



FIRST PHASE CONSULTATION OF SOCIAL PARTNERS UNDER ARTICLE 154 TFEU ON A POSSIBLE ACTION ADDRESSING THE CHALLENGES OF ACCESS TO SOCIAL PROTECTION FOR PEOPLE IN ALL FORMS OF EMPLOYMENT IN THE FRAMEWORK OF THE EUROPEAN PILLAR OF SOCIAL RIGHTS

23 June 2017

KEY MESSAGES

- 1 Social protection is an important aspect of national social systems and is part of the social dimension of the EU overall. Since it is a member state competence, harmonised legislative requirements at EU level would not be appropriate.
- 2 EU action should focus on supporting Member States' efforts to improve the functioning of their labour markets and economies, as well-performing economies are a precondition for sustainable social protection systems.
- 3 National social protection systems and rules on access and contributions are diverse, and are based on national traditions and approaches. This should be better acknowledged.
- 4 Where differences in access to social protection exist and the impact is negative for workers, citizens, employers or the overall sustainability of the social protection system, these are issues to be solved at national level. Facilitating learning at EU level between Member States on this would be useful.
- 5 Employers are fully aware that labour markets are changing, with different kinds of employment relationships, and a variety of demands of employers and workers in response to changes on the market and in ways of life. These changes need to be acknowledged, however introducing new obligations risks making certain employment forms and self-employment less attractive for workers and employers.



23 June 2017

RESPONSE TO FIRST PHASE CONSULTATION OF SOCIAL PARTNERS ON ACCESS TO SOCIAL PROTECTION

1. On 26 April, the European Commission published a first phase consultation of Social Partners under Article 154 of the TFEU on a possible action addressing the challenges of access to social protection for people in all forms of employment. The consultation is published in the framework of the Commission's Package on a European Pillar of Social Rights.
2. The aim of the Commission is to consult the social partners on the possible direction of EU action to address the challenges of access to social protection and related employment services for workers in non-standard employment and self-employed.
3. When it comes to 'non-standard' employment, the Commission proposes that any action would be based on treaty article 153 (1) (c): *"With a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields: (c) social security and social protection of workers."*
4. When it comes to self-employed, the Commission is inviting social partners to share their views on a voluntary basis, as Article 154 (2) of the TFEU does not apply.

I. Do you consider that the Commission has correctly and sufficiently identified the issues and the possible areas for further EU action?

5. We are answering this question regarding both 'non-standard' workers and self-employed.

Terminology of 'non-standard' and 'standard' employment forms is out-of-date

6. As a starting point, one of the key assumptions of the European Commission is that it is possible to make a clear distinction between so-called standard and non-standard employment forms, also in relation to access to social protection. There is certainly diversity in forms of employment across Europe, even if permanent full-time contracts remain the norm, however, the distinction made by the Commission does not adequately reflect the reality of today's labour markets. Grouping very different types of employment forms together under the heading of 'non-standard' is not appropriate as it ignores the diversity between these different forms and the needs and desires of those working under them, also in terms of access to social protection. Also, in some cases including in particular sectors, part-time or fixed-term work are, on the contrary, standard practice.



7. It is important to recognise that each different form of employment serves a purpose both for employers and workers, and therefore has a role to play in the labour market. This is also the case for self-employment.

Diversity of national systems should be better acknowledged

8. In the consultation document, there is an insufficient analysis and appreciation of the diversity of Member States social protection systems, in terms of the different levels of and conditions for access to social protection for different forms of employment and self-employment. It is crucial to take into account the fact that such systems are built on specific national traditions and cultures. And they are very much determined by national political choices on how to distribute wealth, rights and obligations between different groups in society, having regard to the need to ensure strong and sustainable public finances.
9. This leads to some misleading statistics in the Commission's consultation document and the inception impact assessment¹. These state that almost a third of people on temporary full-time contracts in the EU do not qualify for unemployment benefits, ranging from over 70% to less than 3%, depending on the Member State. However, this does not take account of the fact that in Denmark and Finland, for example, people can choose to what extent they are covered by the unemployment system.

