European Commission

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

4th Workshop: Transparency and transferability

Thematic Discussion Paper

DG Employment, Social Affairs and Inclusion

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

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1 Introduction

What is the use of having rights if - at the end of the day - one cannot exercise them or have them exercised? Setting up a social protection system with extensive entitlements on paper is one thing; having it implemented in reality is another. In legal literature, this tension is often labelled as the tension between the law in the books and the law in reality. Transparency in law (application) can bridge that tension. The need to guarantee enough transparency, however, is often overlooked by policy makers as it is assumed that once the system is in place, its implementation will follow automatically. A lack of transparency, though, can affect access to social protection: (i) up to 20% of people are unaware of their social security entitlements, (ii) only 50% of the Member States provide personalized information including an overview of rights and obligations and online tools and services, and (iii) some Member States still do not publish generic information about social security schemes (EU Commission, Impact assessment, 2018, p. 24). Hence, we should not be surprised that the Recommendation emphasises the need for transparency in social protection.

In articles 15 and 16, the Recommendation calls for both transparent rules and their accessible administrative application (see Annex I). The Recommendation also asks for the transferability of rights (article 10) when people move from one system to another, for instance when they change job or occupational status. Transferability rules, although technical by nature, add to transparency in the building of social protection rights over the lifespan of a career: individuals know from the outset that they will not lose entitlements to social protection. This consequently supports mobility on the labour market.

Transparency refers to the characteristic of 'being easy to see through' or the 'quality of being done in an open way without secrets' (Transparency, Cambridge Dictionary). When translated to social protection law it refers to legislation that is clear in its design and/or wording; the system overall and the legislation, in particular, clearly describe the underlying policy objectives. Transparency requires that, even though it may be of a certain complexity, the underlying reality is translated coherently into a set of rules that can be applied easily and as was intended and do not - from the outset - lead to misunderstanding and wrong applications.

Transparency refers thus in the first place to the design of rules (article 15), but at the same time also to access to judicial protection, if the rights of the socially insured person are infringed upon. Additionally, it requires information to be provided about the rules (article 15,): citizens should be aware of their rights and entitlements and the duties related to the entitlements should also be clearly explained. This could also entail some broader strategies to inform the population (again) about the relevance and added value of social protection, e.g. education. In order to have the system implemented, application rules should be in place; they should also be clear and, where possible, kept simple and accessible in their design (article 16); moreover, in their application they should not overburden enterprises. Information technology (IT) can be of use for guaranteeing a swift application and administration of social protection; in some countries, for example, IT has helped to improve access and combat non-take up of benefits, by making it easier to track down potential beneficiaries and making it possible to grant benefits automatically. Finally, these application rules should also guarantee a swift change from one social protection scheme to another when individuals change their work or occupational position (article 10).

We will first highlight the challenges that are related to a transparent and transferable social protection in order to improve accessibility for non-standard work and self-employment (section 2). Then we will have a closer look at some situations in reality; the main focus here will be on best practices (section 3), followed by a discussion on what transparency and transferability can mean to make social protection more

accessible in practice (what should be considered?) in section 4. In the last paragraph we wrap up with some key messages from the Recommendation.

2   Issues at stake

2.1   Transparency

2.1.1 Legal language and system design

In order to make systems transparent we need clearly designed (social protection) rules**. Each legal system requires that the techniques to draft proper legislation ('legislative technique') are respected** (Mousmouti, 2019). This is **even more true for social protection as it guarantees the weaker segments in our population access to income protection** (benefits). When the laws shaping this access are not designed properly, legal uncertainty is created which, in turn, will affect people's trust in the system and eventually in the democratic decision-making processes that are at the origin of the social protection system (Ibid). **This in its turn may affect the confidence of the population in the rule of law; persons will be less inclined to follow the rules and respect their obligations** (e.g. in relation to financing and informing public authorities about changing situations in their personal life).

Proper legislative technique means more than the use of accessible language. **Equally important is the guiding principle that rules should clearly translate the underlying realities or objectives, facilitating a proper application and avoiding that from the outset all kinds of misinterpretations emerge.** The Recommendation can thus also be understood as a call for improving the legal design of the social protection system (see as well section 3).

However, the rules themselves are nothing more than a tool to translate the system behind them. In other words**, the social protection itself should be coherently designed from the outset**. Over time, systems have grown complex and the emergence of new working groups (non-standard workers and self-employed) demanding proper attention in social protection has not helped to keep systems simple in terms of design. As already addressed in previous workshops (on formal and effective access), it will be essential to differentiate here between the basic principles of social protection, which are common to all working groups involved, and the adaptation of these principles to some working situations, specific to non-standard work or self-employment. The underlying general principles of social protection may need a proper adaptation in wording and organization, adding to complexity in the system. Yet, as will be highlighted in the practices (see section 3), the specific rules can be restricted when - from the outset - the system is designed, wherever possible, in generic terms (e.g. regulating in terms of professional activity rather than working hours typical to standard work but difficult to apply to self-employment).

Apart from extending the protection to new groups, there is also the fact that systems have undergone significant changes, and **over time many exceptions for specific groups and/or life situations have arisen**; for some of these, we may have already forgotten the original justification for their introduction. As it is more difficult to abolish what once has been introduced, complexity started to grow. When interviewing social security CEOs across Europe on future challenges, we noted that: "*[t]he evolution where citizens want to have more individual treatment and freedom of choice in the social security system, leads, in a somewhat contradictory way, to a more complex system in which transparency is lost and consequently the public support for the system is decreasing*" (EISS, Social Security Quo Vadis, 2006, p. 30); "*the systems have become more and more complicated, partly in order to make for every special case an adapted solution. Simplification is today more than ever desperately needed, but can only be realized when the population understands the basics of social security and is ready to*

get away from a consumerist approach. (Ibid, p. 84). Although this goes beyond the scope of the Recommendation, access to social protection also calls for the political courage to revisit the system on a regular basis, and to make sure that the original objectives remain in place.

