

The European Pillar of Social Rights: giving atypical workers access to
adequate social protection

Recommendation EU 12753/19

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Overview

- Introduction
- Access to social protection
 - EU Pillar Social Rights (principle 12)
 - Recommendation Access Social Protection: Objective of protection of equal value
 - Scope of the Recommendation
 - Access to social protection in its various dimensions
 - Formal access
 - Effective access
 - Adequacy
 - Transparency

Introduction

- Testimony from training workshops 2019/2020
- EU Recommendation Access
 - Value?
 - Reporting and monitoring (social scoreboard)
 - Spill-over effect? Annual fiscal/economic monitoring → more social recommendations?
 - Reference tool for internal system assessment

Access: the EU Pillar of Social Rights

- European Pillar of Social Rights
 - 26 April 2017 (Recommendation Commission and joint declaration Council, Parliament and Commission)
 - Social framework for EU decision making
 - Respecting social objectives and fundamental social rights (Social Charter, EU (social) charters, ILO-minimum conventions, CoE Code social security, relevant UN Convention,...
- EPSR: legal value
 - Legally not enforceable
 - MS remain competent in social security
 - Relation art. 34 EU Charter?
- EPSR → list of 20 social rights
 - Access labour market (4)
 - Work conditions (6)
 - **Social protection and social inclusion (10)**
 - Child care, health care, social protection, minimum (subsistence) income,

Access: the EU Pillar of Social Rights

- Principle 12 of the European Pillar of Social Rights

“Regardless of the type and duration of their employment relationship, workers, and, under comparable conditions, the self-employed, have the right to adequate social protection.”

- Principle made legally more concrete → *Council Recommendation 12753/19, 8 November 2019*

Access: EU Recommendation - objective of protection of equal value across types work

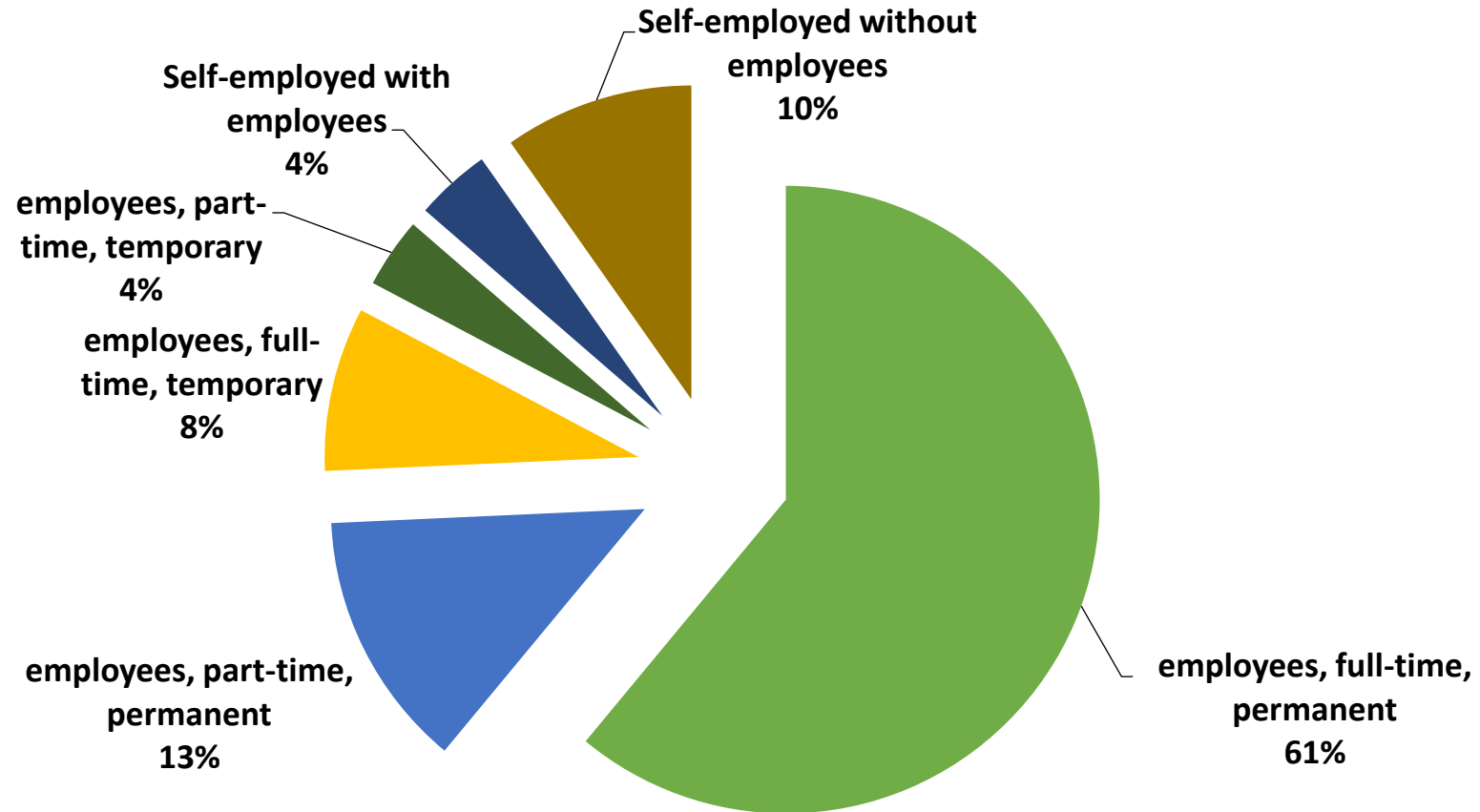
- The principle of 'access' in its various dimensions (see below) applies to all workers and self-employed. The Recommendation acknowledges though that different rules could be applicable
 - Labour form neutral ↔ Labour form specific
 - Principle 12 EPRS
 - “regardless of the type and duration of their employment relationship [...]
 - and under comparable conditions, the self-employed [...]
 - Recommendation, obs (19) “the same rules [...] might not be adapted to the situation of the self-employed [...]. There is scope to tailor the rules more to the situation of the specific groups ... “
 - Basic principles (of protection) – Specific adaptation of principles to specific work situations (art. 5)

