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# paper

## **Improving Access to Social Protection in the European Union: a proposal for further action**

**Paper providing expertise to the Belgian Presidency of the Council of the European Union (January - June 2024)**



Schoukens Paul (KULeuven), Spasova Slavina (European Social Observatory; Université libre de Bruxelles), De Becker Eleni (KULeuven; Vrije Universiteit Brussel), Haapanala Henri (University of Antwerp), Marengo Matteo (Max Planck Institute for the Study of Societies)



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## Introduction: Context of the proposal <sup>(1)</sup>

In this report, we highlight a series of possible actions for the Belgian Presidency of the Council of the European Union (January – June 2024) with regard to the theme of access to social protection. This topic has been high on the EU agenda in the last couple of years, especially access for non-standard workers and self-employed persons <sup>(2)</sup>. It is one of the leading principles of the European Pillar of Social Rights (2017, hereinafter: EPSR) and, from 2019, received much attention thanks to the EU Recommendation on access to social protection 2019/C 387/01 (hereinafter: the 2019 Recommendation).

In 2017, to enhance social rights for EU citizens and to achieve better working and living conditions, the European Union launched the EPSR, which contains 20 key principles grouped into three categories. Principle 12 falls into the category 'Social protection and inclusion' and states that, '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'. In order to achieve the goals of Principle 12, the European Union adopted the 2019 Recommendation. Furthermore, in May 2021, the EPSR 'Action Plan' presented by the European Commission was welcomed by the European Council, the European Parliament, the European social partners and European civil society representatives at the European Summit in Porto (7-8 May 2021).

Considered as a salient moment for social Europe (Fernandes and Kerneis 2021), the Porto social commitment gives strong political legitimacy to the three proposed EU-level headline targets in the areas of employment, skills and social inclusion, as well as 'adequate social protection for all' to be achieved by 2030, and states the key actions to attain them (see Vanhercke and Spasova 2022). Another significant moment reaffirming the key role of social protection and the need to further strengthen the related principles in the Pillar was the interinstitutional proclamation of the 'La Hulpe' declaration <sup>(3)</sup>.

The 2019 Recommendation is based on **four pillars: formal and effective** access to, **adequacy** and **transparency** of social protection. Indeed, it calls for improvement of formal and effective access to social protection for all – standard or non-standard – workers, as well as for all the self-

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1. This report was written between September 2022 and February 2023, and made available and updated in May 2024.
  2. For the purposes of this report, we distinguish between workers (people who have a contract with an employer) and the self-employed (people working on their own account, with or without employees), in line with the 2019 Recommendation. We further distinguish between 'standard workers' (people having a full-time open-ended contract with an employer) and 'non-standard workers' (people having a contract with an employer which falls outside of a 'standard working relationship', defined as a full-time open-ended contract).
  3. La Hulpe Declaration on the Future of the European Pillar of Social Rights (April 2024), <https://belgian-presidency.consilium.europa.eu/media/bj0adazv/declaration-finale.pdf>

employed. It also emphasizes the need for adequate social protection, which should go beyond minimum income protection and should aim at maintaining the decent living standards achieved prior to the emergence of a relevant external event. Finally, the 2019 Recommendation calls for transparent access to social protection through better access to information and simplification of administrative requirements.

Although the 2019 Recommendation addresses access to social protection for workers and the self-employed quite comprehensively, it remains a relatively general text. Moreover, the limits of this 'soft law' approach are clear and highlighted in the European Commission's report on its implementation. The report, while emphasising important reforms in some countries, underlines that there is a wide variation in the overall level of ambition of these reforms. Importantly, in general, 'most of them do not aim to address all coverage gaps identified in the monitoring framework or in the context of the European Semester' (European Commission 2023: 26). The Commission is also concerned that 'some Member States where non-standard workers and self-employed are still not (adequately) covered have not submitted ambitious reform plans' (ibid.: 27).

It is still an open question whether in countries which implemented reforms in line with the 2019 Recommendation, these were triggered by the latter. Finally, as emerged from the Covid-19 pandemic, some aspects need to be further developed, and new challenges (e.g. access to temporary unemployment schemes) have arisen which could be addressed during the upcoming Presidency.

In this context, this paper highlights new issues, as well as long-standing areas where there is room for improvement, and where further actions could be taken at EU level regarding social protection.

We focus largely on the following elements:

- **Part 1** - follow-up legal instruments focusing on particular topics;
- **Part 2** - continuation of the monitoring framework of the 2019 Recommendation, as well as possible synergies with other EU legal and non-legal instruments;
- **Part 3** - the hypothetical scenario of revision of the Treaties and the possibility of extending the legal basis for action in Article 153 TFEU to the self-employed.

## 1. Follow-up actions and instruments

The monitoring process set out in the 2019 Recommendation was launched just after its adoption in November 2019. Member States were asked to submit a plan setting out the corresponding measures to be taken at national level by 15 May 2021 (18 months after the formal adoption of the 2019 Recommendation). Since then, the Commission has been reviewing the progress made in its implementation, in cooperation with the Member States and drawing on a common monitoring framework. After consulting the stakeholders concerned, the Commission was to submit a report to the Council of the EU on 31 January 2023.

After this final assessment of the national reporting, further new initiatives for continued monitoring (updating information) on the national implementation of the Recommendation need to be adopted. There has not yet been an official proposal, but the European Commission firmly intends to continue monitoring the four pillars of the 2019 Recommendation and updating indicators (Interview EU Commission 3). However, as may happen with non-binding legislation, there is a potential risk that the Recommendation's salient principles fall into oblivion, given also the only moderate interest shown by Member States in reforming their systems. More generally, future implementation of the EPSR's Principle 12 could be in question. In this part, we discuss how the legacy of the 2019 Recommendation can be maintained and further developed. Moreover, even though the 2019 Recommendation does comprehensively address access to social protection, after four years of implementation some loopholes and application questions have surfaced, especially during the Covid-19 pandemic. The elements discussed below should thus provide new pathways for strengthening Principle 12 of the EPSR in the EU.

We will first focus on the topic of job retention schemes and temporary income protection for the self-employed, an issue that is not covered in the 2019 Recommendation but is clearly related to its scope and is in need of further development (Section 1.1). Second, we focus on the issue of transparency in access to social protection, which has been less of a target for national reforms (Section 1.2). Finally, we reflect on the possibility of a Directive on minimum requirements for social protection (Section 1.3).

### ***1.1 New areas for action: Job retention schemes***

#### **1.1.1 Context of the proposal**

During the pandemic, job retention schemes (JRS), including short-time work schemes (STW) and wage subsidies (WS) played a key role in saving the European economies from an economic and social disaster. What is more, and very differently from what occurred during the Great Recession, specific income replacement schemes for the self-employed were at the forefront of alleviating the adverse consequences of the pandemic on their income (Spasova and Regazzoni 2022; Baptista *et al.* 2021).

First of all, it is worth noting that the number of jobs supported by JRS at the peak of the Covid-19 lockdowns in April/May 2020 was approximately ten times higher than during the Great Recession, emphasising the unprecedented scale and intensity of these labour market interventions (OECD 2020: 2). Indeed, evidence shows that JRS saved up to 21 million jobs across the OECD during the Covid-19 pandemic (OECD 2022: 2). In the euro area, net labour income for households declined by 7% compared to potential estimated losses of 22% without JRS (Dias da Silva *et al.* 2020). In 2020, the unemployment rate peaked at 8%, compared to an estimated 10.5% if JRS had not been applied (IMF 2022: 1). In Spain – where the unemployment rates reached 19% in 2020 – it is estimated that these would have been around 42% without any intervention (Osuna and García Pérez 2022).

Finally, it is essential to note that the Member States received strong support from the EU, which played an unprecedented role in the financing of these schemes. It did so through the introduction in 2020 of a new financial assistance facility ('temporary Support to mitigate Unemployment Risks in an Emergency' – SURE), providing financial assistance of up to 100 billion euros (EUR) in the form of loans for STW, WS and income support for self-employed workers.

Almost three years after the outbreak of the pandemic, with infection rates under control and economic activity gradually recovering, JRS have been largely phased out. However, still in March 2022, an International Monetary Fund (IMF) study showed that although governments have been rapidly scaling back job retention schemes, these had remained in place in most countries (in some sectors) and the aggregate total hours worked were still below the levels seen at the end of 2019. The Fund recommended that scaling back of JRS should be done gradually because of a risk of increasing unemployment rates (also because of the war in Ukraine), for instance by supporting the sectors that remained most affected by health-related restrictions.

JRS, therefore – although only providing temporary and exceptional support – lasted for more than two years, at least in some sectors. At the same time, clearly societies may be prone to epidemics in the future, or other circumstances may trigger the use of JRS. Climate change will increasingly have an impact on whether it is possible to work during some periods (e.g. strong heatwaves, floodings). For instance, some STW, such as the Belgian *Chômage temporaire/ Tijdelijke werkloosheid* schemes, already have an environmental component.

Since the pandemic, and with a view to future challenges, the importance of JRS has become evident. The question of access to and effectiveness of JRS must therefore be addressed. Access and effectiveness depend on various features, including the design of the policy (generosity, duration, subsidies for hours worked or hours not worked) and the labour market context (standard and non-standard workers, centralization of collective bargaining, permanent or

temporary nature of the JRS scheme) (Boeri and Bruecker 2011; OECD 2020; Baptista *et al.* 2021; Drahokoupil and Müller 2021; Corti *et al.* 2023).

The design and coverage of JRS schemes varied significantly across and within countries during the successive stages of the pandemic. In general, although the boundaries are not watertight (for an overview see Corti *et al.* 2023), STW directly subsidise hours not worked (there is a requirement for reduced working hours), while WS either compensate part of an employer's wage costs for the hours worked or can also be used to top up the earnings of workers on reduced hours. Another difference between STW and WS concerns the eligibility requirements. In the case of wage subsidies, the eligibility criteria are linked to the situation of the enterprise, whereas in the case of STW they relate to the adjustment in working time experienced by the worker (Drahokoupil and Müller 2021). In general, countries that had to introduce a new JRS rapidly opted for a temporary WS, as this incurred lower administrative costs than establishing a STW scheme. Moreover, dismissal costs are relatively low, reducing the attractiveness of STWs, which usually involve procedural costs as well as reporting requirements and contributions by the employer (e.g. on hours worked) (IMF 2022).

With regard to the scope of this report, which focuses on access to social protection, it is important to highlight that countries, at certain points, had to urgently modify (even several times) the rules of JRS as, in some cases, their design disproportionately affected certain categories of (young) non-standard or low-skilled workers (IMF 2022; Spasova and Regazzoni 2022; Baptista *et al.* 2021). Importantly, non-standard workers and the self-employed made up, on average, about 40% of the workforce in the sectors most affected by the pandemic (OECD 2020). In some Member States such as Austria and Germany, the majority of the non-standard workers in the hardest hit sectors were part-time workers. Part-time and temporary workers are more frequently excluded from social protection schemes, including JRS, as they may have difficulty meeting the eligibility conditions. Additionally, in several instances, such workers are doubly penalised as they may be involuntary part-time workers. The countries most impacted by the pandemic include Member States such as Greece, Italy and Spain with the highest incidences of involuntary part-time work, which accounts for 9-14% of total employment in affected industries (OECD 2020). Finally, women, who already shouldered much of the burden of the pandemic through caring activities (Rubery and Tavora 2021), were also strongly impacted because they make up the majority of involuntary part-time workers (63% on average) in almost all countries. Temporary workers, moreover, towards the end of their contract, face a high risk of being laid off instead of having their contract renewed and being included in STW schemes. They may also not qualify for STW schemes or may be excluded because of patchy work histories (OECD 2020).

**The issue of access to JRS is, therefore, essential.** Since the Great Recession, JRS in most Member States have also included non-standard workers, such as part-time and fixed-term



employees and temporary agency workers (Corti *et al.* 2023; Müller and Schulten 2020). However, some gaps persisted, and during the pandemic, changes were made to bridge these gaps by including certain categories of non-standard workers, such as apprentices and temporary agency workers (Baptista *et al.* 2021; Spasova and Regazzoni 2022). In Belgium, for example, temporary employment agency workers could exceptionally claim temporary unemployment benefit during a Covid-19-related break from work, if they had been employed for at least one month. However, the contractual link with the employer had to be maintained. Similarly, in Germany, temporary agency workers were included on the basis of a crisis-related temporary rule. However, mini-jobbers remained excluded. In Finland, the temporary STW was exceptionally extended to cover fixed-term employment contracts, subject to the same conditions as those which apply to the laying-off of employees on a permanent contract. In France, the STW scheme has been extended to new categories of workers who were previously not covered, such as people whose working hours cannot be fixed in advance (e.g. freelancers), sales representatives, domestic workers paid on a piecework basis, and intermittent workers in the entertainment industry and models, as well as students.

In other cases, countries had to relax or even phase out some eligibility conditions, such as the record of contributory periods, in order to make the schemes more inclusive. In Spain, for instance, the eligibility conditions for the STW scheme (ERTE - Expediente de Regulación Temporal de Empleo), were very demanding, requiring at least 360 days of work during the 6 preceding years; these were completely waived in the course of the pandemic in order to protect temporary workers.

Regarding the self-employed, nineteen Member States provided income replacement support targeted specifically at this category <sup>(4)</sup>. These measures were key to tackling workers' lost earnings, especially in cases where the self-employed had no access to unemployment benefits. The support payments were of two types: those paid as a share of previous earnings and those paid as lump sums. Among these nineteen Member States, in only seven (AT, CY, DK, ES, LV, PT, RO) <sup>(5)</sup> were the benefits calculated relative to previous earnings, providing income replacement closer to those earnings, albeit with upper caps. In the remaining twelve (BE, BG, CZ, EE, EL, FI, FR, IT, LT, MT, NL, PL) <sup>(6)</sup>, income replacement for the self-employed was provided as a lump sum equivalent or close to the guaranteed minimum income level of the country. In general, such benefits offered only basic protection. In many instances, they were also subject to a variety of eligibility criteria, usually pertaining to the percentage reduction in turnover, means testing and, in

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4. The eight Member States which did not offer any benefits (DE, HR, HU, IE, LU, SE, SI, SK) provided other types of, generally, economic support, such as measures to help with operating costs (one-off subsidies) or temporary exemption from/reduction of social security contributions and other taxes.
  5. See Annex 1 on country abbreviations.
  6. Bulgaria and Estonia provided income replacement support only for self-employed workers in the cultural sector.

some cases, to contribution histories and previous incomes. In some cases, the benefits were targeted only at a certain category of the self-employed (Spasova and Regazzoni 2022). In spirit, these were equivalent to the STW for wage earners, which proved their worth during their extensive use in the crisis.