2.1.2 Judicial protection

Transparency in relation to access to social protection demands a proper system of judicial protection. First and foremost, the socially insured person should have access to judicial protection. A good, yet somewhat contradictory, indicator is the high number of court cases. Although it may also reflect the inherent flaws of the scheme, generating (too?) much litigation, a high number of court cases also indicates that people do effectively have access to judicial protection.

Social protection litigation is, due to its interlinkage with administrative law and labour law, often specific in its kind. In most countries, the first phase of judicial protection consists of an internal control of checks by the administration that has taken the decision in dispute. The appeal against the decision may even be launched within the administration itself (or at least a higher echelon within this administration). Whatever the administrative ruling within the judicial protection procedure, it should be possible for a person to launch an appeal to another authority not directly involved as a party in the decision (under litigation); most often this will be the court (administrative, civil or social court).

The composition of courts competent for social security matters is quite often specific, too. In some countries, this has even resulted in the development of own social (security) courts. Whatever the competent court for matters of social protection, a mixed composition consisting of both professional and laypeople appointed as judges is generally accepted; the latter are often nominated by the social partners or by representative NGOs. Lay judges are considered to be better accustomed to the social realities in which social protection legislation is to be applied; it also diminishes the distance between the Court and the socially insured person, reflecting a more informal approach in applied procedures (see below). Finally, lay judges represent social partners and/or organisations that have been involved in the original law making. However, at the same time this generates a number of challenges for non-standard workers and the self-employed, as these groups do not always feel adequately represented by the (traditional) social partners. Inevitably, this will lead to some restructuring within the courts: either trade and employers' unions will have to be reorganized so that they also accommodate these new working groups or the composition of the courts will have to be reconsidered, allowing for representatives of these new groups to deal with 'their' cases.

Procedures in social security litigation are simpler (compared to other legal branches). The idea is to keep thresholds low, as we are often dealing with the weakest segments of society here. This also calls for low procedural costs, leading to somewhat deviating rules in cost settlement. Many systems apply the rule that the socially insured person is not required to pay the procedural costs if they lose the case, even though that party may have started the litigation. Another example of accessible jurisdiction is the right to be protected by persons other than professional lawyers (advocates). Wage earners are often represented in court by trade union representatives; this will create problems for non-standard working groups and the self-employed. Here too, one may have to reconsider the right of representation in litigation to groups other than trade unions, especially as many of the non-standard workers and/or self-employed are known to be economically weak.

Finally, it must be noted that judicial protection cannot accomplish much when citizens are not informed of the legal remedies available. **It is necessary, therefore, to provide information about all possibilities of legal protection.** Consequently, the legal remedies in terms of social security protection should be mentioned in the decision

notifications themselves, so that the person concerned can invoke these remedies should they disagree with the decision. A clear indication of the judicial remedies is also part of a policy on clear information in relation to a person's social security rights. It goes without saying that court judgements should be written in understandable and user-friendly language; for judgements, which are often more bound to pre-set legal formalities, this could imply an accompanying summary of the final decision in laypeople's terms for the individual.

2.1.3 Information policies

Individuals need to have access to updated, comprehensive, accessible, user-friendly and clearly understandable information about their individual entitlements and obligations; this should be provided free of charge (article 16).

The need to have clear information is thus multidimensional. It refers to, among other things, **comprehensive overviews**, which can explain and clarify the legal system of social protection in a more accessible language, while **also providing information that reflects the individual situation.** A website or booklet with a description of the system is thus not enough: tools that enable individuals to follow their own financing and current and/or future entitlement situation should also be made available (see also use of IT below).

Many countries have launched multidimensional information websites (see section 3) where insured persons have easy access to their social security accounts, giving overviews of what they have contributed so far and indicating possible future entitlements to social protection. Especially concerning pension schemes, such forecasting of rights seems to be a popular tool. Quite evidently, however, this technique is more difficult to apply to schemes dealing with unemployment, decease and work incapacity as the uncertainty with regard to risk occurrence is bigger than in the case of old age. Interestingly, these tools do not only have an informative function; when well designed, insured persons can see the equivalence and proportionality behind the pension scheme as participating and/or contributing more and longer affects the eventual entitlement.

Providing good information thus not only supports the individual rights of the citizen; it can also be considered as a tool to enhance the general public support for the system. When the insured persons understand the system and its underlying principles more clearly, they will become more supportive of the system. **This is even more true in the case of non-standard workers and the self-employed** (see workshop 3 on adequacy and financing), and was also reflected in our interviews with social security CEOs. In their opinion, one of the main challenges is to explain to the population (again) what social protection is actually about: *a system of solidarity implying that one is not only to receive from social security, but also to contribute to it* (EISS, Social Security Quo Vadis, 2016, p. 26).

Finally, we stress here again **the relevance of social partners**[1] with regard to their role in providing information. It is often one of their core responsibilities to inform their members about their rights and obligation in the field of social protection in an understandable manner. Yet, with a growing diversity in work forms and self-employment, we must consider the role of groups representing non-standard workers and self-employed people in this regard: the intermediary level between public authorities and citizens has traditionally played a crucial role in informing and the clarification of rights, and the emerging groups of such workers should not be forgotten.

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[1] In a complementary way Directive 2019/1152 on Transparent and predictable working conditions requires that the employer inform their employees on the identity of the social security institutions receiving the contributions (art 4.2, sub o). This duty does not go so far that the contents of the social protection coverage is to be explained by the employer. This remains the responsibility of the social protection institutions.

2.1.4 Information Technology (IT)

IT tools can address the need to develop transparency in social protection. As will be shown below in some practices, **IT has definitely helped to activate and personalize information provision**. It can help to speed up application procedures and, in some cases, due to the extensive information exchange between administrations, can lead to the automatic provision of benefits without prior application by the individual. **Especially from the viewpoint of non-take up and the combatting of poverty, this potential development of low-threshold provision of benefits has been warmly welcomed by many. Yet the growing use of IT tools in the delivery of social protection benefits has also raised some growing concerns.**

First of all, the design of the tools themselves should not be overly complicated as this could ultimately lead to social exclusion. Much is technologically possible, but not everybody has the means to follow and apply the latest evolutions when it comes to devices and software needed to upload information and use IT applications. The Recommendation calls for user-friendly information applications (article 15). The oftenlow digital skills of some income and age groups require simple and user-friendly tools; their needs should be considered when setting up electronic application forms and other IT tools. On the other hand, new types of workers – such as platform workers – often organise their work in a more automatised manner. Income flows are digitalised giving new opportunities for a swifter collection of contributions, which can be better monitored and controlled.