Differences in access to social protection are not so marked

10. The Commission's justification for suggesting EU action in this field is that there is a gap in access to social protection for people in 'non-standard' employment forms and self-employed. However, it seems that this is not such a wide spread issue as the Commission suggests.
11. In a number of countries, there is no distinction between 'standard' and 'non-standard' forms of employment in terms of access and contributions to social protection. Furthermore, the Commission itself notes that Member States have undertaken reforms of their social protection systems to provide broader access, by changing eligibility conditions, giving incentives for voluntary coverage, and including workers in wider tax-based social protection measures, irrespective of their employment status. Also, a report by the European Social Policy Network² concludes that 'non-standard' workers in general have 'high' statutory access to social protection schemes.
12. On the other hand, we note that the report by the European Social Policy Network points out that those on 'non-standard' employment forms do not necessarily have effective access because eligibility conditions are not tailored to their needs. On the contrary, the Commission's inception impact assessment states that eligibility conditions for people in 'non-standard' employment mostly are the same as those for so-called standard workers. In fact, it points to only certain categories of workers in

¹ http://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-2067870_en

² <http://ec.europa.eu/social/main.jsp?catId=1135&intPagelId=3588>



a few Member States being excluded or having less access.³ Also, as shown on p20 of the Commission's consultation document, in some cases 'non-standard' forms of employment may in fact have better access to certain elements, in this case access of temporary workers to lifelong learning.

13. Regarding self-employed, in its inception impact assessment the Commission has identified 17 Member States that already give similar access as workers to most statutory social protection schemes and where the self-employed have to pay contributions. Some benefits are excluded in some countries, and in others access and contributions may be on a voluntary basis. Also, certain professions in particular, e.g. lawyers and architects, have broad access to autonomous social protection. Whilst access across the board for self-employed is therefore not guaranteed in all Member States, this is already quite a different picture than the one painted by the Commission of a general lack of access for self-employed. Furthermore, self-employed also have possibilities for coverage through private insurance, of course depending on their income, whereas this part of the social protection coverage of self-employed is not visible if only the statutory systems are looked at. And in some cases, tax deductions are possible in relation to contributions to private insurance. There are also various solutions at national level, for example in some cases, if income is under a certain level, self-employed may be exempt from paying social security contributions.
14. Based on the available evidence, we already see that it is not accurate to make a general statement that those on 'non-standard' employment forms and self-employed are left without sufficient access to social protection benefits and are therefore less protected than people in 'standard' contracts. In any case, we believe that a much fuller and clearer picture needs to be provided on this.

Some differences in access to social protection are logical

15. We agree with the analysis of the Commission that where differences do exist, this is partly due to such rights and obligations traditionally being linked to the status of employee, i.e. insurance-based, whereas other benefits are traditionally tax-based with access provided irrespective of employment status. We recognise that there are some commonalities, for example generally unemployment benefits are financed by insurance-based contributions, whereas family allowances, healthcare, long-term care, social assistance and minimum income provisions are generally tax-based. At the same time, the mix is a national choice and therefore the situation is diverse.
16. The key point is that where differences do actually exist in terms of access and contributions, this is often logical. Firstly, social protection benefits are relative to employment status, for example, for self-employed, only one person is contributing (in contrast to an employee, where the employer also contributes), therefore it is logical that the coverage is not the same. This will also be the case for other forms of employment where the worker is not considered an employee, rather work is project or service-contract based. If someone is working part-time and therefore not

³ For example, casual and seasonal workers in three countries; temporary agency workers in two countries; on-call and zero-hour workers in one; or only have partial access (e.g. mini-jobbers).



earning as much as an equivalent full-time position, it is logical that their social protection benefits are of a different level. We therefore do not find it appropriate to speak about gaps in access to social protection, as this supposes that there is a norm and that where differences exist, this is a negative phenomenon.

17. It is also important to bear in mind that different statuses and forms of employment have different advantages, which may make differences in social protection access and coverage more acceptable. For example, workers may find that working under a flexible employment contract can suit individual lifestyle and preferences. Also, such employment forms can increase the possibilities of unemployed people to find a job.