Access: EU Recommendation 8 Nov 2019

- Scope
 - Personal scope: workers (standard and non-standard) and self-employed
 - Non-standard workers: the persons working in the framework of an employment relationship with an employer, but whose contracts depart from the standard form (with regard to the duration of employment, the number of working hours or other terms of the employment relationship)
 - Self-employed: all persons who work on their own behalf
 - Material scope (art. 3.2.): unemployment, sickness and health care, maternity and equivalent paternity, invalidity, old-age and survivors, accidents at work and occupational diseases
 - Not (art. 4): **family benefits**, social assistance and minimum income schemes
 - Social protection: the set of schemes addressing by way of solidarity the traditional social risks as listed in the Recommendation
 - Social protection < social security

How does the labour market look today?

Types of employment relationships, EU28 (2018)



Standard employment relationship

Self-employed

- Part-time work
- Temporary work

STANDARD EMPLOYMENT

EMPLOYMENT RELATIONSHIP

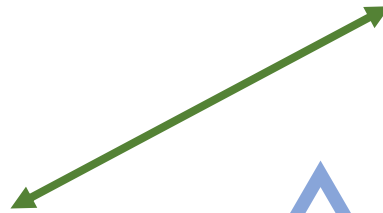
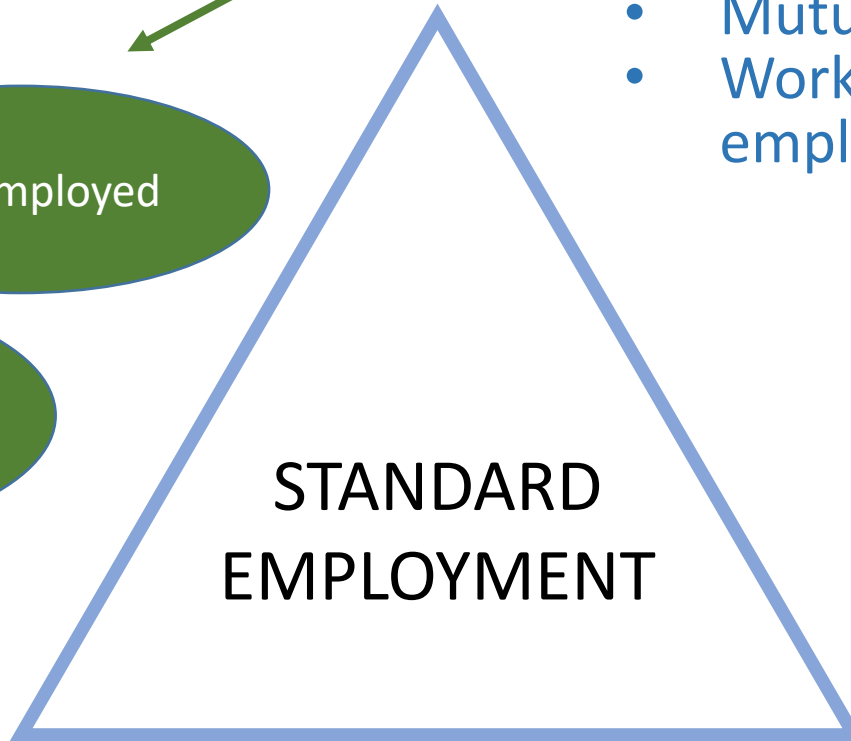
- Personal subordination
- Bilateral character
- Salary
- Economic dependency
- Mutuality of obligations
- Work usually performed at the employer's premises