The idea of providing temporary unemployment coverage for the self-employed did not originate during the Covid-19 crisis; other examples of temporary protection in such cases already existed in a number of countries. These external factors could be, for example, loss of harvest due to extreme weather (for farmers), extreme weather conditions at (open) sea (for fishermen); or the need to provide end-of-life care to a family member.

The pandemic, however, served as a catalyst for reforms of these schemes in some countries such as Belgium and Spain. In 2022 (June), the Spanish scheme providing temporary benefits to self-employed persons in case of suspension of activities underwent a major update. This scheme was originally introduced in 2010 and was adapted several times during the Covid-19 pandemic. The new scheme introduced by the June 2022 reform (RD 13/2022) is equivalent to a comprehensive reform of the social security system for the self-employed. As well as adapting the existing financing structures, this comprehensive reform restructures the scheme, addressing loss of income by the self-employed due to suspension of activities caused by external elements. In the renewed scheme, a distinction is made between cyclical support and sectoral support. Both kinds of support systems are activated by a decision of the Council of Ministers; whereas cyclical support is provided in the case of a major macroeconomic crisis, sectoral support is guaranteed after an assessment which proves that permanent changes are occurring in a given sector, requiring a transformation in the sector as well as a reclassification of work that is traditionally performed in the sector. The sectoral scheme also requires investment and a plan. Benefits are determined in relation to the contributory base of the self-employed and can be provided for up to one year. The benefit can be combined with income from the reduced activity, and an exemption from the need to pay social security contributions (up to 50%) can also be granted.

In Belgium, the so-called 'bridging right' scheme is used to grant temporary income replacement to self-employed people forced to cease or suspend all self-employed activities due to external circumstances, or having to cease their activity due to economic difficulties. This scheme, with some modifications, has been used as a major income protection guarantee during the Covid-19 crisis and the recent Ukraine and energy crisis. Introduced in 1997 and modified/enhanced on several occasions since then, it was reformed at the end of 2022 in light of a recent study by the ABCGG (Algemeen Beheerscomité/Comité Général de Gestion). That study showed that only a limited proportion of self-employed people who cease their activities receive bridging right benefits, because of eligibility conditions which are difficult to meet. The 'old' bridging right was based on four pillars, each targeted at a different form of interruption or cessation of activity: 1)

bankruptcy (pillar 1), 2) collective debt settlement (pillar 2), 3) forced interruption of activity for reasons beyond the control of the self-employed person (e.g. natural disaster, fire, damage, a decision of a third economic actor or an event with an economic impact) (pillar 3) or 4) serious economic difficulties resulting in the cessation of the activity (pillar 4). In order to make it more accessible, the 'new' bridging right is no longer based on the four pillars described above, but applies a double access criterion, in order to simplify the procedure: (i) cessation or interruption of self-employment outside the control of the self-employed person (old Pillars 1 and 3) and (ii) cessation of self-employment due to economic difficulties (old Pillar 4).

The new legislation also simplifies the rules on the qualifying period and applies one set of conditions to the different situations leading to the grant of a bridging right. As of 2023, the legislation not only provides for twelve months of income replacement (fixed amount) as well as continuous health care coverage during a period of four quarters (the insurance of which is still based primarily on professional activities), but also makes it possible to add additional months and quarters during the whole career of the self-employed person, for future use. Other changes were also made to the bridging right, such as the possibility to combine a bridging right with a professional activity and a replacement income under certain conditions. Due to these modifications, the Belgian bridging right scheme for the self-employed has evolved towards a scheme providing even more robust and effective income protection to self-employed people suffering from certain well- defined difficulties.

The Belgian and Spanish schemes show that when introducing temporary unemployment protection for self-employed persons, the specific nature of self-employed work must be taken into account. In line with the 2019 Recommendation, the idea is to guarantee equivalent protection in case of temporary unemployment, which may result in adjustment of entitlement conditions and/or benefits, if these are more fitted to the specific working situation of the self-employed.

Overall, compared to wage earners, two elements are specific to the situation of the self-employed. First, for someone who is self-employed, it is difficult to clearly define the situation causing the loss of income: when does a business 'close down' in cases of temporary unemployment? Second, it is also difficult to determine whether, ultimately, the self-employed person will suffer a loss of income and, if so, to what extent this is related to the temporary closure of the business.

Essentially, care must be taken to avoid the routine use of such temporary unemployment protection to address normal fluctuations in the economic situation. Benefits should not be used to top up income in less profitable times. Consequently, conditions must be applied, relating to a decline in the business situation, the definition of the exogenous event (*force majeure*) that caused the decline (in essence of a 'temporary' nature) and to the presence of a real loss of

income. These elements will have to be included in the specific design of the scheme for the self-employed (for an overview see Schoukens and Weber 2020).

In other words, temporary unemployment protection schemes for the self-employed would have to be designed with sufficient restrictions. Any self-employed scheme equivalent to short-time work income replacement should be limited to exceptional events.

### **1.1.2 Rationale of the proposal and opportune goals for the Belgian Presidency**

While JRS schemes clearly evolved during the pandemic, becoming more inclusive, and there was an unprecedented creation of temporary unemployment protection for the self-employed, there is a lack of comprehensive and comparative information on their current post-lockdown scope and design. There has been research into and evaluations of various aspects of these schemes during the different stages of the pandemic, but now, when the virus seems under control, other challenges are looming over the EU economy (e.g. the war in Ukraine, climate change).

**We believe that, therefore, it is necessary to investigate the current situation regarding these schemes and to consider a common EU action/instrument to make them permanent, inclusive and resilient in all circumstances.**

- **1.1.2.1 *In-depth reviews of JRS***

First, we need evidence on existing schemes in the Member States in order to consider how to make them permanent and ready-to-use in specific circumstances. The latest research on these schemes shows that despite all the reforms implemented during the Great Recessions and especially during the Covid-19 pandemic, only a few of the Member States have transformed such schemes into a permanent instrument (Corti *et al.* 2023).

Second, changing the design of schemes in extreme circumstances (as occurred during the successive lockdowns) is not a viable solution; it takes a lot of political and administrative effort, leads to economic losses, and leaves already vulnerable workers without protection. Recent research has shown that there is a strong correlation between the design of these schemes and the actual take-up. Among the important aspects of the design is access to such schemes, and research shows that the higher the coverage of the schemes, the higher is the take-up. For instance, for workers on temporary contracts, the take-up rates increased significantly between the two recessions, to levels often close to or above take-up rates for workers on open-ended contracts (Corti *et al.* 2023).

Finally, linked to the importance of anticipating future crises and making JRS permanent, another important question arises. During the pandemic, Member States financed most of the measures from their own state budget and through EU support. Even if SURE does not become a permanent

mechanism, it is very likely that in the event of a future crisis, EU resources will again have to be mobilised. This is yet another argument in favour of permanent, inclusive and well-designed schemes, ready to be activated. Since these were emergency measures, they did not involve the risk-pooling and co-financing that takes place when all workers are insured. In times of economic stability, therefore, such temporary schemes need to be re-evaluated, notably to see which workers are not included and to progressively extend coverage to those who are not formally included or may face issues with effective access (Spasova and Regazzoni 2022). If JRS are made permanent and are geared towards providing adequate protection for both workers and the self-employed, there will need to be reflections on the need to pay contributions proportionate to the potential risks. This is important: it is difficult to justify the exclusion of some categories of workers from temporary schemes, whilst others are covered and financed by the state budget and the SURE mechanism.

Given the above-mentioned arguments, we believe that **the Belgian Presidency could strive for inclusion in the EU agenda of an in-depth examination of the design of these schemes in terms of accessibility and effectiveness** (also considering the conditions for their activation). Such an evaluation could be a joint assessment between the Employment Committee (EMCO) and the Social Protection Committee (SPC) (review, mutual learning event, report), as these questions relate to both the labour market and social protection policies. It should be noted that in 2020, unprecedentedly, due to the pandemic, there were 19 and 11 Country-specific Recommendations (CSRs) on income support and short-time work schemes respectively, which together made up 36.5% of the CSRs in the whole 'social protection and social assistance' category (Rainone 2020). By contrast, only four CSRs on income support were issued in 2022 and none on such schemes (Rainone 2022). Although the pandemic context has evolved, this temporary support needs to be evaluated, including the issue of access.

As the topic of this report is access to social protection, we therefore highlight here only some **related features and the issues which should be considered when evaluating the schemes in the Member States:**

- What kind of schemes (co-)exist in the Member States? Are these STW or WS? Are such schemes permanently enshrined in legislation?
- Are there specific extraordinary benefits for the self-employed? Have these been made permanent, enshrined in legislation, ready to be activated in the event of a crisis?
- What are the eligibility conditions of JRS?
- How do they impact access for non-standard workers?
- Are there specific work statuses with no formal access?

Such reviews would provide analytical clarity on the above-described issues, and especially with regard to the design of such schemes, including eligibility conditions for workers.

- **1.1.2.2 Ideas for instruments at EU level**

### **An EU instrument for workers**

We believe that there may be scope for EU action, ranging from the traditional policy monitoring processes (in application of Articles 145-150 and 156-159 TFEU) to **further initiatives for legal action (Article 153 TFEU) i.e. a recommendation or a directive on JRS, as these schemes can be considered to be at the intersection of labour market and social protection policies.**

The Treaties provide more scope for action in the field of labour market policies than regarding social protection; this may be an argument in favour of restricting the action to workers only. If a legal instrument is considered, Article 153 TFEU (par. 1 (b-d), and par. 2 (a)) is normally <sup>(7)</sup> applied <sup>(8)</sup>. Depending upon the field ((b) working conditions and/or (d) protection against termination of employment contract), the decision-making follows the ordinary procedure (working conditions: co-decision; qualified majority) and/or the specific procedure (termination of labour contract: unanimity after consultation of the European Parliament, Economic and Social Committee and the Committee of the Regions; with the possibility of applying the ordinary procedure). However, it will very probably also be necessary to resort to the legal competence basis for social protection ((c)), as in many of the current STW and WS schemes, income replacement is guaranteed through social security ('temporary unemployment schemes' in particular). Consequently, the specific procedure (unanimity; after consultation of the European Parliament, Economic and Social Committee and the Committee of the Regions) will have to be followed, not the ordinary procedure (Article 153 par. 2, in fine TFEU). Furthermore, a discussion might arise as to how far such an initiative touches upon the fundamental principles of a state's social security system and/or significantly affects the financial equilibrium of those systems, which is explicitly excluded by Article 153, par. 4 TFEU.

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7. Apart from Article 153 TFEU, possible alternative legal bases proposed by academia are Article 21 TFEU (citizenship) and Article 175 TFEU (social cohesion): see more about this under Section 3, which deals with extension of the legal competence basis. These articles have been put forward by legal scholars as possible alternatives for EU legal decision making in the field of social security standards, and hence could relate as well to income replacement benefits in case of temporary unemployment. However, although the idea of finding alternative legal bases has potential, it is criticised in legal practice and may jeopardise the necessary decision-making procedures. It is not unanimously accepted that Article 21 TFEU could be invoked for non-mobile citizens; in the case of Article 175 TFEU, it would have to be argued that an EU scheme or framework for temporary income replacement benefits is supporting cohesion within the EU.

8. As these measures concern job retention and temporary unemployment schemes, it is more difficult to justify the application of Article 153, par. 1 as a legal basis, as this paragraph addresses integration of previously unemployed people into the labour market.

Temporary unemployment protection is often based upon (state) subsidies and/or income replacement benefits; in other words, financial support coming from public schemes takes over the financial burden – i.e. the guarantee of loss of income – (fully or partially) from employers. This may affect the internal market of the EU, which could be an argument for basing the action upon the EU articles dealing with fair competition and the internal market (Articles 114 TFEU and 115 TFEU). As Article 114 TFEU does not cover matters that relate to fiscal provisions or to the rights and interests of employed persons, Article 115 TFEU is most likely to be applied; here, as well, a specific decision-making procedure must be followed (unanimity; after consultation of the European Parliament and the Economic and Social Committee).

A legal instrument could, among other things, be used to tackle several of the aspects discussed above in respect to the structure of the Member States' economies and industrial relations. Since the focus of this report is on social protection, we stress the importance of applying such an instrument to the formal rules of access, i.e. the eligibility conditions, of JRS, ensuring that (non-standard) workers are not unjustifiably left behind, and/or to income replacement levels (guaranteeing sufficient protection with respect to fair competition). It could also specify in which 'emergency' situations Member States could resort to a JRS, as well as including procedures enabling Member States to fall back on EU support, thus consolidating, for instance, the existing structures developed under the SURE programme. EU support could, for instance, be envisaged in case of an asymmetric shock caused by an emergency situation.

### **An EU instrument for the self-employed**

It is more difficult to discuss, at EU level, **specific schemes to protect the self-employed in times of crisis**, given the current wording of the Treaties. Based on the reflections in the previous section, **we believe that such measures should be enshrined in permanent legislation at national level**. In the event of a crisis, they would have to be activated/and or adapted. As most Member States introduced such measures during the pandemic, these may serve as a first stepping stone facilitating the permanent establishment of such schemes. Covid-19 can be considered as a catalyst for this concept, making the idea of fully-fledged temporary unemployment protection scheme for the self-employed acceptable across Europe. For instance, the Covid-19 scheme and, recently, the Ukraine crisis could be considered among the factors driving consolidation of the temporary income protection scheme for the self-employed in some countries, such as Belgium and Spain (see Section 1.1.1).

Similarly to the avenues for action proposed above for workers, an EU legal instrument could also be adopted in this regard. Following the philosophy of a labour status neutral approach, as enshrined in the EPSR and the 2019 Recommendation, **we recommend adoption of an instrument for both workers and the self-employed together**. However, as the current schemes for self-employed are less developed than the schemes in place for temporary

unemployment of workers, **EU action in this field specifically addressing the self-employed could also be justified**; in this approach the idea would be to **bring the protection provided to the self-employed in case of temporary unemployment up to the same level as the protection already in place for workers**.