A more pro-active granting of benefits may lead to a further alienation of citizens unable to understand the world of social protection (i.e. a balanced system of rights and duties; contributions and benefits). A system based on automatic entitlements may overly stress the side of the rights and benefits while the need to contribute and to comply with the obligations related to benefits may be forgotten (EISS, Social Security Quo Vadis, 2016). Here, too, new forms of work may create some challenges. Platform work challenges the traditional forms (i.e. wage earnership – self-employment), especially when performed online ; often it combines work characteristics of both labour statuses and hence may create confusion about eventual social protection rights if different levels of protection are in place. More effective delimitation between the labour groups will be required then (see also workshop 2 on effective protection).

Another problem related to increased automatisation is **the risk of increasing litigation** (EISS, Social Security Quo Vadis, 2006). Web applications in particular, where individuals can forecast their future entitlements to benefits, may generate expectations that cannot always be fulfilled in reality (as the tool may not be sophisticated enough to incorporate each single event that is of relevance for the benefit calculation); this could frustrate the expectations of the insured person when they find out that their actual benefit is somewhat below the amount that was forecasted. It calls for a clear policy on how the information coming from these tools should be understood.

Finally, the use of IT often implies the **(massive) exchange of information between social protection carriers.** IT tools use a lot of data on individuals and the data are shared between organisations in order to provide swift access to benefits (but also to check applications by the insured persons for correctness). Evidently, citizens should be protected against the potential abuse of data and it should be verified that not more institutions and persons can consult the data than are strictly necessary. In other words, there is significant tension in the (legal) relationship between **privacy protection and data sharing for the purpose of social protection**. More about this in section 4 (discussion).

2.2 Transferability or the need for internal coordination

The emergence of new work forms and self-employment creates some challenges to the transferability of rights. Article 10 calls upon Member States to ensure that entitlements – regardless as to whether they are acquired through mandatory or voluntary schemes – are preserved, accumulated and/or transferable across all types of employment and self-employment statuses and across economic sectors. The social protection of workers and the self-employed may indeed be organized in separate schemes (so called categorical schemes based upon professional schemes; Schoukens, 1999). This is true for both Bismarckian (traditionally organized around work) and Beveridgean schemes (especially in the 2nd occupational pillar). When a person stops their job or activity and moves to another job, they may have to change the social protection scheme; there is a risk that they will then lose existing entitlement in the scheme they leave behind.

To address this, **technical rules will have to be designed guaranteeing the transferability of rights from one scheme to another. The set of rules dealing with this transferability are sometimes combined under the label of internal coordination**[2]**,** as they refer to the coordination of the schemes within a given country as opposed to the international coordination rules that address cross-border mobility (Regulation 883/2004). Both types of coordination bear some similarities as to the techniques used.

The issues of transferability refer to different types of situations:

They might **address situations where persons simultaneously combine different professional activities** (different wage-earner or self-employed activities or combination of wage-earner activities with self-employed activities). They will have to give practical answers to questions such as whether all activities are to be made subject to social insurance or not; and if so, whether a distinction is to be made between the main activity and the side activity as to the financing and benefit entitlement. If social insurance is to be built up for every activity, often the issue of anti-cumulation will pop up: what is the (maximum) level for joint entitlement to benefits? These anti-cumulation rules, in particular, are known (and even feared) to make social protection legislation extremely detailed and technical.

Important is that policy makers clarify the underlying objectives of the anti-cumulation rules: traditionally, these rules were introduced to cap the ensuing level of the benefit. As social protection presupposes that redistribution takes place in the system, it is legitimate to apply maximum benefits (see workshop 3 on adequacy: balance between equivalence and solidarity). To the same token, if a person combines several activities, it is acceptable to apply anti-cumulation provisions, allowing to limit the joint entitlement of benefits, finding their origin in different schemes (for example partially from the wage earner scheme and partially from the self-employed scheme). Most social protection scheme will allow a joint entitlement of benefits (from an equivalence perspective), but at the same time will make this subject to a maximum level (from a solidarity point of view). Anti-cumulation rules will ultimately indicate in which scheme the benefit can be topped off. In practice this is often the scheme of the 'minor' or 'side' activity. As it becomes more difficult to define what is a main and what is a side activity, some countries decided to use social insurance accounts integrating the various activities of a person (see below 3.1.2.). Anti-cumulation rules are less relevant here, simplifying somewhat the design of the system.

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[2] Apart from the rules coordinating the occupational schemes they also encompass the rules coordinating the different regional schemes; the latter however will not be addressed here taking into account the scope of the Recommendation (See more on this D. PIETERS (ed.), "Special Issue on Coordination of social security within European States", *European Journal of Social Security,* 2019, Vol 21(2), 95-2016 and, P. SCHOUKENS and G. VONK (eds.), Devolution and Decentralization in Social Security. A European Comparative Perspective, Den Haag, Eleven International Publishing, 2019, p. 302)

Anti-cumulation rules can also have a reference to the financing side when activities are combined, distinguishing between the financing consequences for each of the activities. From the point of view of sustainability, it is normally required that similar financial duties are applied on each of the activities. However, quite some systems introduced specific rules for minor or side activities exempting them from contribution. Recent case law called the legislator to be transparent when designing such exemption rules, clarifying clearly why some groups can benefit from it and others not. If the distinction was not justified clearly, it may be considered as discriminating certain groups (Belgian Constitutional Court 23 April 2020, Nr. 53/2020). In similar line of reasoning, the French Supreme Court called on the legislator to apply clear and transparent rules in order to qualify professional activities (as wage earnership or self-employment), especially when the social protection is of a different level (Court of Cassation, 4 March 2020, nr. 374). The Court made it clear that the labour status is not to be left at the negotiation or choice of parties, but that the legislator should play its full role in using clear criteria to distinguish between labour statuses. In the field of platform work, it is often difficult to make the assessment under which labour status a person is working; this new sector, where work is organised in an extremely flexible manner, requires a clear labour qualification (Gilson, 2017; Controuris, 2018; Rocca, 2019;). As it was mentioned already in the three previous workshops, an effective approach could consist in providing equal levels of social protection across the various groups of workers and self-employed (labour status neutral).