Individual choice is paramount

18. There is also a key issue of individual choice. We acknowledge that in some cases, people may be deterred from self-employment or certain employment forms, as they do not have as much access to social protection or there may be a perception that this is the case. And there are instances of people working involuntarily under certain forms of work, for example due to lack of other work opportunities, in some cases with less social protection. However, in general people choose their form of employment and this choice is an important overarching consideration, which we find somewhat lacking in the Commission's analysis. Furthermore, we do not find the analytical evidence that most of those in 'non-standard' forms of employment and the self-employed want more access to social protection. The evidence seems to be more anecdotal.
19. We also recognise that in some cases people may involuntarily become self-employed, also where de facto a subordinate employment relationship exists, and that this can have a negative impact on their access to social protection. At the same, the national rules determining what is considered self-employment differ considerably: in some countries, there is a clear distinction between employed and self-employed status and in other countries there are categories of workers in between. Therefore, we do not believe that it is appropriate to address this broader issue at EU level, by providing the same access to social protection across the board.
20. Overall, access to a wide range of employment forms is generally valued by individuals/workers, who see advantages in the differences. For example, in the large majority of cases, being self-employed is a choice for individuals for many different reasons. If this choice is partly due to a desire to accept less access to social protection and lower social contributions, this should not be viewed negatively. For others, it may be a preference to rely on their own income, private provision and benefits provided through the tax-base either universally or means-tested. It is not appropriate to assume that the needs and desires of those under different employment statuses and at the individual level will all be the same. The aim for Member States should therefore be about giving choices that make sense for employers and workers and facilitating access, but not introducing unjustified obligations.

***Increasing access to social protection also brings risks***

21. The Commission seems to suggest that to ensure the sustainability of social protection systems, people should not really have a choice about whether they contribute to social protection, rather that they should be coerced. However, there is a risk that increasing access to social protection coverage and thereby contributions of self-employed could actually make this form of work less attractive for individuals, which could have a knock-on negative impact on the economy. It is important to avoid that workers are not deterred from self-employment (either labour market entrants or those moving from other forms of employment), by ensuring that the social protection contributions are well adapted to different employment situations. In particular, increasing rates for self-employed, to broaden their access to social protection, would not be viewed positively by those who do not see a personal need for this.
22. If access to the same level of social protection is provided across all types of employment forms, thereby increasing non-wage labour costs, there is also a risk that such forms of work will become less attractive for employers. Whereas, employers need to have at their disposal a range of employment forms, to facilitate hiring. Bearing in mind that such forms of work are often a route onto the labour market or used in transitions on the labour market, this could hamper peoples' chances of success in finding a job, which would have a negative impact on employment growth. Flexible contracts also allow companies to respond to changing market conditions, by allowing them to deal with peaks and troughs in demand and to organise work efficiently, which are key factors of their competitiveness.
23. The focus should rather be on encouraging Member States to work on making permanent forms of employment more attractive for employers. This includes by lowering non-wage labour costs, such as social contributions. Unfortunately, this crucial point is missing from the Commission's analysis, i.e. that in segmented labour markets, lack of flexibility and too high labour costs can have a negative effect on the use of open-ended contracts. This is also linked to the need for dynamic and open labour markets, where rather than increasing rights and protection related to the work contract, security for individuals and workers would be better achieved by improving the functioning of labour markets, by facilitating smoother transitions between different forms of employment without losing prior entitlements, and by providing the conditions for people to become increasingly productive.

Access to employment services is beneficial for all

24. We welcome that the Commission includes the issue of access to employment services. These often play an important role in helping people onto the labour market, typically by providing support in looking for a job and identifying training opportunities, where needed. We agree that such services can be beneficial for people irrespective of employment contract and that improving access to them at national level could therefore be useful. At the same time, it is necessary to improve the capacity of Public Employment Services to provide such services. This can be achieved through adapting their structure and the nature of their service provision role; fostering mutual learning; and strengthening partnerships with key stakeholders, notably private employment services, employers and social partners.

***It is important to ensure sustainability of social protection systems***

25. We welcome the fact that the Commission recognises that if broader access to social protection is granted, this also has a cost and would lead to increases in public expenditure. Depending on how the social protection system is funded, this could also lead to a rise in employer contributions, which should be avoided.

