employed be used as a basis for the benefit (calculation) wherever possible. In a way, the article subscribes to the importance of building sufficient equivalence into the social protection of the self-employed. Using (only) flat-rate benefits, not related to the previously earned income of the self-employed person might be detrimental for the sustainability of the system. The self-employed (especially those earning higher incomes) may consider the contribution as merely a tax with no (direct) return for their social protection and reduce their contribution to the bare minimum. Flat-rate benefits can of course be justified when, for example, it is difficult to address the social risk (see second Workshop on effective coverage) and/or when being part of the larger approach of the national social protection (focusing for example, in a first pillar, on universal protection); however, for work related income replacement schemes, it may make more sense to introduce enough equivalence in the design of social protection.

5 Conclusion

Maybe more than in the other articles, the provisions dealing with adequacy relate both to the financing and the level of the benefits. Workers (regardless whether they are standard or not-standard workers) and self-employed should indeed be guaranteed income replacement protection that is of a decent level; to the same token they should sufficiently contribute to social protection schemes to make adequate protection happen. In a third dimension the Recommendation asks also to pay enough attention to the relation between the income basis (financing) and the basis on which benefits are calculated (adequacy). Benefits should be high enough to guarantee a decent protection to workers and self-employed, yet at the same time should pay enough attention to the weaker groups in society (solidarity), whereas from a sustainability perspective, they are to be proportional in relation to what has been contributed in the past (contribution records) and attractive enough for workers and self-employed to pay enough for social protection (equivalence). The challenge will be in finding a well-proportioned balance between these principles underlying our social protection schemes. Together they serve as a compass for the development of our social protection systems; yet, at the same, the principles should be sufficiently calibrated among themselves.

This means as well that systems will have to develop along new evolutions in the labour market. Non-standard work and self-employment do challenge this balance and call for new approaches in defining professional income and in establishing the income basis from which contributions are to be paid. At the same time these evolutions ask for a further rethinking of the fundamental principles. To make social protection more understandable again, more attention should be paid to equivalence in benefit protection as well as to the relation between minimum protection and the minimum income basis for financing. Low-income groups should not be excluded from protection: from a solidarity perspective, it is justified to provide them proportionally with some better protection. This, however, does not exclude them from contributing to social protection nor does it undermine the principle that normally one starts contributing as of a defined minimum; otherwise, this will eventually lead to a lower level of protection. In other words, we have to accept that the balance in the design of social protection systems also has its limits and that - at certain moment - other means of protection (such as social assistance or welfare services) will have to be called in to guarantee a minimum subsistence protection to all of our citizens.

List of references

LEGISLATION

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, Directive 2010/41 of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, *OJ*, 15 July 2010, L 180/1.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, Directive 2018/957 of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, *OJ,* 9 July 2018, *L* 173/16.

COUNCIL OF THE EU. (2019). Council Recommendation 12753/19 on access to social protection for workers and the self-employed, OJ 15.11.2019, C 378/1.

CASE LAW

CONSTITUTIONAL COURT (Slovenia), 10 March 2011, *Official Gazette RS*, No. 20/2011.

COUNCIL OF STATE (Greece), No. 1880/2019

COUNCIL OF STATE (Greece), No. 1891/2019

CONCLUSIONS Advocate-General P. PIKAMÄE, Case C-610/18, ECLI:EU:C:2019:1010

LITERATURE

ARELLANO ORTIZ, P., 'Informal and self-employed workers in Latin-America: from an excluded category to an example of innovative inclusive measures', in WESTERVELD, M. and OLIVIER M. (eds.), *Social security outside the realm of the employment contract*, Cheltenham, Elgar, 2019, 141-161.

AVLIJAS, S., LSE 'Europe in Question Discussion Paper Series – *The Dynamism of the new economy: non-standard employment and access to social security in EU-28*, LEQS Paper No. 141/2019, 2019, 76.

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

BARRIO, A. and SCHOUKENS, P., 'The changing concept of work: when does typical work become atypical?, *European Labour Law Journal*, 2017, Issue 4, 306-332.

BEHRENDT, Ch. and NGUYEN, Q.A., 'Ensuring universal social protection for the future of work', *Transfer. European review of Labour and Research*, 2019, Vol.3, 205-2019.

BERGHMAN, J., 'Basic concepts of social security', in D. PIETERS (ed.), *Social security in Europe,* Brussels, Bruylant, 1991, 8-22.