A different situation, yet coming close the one referred to in **the case of simultaneous performance of activities, is that of family units where the two partners each perform (different) professional activities**. Here too, a collision between the respective schemes may emerge when opening entitlement to family benefits and health care (for the dependent relatives) or when pension benefits are accumulated (own old age pension and survivorship benefits).

Finally, the **situation of combining professional activities over time** is also addressed under the issue of transferability. Change of work/occupational position can imply a change in social protection regime (from the workers' system to the one for the self-employed, for example). This change may result in a loss of benefits or rights acquired in the first regime (to which you would have been entitled had you stayed in that regime). It may also create problems in the new scheme if one's insurance record is not sufficient to open entitlements to a benefit; an issue of effective protection which seems to be particularly problematic for non-standard workers and the self-employed (see workshop 2).

In some occupational schemes the policy of 'sanctioning' the entitlements when changing job or occupation is justified from the perspective of loyalty to the enterprise or occupational group. However, in our European societies where a frequent change of job and occupation is strongly advocated, such a policy is difficult to maintain. Hence, measures of internal coordination between the different schemes in place are needed. Specific techniques have been developed for this purpose, such as the status of 'dormant participants' (keeping the person on the record of the 'old' scheme), transfer of rights and entitlements to the new scheme (principle of export) and/or adding together insurance periods in the different (old and new) scheme to open entitlement and/or to define which scheme is to pay which part of the eventual benefit (pro-rata calculations). More about these techniques in the next section (3.2.).

3   Mapping what is in place

3.1 Transparency

Developing transparency in social protection schemes can relate to various interventions as we discussed in section 2. It can relate to the adaptation or simplification of the

schemes or their (underlying) structures; or to informing the population of their rights and obligations; as well as to the smart use of IT applications to improve existing information channels or to adapt existing application procedures. Along these lines we will give some examples that countries developed in the past in order to make their system more transparent.

3.1.1 Adapting underlying structures of social protection

As we addressed in the previous workshops, non-standard work forms and self-employment change the concrete work organization; it has been stressed that the emphasis in the concrete organization of social protection schemes is changing from a work driven environment to a more income-based organization of the schemes. **To keep systems transparent, countries have redesigned the income monitoring for the calculation of (future) benefit entitlements, which are also applied for the contribution levy**. In Latvia for instance, the social insurance system is now fully individualised, in the sense that each person's contributions are registered on a separate account. **Personal social security accounts make it possible to attach acquired rights to the individual, rather than the work contract**. This way of working is more adapted to an increasing number of non-standard work forms and self-employment. Differences between contribution collection and contribution amounts can and do still exist between employment statuses, but when shifting from being an employee to being self-employed, previous rights will not be lost (EU Commission, Impact assessment, annex 7, 2018). In Lithuania, the pension scheme was reformed in that regard in 2018. One of the aspects of the **reforms was to increase transparency by introducing a simplified pension formula for the earnings-related part**: It is now a points system that reflects the ratio of individual contributions paid in the past and the average contributions paid overall into the system (EU Commission, Pension adequacy report [Vol 2], 2018, p.144).

In a complementary fashion

A somewhat different approach is the one where **systems launch new structures alongside the existing (complex) system in order to improve transparency**. This was a strategy applied by Belgium. The system is composed of different professional schemes, each having different administrative entities competent for the respective risks. This categorical approach to the social protection insurance schemes created complexity when insured person applied for benefits; moreover, a labyrinth of information channels was created within the administrative structures when benefits were to be calculated. This posed a challenge to the protection of private data. In response, a Charter for insured persons[3] was launched, clearly mapping their rights and duties as well as those of the administrative authorities across the benefit schemes; apart from defining the time frames within which applications had to be handled, this Charter also outlined the administrative duty to provide clear information to the insured person when requested and the consequences when applications were wrongly addressed. Alongside this Charter, the Cross Roads Bank[4] was launched, tasked with organizing the data flows between the different social security administrations involved in the management of social protection. Contrary to what is often believed, the Bank is not a central data deposit; its main task is to control the data flows with a view to privacy. Data are collected and stored by the respective administrations themselves on the basis of clear protocols (ISSA, Good Practices database).

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[3] Loi du 1 avril 1995 visant à instituer "la charte" de l'assuré - Wet van 11 april 1995 tot invoering van het "handvest" van de sociaal verzekerde.
[4] "Kruispuntbank - Banque Carrefour de la Sécurité Sociale" https://www.ksz-bcss.fgov.be/fr
- https://www.ksz-bcss.fgov.be/nl

Along similar lines, in Ireland, an (individualized) Public Service Card (PSC) was introduced in 2011 in order to increase the exchange of data between different public services departments, allowing for increased transferability of information related to social rights. The PSC is linked to an individual's Personal Public Service Number (PPSN), which is linked to essential information such as tax, employment, social welfare etc. The PSC enhances transitions between different types of employment and is based on the idea of improving access to social protection and creating more transparency in order to increase social cohesion (EU Commission, Access to social protection for all forms of employment: assessing the options for a possible EU initiative, 2018).

We will come back to these structures for data transfer when dealing with the relation between transparency and privacy protection (section 4).

3.1.2 Information policies

The provision of information can be organized on several levels. It can be done in a general manner (campaigns), in a more targeted fashion or on an individual basis. For each of these approaches some practices are provided below.

Awareness raising campaigns

The State Social Insurance Agency (*SSIA*) and State Revenue Service (*SRS*) in Latvia launched an information campaign on financial literacy and a more personalized approach to contribution payment (i.e. why do we pay contributions and why is unveiling correct income data important for our individual social security). Personalized letters containing information on salary, contributions paid, length of social insurance, etc. were sent out and followed up with a more general information campaign on tax and social protection. Furthermore, **digital online training was made available to the population in order to improve financial literacy skills and to increase individuals' understanding of the importance of social security by providing basic information on the system**, the importance of paying taxes and the impact on pensions (ISSA, Good practices database).