INCOME SECURITY

- Salary which is sufficient to ensure livelihood
- Expectation of an adequate level of social insurance

LABOUR STABILITY

- Indefinite duration
- Full-time



HOW NON-STANDARD WORK AND SELF-EMPLOYMENT CHALLENGE SOCIAL PROTECTION?

WHY IS IT IMPORTANT FOR SOCIAL PROTECTION?

TO DEFINE/
TO DETECT
WORK

Persons in 'work' earn a 'salary'

Persons not in work need to find work

TO DETECT
EMPLOYER

Employer as key-actor for benefits / financing

Employer decides on redundancy

LACK OF LABOUR
/ INCOME
STABILITY

Thresholds in social protection schemes

HOW IS IT CHALLENGED BY NON-STANDARD WORK/SELF-EMPLOYED?

Unpaid work - Informal work/
salary >< income? ...

Unpaid work

Marginal work

Multiple 'employers'

Issue of classification:
Bogus self-employed
Employer based
social protection?

Very small number of
hours / low income

Difficult to track
hours

Access: EU Recommendation and the dimensions of access

- Formal access (art. 8)
- Effective access (artt. 9-10)
- Adequacy (artt. 11-14)
- Transparency (artt. 15-16)

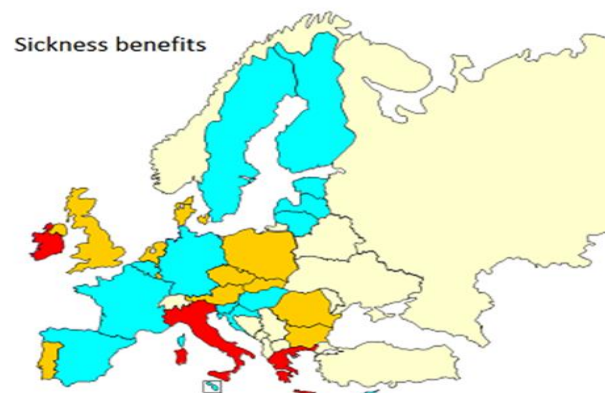
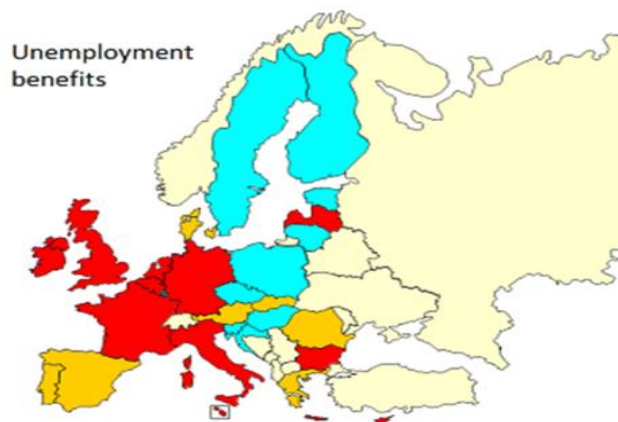
Formal access (art. 8)

Member States are recommended to ensure access to adequate social protection for all workers and self-employed persons in respect of all branches mentioned in point 3.2. of this Recommendation. In light of national circumstances, it is recommended to achieve this objective by improving the formal coverage and extending it to:

- (a) all workers, regardless of the type of employment relationship, on a mandatory basis;
- (b) the self-employed, **at least on a voluntary basis and where appropriate on a mandatory basis.**