Whatever approach is taken, if action requires a legal initiative, the problem of the overly narrow scope of Article 153 TFEU emerges. The general interpretation is that Article 153 TFEU does not cover self-employed persons, with the possible exception of the specific group of dependent self-employed who work in a similar way to workers (Battista 2022). Consequently, use will have to be made of the flexibility clauses in the TFEU that grant the EU institutions the necessary powers to take legal action if no specific competence exists (in particular Article 352 TFEU, possibly in combination with Article 115 TFEU if a link can be made with safeguarding the internal market: see above). This would result in application of the specific procedure (unanimity; consent of the European Parliament – Article 352 TFEU and unanimity; prior consultation of the European Parliament and the Economic and Social Committee – Article 115 TFEU), which in itself is not so different to application of Article 153 TFEU for workers (see above). However, when resorting to the flexibility clauses, the subsidiarity test is more challenging: in order to apply the flexibility clauses it has to be proven that EU action is necessary in the absence of specific competence to achieve one of the EU objectives.

## ***1.2 New areas for action: Transparency***

### **1.2.1 Context and rationale of the proposal**

**Transparency as the fourth cornerstone of the 2019 Recommendation** comprises two main aspects: a) access to information; and b) simplification of access to social protection schemes and administrative requirements, with a view to alleviating the administrative burden. The first issue of **access to information** concerns access to both general and personalised information and clear rules. The second point concerns **simplification** of access to social protection schemes and administrative requirements.

It should be noted from the start that in our reflections, we consider transparency in a broader way than as defined in the 2019 Recommendation. While taking into account the two main aspects – access to information and simplification of administrative procedures – we emphasize the need for clear rules as well as considering an extra dimension, namely the issue of transferability.

With regard to the clarity of rules, when the laws shaping access are not designed or described properly, legal uncertainty is created, which can affect people's trust in the system. This in turn may affect the confidence of the population in the rule of law; people may as a result be less inclined to follow the rules and respect their obligations (e.g. in relation to financing the system and informing public authorities about changing circumstances in their personal life which may



affect their rights) (Schoukens 2020). The 2019 Recommendation highlights the 'current regulatory complexity and lack of transparency regarding social protection rules in many Member States' (Recital 22), which may hinder people's access to social protection due to lack of awareness about their rights and obligations, and may contribute to a low take-up of benefits and services. Transferability of rights and entitlements, in turn, is an essential issue for people changing job statuses.

Recent research shows that over the past 10 years, Member States have, to differing extents, implemented reforms to improve the transparency of social protection systems, mostly by digitalising access (to general and personalised information, application processes) to benefits, and through simplified administrative procedures/structures (Spasova *et al.* 2023). Transparency is particularly important for non-standard workers and the self-employed, as access can be more complicated for these groups due to specific rules and voluntary membership of social protection schemes (Schoukens 2020) <sup>(9)</sup>.

The recitals of the Recommendation highlight several ideas to enhance transparency, such as the creation of physical one-stop information centres, personal accounts, regular sending of individual entitlements and in particular further digitalisation of information services (online tools simulating benefit entitlements, online application processes, etc. (Recital 22)). Public sector institutions rely increasingly on the internet in order to produce, collect and provide online a wide range of information and services essential to the public. Indeed, the development of policy and practices linked to access to information on and simplification (e.g. (automated) application processes) of social protection benefits has been spurred on by digitalisation over the past decade and especially since the Covid-19 pandemic.

In this context, in addition to the provisions in the 2019 Recommendation, two other EU instruments could be considered in the reflections on how to improve transparency. First, the EU 2016 Directive <sup>(10)</sup> on the accessibility of the websites and mobile applications of public sector bodies is also relevant. Its purpose is to 'approximate the laws, regulations and administrative provisions of the Member States relating to the accessibility requirements of the websites and mobile applications of public sector bodies, thereby enabling those websites and mobile applications to be more accessible to users, in particular to persons with disabilities' (Directive (EU) 2016/2102: 8).

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9. See the conclusions, 'Mutual Learning on Access to social protection for workers and the self-employed. 4th Workshop: Transparency and transferability'. Available [here](#).

10. Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies.

Second, the Directive on transparent and predictable working conditions, which, from 1 August 2022, must be transposed into national law, also aims to ensure that workers in the EU, including workers in non-standard work relationships, are, at an early stage, given essential information on their contracts. The information which must be provided by the employer includes 'the identity of the social security institutions receiving the social contributions attached to the employment relationship and any protection relating to social security provided by the employer' (11). Finally, another initiative in the area of social security coordination was announced by the Commission in its 2023 work programme: an initiative for the digitalisation of social security systems and social safety nets in support of labour mobility (12).

Transparency should be a salient issue in our information-driven societies. A deep digital divide still exists in Europe (13) and not all people are equally able to deal with the digitalisation process; some socio-economic groups, people with disabilities, people with no or low digital skills, may be left behind. Although it is the fourth cornerstone of the 2019 Recommendation, transparency is barely touched upon in the national plans monitoring the implementation of the 2019 Recommendation. Some of them do not mention it at all, and in others the situation is presented as complying with the Recommendation's provisions. Only a few countries report reforms and debates linked to further improvement of the national situation (Spasova *et al.* 2023).

Indeed, several issues exist in Member States' policies and practices related to both the access to information and simplification strands of the 2019 Recommendation (Spasova *et al.* 2023; Schoukens 2020). We discuss these in turn.

- Main issues regarding access to information:
  - ✓ Need to improve access to information for vulnerable people

Increasingly, Member States are restricting access to physical venues. In several countries, access to the latter has been reduced, especially during the Covid-19 pandemic, and more generally due to digitalisation of these services. In this respect, it is vital to maintain physical offices in order to ensure that no one is left behind. Face-to-face contact may be essential, especially for older people, for instance regarding healthcare benefits. Digital innovation should go hand in hand with maintaining easy access to physical facilities. What is more, digitalisation policies should specifically include innovative practices for access to information for particular disadvantaged

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11. Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, p. 105-121; see notably Article 4, par. 2, point (o). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L1152>

12. Digitalisation in social security coordination (ESSPASS) and 'Labour Cards'. <https://ec.europa.eu/social/main.jsp?langId=en&catId=88&eventsId=2065&furtherEvents=yes>

13. See the latest results (July 2022) of the European Commission's Digital Economy and Society Index (DESI) ([available here](#)).

population groups, such as those with low levels of (digital but also administrative) literacy, disabled persons with visual/hearing impairments and others.

- Information for non-standard workers and the self-employed is generally easily accessible but it should be better tailored to the needs of such statuses

Further actions can include detailed explanations of the eligibility and receipt conditions, of the specificity and risks of voluntary access, of transferability of rights, more in-depth counselling on the rights, obligations and risks related to certain specific statuses etc.

- Access to information on future entitlements

Calculators for benefits other than old-age pensions exist in only a very few countries. There is a need to create such calculators or other simulation tools for most benefits (including for pensions, in the few countries where such tools do not exist), to improve access to personalised information.

- Better streamlining of information between providers

In some cases, information may be duplicated or spread between the websites of different providers. There is a need to create, or improve the structure of, one-stop web portals, particularly the links between sites.

- Carrying out evaluations, surveys and other types of assessments

Such assessments are needed in order to evaluate the performance of national systems with regard to citizens' access to information. Such surveys (studies) must also have a specific focus on the perceptions and behaviour of particular socio-economic, demographic categories and groups with disabilities. Moreover, when take-up of a scheme is low, such surveys/studies could also usefully focus on whether the manner in which information is provided is limiting take-up.

- Main issues regarding simplification:

- ✓ Simplification of rules

One of the main simplification issues identified is the need to simplify the rules in cases where social protection systems are too complex (Schoukens 2020). Proper legislative technique means more than the use of accessible language. Equally important is the guiding principle that rules should clearly reflect the underlying realities or objectives, facilitating proper application and avoiding any kind of misinterpretation from the outset. The Recommendation can thus also be understood as a call to improve the legal design of social protection systems. However, the rules themselves are merely a tool which reflects the underlying system. In other words, the social protection system itself should be coherently designed from the outset. Over time, systems have grown complex, and the emergence of new work statuses (non-standard workers and self-

employed) requiring specific social protection arrangements has further complicated them. In this sense, it is essential to differentiate between the basic principles of social protection, which are common to all working groups involved, and adapting these principles to particular working situations specific to non-standard work or self-employment. Apart from extension of protection to new groups, the systems have also undergone significant changes, and over time many exceptions have been added for specific groups and/or life situations; we may have already forgotten the original justification for some of these (Schoukens 2020).

✓ Transferability in cases of mixed careers

The emergence of new forms of work and of self-employment has created some challenges with regard to transferability of rights. Article 10 of the 2019 Recommendation calls upon Member States to ensure that entitlements – regardless of 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 one, they may have to change social protection scheme; there is a risk that they will then lose existing entitlements 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 referred to as 'internal coordination', as they concern coordination of the schemes within a given country, as opposed to the international coordination rules that address cross-border mobility (Regulation 883/2004). The techniques used for these two types of coordination are quite similar. Transferability issues arise in different types of situations:

They may occur in situations where a person combines different professional activities (various wage-earner or self-employed activities or a combination of wage-earner and self-employed activities). In such cases, the individual concerned will have to give practical answers to questions such as whether or not all activities are to be made subject to social insurance; and if so, whether a distinction is to be drawn, regarding financing and benefit entitlement, between the main activity and the side activity. If social insurance is accumulated for every activity, the issue of anti-cumulation will often arise: what is the (maximum) level for joint entitlement to benefits? Anti-cumulation rules may also be relevant to financing when activities are combined, distinguishing between the financing consequences for each of the activities, possibly differentiating between main and side activities.

A different yet similar situation is that of family units where the two partners each perform (different) professional activities. Here too, there may be a clash between the respective schemes when an entitlement arises to family benefits and health care (for the dependent relatives) or when pension benefits are accumulated (own old age pension and survivors' benefits).

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

Hence, internal coordination measures are needed between the different schemes in place. Specific techniques have been developed for this purpose, such as the status of 'dormant participant' (the person is kept on the record of the 'old' scheme), transfer of rights and entitlements to the new scheme (export principle) and/or adding together insurance periods in the (old and new) schemes to open entitlement and/or to define which scheme is to pay which part of any benefit (pro-rata calculations). It is important that policy makers clarify the underlying objectives, as in practice these are often reflected in a rather complex set of technical rules (Schoukens and Bruynseraede 2021). With a growing number of non-standard work forms and of persons combining several (non-standard) activities at the same time, it is more essential than ever to have internal coordination rules in place to cover all the income generated by the underlying mix of professional activities (Schoukens and Bruynseraede 2021).

- ✓ Simplification of procedures and administrative requirements

The issues discussed above relating to access to information and transferability could be also partly linked to the complexity of administrative requirements and procedures.

- Simplification of the application process

There is a need to improve the application process through easily accessible digital identification, such as personal accounts and automation. Systems should strive for easy and quick identification methods and automated processes that provide timely updates on individual entitlements. In this context, it is also important to promote automated processes to apply for and grant benefits, facilitating access and reducing non-take-up.

- Better integration of and creation of single databases and communication channels between social protection branches/administration units

Such systems could take the form of 'crossroads of databases', i.e. single one-stop administration systems which collect and monitor data and are accessible to all the social protection institutions involved. Better interconnection between different units might include the development of early warning methods for persons at risk of poverty, in order to inform them of their situation and of the benefits and services available. Such integrated systems can also play an important role with regard to transferability of entitlement processes.

### 1.2.2 Opportune goals for the Belgian Presidency

The issues linked to transparency of social protection present an important avenue for further examination and actions.

On one hand, **the Belgian Presidency can push for greater inclusion of these issues in the further monitoring of the provisions of the 2019 Recommendation, through SPC thematic reviews.** The issue of transparency has not been given an important place in the national implementation plans. Only 14 of these refer explicitly to it, and even then, it is not among the central topics but is only briefly addressed. Some Plans provide a description of the current social protection system and how the principle of transparency is applied within it. While some explain that transparency is addressed in a satisfactory way within the current system, others call for further progress on the issue. Finally, some also mention ongoing reforms and developments aimed at enhancing transparency (Spasova *et al.* 2023).

Moreover, as good as no methods/indicators for measuring transparency have been proposed in Version zero and the partial update of the monitoring framework (European Commission 2021a and b). The latter refers to a survey conducted to prepare for the Impact Assessment accompanying the 2019 Recommendation, which showed that people in self-employment and non-standard work seem to be less well informed about their rights and obligations than standard workers.

Such surveys, however, are not readily available, as clearly stated in Version zero of the monitoring framework. The document also states that another method of measuring transparency is to track the availability of general and personal information in each country. There have been some efforts to do this in the past (e.g. an unpublished feasibility study on a European Mobility Portal on Social Security). The conclusion of Version zero of the monitoring framework is that more work is needed on mapping such information before it can be included in the framework (European Commission 2021a). The European Social Policy Network Synthesis report 'Making access to social protection for workers and the self-employed more transparent through information and simplification' (Spasova *et al.* 2023), based on 35 national reports, is to our knowledge the most comprehensive document providing such information.

In this sense, there is considerable scope to continue monitoring issues related to transparency within the monitoring framework and to reflect on methods (e.g. surveys, mapping) and indicators which could be added in order to develop this pillar. Moreover, some aspects of transparency could be also encouraged through the European Semester.

Finally, **transparency could also be the subject of a separate comprehensive instrument (e.g. a recommendation or a directive on transparency of social security systems)** addressing the problematic aspects discussed above in relation to competence (Article 153, par. 2 (c) and par. 2 TFEU), as well as in relation to the use of the flexibility clauses (Articles 115 and/or 352 TFEU), the latter if the self-employed are to be covered by the legal measures. A legal instrument could focus upon: a) common guidelines/principles on the relations between insured persons and administrations (in line with, for example, the Belgian charter of the socially insured person); b) provision of access for citizens to clear general and personalised information on protection for the various employment statuses (clarifying the implications for financing and benefits when a person works as an employee, self-employed, platform worker, depending upon the professional systems in place); c) simplification of administrative requirements and procedures; d) clear rules; e) general principles on transferability of rights and entitlements; and f) minimum requirements needed to guarantee interservice social security coordination (across the various professional systems in place). Such an instrument should particularly take into account the issues around transparency for non-standard workers and the self-employed, as they may be in a much more complex situation of 'deciphering' social protection rules due to differences in access (e.g. voluntary, specific schemes), compared to people in standard employment.