Similarly, in order to raise awareness among the population about the relevance of declared income for pensions, several initiatives were taken in Lithuania. This campaign followed a survey that was conducted by the State Social Insurance Fund Board (Sodra). In the survey it was estimated that, on average, socially insured persons were declaring too low incomes for social protection purposes; this in turn was having a detrimental effect on the individual pension entitlement. Prior to the campaign, *Sodra* sent letters known as 'cherry envelopes' to 138 000 employees and 84 000 self-employed individuals **who had earned less than the minimum wage over the previous 12 months. These were intended to remind workers that their future pension depends on their current insurance contributions** and supported them in negotiating higher salaries with their employers, as well as highlighting the possible consequences of the shadow economy. It was followed by **a change in legislation requiring employers to pay social insurance contributions based on at least the minimum wage**, irrespective of the employee's working hours (EU Commission, Access to social protection for workers and the self-employed, 2018, p. 27).

Targeted campaigns through social media

In 2017 the '*Kela Tips*' were launched, a structured format for social media articles, developed by the Social Security Institution of Finland (Kansaneläkelaitos – Kela). The format is intended to ensure that relevant social protection content reaches specific groups of insured persons, by being interesting and understandable enough to be read and shared in social media channels. **Apart from having a clear target group and customer-oriented content, the Kela Tips work on the basis of a headline that catches the attention in social media** (ISSA, Good Practices database). This kind of approach can lead to tailor-made information to specific groups of non-standard work and the self-employed.

Making Individualised information accessible

The individuals' portals on social protection websites, where insured persons can retrieve information on their benefits, are probably best known. **These portals provide general information on the system and the related rights and duties. They can be used to launch applications and to give personalized information on the social security status of the concerned persons. Moreover, some of the tools can provide simulations of future entitlements when parameters, relevant for the benefit calculation, are entered by the insured person.** Such portals are common place in many of the social protection systems in the EU and have e.g. been reported by Belgium (for career break programmes), the Netherlands ("Mijn UWV"), Spain ("Tu Seguridad Social"), Portugal and Sweden (ISSA, Good Practices Database). In Sweden, a joint cooperation between pension, social insurance and tax authorities launched an integrated webtool to inform surviving family members about rights and duties after the decease of a relative (Efterlevandeguiden.se). The interesting element of this approach is that it is life-event driven and cross-sectoral (tax and social protection). Such events generate claims across several law fields and administrative authorities; instead of a vertically pillared approach, portals have the advantage of being constructed around their occurrence (EU Commission, Access to social protection for workers and the self-employed, Luxembourg, 2018, p. 28; ISSA, Europe: Strategic Approaches to improve social security, 2016, p. 15).

3.1.3 Automated applications and benefit granting

As was mentioned before, IT can be helpful in dynamising the application procedures; **pro-active tracking of (potential) beneficiaries and even automatic granting of benefits** have become possible due to the massive availability of data at administrative organisations. **These data can be shared and algorithms can be applied to improve the predictability of benefit applications in a given country**. More automatisation in the applications has been reported by countries such as Belgium, Bulgaria and Croatia highlighting advantages, such as the reduction in the number of declarations and related administrative burden for citizens and companies (ISSA, Good Practices Database). But digitalization and automatisation also raise new challenges, not the least in relation to the protection of privacy as will be discussed further in section 4 of the paper.

In France, the national fund responsible for family allowances (Caisse d'allocations familiales - CAF) developed structures that allow the paperless provision of services: on-line benefit applications, access to and monitoring of personal files, electronic mail, access to child-care facilities, entitlement simulation tools, service provider porting to smartphones and tablets, and automatic information exchange with partners. However, the electronic development goes together with local support services, especially for people who are less IT-literate. In alignment with these developments, on-line appointments have been facilitated. The CAF launched 'Visiocont@ct', a video-conference appointment service that allows users to discuss their situation with an advisor from the Family Allowance Fund without having to travel to a CAF office. The appointment can also be held at the premises of a CAF partner organization for people who do not have the equipment or are not at ease with IT technology (ISSA Good Practices database).

3.2   Transferability (internal coordination)

A categorical design of social protection schemes, providing different regulations for each of the work categories or occupational groups, creates problems of transferability. This happens when the insured persons change their job or occupation or when they combine several professional activities at the same time. As was mentioned before (section 2), people risk losing part of the entitlement due to interrupted insurance records. These problems are not new as they find their origin in the categorical design of social protection. Technical rules have been developed to address these issues of a

lack of transferability for many years. The Recommendation itself makes reference to a series of them (article 10) and asks that at least within a given social protection branch transferability of rights is guaranteed. We can think then of transfer of rights and accumulated entitlements and the adding up of insurance records in order to open entitlement in a new scheme that uses minimum thresholds. Moreover, the issue of interrupted insurance records is linked to the free movement of workers and the self-employed in the EU, as it is often accompanied with social protection insurances spread across various member states. Here, the EU regulations 883/2004 and 987/2009 suggest a comprehensive approach in coordinating the various national systems with each other: the fundamental principles underlying this coordination, such as the export of benefits (art. 7), the protection of rights in the course of acquisition (art. 6), non-discrimination and respect of assimilated facts (art. 4 and 5) and administrative cooperation (art. 76ff), are similar to the measures we will discuss below. After outlining the traditional techniques in place (3.2.1.), we will go one step further and indicate how a policy of further aligning the protection across the various work forms and occupation groups may ultimately facilitate transferability (3.2.2.). It is easier to design transparent and clear technical rules of transferability when the underlying systems, that need to be coordinated, are already pretty well harmonized as to their contents.