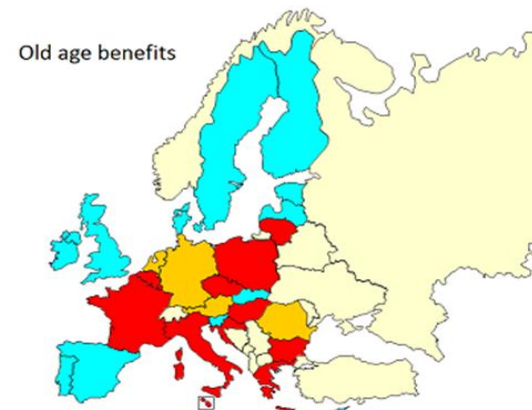
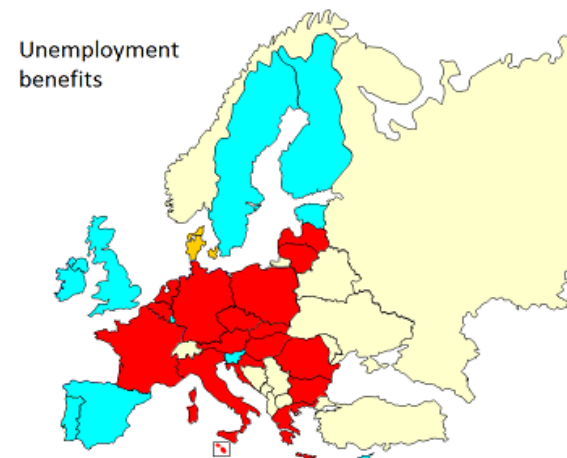
Access to social protection schemes. Self-employed and non-standard workers (Spasova et al, 2019)

The case of the self-employed



Cyan Mandatory coverage
Yellow Voluntary coverage for at least one category of self-employed
Red No formal coverage for at least one category of self-employed

The case of non-standard workers



Cyan Mandatory coverage
Yellow Voluntary coverage for at least one group of non-standard workers
Red No formal coverage for at least one group of non-standard workers

Spasova, Bouget, Ghailani and Vanhercke (2019): gaps SE

Non-contributory social protection schemes	Statutory access SE		
	Available		Not available
Social assistance	Statutory access for SE in all 35 countries		N/A
Child benefits	Statutory access for SE in all 35 countries		N/A
Long-term care benefits	Statutory access for SE in all 35 countries		N/A
Insurance-based social protection schemes	Statutory access		
	Available		Not available
	Mandatory	Voluntary	
Unemployment	CZ, HR, HU, LU, SI, SK ^c , PL	AT ^c , DK, ES, FI, RO, SE	BE ^a , BG, CY, DE, EE ^a , EL ^b , FR, IE ^a , IT, MT ^a , NL, LT ^b , LV, PT ^b , UK ^a
Accidents at work and occupational injuries	EE, EL, HR, HU, IT, PL, LU, MT, SE, SI	AT ^c , ES ^d , FI ^d , FR ^b , PT, RO ^d	BE, BG, CY, CZ, DE, DK, IE, LT, LV, NL ^b , SK, UK
Sickness benefits	AT ^c , BE, CY, DE ^c , DK, ES ^d , FI, FR, HR, HU,	BG, CZ, EE, NL, PL, RO ^d	EL ^b , IE ^a , IT
Pensions	AT ^c , BE, BG, CY, CZ, DE, DK, EE, EL, ES ^d , FI, FR, HR, HU, IE, IT, LU, LT, LV, MT, NL, PL, PT, RO, SE, SK, UK	DE	
Healthcare	AT ^c , BE, BG, CY ^a , CZ, DE, DK, EE, EL, ES ^d , FI, FR, HR, HU ^b , IE, IT, LU, LT, LV, MT, NL, PL, PT, RO ^c , SE, SK, UK		
Maternity benefits	AT ^c , BE, BG, CY, DE, DK, EE, EL, ES ^d , FI, FR, HR, HU, IE, IT, LU, LV, MT, NL, PL, PT ^c , SE, SK, UK	CZ, LT, PL, RO ^d	
Invalidity	AT ^c , BE, BG, CY, CZ, DE ^d , DK, EE, EL, ES ^d , FI, FR, HR, HU, IE, IT, LU, LT, LV, MT, PL, PT ^c , RO, SE, SK ^c , UK ^c	NL	

a) Access only to means-tested benefits b) Access only for certain categories of SE c) OPT-OUT and exemptions d) Compulsory/voluntary access depending on the category of self-employed