There is perhaps also some scope for inspiration and for synergies with certain instruments established under the EU's digital policy (Interview European Commission 3). Moreover, some existing directives and future instruments (e.g. the future initiative on digitalisation in the area of social security coordination; see section 1.2.1) might be considered, with a view to seeing how synergies could be found with such existing instruments or how an initiative could build upon them. The authors, who are not experts on the latter, recommend a discussion with specialists in the field and a broader reflection on this point between services in the European Commission.

### ***1.3 Towards a comprehensive directive on minimum requirements***

The previous two sections show that parts of the 2019 Recommendation can be further developed and/or could be transformed into a comprehensive proposal for a directive on minimum requirements. In 2017-2018, during the negotiations of the 2019 Recommendation, the legal service of the Commission stated in an opinion that a directive is legally possible (EU Commission, Consultation document 2017, 66); it would however require unanimity, as the relevant legal basis is Article 153, par. 1 (c): social security and social protection of workers. However, no proposal

was made, because the political situation was unfavourable (Interviews European Commission 1 and 2). There was no political will for a directive, and the situation has not changed much, as can be seen from the negotiations on the proposed directive on platform work. Whenever an issue regarding the self-employed is raised, particularly when it relates to an extension of protection of labour conditions, protagonists/camps develop, fiercely opposed to each other. At the very root of the initiative back then was the reflection on the 'fate' of vulnerable solo self-employed; further analysis then persuaded the Commission to consider broader issues of access to social protection (Interview European Commission 1bis). Academic debate has also focused on a potential directive on minimum requirements (e.g. for the self-employed <sup>(14)</sup>), on the debates and this topic see Battista 2022). Apart from JRS and transparency (discussed in sections 1.1 and 1.2), there are also other parts of the 2019 Recommendation that could be turned into legally enforceable measures, although some would require further specification and development.

Possibilities would be:

The personal scope of application, addressing which persons are to be covered:

- workers, self-employed
- all workers or, as in the minimum standards of the International Labour Organization (ILO) and the Council of Europe (CoE) Code of Social Security, a minimum percentage of workers, and/or the self-employed? In both situations (all or minimum percentage) it will be important to give a definition of work/professional activity: as of when is an activity considered to be a professional activity (and thus work)?
- as of which income level do workers/self-employed have to be protected (touching on the issue of minimum thresholds and mandatory and/or voluntary coverage)? If, for instance, the threshold is not reached, should at least voluntary coverage be accepted? What to do with income levels that exceed a certain level: do we allow them to be exempted or do we accept alternative private coverage, and base the exemption on this?
- regarding formal access, which situations/grounds can justify voluntary coverage (Schoukens and Bruynsearede 2021)?

Additionally, in relation to the material scope, further rules could be discerned from the current Recommendation. For example:

- further specification of the duration of benefit payment (how long should the benefits be paid compared with the ILO and Code minimum standards: for the duration of the contingency, 6 months for sickness? etc.)

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14. The idea for a Directive on minimum social protection requirements for (vulnerable) self-employed has also been mentioned by the European Commission (Interview European Commission 3).



- the use of minimum waiting periods and/or minimum insurance periods (e.g. how long can they be, compared to, for instance, the ILO and Code standards referring to either fixed periods or to eventualities as fraud? (as long as justified to exclude fraudulent situations)
- a description of the changes required to adapt the material rules to non-standard workers, such as:
  - the needed reformulations of qualifying conditions when applied to part-time work and work for defined periods
  - the specific work situations that justify adaptive protection or exoneration from protection (e.g. for the self-employed in case of short-term income replacement benefits, accidents at work, etc.)
- the minimum provisions to be introduced at national level to specify the rights and duties of insured persons (relations between insured person and administration)
- In relation to adequacy, further legal minimum requirements could be specified, clarifying the minimum income replacement benefit levels expected, both for those in standard employment and for those in non-standard and self-employed situations; as well as describing the household compositions used to test income replacement. It might also be important to indicate absolute minimum levels for social protection, taking into consideration the role of social insurance and other schemes (such as social assistance and tax allowances) in guaranteeing these minimum levels of protection.
- In line with the current 2019 Recommendation, the provisions concerning financing of self-employed schemes could be further specified in legislation: what is to be considered as self-employed income, possible grounds for exoneration from the payment of contributions, exemption for marginal income, etc.

Both the European Pillar of Social Rights and the 2019 Recommendation have acted until now as a framework setting out the main challenges and the major elements that need to be taken into account when developing social protection schemes for the working population. They indicate the strands and elements relevant for country reporting in the ongoing monitoring processes. However, they could also serve as a basis for further legal development of the minimum requirements which countries have to respect when developing social protection for professionally active persons. In a way they encapsulate the European social model for social protection, yet there is still no tool which can be used to check whether certain rules or planned changes in the system align with the minimum requirements reflecting the model. Such a specific tool could be developed in a directive on minimum requirements for social security protection for all working persons (standard or non-standard, in a relationship of subordination or self-employed).

As such an initiative would incorporate all professionally active persons, it will need to use as a legal basis both Article 153, par. 1 (c) TFEU and one or more of the flexible competence clauses in the Treaty (Article 352 TFEU; Article 115 TFEU). Here too the issues explained in the previous chapters will emerge, making the initiative rather challenging. Although alternative legal bases could be justified, such as Article 21 TFEU (social citizenship; Aranguiz 2022) and Article 175 TFEU (social cohesion; Aranguiz and Houwerzijl 2022), these are still not generally accepted for use in the field of social security harmonisation. Further reflection is therefore required on how to make the legal basis in the current Treaties more robust for future legal initiatives involving non-standard work and in particular the self-employed. This would be in line with the overall philosophy of the 2019 Recommendation, which calls for a labour status-neutral approach when designing social protection for working persons. In a similar fashion, the articles (legal bases) upon which legal action can be taken, and even more broadly, all EU secondary legislation, should be checked as to its labour status neutrality. Indeed, instead of focusing on the EU definition of a 'worker', which is politically unfeasible at this stage but also not widely accepted within the services of the Commission (Interview European Commission 2), a better option would be to work in a way which is labour status neutral; legal practice shows that where there is equal protection across professional groups, definition issues in the field of social security law become less relevant.

Even with a neutral approach, there is still a need to define the labour groups, in order to ensure application of the correct specific rules on implementation (as the self-employed do work differently). However, the definition would, in this case, be used to apply the correct implementation rules, no longer referring to more fundamental questions on how much it will cost to work or how much coverage the person will enjoy. These practical legal questions are less 'explosive' than the more fundamental question of costs and coverage levels (Schoukens 2000), but also reflect one of the objectives of the Recommendation: a level playing field in relation to social security: the cost of hiring work should be neutral in terms of social security status.

We make a first proposal along these lines in relation to the legal basis for competence. This can be found further down, in the third section of this report.

## 2. Further follow-up of the content of the 2019 Recommendation using existing legal and non-legal instruments

In this part we discuss the 2019 Recommendation as it stands, with further development of the monitoring framework as well as continuation of the monitoring through other EU instruments and processes. Firstly, we propose to further improve/develop the indicators used within the monitoring framework. Second, we propose some ideas to further streamline the monitoring by use of other EU (future) instruments and procedures (e.g. the European Semester and the Directive on improving working conditions in platform work <sup>(15)</sup>; hereinafter the 'Platform work directive'). Indeed, the 2019 Recommendation needs to take account of new initiatives, such as the upcoming directive on platform work and the 2023 Recommendation on minimum income <sup>(16)</sup>. From a cross-cutting perspective, the question is how these instruments should be read and applied together to ensure consistent implementation at EU and national level.

In the context of the 2019 Recommendation, the aim must be to ensure continuous monitoring. This should safeguard two objectives:

- To ensure that the text will be applied in line with the current development of social security systems in the EU (i.e. that the text will be updated, without reducing the guarantees); and
- To ensure consistency with other European or international instruments.

In line with the first objective, the monitoring must keep up with any further changes that may occur at national level in the coming years. In its first four years, the 2019 Recommendation has already been faced with the global Covid-19 crisis and how this was tackled in (European) social protection schemes: 'income protection schemes in case of temporary unemployment due to external situations'. This response now needs to be reflected in the current text: how can the underlying principles of the 2019 Recommendation be applied in these temporary protection schemes and what kind of guidelines could be developed on the basis of these principles?

The Belgian Presidency could take a leading role in developing a new monitoring approach applying the two objectives referred to above. More specifically, it could work on the issues of temporary protection (how to integrate this new phenomenon into the current legal instruments) and adequacy (how the 2019 Recommendation should relate to the 2023 Recommendation on minimum income and other international instruments).

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15. <https://www.consilium.europa.eu/en/press/press-releases/2024/03/11/platform-workers-council-confirms-agreement-on-new-rules-to-improve-their-working-conditions/>

16. Council Recommendation of 30 January 2023 on adequate minimum income ensuring active inclusion (2023/C 41/01)

## ***2.1 Continuation of the monitoring framework through improved indicators***

Indicators are essential tools for monitoring. It is vital to regularly update them, improve them, and create new indicators in order to continue developing the pillars of the 2019 Recommendation and more generally Principle 12 of the EPSR.

### **2.1.1 Context**

The monitoring framework on access to social protection for workers and the self-employed provides a quantitative and qualitative overview of the progress Member States have made towards the targets outlined in the 2019 Recommendation. The original version zero of the monitoring framework (European Commission and SPC 2020) has undergone one partial update containing revisions and clarifications of some key indicators (European Commission and SPC 2021b). In 2022, the Joint Research Centre conducted a review of the monitoring framework with a focus on effective coverage and adequacy (Antón and Grande 2022). The monitoring framework is developed and overseen by the Indicators Sub-Group (ISG) of the SPC.

The indicators on access to social protection are grouped into three main categories: 1) performance indicators focusing directly on the outcomes of the Recommendation; 2) context indicators describing the prevalence of non-standard employment and self-employment; and 3) policy levers describing the existing social protection schemes in Member States. In this report we focus on the performance indicators, since they are central to evaluating the effectiveness of the Recommendation. Performance indicators are further divided into indicators on formal, effective, and adequate coverage. In the light of our suggested follow-up action on transparency, we also encourage the development of performance indicators on this topic (see also Section 2.1).

The main data source for performance indicators is the EU-SILC, supported by data on formal coverage collected from national reporting. Indicators on the labour market context are mainly derived from EU-LFS and the policy levers are obtained from the MISSOC database. These indicators have revealed the generally good progress made by Member States in improving access to social protection for non-standard workers and the self-employed, while highlighting some comparability issues and several ways in which the indicators could be improved.

### **2.1.2 Issues linked to current indicators**

The main limitation with the indicators currently used in the monitoring framework is the scope and accuracy of the underlying data in relation to specific work statuses. In this section we outline potential focus points for improvement in methodology and statistical data collection, broken down into indicators on formal, effective and adequate access as well as transparency. These suggestions are a further development of the issues identified by the European Commission and SPC in the monitoring framework reports as well as the JRC review (Antón and Grande 2022).

## **Formal access**

- More detailed information on persons lacking formal access.

Formal access to social protection is defined following a two-step approach: the number of non-standard or self-employment contracts lacking formal coverage in a social protection scheme, followed by the number of contracts belonging to a voluntary social protection scheme. These data are obtained through 'ad hoc' data collection from the national reporting of Member States. Data collection processes and sources vary by country, and 8 Member States did not provide any data in either 2020 or 2021 (European Commission and SPC 2021b: 14) <sup>(17)</sup>.

For practical reasons, these indicators focus on the number of *contracts* rather than the number of *individuals* lacking formal access. While closely related, these numbers are not necessarily equivalent (e.g. due to persons holding multiple employment contracts). The data may also misidentify the status of non-standard workers with marginal labour market attachment, who may have formal access to social protection through a co-insurance scheme or a job that they are holding during a time outside of the data collection period. Examples include short-term, seasonal or casual employment, students performing internships, trainees and apprentices (European Commission and SPC 2020: 34-5; European Commission and SPC 2021b: 14). The issue of rapidly changing labour market statuses is far from trivial, as Antón and Grande (2022: 8) calculate that the most frequent activity status for more than 50% of temporary workers observed in EU-SILC in 2021 was 'not in employment'.

A further question for the monitoring framework is how to identify and report formal access to schemes relating to risks partially covered by residence-based, general social insurance schemes (outside the scope of the 2019 Recommendation), in addition to voluntary, earnings-related top-up insurance (within the scope of the Recommendation). Unemployment insurance in particular is organised in several Member States according to this principle.

- Expanding and harmonising the statistical definitions of non-standard employment and self-employment.

From a research perspective, the lack of consistent definitions of 'employee', 'worker', 'non-standard worker' and 'self-employment' presents considerable challenges for the production of comparable statistics. Distinctions between these types of employment not only vary between countries, but in many Member States the definition of 'employee' differs between employment, tax, and social security legislation (European Parliament 2017: 71-2). Harmonising the legal definitions of different employment types across the EU may be politically too ambitious for the

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17. Member States that did not report any data on formal access: BG, DK, HR, MT, PL, PT, RO, SI.

Presidency, but encouraging greater use of register data would be a useful alternative strategy to gain more accurate statistics on access to social protection.

From 2021, the EU-LFS contains more detailed categories of non-standard employment and economically dependent self-employment. However, these new categories are not implemented in EU-SILC because the labour market is 'not at the core of this survey' (European Commission and SPC 2020: 212) and small sample sizes may not permit the identification of such relatively rare employment types. Moreover, the statistical definitions do not necessarily match the national legal definitions. The Belgian Presidency could consider action on this issue, which has both statistical and substantive implications for the workers in this legal grey area.

### **Effective coverage**

- Better measurement of income for the self-employed.

Indicators on both effective and adequate coverage of social protection rely heavily on income data from EU-SILC, which is used to calculate the at-risk-of-poverty rate (AROP) <sup>(18)</sup>. The income measurement suffers from some well-known limitations, especially for self-employment income (PY050), which is not fully comparable between Member States due to different legal definitions and data collection strategies (European Commission and SPC 2020: 197). Even if the data collection were harmonised, self-reported income alone is not a reliable indicator of the adequacy of social protection for the self-employed, as these workers often have incentives to under-report their true earnings or under-contribute to social protection systems (Spasova *et al.* 2017; Horemans and Marx 2017). Therefore, the AROP rate for the self-employed tends to be higher than for workers. As an interim solution before better income data is available, effective access particularly for the self-employed should be monitored following the 'triangulation strategy' of jointly assessing AROP with the indicator on material and social deprivation. This indicator, representing the inability to afford some items considered by most people to be desirable or even necessary to lead an adequate life, shows very similar and often even more favourable rates for the self-employed compared to workers.