3.2.1 Internal coordination of categorical schemes

For many years, systems that have categorized the contents of their social protection schemes along professional groups have been forced to develop rules of internal coordination; they should enable the swift transfer from one scheme to another, so that the insured persons would not lose out on entitlement to any protection. As was mentioned before, a differentiation has to be made between the situation in which activities are simultaneously combined (involving several schemes at the same time) and the situation where persons have had several consecutive occupational positions (where systems followed each other up, but could collide in the case of entitlement to long-term benefits involving a great deal if not all previous insurance records). Of course, both situations could coincide (persons with several positions, changing over time as well) and in some situations distinctions will have to be made depending upon whether the combining of schemes is based upon one person or the family situation. With regard to the latter, it is possible that two working partners open entitlements in different schemes which eventuality may collide (for example to open entitlement for the dependent child or parent living in the family)

Traditionally we distinguish the following techniques:

- Rules with 'after-effect': these rules **guarantee that benefits will be continued to be paid even though the person is no longer insured in the scheme**. A pensioner who stops working and, in a professional scheme, risks losing entitlement as they no longer participate in the workers' scheme. Nevertheless, the benefit payment continues to be guaranteed, and possibly with the related protection for health care and family burden for dependent family members. In other words, the termination of the social insurance does not mean at all that entitlements to benefits will stop. As a rule, current benefits will be continued, but entitlement might also be opened even though the risk occurred after the person left the insurance scheme. **Most professional schemes apply an 'after-period' (of some months) during which entitlements can still be opened; very often this period coincides with the waiting period in the new scheme to which the insured person became affiliated due to their new work or occupation**. However, very popular too is the use of longer periods in unemployment schemes, especially when the change of occupation is towards a self-employed activity that does not open rights to unemployment benefits. In Belgium, for example, **this mechanism of vested rights allows a self-employed person to use the contribution record of a previous employment for opening and**

calculating the unemployment benefit (from the wage earner scheme) after the self-employed worker had to close business. The use of former vested rights, built up in the wage-earner scheme, can go back as far as 15 years. The unemployment benefits are calculated on the income earned as a salaried employee (EU Commission, Impact assessment, annex 7, 2018).

- Protection of rights in course of acquisition: the possibility **to add the insurance record of the previous scheme to the insurance record of the current scheme to open entitlement**. This makes it possible to reach the minimum periods required by the thresholds applied by the latter scheme, in particular.

- Dormant participants (often applied in pension schemes): these are the persons who participated in a pension scheme for a given period and who then **left the scheme** (as a consequence of a change of job or occupation). **Their (pension) claims will not be lost**: they will be able to enjoy the benefit of the scheme once they meet the entitlement conditions (pensionable age) pro rata to their participation in the scheme. When the person has been part of several pension schemes, the eventual benefit will be a combination of several pro-rata pension parts (to which entitlement is still guaranteed as a consequence of the status of dormant participant in each of these schemes).

- Transfer of (previously) accrued rights: (often used as an alternative to the status of dormant participant) when moving to a new scheme, **the person transfers their accrued rights from the previous scheme to the new one, where the periods fulfilled previous receive similar legal value in line with the new scheme**.

- Rules governing the simultaneous performance of several activities: A person can practise several professional activities simultaneously, which can lead to rights in diverse professional social insurance systems. Sometimes, the person may only be covered in the system of the main activity and the side-activity exempted from coverage. However, in most cases, a cumulation of the professional social insurance systems is undertaken, at least as far as the contributions are concerned; a specific (more favourable) contribution arrangement for the side-activity may then apply. As to the benefit side, normally entitlement can be acquired in both systems, but it can happen also that no benefit or only reduced benefits are granted in the system applied to the side activity.

- The last set refers to the use of anti-cumulation rules, in which benefits can be enjoyed together up to a defined level. To what extent this is possible, is very much a policy decision at the end of the day as it translates the principles of redistribution as applied in the system. In workshop 1, we could see that anti-cumulation became a major issue again due to resurrection of all kinds of mini-jobs or smaller side activities.

3.2.2 Transferability leading to harmonization of schemes

Changing systems to accommodate professional activities more easily

The technical rules of internal coordination have their relevance in practice; they prevent people losing social protection entitlements when changing job or occupation. However, they may have their limits too, especially when situations such changes occur often. **To some extent, the rules of internal coordination may themselves generate a certain degree of complexity in the system. Originally, these rules where designed with a once-in-a-life-time change of scheme, in mind. When applied to high job flexibility, they may not be up to the situation anymore.**

This may push countries **to integrate the separate schemes in one scheme for all working people, regardless of their professional or occupational activities**; or, alternatively, drafting new relevant legislation on more common grounds and terminology, keeping the deviating rules specific to some groups of non-standard workers or self-employed to the bare essential. **Rather than building coordination bridges between separate schemes, the policy is here to align the contents or even integrate several schemes in one general scheme for all professional groups.** In the latter case, it is still possible to have group specific rules, but they are kept to the minimum and are mainly found at the executive and administrative levels.

In line with that approach, we can refer to the recent changes in the Danish unemployment scheme: by designing the rules around activities rather than around the labour agreement and the self-employed business, it has become easier to deal with situations where the insured person combines several activities as one (see workshop 1 and ESPN flash report 2017/45, KVIST). Along similar lines, the Irish unemployment scheme has been opened up to the self-employed. Here, the rules were designed so that the insurance records built up for each of the involved activities can be added together to open benefit entitlements (see workshop 1). Similar rules in the unemployment schemes have been reported by Luxembourg, Sweden and Portugal (EU Commission, Impact assessment, annex 7, 2018).

4 Discussion

A more transparent approach to social protection should, in the end, be beneficial for the access to social security rights. Transparency in relation to social protection access implies several dimensions that should be taken care of by member states. These dimensions address certain evolutions, such as:

- the growing flexibility in labour organization and the different social protection schemes responding to different labour forms;

- the tendency for social protection to be increasingly built around income (protection) rather than work protection;

- the fact that people start to combine more activities simultaneously and/or over time;

- the fact that working persons may have several employers and hence the need for more effective techniques to raise contributions and to define benefits;

- the opportunities generated by a growing presence of IT tools;

- the fact that systems have grown complex and that citizens no longer or not always understand the underlying fabrics of social protection.

All of these evolutions require a coherent approach by countries when addressing transparency in social protection; among others, the need to:

- have a good information strategy (to explain the system);

- start from a logically built-up system and to keep the protection structures, as well as the relation systems of judicial protection and administration, accessible in design; and

- respect other fundamental rights and principles (in relation to privacy and profiling) when making systems more transparent.