26. One argument put forward by the Commission for ensuring broader access to social protection, is that this could increase contributions, which could help improve the sustainability of national systems. This is crucial, particularly in the context of an ageing population, as healthcare and pensions need to be financed in a sustainable way. At the same time, the issue of cost seems to be simplified in the consultation document, for example, the Commission argues that the fiscal impact would be neutralised as those concerned would also be contributing. It is a valid point that if those in 'non-standard' employment or self-employed are not contributing, but then have to rely on social assistance or fall back on social safety nets, due to gaps in their working lives or low/irregular income, this affects the sustainability of the social protection system overall. However, this ignores the fact that in some countries, a big part of social security is paid by taxes, not only employer/employee social contributions. Also, the self-employed often have a specific tax regime, which means that they pay into the overall budget, which can contribute to funding social protection. Furthermore, when considering costs, it is necessary to take account of the diversity in Member States' funding models. Overall, to have a full picture on this point, a deeper analysis would be required comparing the costs of providing broader access to social protection and the supposed higher income generated by increased contributions.

27. Whilst insufficient work over the life course and therefore insufficient contribution periods can lead to a lack of social protection for workers, for example once they retire, the answer is to ensure that there are supportive social services, such as childcare, that labour markets function efficiently and that people have appropriate skills, to facilitate as far as possible continuous employment.

28. Whatever the national situation for self-employed in terms of access and contribution to social protection benefits and tax arrangements, it is important to make sure that the system does not create an economic burden on employers and employees through overly high social contributions which are in effect subsidies for others to access universally provided benefits. At the same time, it is crucial to avoid rendering self-employment less competitive and less attractive by obliging self-employed to contribute to and access social protection, also considering that companies value having access to the self-employed.

Transferability of entitlements is an issue for labour market mobility

29. Facilitating mobility on labour markets is essential, in particular as economies go digital. We note, however, that entitlements may not necessarily be portable when people change jobs, whereas this is important for mobility on the labour market. We therefore agree that there may be a need to improve transferability and portability of



social protection entitlements cross-border in some cases, but also in terms of sharing national practices to promote mobility at national level.

30. At the same time, it is important to recognise that employers often reward workers for their loyalty and commitment to the company, by providing access to occupational schemes, also under certain conditions. This must not be hampered.
31. It is also important to make sure that when facilitating transferability and/or preservation of rights when someone changes jobs, the administrative costs are kept to a minimum and that there are no additional costs for the new employer to take on the provision of the transferred rights.

Providing information about rights is important

32. The Commission rightly identifies a problem of lack of transparency and information about rights, stating that people should be well-informed about their entitlements and obligations. This is a valid point and it would be appropriate for the Commission to encourage Member States to make improvements in this area. This could make it easier for people to manage their careers and give people confidence to be more open to change in their careers.
33. We also agree with the Commission that user-friendly information on individual entitlements and employment services should be easily accessible, by making administrative requirements simpler. This is particularly important in view of increasing mobility on labour markets, for example between jobs and different employment statuses. This will help increase efficiency in social protection systems, making them more sustainable in the future. It will also help in making the rights and entitlements of people better known and visible.
34. We note that the Commission highlights the French model of personal activity accounts (CPA) as a good example in this context. In principle, personal activity or work accounts can be helpful to provide workers from the beginning of their career with the necessary information and knowledge to keep their skills up-to-date, to enhance them, to maintain their employability, to prepare for career breaks and even to start their own business and pay their own contributions into such an account. The website facility which is part of the French personal activity account (CPA) is a useful tool, as it allows workers and employers to access information on entitlements. And the personal training account (CPF) which is part of the CPA has given some good results in France in terms of facilitating management of periods of mobility/transition on labour markets. However, other elements of the CPA are not so positive, due to their complexity and potential burdens on companies. In any case, rather than focusing on only one country/example, the Commission should make a more thorough analysis of the different national schemes available, as different types of personal accounts and other solutions exist in other countries, e.g. Denmark. Also, various solutions regarding transferability/portability of social protection entitlements have been found at sectoral level, including by social partners, for example when someone moves to a different company, but in the same sector. For example, solutions have been found by social partners in the temporary agency sector across



the Netherlands, Belgium and France, for people employed as temporary workers in different companies.