- Greater focus on estimating the non-take-up of benefits.

The two indicators used for assessing effective coverage, the benefit receipt rate for the population AROP before social transfers and the coverage of unemployment benefits for the short-term unemployed, are only imperfect proxies for the concept of effective coverage as defined in

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18. The at-risk-of-poverty rate is defined as the share of persons with an equivalised disposable income below 60% of the national equivalised median income. It is one of the three components making up the at-risk-of-poverty-or-social-exclusion (AROPE) indicator, the headline indicator for the EU 2030 targets on the implementation of the European Pillar of Social Rights.

Article 7 (f) of the 2019 Recommendation. Presently available survey data are not sufficiently detailed to identify whether non-standard or self-employed workers exposed to a labour market risk truly 'have an opportunity to accrue benefits' or 'access a given level of benefits'. In particular, these indicators fail to identify people who have access to specific (levels of) benefits but do not take them up for various reasons (lack of awareness, stigma, administrative burdens, etc.). Further work on non-take-up, for instance through richer data sources, could help to better monitor effective coverage.

- Encouraging greater use of administrative and register data, especially for monitoring effective and adequate coverage.

EU-SILC and EU-LFS suffer from the conventional limitations of household surveys, including sample sizes and (non-)response bias. These issues are more severe, the smaller the type of non-standard employment as a share of the labour force in a particular Member State, and in relation to questions such as the above-mentioned self-reported income of the self-employed, but also the issues related to effective access for such groups. Indeed, even if, in general, most workers have formal access, they may not meet the eligibility conditions and may be subject to restrictive periods of receipt of benefits. The survey data are also limited by the number of statistical categories for different types of non-standard employment (Interview European Commission 3). In view of Article 17 of the Recommendation <sup>(19)</sup>, Member States' statistical agencies could look into greater use or sharing of administrative data to evaluate the effective coverage and adequacy of social protection for small and vulnerable groups (Antón and Grande 2022: 59). Attention needs to be paid to a systematic and structured method of data collection and standardised definitions, so as to make the national data useful for cross-national comparisons and monitoring.

- Greater use of microsimulation modelling in estimations of effective and adequate coverage.

Tax-benefit microsimulations using EUROMOD allow researchers to produce dynamic simulations of the outcomes of various adjustments to social protection schemes, taking behavioural responses into account (Antón and Grande 2022: 60). This type of analysis is additional to the yearly monitoring of outcomes, but is a promising avenue for the analysis of effective coverage and adequacy, for instance in forecasting the effects of national reforms to social protection systems (European Commission and SPC 2020: 198). It is also valuable for assessing the adequacy of benefits for representative household units or vulnerable groups (e.g. quasi-jobless households). However, since the input data for EUROMOD is derived from EU-SILC, it does suffer from the

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19. REC 2019/C 387/01 Article 17: 'Member States are recommended to collect and publish, where possible, reliable national statistics on access to the various forms of social protection, for example broken down by labour market status (self-employed/employee), type of employment relationship (temporary or permanent, part-time or full-time, new forms of work or standard employment), gender and age.'

limitations discussed above, particularly when estimating coverage for very small sub-groups of non-standard or self-employed workers.

### **Adequate coverage**

- Further specifying the definition of adequacy within the Recommendation and in related EU policies.

One of the major drawbacks of the 2019 Recommendation is the lack of clarity surrounding adequacy of social protection. Article 11 of the Recommendation calls upon the EU Member States to guarantee adequate benefits, but is formulated in an open way. Such an approach is different from international social security standards specified by the ILO and the Council of Europe. The latter explicitly spell out what they mean by adequacy by outlining the minimum percentages of income replacement that member states should provide (Council of Europe 1964, 1990). Although clear criteria are missing, Article 11 of the Recommendation strongly reflects the protection logic underlying traditional social security design in insurance-based schemes in Member States. Social protection benefits should guarantee workers and the self-employed a decent standard of living, and when social protection is work-based, it should preferably reflect the previously earned income. Furthermore, the 2019 Recommendation also makes clear that the underlying intention is to prevent those persons, in any event, from falling into poverty (prior observation 17 to the 2019 Recommendation; Schoukens and Bruynseraede 2021). However, again, the 2019 Recommendation does not spell out any clear criteria to define what 'keeping out of poverty' means. Indeed, back then in 2017-2018, the policy context was such that it was difficult to further develop the issue of adequacy in the 2019 Recommendation. However, these reasons were not per se linked to strong political opposition from the Member States (Interview European Commission 1bis). So, there is a real scope to continue developing the definition and methodology on adequacy, which could not be done back then for context-related reasons.

Research conducted by the EuSocialCit project analysing the present and future of European social citizenship (Keune 2024) also highlights that the guarantee of 'adequate social protection' in principle 12 of the European Pillar of Social Rights, and the entire third chapter on the topic of Social Protection and Inclusion, has so far been implemented only to a 'limited' or 'insufficient' extent, compared to the more directly employment-related first and second chapters, where legislative implementation has been more thorough (Ferrera and Bruno 2023). It is likely that this also reflects the policy context around minimum incomes and non-work-related social protection, as presented above.

Furthermore, in the absence of more specific definitions of adequacy, e.g. suggested replacement rates for contributory benefits, the indicators used in the monitoring framework for adequate coverage largely focus on the prevention of poverty, building on a long-standing tradition at EU



level. While this is in line with Article 11 of the 2019 Recommendation, requiring that ‘when assessing adequacy, the Member State’s social protection system needs to be taken into account as a whole’ and the importance of preventing people falling into poverty, it makes it more difficult to identify the adequacy of the social security benefits alone within the scope of the Recommendation.

Moreover, due to the limited scope of the 2019 Recommendation, no clear picture is given of the different levels of social security, social assistance and other benefits/labour market policies. However, the importance of the overall social security system became evident (again, as also shown by earlier research) when researchers for the Working Yet Poor project (hereinafter: WorkYP project) tested the social security benefits received in the event of unemployment and sickness by four groups of professionally active persons <sup>(20)</sup>, assessing their levels of adequacy <sup>(21)</sup>. It turned out that for these vulnerable groups of workers (in unskilled and/or non-standard work), family benefits, social assistance benefits and, overall, socio-fiscal allowances/benefits play a particularly important role in guaranteeing them ‘adequate’ protection, in addition to the social insurance benefits they receive in case of sickness and unemployment <sup>(22)</sup>.

The 2019 Recommendation does not consider the composition of the household in which the worker or self-employed person finds himself; it merely addresses social protection from an individual perspective. Yet family benefits, social assistance and socio-fiscal allowances/benefits depend largely on the family composition of the worker (i.e. number of dependent family members, number of professionally active persons, income generated by each family member, etc.). It is questionable whether any analysis of the adequacy of social security benefits which excludes social assistance (incl. minimum income schemes), family benefits and other social-fiscal allowances/benefits, can provide an accurate representation of the social security situation of non-standard and self-employed workers. Such schemes can also play an important role in protecting a person’s previous living standard and/or keeping him/her out of poverty. Diversity in work patterns must also be taken into account, as combining different activities at the same time or over a longer period of time can lead to the loss of social security rights.

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20. The groups were the following: 1) low-skilled employees on low wages; 2) bogus and solo (economically) dependent self-employed persons; 3) flexible workers (part-time workers, workers with fixed-term contracts and temporary agency workers); and 4) casual and platform workers.

21. For these calculations, the WorkYP project only looked at group 1, group 2 and group 3 (part-time workers) (as mentioned in the previous footnote). The data needed to calculate sickness and unemployment benefits for the casual and platform workers in group 4 were not available (De Becker 2023).

22. Although the findings from the WorkYP project made it clear that not all benefits received by non-standard workers (taking into account different household compositions) reached the AROP thresholds in the respective countries (De Becker 2023).

The Belgian presidency could focus on further strengthening the notion of adequacy. This can be done by including more clearly the principles underlying social security schemes (the principles of equivalence, proportionality and solidarity) in the monitoring framework. Moreover, when measuring adequacy, a broad view should also be taken of social security, social assistance and other social/labour-market policies. Hence, **it would be good have a clear set of rules on how benefit levels are to be tested in an integrated manner and which household compositions are to be used for this purpose.**

- Moving towards a two-step identification of adequacy of social protection.

In the absence of a clear-cut EU framework on adequacy and given the difficulty of developing indicators for social security benefits, we propose to make use of 'hypothetical cases' (see also EU Commission and SPC 2021a: 66 for pension benefits and the method applied in De Becker 2023) and map the protection granted to those cases in terms of social security as well as other benefits (e.g. social assistance, socio-fiscal welfare benefits, child-care benefits, impact of social security contributions, taxes, etc.).

We suggest working with the following four vulnerable and underrepresented groups, identified in the WorkYP project: 1) low-skilled workers on low wages; 2) bogus and solo (economically) dependent self-employed persons; 3) flexible workers (part-time workers, workers with fixed-term contracts and temporary agency workers); and 4) casual and platform workers. Social protection seems particularly poorly equipped to help these groups. To define the income of the various hypothetical households, we can make use of EU-SILC data (e.g. group 1, 2 and 3); this will be more difficult for group 4, as EU-SILC data are not suited to research on this group (see the discussion on the different groups in Ratti *et al.* 2022: 32-33). EU-SILC data have certain limitations and are not a perfect fit with the various groups set out above. As already mentioned, EU-SILC does not provide information on the income of economically dependent self-employed people but only for self-employed without personnel (e.g. small sample sizes for certain groups, etc.); however, it can provide an important first step. In a later phase, via EU or national data, more information can be gathered about the income earned by the different hypothetical cases.

We also propose to further define the hypothetical cases, taking account of different household compositions, e.g.: 1) single person; 2) single person with two young children; and 3) breadwinner with a partner who does not work and two young children. Such cases should highlight the gender dimension, in line with the Gender Equality Strategy and the need for gender mainstreaming in EU policies. We build on the method applied by the ILO and the Council of Europe, which, in their international social security standards, consider two household compositions (i.e. single person and breadwinner). Furthermore, this way of working also allows us to map the impact of different social security benefits, as some benefits also take the household composition into account.

**In order to measure whether benefits are adequate, we suggest the following two-step approach, applied to the different hypothetical cases** <sup>(23)</sup>:

- **Step 1** – Review whether or not social security systems ensure that a person can maintain their previous standard of living; use could be made of the replacement ratios in the international standard-setting instruments (ILO Convention no. 102 and/or the (revised) European Code of Social Security) to check whether the benefits for the hypothetical cases reach the replacement ratios. The EU could in the coming year also adopt its own adequacy framework (covering different non-standard work forms and a range of household compositions, as suggested above), or work closely together with the ILO and the Council of Europe to develop such an updated framework.
- **Step 2** – Review whether or not the benefits received in the occurrence of a social risk reach the AROP threshold in the various hypothetical cases. The EUROMOD simulation tool <sup>(24)</sup> can play an important role in calculating net income and mapping the various benefits to which a person – in a representative household unit – is entitled. As EUROMOD builds on EU-SILC data, it has its limitations (see also the previous discussion): it can nevertheless serve as a first tool which should be further developed and refined in the coming years. Use can also be made of other calculation methods, such as reference budgets <sup>(25)</sup>.

When analysing the protection provided by national social security systems and ratios, sufficient attention should be paid to the impact of taxes, social security contributions, other social benefits and socio-fiscal welfare. Both the gross and net income replacement ratios should be considered, as well as net income (also taking into account additional benefits, such as social assistance, etc.). The approach set out above should allow the EU to map whether or not national social security schemes achieve the two goals set out in the 2019 Recommendation, i.e.: 1) to protect the

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23. The comparative report on social security (De Becker 2023), drafted as part of the WorkYP project, used the social security standards formulated by the ILO (Convention no. 102) and the Council of Europe (the (revised) European Code of Social Security). This report examined the (gross) income-replacement unemployment and sickness benefits received by the selected non-standard and self-employed workers. Adequacy in this report was defined as respect of the international social security standards adopted by the ILO and the Council of Europe. In addition, this paper also tried to map the net income of non-standard workers, for different household compositions. For that reason, the comparative report on social security produced for WorkYP looked at the impact of social security contributions and taxes, using a simulation tool (EUROMOD), for three hypothetical households of the selected non-standard and self-employed workers. This tool provided insights into the net replacement ratios and checked whether the net income reached the AROP threshold. Earlier research by Van Limberghen *et al.* (2020 and 2021) used a similar working method.

24. EUROMOD is a tax-benefit microsimulation model for the European Union that enables researchers and policy analysts to calculate, in a comparable manner, the effects of taxes and benefits on household incomes and work incentives for the population of each country and for the EU as a whole, [here](#).

25. See also Goedemé T. *et al.* (2019). Also see, in the same volume, Cantillon B. *et al.* (2019) 'Toward a decent social floor for all Europeans', p. 276 and particularly the following statement: '*the contextualization of the thresholds by means of the reference budgets [...] estimate the minimum financial resources that a household requires for adequate social participation*'.

previous standard of living of workers and self-employed; and 2) to ensure that those persons do not fall into poverty. Moreover, the hypothetical cases approach can also be used in different policy domains, e.g. the follow up to the 2019 Recommendation, the 2023 Recommendation on minimum income and the Platform work directive.

- Improving the comparability of data on social benefits, most importantly pensions.

After unemployment benefits, access and adequacy of pensions is the second most important concern for workers in the EU (European Commission 2018). However, comparable data on the level and adequacy of pensions are not easily available, due to the complex multi-pillar pension systems in different Member States. This issue is particularly acute for non-standard workers and the self-employed, who may be disadvantaged by fragmented careers, career interruptions or low contributions (European Commission and SPC 2020: 201). While statutory pensions are mandatory for all types of workers in the Member States, occupational pension systems may disadvantage non-standard workers if they have been designed for workers in standard employment relationships (Avlijaš 2020: 57). Potential data sources for an in-depth analysis of pensions adequacy include SHARE, ESSPROS and Member State administrative data, building on the special feature on pensions adequacy for non-standard workers and the self-employed in the 2018 Pensions Adequacy Report (European Commission and SPC 2018).

### **Transparency of access**

- Developing new indicators on transparency.