4.1 Transparency requires a clear and comprehensive information strategy

Article 15 requires access to updated, comprehensive, accessible, user-friendly and clearly understandable information about the individual entitlements and obligations. Complementary to a (transparent!) system, it is crucial to inform socially insured persons properly about their rights and entitlements. **This presupposes not only access to the information tools, but also access to these professionals.** New groups such as non-standard workers and the self-employed should feel represented by the traditional interest groups (such as trade unions); if this is not the case, it is upon the government to look for new representation channels.

Apart from the representation, the diversity of information channels can be a challenge too. As mentioned in the previous sections, the approaches to providing clear information are manifold, ranging from overviews of the systems to tailor-made pro-actively designed simulations. The tools available are diverse, from the more traditional paper forms to websites and moving towards more smart interactive tools using smartphone apps and social media channels. Information can be provided passively to the population or in a more interactive setting; it can be even pro-actively designed to make it adaptable to the needs of the insured individual. **A new challenge may arise due to the presence of different (administrative) players in the systems and the enormous choice of tools and techniques that are present.**

Apart from different information carriers, the social protection system itself can still be diversified in its design, each of the schemes in place using their own approaches to information provision. From the perspective of an individual, this can become problematic as they may not always be familiar with the diversity within the social protection system. When faced with a risk such as a health disorder or unemployment, the person wants to receive treatment and/or guaranteed income protection. They may not be reached by the different information channels, each explaining in different ways the rights and obligations that are related to the respective schemes in place. This has already inspired some systems **to set up common desks (one-stop shops) for insured persons for all social protection related questions and problems; it is upon the desk to transfer the issue to the competent authorities or regulations**. Today, this desk is often an IT interface (accessible via a computer or other smart mobile device), which works as a gateway to the overall system.

Consequently, **an information strategy, common to all schemes should be in place**. Apart from how the insured person can access the system for information, the different information layers should be considered, how these could interrelate and what their respective functions are. There should, in other words, be a clear vision on how the provision of information can support the access to social protection at the end of the day, from providing information to benefit delivery.

Apart from supporting persons in exercising their individual rights and fulfilling their obligations, this requirement for clear information should also be **understood as a way of explaining to the population once more what social protection is (educational aspect of information**). Therefore, the (sometimes rather complex) system will have to be outlined in its bare essentials: what does solidarity mean and what does it require from the individual? (EISS, Social Security Quo Vadis, 2006). Information tools, such as interactive webpages, can play a role here, but also more uncommon tools, such as building in story lines related to social protection in popular TV-soaps, can serve this goal (as reported by several social security CEOs when questioned about their view on future challenges: EISS, Social Security Quo Vadis, 2006). In other words, countries will have to be creative and use the vast range of communication tools to get the message of what social protection stands for across. Given the latest evolution in work forms, it might be recommendable to have non-

standard workers and the self-employed play a more prominent role in these information campaigns.

4.2 Transparency requires a simplification of the underlying schemes and structures of social protection

Article 15 calls upon member states to ensure that the conditions and the rules for all social protection schemes are transparent. Moreover, member states are recommended to ensure that the entitlements are preserved and accumulated and/or transferable across all types of employment and self-employment statuses (article 10). Not only the system should be well documented towards the population, the rights and entitlements foreseen in the system should themselves be clear and transparent in design. This is also true for the rather technical rules that should guarantee the transferability of rights.

From the previous sections, we learn that there are plenty of techniques available to make access to social protection more effective. **In addition, transparency can also be created when the system behind is simple in philosophy and design.** This is not the same as requiring that the system should be universal and unique to all active citizens in the country. Harmonising social protection contents across schemes can take several forms, one being complete unification; however, this is not always aspired to nor does the Recommendation require a unified approach in the design of social protection. What should be guaranteed, is a similar level of protection across the different professional groups. Ultimately, the system will have to find the proper balance between the same rules for all and the adaptation of some of these rules for specific situations or categories of insured persons. The example of the recent reforms in the Danish and Irish unemployment schemes is tantamount in this respect: entitlement conditions are now rather based upon the activity (regardless whether this is done as a self-employed person or as a worker) instead of elements typical for a standard work status (e.g. working hours that automatically refer to the labour contract and hence are more difficult to be achieved by the self-employed in order to open entitlement). This will not exclude that specific rules will continue to exist (e.g. assessment of unemployment based upon closing down the business for the self-employed and dismissal for the wage-earners). However, **by phrasing the majority of the conditions in terms that are understandable by all the degree of transparency will grow which in its turn will lead to a more accessible social protection**

In addition to system design, transparency is also required in the related structures that create access to social protection in reality: judicial protection and administrative (case) management are as important as the system. **With regard to the administration, the front office towards the insured population is crucial, even though the back-end interface of the system may be complex**. Existing structures should not necessarily have to change fundamentally, as long as the access to the system is transparent and easy at its forefront while catering for the diversity of social risks in the background. Examples of such administrative systems that manage to translate the complexity into transparent case-by-case situations are manifold (the Belgian Cross Roads Bank being one of them). As mentioned before, a**longside administration, the access to judiciary is a key element in turning the law in the books into reality.** For the emerging groups of non-standard workers and the self-employed, this calls for a reconsideration of the composition of social courts, in which these new working groups should be sufficiently represented so that their social realities are taken into account during dispute settlement.

