

ETUC position on first-stage consultation of the EU social partners on a possible action addressing the challenges of access to social protection

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ETUC position on first-stage consultation of the EU social partners 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.

Adopted at the Executive Meeting of 13 and 14 June 2017

General remarks

At the same time as the raft of texts connected with the European Pillar of Social Rights (EPSR) Package on 26 April 2017^[1], the European Commission has recently published a Consultation Document, launching a “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^[2]”. It describes the main arguments for addressing deficiencies in *de facto* access to social protection and employment services for workers in all forms of employment other than full time, open-ended employment in a subordinate and bilateral employment relationship. The Consultation relates directly to several Principles of the Pillar^[3], and namely Principle 4 on ‘Active support to employment’; Principle 5 ‘Secure and adaptable employment’; Principle 12 on ‘Social Protection’).

The consultation document refers to the responses received during the broad and extensive consultation on the EPSR, stating that “*how to ensure social protection for people in all forms of employment was a central topic at the January 2017 European Conference on the European Pillar of Social Rights*”. The ETUC congratulates the Commission on listening to the case that was forcefully made by the trade unions on that day and throughout the period of discussion, and welcomes the principles brought forward and the present Consultation initiative.

The ETUC also welcomes that the Consultation may represent a positive point-of-departure in acknowledging the reality of the changing pathways of work and demography, and the need for sound and adequate social protection as a critical tool in managing a just and sustainable transition in the economy and the labour market. This can be seen as first constructive steps in providing social protection coverage to all workers, as a partial and yet necessary intervention to counterbalance the social consequences of increasing precariousness and poor quality jobs.

It must be clear that reforming welfare systems to make them fairer and more inclusive cannot in fact be separated from a comprehensive approach, which must have the issue of ‘quality work’ at its core^[4]. This means taking account of several policy areas, taking

stock of the scenarios and the challenges of the present and the future of work, addressing labour market policies, re-designing employment services, active employment policies and consequently adequate framework of social protection.

In this sense, the Consultation document makes reference to a series of challenges related to the employment perspective and labour market trends, their social impact and the sustainability issue (paragraph 2.3). It however partly fails in addressing them only as a consequence of existing gaps in social protection for a huge number of workers, and in not framing them in a broader picture of increasingly poor job quality, deteriorating labour market trends, downward wage policies. Less decent work for fewer people (and poor wage levels) inevitably have disastrous repercussions on social protection adequacy, coverage and sustainability.

Taking into account a comprehensive picture, a new approach to welfare in Europe is needed^[6]. It must be built on the fundamental right to social protection and assistance for all, as for the Charter of Fundamental Rights of the European Union and the ILO instruments^[6], as a founding element of the still valid European social model. The issue of protection for self-employed and workers in other non-typical forms of work must take into account^[7] the long-standing challenges of lack of protection linked to loopholes in full entitlement to trade union rights and collective bargaining coverage, exacerbated by the rapidly changing labour market.

The ETUC recalls the main principles of social protection for all: the importance of full adequacy, accessibility and universal coverage of social protection and assistance against the main risks of life; the crucial role for the welfare state in shaping solid systems of protection, adapted to individuals whilst based on solidarity; that everyone should be able to contribute to the system according to her/his possibilities, and should be able to receive accordingly to his/her needs. Social protection systems should be able to deliver adequate and efficient benefits and services to all workers, as well as minimum standards of assistance to all EU citizens and residents, women and men, EU nationals and migrants, young or old people, to allow them to live in dignity, take part in society and stay out of poverty.

The following paragraphs address the questions laid out in the consultation document for social partners. The first set of questions (5.1) relates to the first stage consultation on non-standard forms of employment, with a second set (5.2) is dedicated to the voluntary consultation regarding the self-employed.

5.1. 1st stage consultation on workers in non-standard forms of employment

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

We welcome that the consultation document acknowledges the deficiencies in *de facto* access to social protection and employment services for people in all forms of employment different from standard employment – compromising up to 40% of the

workforce, more at risk of poverty, exclusion, disparities and inequalities, by its own assessment.