Currently there are no indicators on transparency in the monitoring framework. In line with our suggestion for further action on this topic, we propose that the thematic reviews, evaluations or surveys on the performance of national systems are used to develop indicators for monitoring transparency. Since there are no readily available survey data at the EU level for the development of such indicators, the first stage of indicator development would likely have to rely on 'ad hoc' national data collection. These indicators should be designed according to Atkinson's principles, i.e. having a clear normative interpretation, statistical robustness, international comparability, and being measurable without imposing an excessive burden on statistical agencies (Marlier and Atkinson 2010). Potential indicators on transparency could focus on measuring the share of people who are (un)aware of their rights and obligations under social protection schemes, or quantifying the availability of general and/or personalised information regarding access to social protection (European Commission and SPC 2020: 209-10). These indicators should be broken down by labour market status, in line with the existing indicators in the monitoring framework.

## ***2.2 Monitoring of social protection issues through other instruments and processes***

### **2.2.1 Monitoring social protection for platform workers within the framework of the Directive on platform work**

- **2.2.1.1 Context**

The proposal for a Directive on platform work (hereinafter: the Proposal) was presented in December 2021 and adopted in March 2024.

While social protection was a central theme in the first-stage consultation organised by the European Commission with the social partners, this scenario changed during the negotiations of the text (Spasova and Marengo 2023). The Proposal did not refer to social protection as such but assumed that it will trickle down from the employment status: 'the general objective of the proposed Directive is to improve the working conditions and social rights of people working through platforms [...]'. Among the specific objectives through which the general goal will be pursued, the Proposal highlighted the need 'to ensure that people working through platforms have – or can obtain – the correct employment status in light of their actual relationship with the digital labour platform and gain access to the applicable labour and social protection rights' (European Commission 2021c). This approach clearly reveals that the Proposal considered improvements in social protection as dependent on the classification of the contracts in question. The text of the Directive adopted in March 2024 makes such improvements hard to achieve as it does not introduce a Europe-wide presumption of employment. Consequently, the categorization of platform workers within contractual frameworks will remain predominantly subject to the discretion of individual Member States. This is likely to lead to weak national presumptions of employment and therefore will probably not result in better social protection for platform workers.

- **2.2.1.2 Opportune goals for the Belgian Presidency**

Research also points to a more general issue with regard to reclassification of statuses. While employment protection is certainly made available to those who are reclassified as workers, they may still face significant protection gaps, as they will likely be employed via non-standard contracts, such as temporary or part-time contracts, which provide only restricted access to social protection. Indeed, in most cases, access to insurance-based schemes is subject to long contributory periods, and platform workers, even with the status of a salaried worker, may not have a sufficient contributory history to meet the requirements. As Hooker and Antonucci note (2022: 9), 'in Member States that, like Spain and Sweden, have already taken measures to reduce false self-employment among platform workers, platforms have used exactly such employment forms to minimise their responsibilities towards workers' (see also Friedrich Ebert Stiftung 2022). For example, in Sweden, delivery platform workers are usually employed on one or three-month worker contracts, renewable according to their performance. Although they enjoy some

advantages as workers and are covered by collective agreements, Hooker and Antonucci show the significant employment insecurity – and associated financial difficulties – that they continue to face despite being employees (2022: 15).

For these reasons, we argue that **social protection of platform workers should be monitored regardless of their contract classification, applying an approach that takes into account their working conditions and actual access to social protection**. However, despite being mostly focused on employment status, the ideas on how to monitor the correct contract classification of platform workers discussed in the Proposal are also promising in terms of social protection monitoring.

In order to increase legal certainty, some Member States have already taken measures in this regard. In Austria, for instance, since 2017, a more detailed verification is now undertaken when a person registers with the Social Insurance Institution of the Self-Employed (SVS) as self-employed in 'free craft and trades' (*freies Gewerbe*), a category requiring no training or authorisation, the so-called 'new self-employed'. The aim is to ascertain ex ante whether or not the person is indeed self-employed. To this end, applicants for insurance now have to fill in a rather detailed questionnaire, reporting on the tasks they plan to perform, on organisational issues and on their links with (potential) customers. The results of this assessment are then evaluated both by the SVS and by the Austrian Health Fund, the health insurance provider for dependent employees/workers (Fink 2022).

The Proposal also highlighted the need to 'strengthen the controls and field inspections conducted by labour inspectorates or the bodies responsible for the enforcement of labour law'. Recent research has indicated that such measures would directly equip social security authorities with the necessary – and thus far evasive – information to enforce platforms' fiscal and social security obligations (Hooker and Antonucci 2022).

We believe that the Belgian Presidency could further promote the **issues related to social protection of platform workers in the monitoring framework of the directive**.

- Firstly, formal and effective access of platform workers could be monitored through SPC (or joint EMCO-SPC) thematic reviews, especially in cases where their status has been reclassified.
- Secondly, it will be also important to monitor the capacity of social protection authorities to deal with the above-mentioned issues.

However, it should be also acknowledged that the issues concerning platform workers also apply to a much broader contingent of workers in various sectors, i.e. the dependent self-employed. The

social protection situation of platform workers, could, thus, also be followed using the monitoring framework of the 2019 Recommendation (Interview European Commission 3).

## **2.2.2 Monitoring access and adequacy through the European Semester and the EU Recovery and Resilience Facility**

### **• 2.2.2.1 *European Semester***

Monitoring of the 2019 Recommendation through the EU Semester will definitely continue, as this is one of main venues for this task (Interview European Commission 3). Although within the European Commission there is internal ‘competition’ as to the topics to be included in the CSRs, there is certainly much more potential than currently deployed for CSRs on social protection (Interview European Commission 3). As the European Semester is primarily a data-driven process, the question of robust indicators on social protection is essential (Interview European Commission 1bis). Just before Covid-19, only a few CSRs on social protection were issued, including the most ‘famous’ recommendations on the Dutch situation (in 2016 and 2017). In these, the EU called for measures to tackle issues related to the steep increase in the number of self-employed without employees, including the promotion of ‘access of the self-employed to affordable social protection’.

By contrast, in 2020, the number of social CSRs and in particular those related to social protection increased significantly. Importantly, among the latter, several concerned income support and short-time work schemes <sup>(26)</sup> (for an overview see Rainone 2020). However, 2020 was an outlier year, an unprecedented context linked to the pandemic during which there were no macroeconomic recommendations and the adequacy of national protection systems was under the spotlight. In the 2022 cycle, the number of CSRs on social protection decreased. However, although there has been a general decrease of CSRs relating to social issues, there is a continued emphasis on social protection and assistance (see also the discussion in De Becker 2024, forthcoming). There is only one explicit recommendation on addressing gaps in access for the self-employed – again to the Netherlands: ‘promote adequate social protection for the self-employed without employees, tackle bogus self-employment and reduce the incentives to use flexible or temporary contracts’ (for an overview see Rainone 2022; see also the discussion in De Becker, 2024 forthcoming). The European Commission recognises that there is future scope to continue monitoring the topics which we discuss in Section 1, through the Semester (Interview European Commission 3).

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26. We do not provide an exact number because various methodologies have been used to determine what is a ‘social protection’ CSR, and the number thus differs between different sources that we have consulted – The European Commission (Interview European Commission 3), Lelie P. (2021), Rainone S. (2020). However, the above-mentioned trends seem to be confirmed. We suggest that readers refer to the specific social protection branches/topics they may be interested in (e.g. unemployment, long-term care, non-standard work and self-employment, short-time work etc.).

Monitoring of social protection topics could also be further reinforced through the multilateral surveillance carried out by the Social Protection Committee in the context of the European Semester. The SPC, jointly with EMCO, conducts multilateral reviews on points of common interest related to social protection and inclusion in the labour market. In this respect, it is important to acknowledge that the Joint Employment Report is not only focused on employment but also on social matters, and that the SPC is directly involved. The name of this report has changed over the years, but the Belgian Presidency could usefully reflect on how to better acknowledge the role of the SPC, and thus the social issues discussed in this report.

Reviews of national reforms agreed in the CSRs, in place since 2011, are a key dimension of multilateral surveillance. During the 2022 European Semester cycle, the SPC conducted 32 multilateral reviews (some jointly with EMCO), as well as an in-depth thematic discussion on social protection and social inclusion. These in-depth thematic discussions, on each policy area under the Committees' competence, have been significantly reinforced in 2022 (SPC Annual Report 2022).

- **2.2.2.2 *Scope for monitoring social protection through the resilience and recovery plans?***

Highlighting social protection issues through the CSRs is a challenging process as is, even more so, their actual implementation by the Member States. There is also scope for monitoring such issues through the Recovery and Resilience Facility (hereinafter: RRF), since the Commission has a steering role in the process (Interview European Commission 3; Vanhercke and Verdun 2022).

Bokhorst (2023) argues that a key innovation of the RRF is the 'performance-based financing' approach. This foresees much greater detail in the plans than previously in the European Semester, and an enhanced monitoring role for the European Commission. Indeed, to gain access to the funding, Member States need to show how their plans address the challenges set out in the European Semester's CSRs, many of which concern the adequacy of social provisions and the longer-term challenges facing the welfare state (Vanhercke *et al.* 2023). Although there is no defined 'social' target in the RRF (which does have climate and digital targets), one of its key goals is to mitigate the social and economic impact of the crisis, especially on women, children and young people <sup>(27)</sup>, in line with the EU 2030 headline targets on employment, skills and poverty

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27. The Facility supports EU Member States in their implementation of employment and social measures linked to initiatives such as the Recommendation on an effective active support to employment following the Covid-19 crisis (EASE), the Communication on youth employment support and the Recommendation on a bridge to jobs – Reinforcing the youth guarantee, the Recommendation on vocational education and training (VET) for sustainable competitiveness, social fairness and resilience, the Recommendation establishing the European Child Guarantee, the Strategy for the Rights of Persons with Disabilities 2021-2030, the European Skills Agenda for sustainable competitiveness, social fairness and resilience, the European Education Area and the Digital Education Action Plan, the EU Anti-racism Action Plan 2020-2025, the EU Roma strategic framework for equality, inclusion and participation, the Gender Equality Strategy 2020-2025, the LGBTIQ Equality Strategy 2020-2025, the Communication on



reduction in the European Pillar of Social Rights Action Plan. Moreover, in the Delegated Regulation on the methodology of social spending (September 2021), the Commission defined a methodology for reporting social expenditure – including for children, young people and women – under the RRF so that the Member States can report on the reforms and investments financed by the Facility which have a social dimension. Each measure of a social nature that includes a focus on children and young people, or on gender equality, should be flagged, allowing for specific subsequent reporting on expenditure focused on these three dimensions (Spasova *et al.* 2022).

It is important to consider that two thirds of the Member States have, in their Recovery and Resilience Plans (RRPs), proposed measures (e.g. reforms, investments) concerning access to social protection (European Commission Interview 3). Indeed, no less than nineteen Member States have proposed measures (in some cases more than one) to improve their social protection systems. Of these measures, sixteen relate to improving either formal or effective access, eleven are initiatives to enhance transparency, while only four focus on adequacy. Regarding formal and effective access to social protection, for example, Cyprus presented a reform aimed at extending and improving coverage of unemployment benefits, accident-at-work benefits and occupational disease benefits, particularly for self-employed people and those working on a contract or in new forms of employment (such as platform workers). One of the transparency measures is reported in the RRP from Belgium, which aims to invest in a digital platform for interaction between the Social Security administration and the citizens and businesses of the Federal State, with the following objectives: 1) to provide better access to social security services for citizens and businesses, including the self-employed; 2) to achieve performance gains for administrations and businesses; and 3) to make Belgian social security more accessible in a European context. Finally, among the few measures related to adequacy is a reform, in Croatia, aimed at strengthening the system to include and monitor vulnerable groups in the labour market; to this end, employment service processes will be improved by, *inter alia*, increasing the amount and the duration of unemployment benefits (see also the discussion in De Becker, 2024 forthcoming).

It is important to recognise that the whole discussion on the RRF should be seen from a forward-looking perspective linked to the reform of the fiscal and economic governance of the EU. The RRF financing is a one-off, linked to unprecedented circumstances. In a nutshell, before the RRF, a relatively soft approach was taken (linking CSRs to the ESF+). Under the RRF we see a strengthening of the link between funding and reforms, with the Commission in the driving seat (see Bokhorst 2023), and in the future (the EU's economic governance reform) this link is expected to become more rigid - the CSRs may determine national reforms. Again, if adequate access to social protection is to become a 'competing' area among other social issues, there is a

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building a European Health Union, the Pharmaceutical Strategy for Europe, and Europe's Beating Cancer Plan (European Parliament and Council of the EU 2021).

glaring need for the right methodological tools (i.e. indicators) (Interview European Commission 1bis). More generally, the Economic Policy Committee is dominant in the RRF process. An idea for the future shape of the EU fiscal and economic governance would be to strive for involvement of the SPC and EMCO in these processes (Interview Bokhorst).

More generally, the existence of such reforms (many of which are in line with previously issued CSRs on adequacy of social benefits) provides DG Employment, and in particular the social protection unit, with 'ideational' impetus to further push forward such ideas through the European Semester, which is used as a forum for monitoring the proper implementation of the RRF (Bekker 2021).

In the next section, we discuss some proposals for action to put to the Belgian Presidency, in order to strengthen social protection issues within the European Semester and support the European Commission in placing more social protection issues at the forefront of the European Semester.

- **2.2.2.3 Stronger focus on social protection in the European Semester**

The future Belgian Presidency could encourage inclusion of the topics discussed in Section 1 (e.g. JRS, transparency, etc.) in the European Semester.

Whilst the EPSR, the social scoreboard accompanying this document, and recent follow-up instruments (such as the 2019 Recommendation) already shape more clearly what the EU social model stands for, it is still difficult to discern a clear and coherent view of this notion in the EU Semester. Furthermore, the current social indicators in the social scoreboard are still strongly focused on poverty reduction (e.g. the AROP threshold and the material and social deprivation rate). The European Semester, fundamentally, has no detailed set of indicators related to different aspects of social protection.

Below, we develop our proposal to the Belgian Presidency for further strengthening the social security dimension of the EU Semester, in a two-step approach. Step 1 does not require new indicators, but can make use of the existing EU legal and governance framework in the European Semester. In Step 2, we propose to go further; the 2019 Recommendation will serve as an important catalyst to further develop the social dimension of the Semester and, where possible, establish new indicators (on indicators, see section 2.1).