BORSTLAP-COMMISSIE REGULERING VAN WERK , *In wat voor land willen wij werken? Naar een nieuw ontwerp voor de regulering van werk (*Dutch Commission work regulation-BORSTLAP*, In what kind of country do we wish to work? Towards new arrangements for the regulation of work)* , 2020, 112p.

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

EUROPEAN COMMISSION, *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, 2018, 167.

EUROPEAN SOCIAL INSURANCE PARTNERS, *Are social security systems adapted to new forms of work created by digital platforms?*, Brussels, ESIP, 2019, 31p.

FONDAZIONE G. BRODOLINI, *Access to social protection for all forms of employment*, Brussels, European Commission, 2018, 247p.

INTERNATIONAL SOCIAL SECURITY ASSOCIATION, *Handbook on the extension of social security coverage to the self-employed*, Geneva, 2012,57p.

-, Database Good Practices, https://ww1.issa.int/gp Consulted January 2020.

MISSOC, *Mutual Information System on Social Protection, Comparative tables*, Brussels, Commission EU, consulted August-October 2019

ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (2018), *The future of Social Protection: what works for standard workers?*, OECD Publishing, Paris.

(2019). Employment Outlook: The future of work, Paris, pp 339.

PIETERS, D., *Social security: an introduction to the basic principles*, The Hague, Kluwer Law International, 2004, 135p.

PIETERS, D. and SCHOUKENS, P. 'Social security law instruments of the next generation', in VONK, F. and PENNINGS, Fr. (eds), *Research Handbook International Social Security Law*, Elgar, Cheltenham, 2015, 534-560.

SCHOUKENS, P.-, *EU social security law: the hidden 'social' model*, Tilburg, 2016, Tilburg University, 56.

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

-, *De sociale zekerheid van de zelfstandige en het Europese Gemeenschapsrecht: de impact van het vrij verkeer van zelfstandigen* (Social security of self-employed persons en EC-Law: the impact of the free movement of self-employed persons), Leuven, Acco, 1999, 615p.

SEMENZA, R. and PICHAULT, F. (eds.), *The challenges of self-employment in Europe. Status, social protection and collective representation*, Cheltenham, Elgar, 2019, 233p.

SPASOVA, S., BOUGET, D. and GHAILANI, D., 'Self-employment and social protection: understanding variations between welfare regimes, *Journal of Poverty and Social Justice?*, 2019, Vol. 27, No2, 157-175.

SPASOVA, S., BOUGET, D., GHAILANI, D. and VANHERCKE, B., *Access to social protection for people working on non-standard contracts and as self-employed in Europe – A study of national policies*, Brussels, EU Commission, 2017, 97.

STRBAN, G., 'Constitutional protection of the right to social security in Slovenia', in EGOROV, A. and WUJCZYK, M. (eds.), *The Right to Social Security in the Constitutions of the World: Broadening the moral and legal space for social justice*. ILO Global Study, Volume 1: Europe. International Labour Organisation, Geneva 2016, 243-260.

UNITED NATIONALS ECONOMIC COMMISSION FOR EUROPE, *Guide on poverty measurement*, New York/Geneva, United Nations, 2017, 207p.

VANHERCKE, B., GHAILANI, D. and SABATO, S. (eds), *Social policy in the European Union: state of play 2018*, Brussels, European Trade Union Institute (ETUI) and European Social Observatory (OSE) 196.

WESTERVELD, M. and OLIVIER, M., *Social security outside the realm of the employment contract*, Cheltenham, Elgar, 2019, 275p.

WHELAN, B., 'Assessing the Incomes of the Self-Employed', PIETERS, D. (ed.), *Changing work patters and social security*, The Hague, 2000, 149-160.

ESPN THEMATIC REPORTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Annexes

Annex 1: Minimum income replacement rates (ILO Convention 102 and European Code Social Security)

Part	Contingency	Standard Beneficiary	Percentage
III	Sickness	Man with wife and two children	45
IV	Unemployment	Man with wife and two children	45
V	Old age	Man with wife of pensionable age	40
VI	Employment injury:		
	Incapacity of work	Man with wife and two children	50
	Invalidity	Man with wife and two children	50
	Survivors	Widow with two children	40
VIII	Maternity	Woman	45
IX	Invalidity	Man with wife and two children	40
X	Survivors	Widow with two children	40

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