Gaps : self-employed and system typology

Table 1^a

‘Inclusive systems’	‘Access à la carte systems’	‘Exclusive systems’
Mandatory protection	Access but with specific arrangements (voluntary schemes)	No full access to social protection

Table 2^b

‘Universal/general’	‘General for all self-employed’	‘Categorical’
A (basic) social protection in the same system for all working groups of the population or even for the whole population.	A system where all professional categories of self-employed people are compiled into one social security system.	Specific systems for different professional categories of self-employed persons. Benefits may differ across the categorical systems.

^a S. Spasova et al, “Self-employment and social protection: understanding variations between welfare regimes”, *Journal of Poverty and Social Justice*, vol. 27, No 2, 2019, (157), 162.

^b P. Schoukens, “Social security law for the self-employed persons”, in EISS (ed.), *Changing work patterns and social security*, The Hague, Kluwer, 2000.

Formal access: gaps social protection self-employed

Regardless type of system, gaps due to:

i) Own kind of work

- Unemployment
- Sickness
- Accidents at work/occupational diseases

ii) Income thresholds (more recent evolution) → all schemes

- Solo self-employed
- Marginal activities → work?

Formal access: gaps social protection non-standard work

- Typology?
- Gaps related to:
 - Thresholds (income – volume work over time)
 - Marginal activities : work?
 - All risks (schemes) : compare self-employed

Gaps addressed in voluntary protection : applied types of insurance

- Voluntary opt-in system **for all workers and/or self-employed** (*excluded risks*)
- Voluntary opt-in system **if time/income threshold reached** (*work but not mandatory covered → option voluntary*)
- Voluntary opt-in **system if time/income threshold not reached** (*marginal activity so not mandatory covered → option voluntary*)
- Voluntary opt-out system **if time/income threshold not reached** (*marginal activity*)
- Voluntary opt-out system **if similar protection available**
 - *if specific professional chamber supplies similar protection*
 - *private insurance*
 - *available assets*
- Supplementary voluntary insurance (*additional access to risk in scheme*)

Voluntary protection for SE

Risk	Mandatory	Voluntary (Opt-in)	Voluntary (Opt-out)	No scheme
Healthcare	AT, BE, BG, HR, CZ, DK, EE, FI, FR, DE, EL, HU, IE, IT, LV, LT, LU, MT, PL, PT, RO, SK, SI, ES, SE, NL, UK	AT ^a , CY, LU ^d	AT ^b	
Sickness (Cash Benefits)	AT, BE, HR, CY, DK, EE, FI, FR, DE ^c , EL, HU, LV, LT, LU, MT, PL ^c , PT, RO, SK, SI, ES, SE, UK	AT ^a , BG, CZ, DE, IE ^f , LU ^d , PL, RO, SK ^a , ES ^c , NL	AT ^b	AT ^c , EL ^{c,e} , IE, IT
Maternity/Paternity	AT, BE, HR, CY, DK, EE, FI, FR, DE, EL, HU, IE, IT, LV, LT, LU, MT, PL ^c , RO, PT, SK, SI, ES, SE, NL, UK	AT ^a , BG, CZ, LT, PL, RO, SK ^a	AT ^b	
Old-age pensions	AT, BE, BG, HR, CY, CZ, DK, EE, FI, FR, DE ^{c,g} , EL, HU, IE, IT, LV, LT, LU, MT, PL, PT, RO, SK, SI, ES, SE, NL, UK	AT ^a , DE, LU ^d , RO ^a , SK ^a ,	AT ^b	
Survivors' pensions	AT, BE, BG, HR, CY, CZ, DK, EE, FI, FR, DE, EL, HU, IE, IT, LV, LT, LU, MT, PL, PT, RO, SK, SI, ES, SE, NL, UK	AT ^a , DK (suppl), DE, RO ^a	AT ^b	
Unemployment Benefits	HR, CZ, FI, EL, HU, IT, LT ^h , LU, PL, PT, SI, SE	AT, DK, FI (suppl), IE ^f , RO, SK, ES, SE (suppl)		AT ^c , BE, BG, CY, EE, DE, FR, EL ^c , IE, IT, LV, MT, PL ^c , NL, UK.
Long-term care	AT, BG, HR, CY, CZ, DK, EE, FI, DE ^g , IE, IT, LV, LT, LU, MT, PL, PT, RO, SK, SI, ES, SE, NL, UK			BE, FR, DE, EL, HU
Invalidity	AT, BE, BG, HR, CY, CZ, DK, EE, FI, FR, DE, EL, HU, IE, IT, LV, LT, LU, MT, PL, PT, RO, SK, SI, ES, SE, UK	AT ^a , SK ^a , NL	AT ^a	
Labour accidents	AT, HR, EE, EL, FI ^c , FR ^c , DE ^c , HU, IT, LU, MT, PL, PT, SI, SE	AT ^a , DK, FI, FR, DE, RO, ES		BE, BG, CY, CZ, IE, LV, LT, SK, NL, UK
Family Benefits	AT, BE, BG, HR, CZ, DK, EE, FI, FR, DE, EL, HU, NL, IE, IT, LV, LT, LU, MT, PL, PT, RO, SK, SI, ES, SE, UK	CY		