- **Step 1** – develop a clearer focus on the EU's social objectives, horizontal social clause and fundamental social rights in the context of the European Semester. The EU already has a set of (legally binding) fundamental social rights set out in the Charter of fundamental rights of the European Union (CFREU), social objectives in Article 3 TEU and a horizontal social clause in Article 9 TFEU. Anchoring these rights and objectives more strongly in the European Semester means that both EU Member States and EU institutions should

implement them in this framework. EU Member States could be asked to explain, in their national reports, current and future measures to achieve social objectives and social rights. The Commission and the Council will, if necessary, explicitly call on EU Member States to (further) respect and implement the fundamental social rights and the social objectives in their national policies, including in the context of the RRF.

- **Step 2** – further develop the social protection dimension of the EU Semester by making use of the 2019 Recommendation and the indicators proposed in Section 2.1 (e.g. the indicators on adequacy). Together with the 2023 Recommendation on minimum income, the social dimension could be one of the pillars of the EU Semester, on an equal footing with other (economic) policies.

Furthermore, an enhanced role for the SPC could be also reflected upon: the SPC could provide more technical assistance to EU Member States, helping them to design their policies.

Our proposal is part and parcel of the reform of EU economic governance (adopted in April 2024), including the discussions on a Social convergence framework. As argued by Vanhercke *et al.* 2023, any reform of the EU's economic governance should be accompanied by a significant strengthening of the EU's social dimension. In this respect, the setting up of a 'Social Imbalances Procedure' (SIP), complementing existing fiscal and macroeconomic procedures, would be a promising step forward (Sabato *et al.* 2022). The call to reform the overall Semester framework is not new: both the European Parliament (28) and the Council (29) have called for a reform of the governance framework of the European Semester. Providing more clarity in the Semester, with a strong and clear-cut social dimension focusing strongly on fundamental social rights and the 2019 Recommendation, could be a possible first step in that direction.

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28. European Parliament, A strong social Europe for Just Transitions (2020).

29. Council Conclusions on Strengthening Minimum Income Protection to combat Poverty and Social Exclusion in the COVID-19 Pandemic and Beyond of 9 October 2020.

### 3. Extending the legal basis in the Treaty

#### 3.1 The current framework

The EU competences in the domain of social security can be found in the social policy chapter of the TFEU. Article 153 TFEU states that the EU shall support and complement the activities of the Member States in the field of: (i) social security and social protection for workers (point c); (ii) the combating of social exclusion (point j); and (iii) the modernisation of social protection systems without prejudice to the competence of the EU in the field of social security and social protection for workers (point c). To this end, the European Parliament and the Council can adopt non-legislative measures. For point c, the European Parliament and the Council can, by means of a directive, adopt minimum requirements for gradual implementation, having regard to the conditions and technical rules in each of the Member States. Although there are no criteria to determine when a provision ceases to be a 'minimum' requirement, this phrase clearly means that EU legislation in the field of social policy can never be exclusive.

In light of the above, the possibility to adopt legal measures in the domain of social security is subject to certain restrictions.

- EU directives in the field of social security and social protection must be adopted unanimously.
- Furthermore, measures taken on the basis of Article 153 TFEU shall not affect the right of Member States to define the fundamental principles of their social security systems and EU action must not significantly affect the financial equilibrium of those social security systems (Article 153 (4) TFEU).
- Article 2 (5) TFEU also states that in matters for which supportive or complementary competences are granted to the EU – which is the case for the social security of workers – such measures may never be of a kind to harmonise national laws.
- Action in the field of social security and social protection (Article 153, par. 1 (c) TFEU) cannot be the subject of a passerelle, moving from the special decision-making procedure to the ordinary (Article 153, par. 2 in fine TFEU), but only the general passerelle clause of Article 48 TEU, involving the national Parliaments (Kotanidis 2020; European Commission 2019).
- Moreover, the scope of Article 153 TFEU also seems restricted to one group in the workforce, i.e. 'workers'. It is still unclear what is meant by 'workers' and whether or not this notion only encompasses 'employees'. The Court of Justice has not yet interpreted the concept of worker in the context of Article 153 TFEU. In some language versions of the

Treaty, such as Dutch and German, the stricter concept of employee<sup>(30)</sup> is used, excluding by definition groups such as self-employed persons (characterised by work in a non-subordinated relationship). Some authors have also argued for a broader understanding of the concept of 'worker' in Article 153 TFEU: more emphasis could be placed on the notion of 'dependency' rather than the formal work relationship; this would then also include 'economically dependent' persons, such as solo (economically dependent) self-employed or (certain groups of) platform workers<sup>(31)</sup>.

Taking into account these restrictions, Article 153 TFEU could nevertheless provide a tool to develop some legal standards in the field of social security:

- The standards developed in the 2019 Recommendation could provide a starting point for reflecting further upon the form that such legal standards could take. In addition to Article 153 TFEU, Article 352 TFEU could be used to develop an instrument potentially encompassing both workers (on the basis of Article 153 TFEU) and the self-employed (Article 352 TFEU).
- A legal instrument in the field of social security could also be tied to specific groups of (non-standard) workers, such as part-time workers, fixed-term workers or platform workers. For some groups (such as part-time and fixed-term workers), EU labour law instruments have already been adopted, although gaps have emerged in the protection they offer. Rethinking these instruments can go hand in hand with developing certain rules on social security coverage (e.g. that formal, effective, adequate and transparent coverage should be guaranteed).

Other legal bases such as Article 21 TFEU (citizenship) and Article 175 TFEU (social cohesion) could potentially also allow the EU to develop social (security) standards (Schoukens 2013; Aranguiz *et al.* 2020). However, this is still very much under (legal) debate and hence both articles could be considered as unstable legal bases for social security (standard-setting) rules until they have been used in (legal) practice.

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30. The German version refers to '*Arbeitnehmer*', the Dutch version to '*werknemer*'; both are stricter in their scope than the more general concept of 'worker' (as used in the English version) or '*travailleurs*' (as used in the French version). The latter concepts are more generic and can also refer to groups of professionally active persons who are not working in a subordinated relationship, such as the self-employed. In the Dutch and German versions, however, it is legally difficult to base any kind of action for the self-employed on this article, as they essentially do not fall within the scope of the more narrowly defined concepts of '*Arbeitnehmer*' and '*werknemers*'.

31. We do not propose to develop the notion of 'worker' in a separate instrument for both labour law and social security. We understood from one of the interviews with the European Commission (N°2), that such a proposal would not be politically feasible.

Article 21 TFEU relates to European citizenship and the right of European citizens to move and reside freely within the territory of the Member States (subject to the limitations and conditions laid down in the Treaties). The article serves as a basis for taking legal action, following the ordinary procedures of co-decision by Parliament and Council and by qualified majority voting by the latter institution. Moreover, in the event that the Treaties have not provided the necessary powers, the Council, unanimously after consulting the European Parliament, may adopt measures concerning social security or social protection. Traditionally, this part of the legal basis for social security is used as a legal basis for the EU social security coordination rules (Reg. 883/2004), which cover professionally non-active persons who move within the EU (for the professionally active this is Article 48 TFEU). However, some legal scholars consider that this article could also be used to develop social security rules at EU level for non-mobile EU citizens, potentially providing a legal basis for minimum provisions in the field of social security (Schoukens 2013; Aranguiz *et al.* 2021). Yet a broad application of Article 21 TFEU to non-mobile EU citizens is not yet broadly accepted.

Article 175 TFEU, on the other hand, is used as a legal basis for actions in the field of (social) cohesion. Social security standard-setting rules (e.g. guaranteeing minimum income protection) could be based upon this article, as they can contribute to social cohesion and upward convergence towards an adequate standard of living (Aranguiz and Houwerzijl 2022): 'article 175 TFEU gives the EU competence to adopt measures to strengthen the economic, social and territorial cohesion of the EU. In order to use this legal competence basis, a minimum income instrument would have the primarily objective to reduce socio-economic disparities across the EU by promoting upward convergence and a more harmonious development of the EU. This would require the EU to prove that such an instrument is likely to significantly contribute to social cohesion'. As the authors indicate, the concept of social cohesion is pretty generally defined and will generate (political) discussions on what social cohesion exactly entails. Cohesion is generally to be understood as mainly aiming to minimize socio-economic gaps and overall inequalities within the EU. Any measure approved on the basis of Article 175 TFEU will need to be justified by showing its specific impact on improving this general social cohesion within the Union, leading inevitably to debate and conflicting arguments (Aranguiz and Houwerzijl 2022). On the other hand, the advantage of this legal competence basis is that the normal legislative procedure can be followed and that measures can be adopted by qualified majority. For the sake of completeness, we mention that a monitoring system is foreseen in Article 175 (2) TFEU: every three years the Commission is required to report to the European Parliament, the Council, the Economic and Social Committee, and the Committee of the Regions on the progress made in achieving economic, social, and territorial cohesion, and on how the various tools outlined in Article 175 TFEU have helped towards that goal. If required, suitable proposals must be included with this report.

To conclude, Article 21 TFEU and Article 175 TFEU are interesting alternatives to Article 153 TFEU as a basis for overall social security (legal) standards, yet such a broad application is not generally supported, and is very likely to generate political discussion.

### ***3.2 Extending the legal basis***

**An alternative track could be to strengthen Article 153 as a legal basis, by broadening its scope to all (professionally active) persons** <sup>(32)</sup>. In the hypothetical scenario of a revision of the Treaties, one possible option for the Belgian presidency could be to reformulate the legal basis for competence in Article 153 TFEU. This could take inspiration from the competence for social security coordination which, in its formulation, has been extended to self-employed persons. Whereas this article was originally restricted to workers (in the strict sense), it was opened up to the self-employed in the Treaty of Lisbon. To achieve this change, the text now refers explicitly to workers and self-employed. The two concepts (i.e. social security and the social protection of workers) could also be extended to non-economically active persons, as social security is traditionally understood as referring to both work-related and non-work-related schemes.

The 'passerelle' of Article 153, par. 2 in fine TFEU could also be extended to social security and social protection.

### ***3.3 Proposed action for the Belgian presidency***

In light of the above, we would propose the following:

- **Prepare a possible extension of Article 153 TFEU, to include self-employed and/or non-economically active persons.**

This could be done by adding to Article 153 TFEU, (c) self-employed persons after social protection and/or by adding the words 'of all EU citizens' after 'social security'.

The specific 'passerelle' foreseen under Article 153 TFEU could be further extended.

For both initiatives, Treaty revision procedures need to be followed. Unlike secondary European rules, national authorities (parliaments) have to approve any Treaty changes, making it more challenging to have these adopted.

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32. We are thankful to one of our interviewees for the suggestion that we consider such a scenario

## Conclusions

The purpose of this report was to provide ideas to the future Belgian Presidency of the EU for action in the area of social protection.

The first section of the report focused on outlining actions developing further the spirit of the 2019 Recommendation. We examined two topics, the first new to the scope of the 2019 Recommendation (job retention schemes and specific temporary unemployment schemes for the self-employed) and the second focusing on the fourth cornerstone (transparency). We described the main issues linked to these two topics, which could be 'taken up' à la carte, as well as several proposals for dealing with them, depending on the political situation. We believe that the two topics could be addressed through distinct legislative actions.

In our view, as the pandemic has shown, access to permanent, easily activated and resilient JRS and functionally equivalent schemes for the self-employed is essential. We discussed, therefore, the need to research the current situation regarding such schemes and to consider a common EU action/instrument. We believe that there may be scope for EU action, ranging from the traditional policy monitoring processes (applying Articles 145-150 and 156-159 TFEU), to further legal initiatives (Article 153 TFEU) i.e. a recommendation or a directive on JRS, as these schemes can be considered as at the intersection of labour market and social protection policies. Under the Treaties, there is greater scope for action on labour market policies than on social protection; this could be used as an argument to propose restricting action merely to 'workers'. Our idea, however, is to adopt such an instrument for both workers and the self-employed together. Since the current schemes for the self-employed are less well developed than the schemes for workers, our idea is to provide the same or equivalent protection to the self-employed in case of temporary unemployment as is already in place for workers. Whatever approach is taken, a problem emerges if action requires a legislative initiative: the scope of Article 153 TFEU is too narrow. Consequently, use will have to be made of the flexibility clauses in the TFEU, which grant the EU institutions the necessary powers to take legal action where there is no specific competence.

As for transparency, we show that, although it is the fourth cornerstone of the 2019 Recommendation and a crucial issue in our information-driven societies, it is only slightly present in the national plans monitoring the implementation of the 2019 Recommendation. At the same time, Member States' policies and practices contain several points related to both the access to information and the simplification strands of the 2019 Recommendation. Our proposal is to further monitor specific transparency-related issues, but also to reflect on a possible legal instrument (e.g. a recommendation or a directive). This instrument could focus on the relationship between insured persons and administrations, the need to inform citizens clearly about the various social protection statuses, and on the minimum requirements needed to guarantee internal social security



coordination. Inspiration could be found or potential synergies explored with other EU instruments (including those in the area of digital technologies).

As well as considering how to address these two major topics separately, we have discussed how to further develop the 2019 Recommendation on access to social protection, which could be transformed into a comprehensive proposal for a directive on minimum requirements. Such a proposal would include the issues of JRS and transparency but would also present improvements concerning, for instance, the personal scope of application, specification of the duration of benefit payment, and potentially further statutory minimum requirements in relation to adequacy.

The second part of the report focused on continued monitoring of the 2019 Recommendation. The first section briefly summarised the problems with the main indicators in the monitoring framework, which could be further improved in the future, and discussed the particular issue of measuring adequacy. The second and the third part provide ideas on monitoring the pillars in the 2019 Recommendation through other instruments and processes, including the European Semester and the Platform work directive. We believe that there is scope for enhancing the monitoring of social protection issues through the European Semester, and especially those linked to non-standard work and the self-employed, by a stronger link to funding and by improving indicators on these issues. With regard to the platform work directive, workers who are re-classified may still face significant protection gaps, as they will likely be employed on non-standard contracts which provide only restricted access to social protection. We believe therefore that monitoring the social protection of platform workers – but also of workers in similar situations in other sectors – is essential in order to further identify gaps in formal and effective access to social protection.

Finally, in the third part we discussed some ideas concerning a hypothetical revision of the Treaties and possible inclusion of the self-employed in Article 153.

More generally, we believe that given its timing, the BE Presidency should strive to enshrine a consistent social agenda in the next 'Strategic agenda' of the EU. This sort of social agenda could also be promoted through the EU Parliament, in its negotiations on the profile of the future EC President.