35. A link should also be made to the pilot project to set up a European tracking service for pensions, for which the Commission has published a call for proposals. The overall purpose is to facilitate the access of mobile workers to pension information, firstly by linking national tracking services.

Action should only be taken at the appropriate level

36. In line with the principle of subsidiarity, social protection is a member state competence. The EU's competence in this area, in line with article 153 of the TFEU is restricted to supporting and complementing the activities of the Member States and any EU legislative action would have to be agreed on unanimously in the Council. At this crucial juncture in the development of the European project, the Commission should avoid giving rise to divisive discussions with and between EU Member States.
37. The Commission positively states that any action in this area would not seek to harmonise rights and obligations across countries, or interfere with the way Member States organise their social protection systems. However, the option of EU legislation would not be in line with this. Proposing harmonised minimum legal requirements at EU level to provide the same access to social protection irrespective of employment status would necessarily affect Member States' approaches to organise their national social protection systems, which would go against the principle of subsidiarity.
38. Furthermore, a one-sized-fits-all approach of harmonised legislative requirements at EU level would not adequately take account of the wide diversity of national circumstances and systems, which have been built over time based on national traditions and culture.
39. Where there are differences in access to social protection for different employment forms, and this is seen as having a negative impact on workers, employers, citizens and/or the sustainability of the overall system, this is an issue to be solved at national level.
40. Where common issues exist regarding differences in access to social protection across EU Member States, we do however see potential for reinforced mutual cooperation, as suggested by the Commission, including peer learning and exchanges of good practice at EU level. As part of this, existing national/sectoral practices and tools could be looked at, including those provided by social partners. This could include in the area of transferability and portability of entitlements when people change jobs and/or employment status.
41. We could also support developing benchmarks in the framework of the European semester process, as suggested by the European Commission, to facilitate learning between Member States, in particular on how to achieve more effectiveness and efficiency in spending, to support the sustainability of social protection systems. How to improve access to employment services for all forms of employment is another



field that could lend itself to mutual learning between Member States, as well as public employment services.

42. We do not find it appropriate that the Commission already uses the principles which are recommended as part of the European Pillar of Social Rights as a basis for action in this field. These principles have not been agreed on at EU level, including by Member States.

II. Which branches of social protection and employment services do you consider to be most relevant for an EU initiative covering access for workers in non-standard forms of employment and self-employment?

43. This question pre-supposes that there will be an EU initiative in this field, whereas, as stated above, we are not in favour of this, unless it is about mutual learning and exchange of good practices.

III. Should all workers in non-standard forms of employment/ self-employment be included in such an initiative?

44. See answer above.

IV. Do you consider that improvements should be made to EU legislation or other EU level instruments to address the identified issues?

45. We do not consider that changes to EU legislation in this field are needed or appropriate, for the reasons highlighted above under 'appropriate level of action'.

46. The open method of coordination and the European Semester process, including benchmarks, would be the right tools for mutual learning and exchanges of good practice. The aim should be to improve national policy responses by taking into account relevant other national practices.

V. Would you consider initiating a dialogue under Article 155 TFEU on any of the issues identified in point 4 of this consultation?

47. We do not consider initiating a dialogue under Article 155 TFEU.

48. Firstly, we do not see the need for EU level action in this area, as already explained above, apart from peer learning and exchange of practices. We do not believe this would merit a full dialogue between social partners under Article 155 TFEU. However, we would be ready to engage in a constructive way in such a peer learning process, if the Commission took forward such an action through the Open Method of Coordination.

49. Secondly, whilst social partners in some Member States have an integral role in the social protection systems, generally it is the state (albeit often in consultation with national social partners) that decides on the structure of the social protection system and the rules determining access and contributions to welfare benefits.



50. Finally, we do not believe that a dialogue between EU social partners would adequately capture and take account of the diversity of national social protection systems.
51. Whilst the Commission's consultation also covers occupational social protection schemes, where social partners are often part of the governance, we do not consider initiating a dialogue on this issue given the diversity between national, sectoral and company occupational schemes.