a) income below a certain threshold b) liberal professions who have the possibility to join a coverage offered by their specific Chamber c) farmers d) professional activity of less than 3 months/year e) self-employed professionals f) share-fishermen/women g) artists/publicists h) certain specific categories

Formal access: mandatory vs voluntary

Mandatory: remains 'standard' approach for social protection

- Solidarity requires high degree of redistribution → statutory schemes (public law)
- Voluntary protection: high income groups and low-income groups → drop out (study Codagnone)
- Low-take up of voluntary schemes in reality
- Low take up of voluntary schemes → high potential dependency on social assistance schemes over time
- Risk of fragmentation of protection according to (professional group)
 - Mobility on a flexible labour market?
 - Growing relevance of qualification for professional activities (issue of bogus self-employed)

Voluntary: 'non-standard' approach for social protection

'voluntary protection where appropriate' for SE = to be interpreted restrictively!

Effective coverage (art. 9)

Member States are recommended to **ensure effective coverage for all workers**, regardless of the type of employment relationship, and for the self-employed, under the conditions set out in point 8, while also preserving the sustainability of the system and implementing safeguards to avoid abuse. To that end:

- (a) rules governing contributions (e.g. qualifying periods, minimum working periods) and entitlements (e.g. waiting periods, calculation rules and duration of benefits) should not prevent individuals from accruing or accessing benefits because of their type of employment relationship or labour market status;
- (b) differences in the rules governing the schemes between labour market statuses or types of employment relationship should be proportionate and reflect the specific situation of beneficiaries.

Effective and formal coverage

- Formal coverage: conditions to participate in a social protection scheme
 - Focus here upon work related conditions
- Compare with effective coverage
 - entitlement conditions: although entitled to participate the person does not fulfil the entitlement criteria

Problems effective coverage

Time- and income- thresholds affecting the contingencies

- **Health care:** rather exceptional (minimum qualifying period and especially minimum income thresholds)
- **Accidents at work/occupational diseases**
 - Sometimes waiting period
- **Sickness, invalidity and maternity: most countries**
 - Minimum qualifying period
 - Waiting period (sickness)
 - Sometime covered by wage continuation
 - Especially self-employed → shorter duration of payment benefit
- **Old age, invalidity and survivorship (pensions), including work accidents**
 - Qualifying records (and work records)
 - Dual function: opening – composition of benefit
- **Unemployment**
 - Most schemes apply (min) work records (dual function)

Problems effective coverage

Time- and income thresholds are (often) historically justified (see above ratio and standards) and strongly rooted in our systems

... yet were traditionally designed with standard workers in mind

But they **hit often disproportionately non-standard work and self-employment**

- EU Commission Draft Joint Employment Report
- OECD Employment Outlook 2019

Problems effective coverage

Time- and income- thresholds are...

... more challenging for non-standard workers:

- to reach the full-time equivalents of the time and income conditions
- to reach defined minimum level, especially when fragmented time and income records cannot be added
- for reaching decent benefit levels

... more challenging for self-employed:

- to open entitlement for sickness and unemployment (if formal access provided) due to longer waiting periods
- to access part-time or partial benefits (pensions, invalidity)
- for reaching decent benefit levels
 - Low or irregularly structured prior income
 - Limited assimilated periods

Addressing effective coverage

Different rules → *possible justifications?*

Stricter qualifying periods and/or waiting periods for self-employed (in sickness and unemployment schemes)

Different kind of work, more prone to abuse? Proportional?