4.3 Transparency requires respect for other fundamental protection rights

Member states are required to simplify, where necessary, the administrative requirements, of social protection schemes (article 15). From the previous sections, we see that IT plays a crucial role in this regard: pro-active information-based tools can

drastically simplify numerous administrative applications, guaranteeing in some circumstances automatic benefit delivery. Not only does this simplify the life of many of the concerned actors (individuals, employers, administrations and alike), it may even be a very effective tool in combating the non-take up of benefits. In societies where work patterns are changing into more flexible work forms such as non-standard work and self-employment, this seems a very promising evolution as it is precisely these categories of workers that are often confronted with benefit exclusion. Pro-active data systems, however, presuppose a massive collection of (personal) data and their transfer amid various administration. These IT-driven administrative practices may come into conflict with the rules governing data and privacy protection (such as recently the General Data Protection Regulation 2016/679, GDPR). **Although not specifically mentioned in the Recommendation, it is clear that policies aiming at more transparency should respect the fundamental rights of privacy and data protection.**

Although separate in their scope - the right to data protection is to be distinguished from the right to privacy. In reality, both rights are often taken together (as unveiling of personal data may affect your privacy). The right to privacy includes the right to protection of 'privacy sensitive' personal data (not of all personal data). By virtue of the theory of 'the expectation of privacy', also public information on a person can be protected when the information is systematically collected and stored by authorities. The right to data protection protects all personal data and considers all fundamental freedoms including freedom of expression, of association and non-discrimination. In relation to transparency, the right to data protection is thus more relevant. It regulates the collection and processing of data, the rights of data subjects, and sets out the duties for data processors and providers. It includes special protection for special categories of data, so-called 'sensitive' data. The processing of personal data is allowed when meeting set legal conditions; however, the processing of 'sensitive' data is forbidden unless exceptions are set forth.

These principles are confirmed even more clearly now in the recent GDPR. **It does not forbid data transfer or automatisation of delivery of rights as it is often (wrongly) believed. Yet the Regulation asks for a clear policy in the protection of personal data when administrations introduce data exchange structures**, for instance to provide swifter access to social protection. The main principles to be followed (cf. articles 5-9) can be summarized in the following way:

- the collection and/or transfer of data should serve a clear and specified goal of public interest (legitimate purpose, for example, improving access to social protection);

- the techniques deployed should not be disproportional; and

- the data cannot be used for applications other than the ones they were originally intended for and should not be retained longer than is necessary.

This suggests a clear vision and modus operandi on the goal and the deployed system to reach that goal.

If automated benefit delivery is applied, one should also provide guarantees in relation to profiling. Eligible persons will indeed be selected for assessing a potential benefit delivery on the basis of personal data available to the administrations. The GDPR, however, demands that "[p]*ersons have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or significantly affects him or her"* (article 22). Thus, the insured person should have the option to turn down the possibility of receiving the benefit in an automated way. Moreover, when profiling is applied to support automated benefit delivery, it should be expressly authorized by a member state government, in support of a specific (public) policy goal (such as the organization of social protection). Moreover,

it should be based upon a clear and transparent procedure safeguarding the personal rights and freedoms of the insured persons. Furthermore, a person still has the right to obtain human intervention if they want to contest the decision (article 22; recitals 71 and 73).

Although the technique of profiling is not overall forbidden, in reality, the number of procedures to be followed may outweigh the projected outcome of automatic benefit delivery. Taking into account the other adverse consequences these automatic procedures may generate (e.g. loss of support of the social protection system by the covered population), one wonders whether this is the right track to follow when pursuing transparent access. A swift delivery of benefits can still be guaranteed with less far reaching data-based procedures: insured persons could for instance be warned or informed that they have a right to benefits or applications could be kept simple by using files that are already rather comprehensive on the basis of data known to social protection authorities.

5   Conclusions

If we want to guarantee access to social protection, the system should be transparent. This principle is too often overlooked and considered to be self-evident and intrinsic to every system, once it is put in place. Nevertheless, transparency is crucial to turn the system in the books into reality and should be given enough consideration, especially for groups of non-standard workers and self-employed persons - not only because these groups are often made subject to deviating and specific rules and hence more complicated applications of existing rules, but also because they are left without the traditional messengers that make transparency happen, the social partners. They often lack one stable employer and do not always feel adequately represented by the traditional trade unions. This lack of traditional messengers should thus be addressed by introducing complementary tools and by creating new channels.

Transparency is multidimensional and starts from the system being kept simple and coherent in design, using clear language. It is also the responsibility of administrations and judiciaries that make access to social protection happen. Essentially, it relates to information exchange but can go so far as to create automated access. This multidimensional approach requires caution: there should be a clear policy integrating the multifaceted information approach in a coherent vision. Moreover, transparency as a principle has limits, too, and has to respect and guarantee other fundamental rights, not the least the protection of data and privacy. The latter principle should not be considered as an impediment to making systems more transparent, but rather as an indicator that invites us to reflect on the final objective: transparency should help people to understand the systems better and to have their rights enforced, yet at the same time - by understanding the underlying logics better – encouraging them to support the system. However, as the application of automatic benefit delivery is teaching us, the ambition to build in transparency should not undermine the goal of social protection; rather, it should provide support in making systems achieve their end as transparency as such it is not a goal in itself.

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Annexes

Annex I: External and internal drivers for insufficient protection

Source European Commission, Impact assessment 2018 (annex 5)

Drivers

EXTERNAL

- *Globalisation*
- *Technology*
- *Demographic changes*
- *Labour market institutions*

INTERNAL

Insufficient MS reforms | **Regulatory failures** | **Behavioural biases**

Gaps in formal coverage and voluntary schemes → Gaps in effective coverage and transferability ← Lack of transparency

Problem

INSUFFICIENT SOCIAL PROTECTION AND COVERAGE

Consequences

Consequences for workers/self-employed individuals

- Higher income insecurity when the risks materialize (sickness, job loss etc.)
- Unequal conditions for workers on different types of contract/self-employed which are not justified by the nature of the work
- More precarious lives
- Higher poverty risk
- Negative consequences affecting whole families

Consequences for business

- Unfair competition between companies employing workers on different contracts
- Transfer of risk/costs to third parties (workers, dependent/bogus self-employed and/or public budget)
- incentives for externalising costs of staff's social protection through (over)use of contracts exempted from social security contributions and associated free riding on available safety nets of last resort

Consequences for labour markets/ public budget/economy/society

- Labour market segmentation
- Lower quality of skills matching
- Might erode the economic basis for standard employment
- Negative impact on labour mobility and transitions between jobs, contracts and labour law status, preventing job creation potential from being fully exploited
- Negative impact on the sustainability of social security by weakening the financing of social security systems
- Increased public expenditure (e.g. via social assistance)
- Social dumping