The identification of the issues and areas for action could however be improved upon. We cannot ignore that legislation on labour protection is a necessary prior condition to access social protection. We cannot ignore the legislative loopholes that do not ensure any *de facto* social protection to non-standard workers. In labour relations, there is still a huge gap in addressing qualification issues, whereas bogus self-employment is detrimental to both social security systems and workers' entitlements.

The ETUC rejects the suggestion that "the extra non-wage labour costs could lower the demand for labour". It seems to imply that reducing social protection can help getting people into work – an argument which contradicts the very purpose of the consultation initiative and recalls the serious risk of competitiveness played on the ground of social dumping or – even worst – of undeclared work.

There are distinctions that need to be made clear in order to provide appropriate levels of protection and support for those both inside and outside the labour market. Firstly, that very distinction (between "insiders" and "outsiders") itself needs to be made clearer. It is inevitable that labour market policy and social protections will have a high level of cross-over and we appreciate that this consultation relates specifically to social protection for *non-standard workers*. However, the two policy areas of social protection and labour market policies must not be conflated. Some people in Europe need help getting into work (labour market policy) whereas others are not in a position to work at a given moment (social protection). Others still will be either in work or looking for work but need to secure provision for such time as they cannot work due to sickness or old age (labour market policy *and* social protection). Europe needs bold action in both policy fields.

The recognition of the gaps in protections must be firstly seen in the context of the 'flexibilisation' or 'casualisation' of labour markets in Europe over a prolonged period – though accelerated in recent years of crises. This has meant both the proliferation of non-standard employment, as well as the weakening of employment rights within standard employment, traditionally seen as the hallmark of solid labour rights. This latter point is missed by the consultation document. We urge to specify that new forms of work entailing poor job quality and unsecure conditions lead more to a lack of protection against life risks than to real job opportunities (page 9).

As feared and repeatedly flagged up by the ETUC, competitiveness pursued by cutting back on job quality, working conditions and labour costs, wage and non-wage related, is damaging for individual workers and their families, the labour market, the collectivity and the sustainability of efficient protection systems. This is clear when looking at non-standard workers, often excluded from social protection arrangements, including casual and seasonal workers, temporary agency employees, on-call and zero-hour workers in some countries. Many of these workers then must rely on patchy tax-based benefits where they exist.

In a logic of upward convergence, the overall objective must be to get more people (women, migrants, 50+) in high quality jobs, as this is the most effective guarantee for adequate and sustainable social protection when needed.

As the ETUC has made clear repeatedly, the missing ingredient is clear proposals on the creation of quality jobs – with agreed indicators to track them. These indicators must include access to social protections. Therefore, the identified key aspects of insufficient access (gap in access to social protection, lack of transferability of rights as well as lack of transparency about their social protection entitlements) are indeed important challenges to be tackled, but we need to put the emphasis on challenging divergent social rights of people with respect to social protection and employment services.

Following this rationale, and provided the overall challenges outlined above are addressed in coherent and integrated interventions, the ETUC agrees to working on the four possible areas for further EU action:

1. Ensuring similar social protection rights for similar work: upgrading working conditions and protection coverage for all, in a logic of upward convergence; ensuring solidarity and fairness in social protection also means designing systems to which workers contribute (via taxes or social contributions, depending on the national social security system) proportionally to their capacity and benefit from according to their needs, as for at least minimum provisions (universal social protection and assistance)
2. Tying social protection rights to individuals and making them transferable: provided that this leads to adaptation to individuals and not to an individualisation of social protection benefits and that the collective dimension remains prominent
3. Making social protection rights and related information transparent: as a matter of consistency among the different initiatives of the Pillar, the ETUC is of the opinion that a minimum floor of workers' rights is needed. The ETUC is calling for a number of legal initiatives. In the context of the Written Statement Directive, it is essential to include social protection. Therefore, we propose to include in the WSD also information on social security systems and relative entitlements.
4. Simplifying administrative requirements

On the principles, we agree on the initiative to tackle:

1. Gaps in access to social protection and employment services
2. Lack of transferability of entitlements to social protection and employment services
3. Lack of transparency of entitlements to social protection and employment services

With regards to this last point, pertinent to areas 2, 3 and 4 listed just above, we recall that

1. Personal accounts should be considered as possible instruments of information, awareness raising and transparency, but should not lead to individualisation of benefit management, nor be considered as interchangeable tools of rights and benefits.
2. Consistency must be ensured with the possible revision of the Written Statement directive - information of the social security system proposed)

We agree in addressing each single issue as well as in considering the interaction and the mutual impact, on the basis of further analysis to have a clearer picture of where the loopholes reside. Also, the question of the cost impact of enlarged coverage is important.

When envisaging the impact of a new personal and material scope of social protection, we must ensure that crucial aspects are taken into account: the personal capacity to contribute to the systems must be assessed, as well as means to ensure this are guaranteed; a certain role must be envisaged also for social assistance, granting minimum standards for all; there must not be trade-off between adequacy and enlarged coverage of social protection; wider solutions could be envisaged to finance the renewed system, relying also on fairer taxation and redistribution policies^[8].

2. **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?**

The ETUC has always promoted an integrated and holistic approach to social protection, notwithstanding the points above about the distinctions between the policy fields, **including all branches covered by the ILO convention 102** (and the Regulation on social security coordination). It is difficult to figure on which basis some branches should now be prioritized and which excluded to access. In principle, all branches are equally important.

If a certain degree of gradualism in ensuring access to social protection must be taken into consideration, the existing social security and protection systems must be designed so as

1. to provide adequate minimum provisions to the highest possible proportion of workers (pensions; sickness benefits and benefits in respect of accidents at work and occupational diseases; unemployment benefits; maternity and paternity benefits) through social security systems financed at least partly by the recipients (insurance/taxes for workers of a given status depending on the national systems)
2. to provide access to enabling goods and services such as quality healthcare for all, through universal social protection rules as well as through a fair and redistributive financing by all.
3. to benefit from employment services: guidance, counselling and placement; training and updating; rehabilitation and re-insertion measures

In addition, as a matter of consistency with the Pillar Principles, everyone lacking sufficient resources must enjoy the right to adequate minimum income benefits ensuring a life in dignity at all stages of life, and effective access to enabling goods and services, combined, for those who can work, with incentives to (re)integrate into the labour market.

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

Yes

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

It must be acknowledged that the EU legal framework for protection of rights in some areas of non-standard employment has not been followed up by consistent legislation at national level ensuring non-standard workers the enjoyment of their rights (page 10).

Council Recommendation 92/442/EEC on Convergence in social protection objectives and policies should be interpreted in the sense that all workers are covered. The OMC has not really delivered any convergence, and certainly not upward convergence, also because it has paid little or disrupted attention to the developments of labour law at national level and its impact on self-employed and on workers in non-standard or new forms of employment.

Specific monitoring of the financial and fiscal sustainability issues should be made at member State level, with the involvement of social partners, targeting the efficiency and the consistency of policies aimed at easing the burden of non-wage labour costs and taxes on labour.

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

The ETUC is ready to start negotiations with employers' organisations at EU level about the above-mentioned issues to improve the situation for workers. However, in the event that the EU social partners do not agree to negotiate, or in case negotiations do not lead to a successful outcome, we would urge the Commission to come up with a legislative proposal.

5.2. Voluntary consultation on people in self-employment

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

Whilst disagreeing with the promotion of self-employment as a panacea for unemployment, the ETUC supports proposals for standards to cover self-employed and non-standard workers. Also, not every worker is capable or willing to become self-

employed.

The ETUC is concerned that the Commission seems to have determined that the consultation procedure of Article 154(2) TFEU does not apply. We do not agree. As soon as an issue touches on questions of employment, the employment relationship, work or workers, Article 154 (2) must be respected.

As stated in the resolution "Towards new protection for self-employed workers in Europe" adopted in the ETUC Executive Committee of December 2016, the European trade union movement should insist that such category of workers is covered by social rights, such as the right to adequate remuneration, fair terms and working conditions, education and training, unemployment protection, social protection, and pension rights.