Different rules, however comparable protection (protection of equal value)

Instead of income replacement, compensation loss of manpower or combination of income replacement (of lower level) with compensation of costs due to loss manpower
e.g. Belgian maternity/paternity scheme and reduction of waiting period in sickness scheme

Adequacy

11. 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.

12. Member States are recommended to ensure that the contributions to social protection are proportionate to the contributory capacity of workers and the self-employed.

13. In light of national circumstances and where appropriate, Member States are recommended to ensure that any exemptions or reductions in social contributions provided for by national legislation, including those for low-income groups, apply to all types of employment relationship and labour market status.

14. Member States are recommended to ensure that the calculation of the social protection contributions and entitlements of the self-employed are based on an objective and transparent assessment of their income base, taking account of their income fluctuations, and reflect their actual earnings.

(Art. 11-14 [Council Recommendation 12753/19](#), 8 November 2019)

Adequacy = adequacy and financing

- Focus = adequacy of benefits and its interrelation with financing social protection
 - Issues with organising financing self-employed and non-standard workers
 - What is an adequate level of social protection benefits?
 - Adequate benefits pre-supposes adequate ways of financing: interrelation underlying principles social protection
 - Equivalence (income)
 - Proportionality (time) Redistribution (vertical) Sustainability (financing)

Adequacy

- Adequate level of benefits (art. 11 Rec)? Compare ILO Convention 102 and European Code of 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	<u>Employment injury:</u>		
	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

Problems adequacy: financing SE

- Declaring their own income (cfr. Article 12: financing capacity)
- Fluctuating income (cfr. Article 14: objective and transparent)
- How to define income? (cfr. Art 13: same level as WE?)

Problems adequacy: financing non-standard work

- Possible different labour relations
 - Danger of splitting-up contribution basis (thresholds)
 - Major and side-activity?
 - Who is the employer?
 - Where is the employer?
 - Growing flexibilisation of work forms in order to curb costs (social dumping)
 - Reaction?
 - Report *Borstlap* Netherlands
 - EU initiatives posting (labour law and social security)
 - ECJ (C-610/18): employer is the entity from which the worker receives instruction and/or in whose structure the worker is integrated in reality

Problems adequacy: financing non-standard work

Non-remunerated non-standard work

Exemptions to contribute?

Character of activity (study)

Marginal nature of activity?

Relevant for society and/or family

Exempted 'side-activity', because covered 'main' activity

Person itself, combining main and side activities

Family member of person

Helping spouse >< EU Directive 2010/41/EU equal treatment men and women

engaged in self-employed activity

Constitutional Court Belgium (23/4/2020): side activity, exemption from social security contribution/coverage >< equality of treatment (art. 10 Constitution)

Transparency (artt. 15-16)

- Member States are recommended to ensure that **the conditions and rules for all social protection schemes are transparent** and that individuals have access to updated, comprehensive, accessible, user-friendly and clearly understandable **information** about their individual entitlements and obligations free of charge.
- Member States are recommended to **simplify**, where necessary, the **administrative requirements** of social protection schemes for workers, the self-employed and employers, in particular micro-, small and medium-sized enterprises.

Transparency

- Administrative dimension
- Dimension contents design
- Transferability (art. 10)

Transparency

Art. 15 calls for updated, comprehensive accessible, user-friendly and clearly understandable information

- A more transparent approach in order to increase accessibility to social security rights
 - Complexity of the system in background >< clear single access point ('one stop shops')
- Clear and comprehensive information strategy
 - Access to information tools, professionals
 - Representation by interest groups (trade unions)
 - Diversity and targeted approach: new challenges when different choices of tools and techniques
 - Information strategy common to all schemes
- Emphasizing the essence of social protection

Transparency II

Transparency calls for a **simplification of underlying structures**, as well as **transferability of rights and entitlements**

- Simplicity in design
- Understandable language
- Administration and access to judiciary

Transferability

Techniques

- Rules with 'after-effect'
- Protection of rights in course of acquisition
- Dormant participants
- Transfer of previously accrued rights
- Rules governing the simultaneous performance of several activities
- Use of anti-cumulation rules

Thank you for your attention

- Questions?