## References

- Antón J. I. and Grande R. (2022) Monitoring the Effective Coverage and Adequacy of Social Protection in the EU: Development and Update of the Monitoring Framework of the Council Recommendation on Access to Social Protection, Luxembourg: Publications Office.
- Aranguiz A. (2022) Combating Poverty and Social Exclusion in European Union Law, Routledge.
- Aranguiz A. and Houwerzijl M. (2022) Reconceptualising EU social citizenship: Towards the social citizenship that we deserve, Working Yet Poor Project – European Union Horizon 2020.
- Aranguiz A., De Becker E. and Schoukens P. (2021) Minimum income protection at the EU: What role to play for the EU?, *EU Law Live*, 2021 (82), 16-24.
- Aranguiz A., Verschueren H. and Van Lancker A. (2020) Expert study on a binding EU framework on adequate national minimum income schemes: making the case for an EU framework directive on minimum income, Study commissioned by the EAPN.
- Avlijaš S. (2020) Social Situation Monitor. Comparing Social Protection Schemes for the Self-employed Across EU-27. Focus on Sickness, Accidents at Work and Occupational Diseases, and Unemployment Benefits, Brussels, European Commission.
- Baptista I. *et al.* (2021) Social protection and inclusion policy responses to the COVID-19 crisis: An analysis of policies in 35 countries, European Commission, Directorate-General for Employment, Social Affairs and Inclusion.
- Battista L. (2022) Social Security for Self-Employed in EU Law: A Minimum-Level Playing Field?, in Addabbo T., Ales E., Curzi Y., Fabbri T., Rymkevich O. and Senatori I. (eds.) *Defining and Protecting Autonomous Work A Multidisciplinary Approach*, Palgrave Macmillan, 193-217
- Bekker S. (2021) The EU's recovery and resilience facility: a next phase in EU socioeconomic governance?, *Politics and Governance*, 9 (3), 175-185.
- Boeri T. and Bruecker H. (2011) Short-Time Work Benefits Revisited: Some Lessons from the Great Recession, *Economic Policy*, 26 (68), 697-765.
- Bokhorst D. (2023) Steering national social reforms through the EU's recovery plan, in Vanhercke B., Sabato S. and Spasova S. (eds.) *Social policy in the European Union: state of play 2022*, *Policymaking in a permacrisis*, ETUI and OSE, 25-41.
- Cantillon B. *et al.* (2019) Toward a decent social floor for all Europeans, in Cantillon B., Goedemé T. and Hills J. (eds.) *Decent Incomes for All: Improving Policies in Europe*, Oxford University Press.
- Corti F., Ounnas A. and Ruiz de la Ossa T. (2023) Job retention schemes between the Great Recession and the COVID-19 crises. Does the institutional design affect the take up? An EU-27 cross-country comparison, CEPS.
- Council of Europe (1964) European Code of Social Security, no. 48, Strasbourg: European Treaty Series.
- Council of Europe (1990) European Code of Social Security (Revised), no. 139, Rome: European Treaty Series.
- Council of the EU (2019) Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed, 2019/C 387/01.
- De Becker E., (2023) Social Security and the Combat of In-Work Poverty, in Ratti L., Schoukens, P. (eds.) *Working Yet Poor: Challenges to EU social citizenship*, Hart Publishing.
- De Becker, E., (2024 forthcoming), The principle of adequate social protection in the European Pillar of Social Rights. Assessing the instruments used to realise its potential, *European Journal of Social Security*, accepted/ in press.
- Dias da Silva A., Dossche M., Dreher F., Feroni C. and Koester G. (2020) Short-time Work Schemes and their Effects on Wages and Disposable Income, *ECB Economic Bulletin*, 4/2020.
- Drahokoupil J. and Müller T. (2021) Job Retention Schemes in Europe: A Lifeline During the Covid-19 Pandemic, Working Paper no. 2021.07, ETUI.

European Commission (2018) Behavioural Study on the Effects of an Extension of Access to Social Protection for People in All Forms of Employment, Luxembourg: Publications Office.

European Commission (2019) More efficient decision-making in social policy: Identification of areas for an enhanced move to qualified majority voting, Communication from the Commission, Strasbourg, 16.04.2019, 11-12.

European Commission (2021a) Access to social protection for workers and the self-employed. Partial update of the monitoring framework, Brussels: Directorate-General for Employment, Social Affairs and Inclusion.

European Commission (2021b) Commission Delegated Regulation (EU) 2021/2105 of 28 September 2021 supplementing Regulation (EU) 2021/241 of the European Parliament and of the Council establishing the Recovery and Resilience Facility by defining a methodology for reporting social expenditure, OJ L 429, 01.12.2021, 79-82.

European Commission (2021c) Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work, COM (2021) 762 final, 09.12.2021

European Commission (2023) Report from the Commission to the Council on the implementation of the Council Recommendation on access to social protection for workers and the self-employed, Employment, Social Affairs & Inclusion, News, 31.01.2023.

European Commission and Social Protection Committee (2018) The 2018 Pension Adequacy Report: Current and Future Income Adequacy in Old Age in the EU, Volume II, Country profiles, Luxembourg: Publications Office.

European Commission and Social Protection Committee (2020) Access to Social Protection for Workers and the Self-Employed: Version 0 of the Monitoring Framework, Brussels: DG EMPL.

European Commission and Social Protection Committee (2021a) Pension Adequacy Report: Current and Future Income Adequacy in Old Age in the EU, Volume I, Luxembourg: Publications Office of the European Union.

European Commission and Social Protection Committee (2021b) Access to Social Protection for Workers and the Self-Employed: (Partial) Update of the Monitoring Framework, Brussels: DG EMPL.

European Parliament (2017) The Social Protection of Workers in the Platform Economy, European Parliament, Policy Department A: Economic and Scientific Policy.

European Parliament and Council of the EU (2021) Regulation (EU) 2021/241 establishing the Recovery and Resilience Facility, OJ, L 57/17, 18.02.2021, 17-75.

Ferrera, M. and Bruno, F. (2023) A resource-based conception for the analysis of the European Pillar of Social Rights: implications for further developments, EuSocialCit Working Paper, August 2023. Doi: 10.5281/zenodo.8288947

Fernandes S. and Kerneis K. (2021) The Porto Social Summit: turning principles into actions, Notre Europe, Jacques Delors Institute, Blog post, 03/05.2021. <https://institutdelors.eu/en/publications/sommet-social-de-porto-passer-des-principes-a-laction/>

Fink M. (2022) ESPN Thematic Report on Making access to social protection for workers and the self-employed more transparent through information and simplification – Austria, European Social Policy Network (ESPN), Brussels: European Commission.

Friedrich Ebert Stiftung (2022) Mapping Platform Economy. <https://futureofwork.fes.de/our-projects/mapping-platform-economy>

Goedemé T. *et al.* (2019) What does it mean to live on the poverty threshold? Lessons from reference budgets, in Cantillon B., Goedemé T. and Hills J. (eds.) Decent Incomes for all: Improving policies in Europe, Oxford University Press.

Hooker J. and Antonucci L. (2022) Improving the EU Platform Work Directive proposal: a contribution from emerging research findings, Opinion Paper no. 28, OSE.

Horemans J. and Marx I. (2017) Poverty and Material Deprivation among the Self-Employed in Europe: An Exploration of a Relatively Uncharted Landscape, IZA discussion paper no. 11007.

- IMF (2022) European Labor Markets and the COVID-19 Pandemic: Fallout and the Path Ahead, IMF departmental paper DP/2022/004.
- Kotanidis S. (2020) Passerelle clauses in the EU Treaties: Opportunities for more flexible supranational decision-making, European Parliament Research Service, 26 and 44-45.
- Keune, M. (ed.) (2024) The State of European Social Rights and European Social Citizenship in the EU, EuSocialCit Flagship Report 1, March 2024. Doi: 10.5281/zenodo.10840424
- Lelie P. (2021) La Recommandation du conseil de l'Union Européenne relative à l'accès des travailleurs salariés et non-salariés à la protection sociale. Une occasion de préparer à l'avenir les systèmes de protection sociale des Etats membres de l'UE, Revue belge de sécurité sociale (RBSS), Vol.1.
- Marlier E. and Atkinson A. B. (2010) Indicators of Poverty and Social Exclusion in a Global Context, Journal of Policy Analysis and Management, 29 (2), 285-304.
- Müller T. and Schulten T. (2020) Ensuring Fair Short-Time Work - A European Overview, Research Paper - Policy Brief 07/2020, ETUI.
- OECD (2020) Job Retention Schemes During the COVID-19 Lockdown and Beyond, Paris: OECD Publishing.
- OECD (2022) Riding the Waves: Adjusting Job Retention Schemes Through the COVID-19 Crisis, Paris: OECD Publishing.
- Osuna V. and García Pérez J. (2022) Temporary Layoffs, Short-Time Work and COVID-19: The Case of a Dual Labour Market, Applied Economic Analysis, 30 (90), 248-262.
- Rainone S. (2020) An overview of the 2020-2021 country-specific recommendations (CSRs) in the social field. The impact of Covid-19, Background analysis 2020.01, ETUI.
- Rainone S. (2022) The 2022 Country Specific Recommendations in the social field: quo vadis, EU recovery? An overview and comparison with previous European Semester cycles, Background analysis 2022.08, ETUI.
- Ratti L., Garcia-Muñoz A. and Vergnat V. (2022) The Challenge of Defining, Measuring and Overcoming In-Work Poverty in Europe: An Introduction, in Ratti L. (ed.) In-Work Poverty in Europe, Kluwer Law International, 1-36.
- Rubery J. and Tavora I. (2021) The Covid-19 crisis and gender equality: risks and opportunities, in Vanhercke B., Spasova S. and Fronteddu B. (eds.) Social policy in the European Union: state of play 2020: Facing the pandemic, ETUI and OSE, 71-96.
- Sabato S. with Vanhercke B. and Guio A.C. (2022) A 'Social Imbalances Procedure' for the EU, Working Paper 2022.09, ETUI.
- Schoukens P. (1999) De sociale zekerheid van de zelfstandige en het Europese Gemeenschapsrecht: de impact van het vrije verkeer van zelfstandigen, Leuven: Acco.
- Schoukens P. (2013) From soft monitoring to enforceable action. A quest for new legal approaches in the EU fight against social exclusion, Leuven, Euroforum.
- Schoukens P. (2020) Mutual Learning on Access to social protection for workers and the self-employed, 4th Workshop: Transparency and transferability, European Commission Directorate-General for Employment, Social Affairs and Inclusion.
- Schoukens P. and Bruynseraede C. (2021) Access to social protection for self-employed and non-standard workers: An analysis based upon the EU Recommendation on access to social protection, Leuven: Acco.
- Schoukens P. and Weber E. (2020) Unemployment insurance for the self-employed: A way forward post-corona, EISS research paper, European Institute of Social Security.
- Social Protection Committee (2022) Annual report 2022 review of the social protection performance monitor (SPPM) and developments in social protection policies, Luxembourg: Publications Office of the European Union.
- Spasova S. and Marenco M. (2023) The politics behind EU legislation on platform work: institutional synergies and a novel constellation of players, in Vanhercke B., Sabato S. and Spasova S. (eds.) Social Policy in the European Union: state of play 2022, Policymaking in a permacrisis, ETUI and OSE, 69-89.

Spasova S. and Regazzoni P. (2022) Income Protection for Self-Employed and Non-Standard Workers During the COVID-19 Pandemic, *International Social Security Review*, 75 (2), 3-24.

Spasova S., Atanasova A. and Regazzoni P. (2022) National monitoring frameworks for public social spending. An analysis of policies in 35 countries, European Social Policy Network (ESPN), Luxembourg: Publications Office of the European Union.

Spasova S., Atanasova A., Sabato S. and Moja F. (2023) Making access to social protection for workers and the self-employed more transparent through information and simplification, European Social Policy Network (ESPN), Luxembourg: Publications Office of the European Union.

Spasova S., Bouget D., Ghailani D. and Vanhercke B. (2017) Access to social protection for people working on non-standard contracts and as self-employed in Europe: A study of national policies, European Social Policy Network (ESPN), Luxembourg: Publications Office of the European Union.

Van Limberghen G., Dumont D., Louckx F., Marchal S. and Cantillon B. (2021) Een kritische en propositionele kijk op de sociale verzekeringen van werknemers en zelfstandigen. Analyse op basis van de aanbeveling van de Europese Unie met betrekking tot de toegang van werknemers en zelfstandigen tot sociale bescherming, *Belgian Revue for Social Security*, 49-135.

Van Limberghen G. *et al.* (2020) L'accès des travailleurs salariés et indépendants à la sécurité sociale en Belgique, Report, SPF Sécurité Sociale.

Vanhercke B. and Spasova S. (2022) Conclusions. Dealing with the pandemic: re-emerging social ambitions as the EU recovers, in Vanhercke B. and Spasova S. (eds.) *Social policy in the European Union: state of play 2021. Re-emerging social ambitions as the EU recovers from the pandemic*, ETUI and OSE, 145-170.

Vanhercke B. and Verdun A. (2022) The European Semester as Goldilocks: Macroeconomic policy coordination and the Recovery and Resilience Facility, *Journal of Common Market Studies*, Special Issue, 60 (1).

Vanhercke B., Sabato S. and Spasova S. (2023) Conclusions. Policymaking in a state of permacrisis: can the EU uphold its social ambitions?, in Vanhercke B., Sabato S. and Spasova S. (eds.) *Social policy in the European Union: state of play 2022, Policymaking in a permacrisis*, ETUI and OSE, 137-155.

## **INTERVIEWS:**

Interview European Commission 1 (30/09/2022) and 1bis (30/01/2023)

Interview European Commission 2 (08/11/2022)

Interview European Commission 3 (15/12/2022)

Interview David Bokhorst, Research Fellow, European University Institute, Florence (30/01/2023)

## Annex 1: Country abbreviations

EU Member States			
Austria	AT	Italy	IT
Belgium	BE	Latvia	LV
Bulgaria	BG	Lithuania	LT
Croatia	HR	Luxembourg	LU
Cyprus	CY	Malta	MT
Czechia	CZ	Netherlands	NL
Denmark	DK	Poland	PL
Estonia	EE	Portugal	PT
Finland	FI	Romania	RO
France	FR	Slovakia	SK
Germany	DE	Slovenia	SI
Greece	EL	Spain	ES
Hungary	HU	Sweden	SE
Ireland	IE		