The challenges identified by the European Commission (opening access to social protection, transparency of systems so citizens know about their rights, and transferability of rights) are indeed very important for the future of the European labour and the ETUC seeks to work jointly with the European governing bodies and with the European employers' organisation in identifying and implementing a strategy to tackle such challenges.

The ETUC therefore welcomes the widening of the scope of social protection to include self-employed workers. However, when it comes to the funding of such protection, a progressive and contributory participation of the whole working force and the self-employed in particular should be encouraged. Otherwise, a solution based on funding through taxes on consumption (VAT) from which a huge proportion is paid by poor middle-class earners would widen the gap between rich and poor. In this respect, the ETUC does not agree with the proposal of the Commission that those better protected should contribute to cover the extra costs of encompassing new categories of workers.

As stated in the recent report of the European Commission on access to social protection for non-standard and self-employed workers, extending social protection to people in all forms of employment and work will have positive consequences both in terms of sustainability of the social security systems and economic performance as a whole^[9]. While an initial reluctance to pay social security contributions from some groups of self-employed workers can be expected, in the end such system will result in less costs for such workers (when compared to the cost of a private insurance) and for the national economy.

The concrete example of the French CPA (*compte personnel d'activité*, personal activity account), although still under construction, could be considered as a good example. But the explanation of the tool put forward by the Commission is not correct: in the CPA, there is no such interchangeability" between rights and benefits. A worker cannot change "points" and choose between additional remuneration, training rights or early pension. Such a system would be dangerous.

2. Which branches of social protection and employment services do you consider to be most relevant for an EU initiative covering access for people in self-employment?

Social Protection:

xi. unemployment benefits

xii. sickness benefits

xiii. benefits in respect of accidents at work and occupational diseases

xiv. pensions and old-age benefits

xvii. maternity and equivalent paternity benefits,

Employment services:

iv. guidance, counselling and placement

v. training and updating

vi. rehabilitation and re-insertion measures

However, while selecting the above-mentioned list of most relevant branches of the social protection packages, the ETUC points out that a comprehensive approach should be sought. A “cherry-picking solution” would eventually result in discriminatory practices to specific groups of the society. Therefore, the ETUC looks forward to further exploring with the European Commission and the European employers’ organisations the necessities and the impact in terms of social protection for the different categories of self-employed workers.

3. Should all people in self-employment be included in such an initiative?

Yes.

[1] The European Pillar of Social Rights Package is a set of documents, available [here](#)

[2] <http://ec.europa.eu/social/BlobServlet?docId=17616&langId=en>

[3] Enshrined in the Commission Recommendation of 26/4/2017 on the European Pillar of Social Rights available [here](#) and explained in the Commission Staff Working Document Accompanying the Communication Establishing a European Pillar of Social Rights (SWD(2017) 201 final), available (https://ec.europa.eu/commission/publications/staff-working-document-explanatory-fiches-each-principle_en)

[4] The ETUC is currently developing its definition of 'quality work', building on the 2015 Paris Congress Action Programme and the preceding position paper Towards a European strategy for quality employment: Position adopted by the Executive Committee of 10 and 11 March 2015, available [on line](#)

[5] ETUC Action Programme for Welfare and Social Protection: Resolution adopted at the Executive Committee Meeting of 15 December 2016. Available [online](#)

[6] Ref. to ILO Convention 102 and Social Protection Floor initiatives, as well as to the SDGs and Agenda 2030

[7] *Towards New Protection for Self-Employed Workers in Europe: Adopted at the Executive Meeting on 14-15 December 2016, available [online](#)*

[8] The Consultation document at page 9 makes reference to recommendations to Member States, in order to boost job creation, to reduce the taxes on labour and shift the financing of non-wage labour costs such as social security to other sources of revenue (COUNCIL DECISION (EU) 2015/1848: Employment guideline 5, available online). This may include revenue sources such as consumption taxes, recurrent property taxes and/or environmental taxes (See Eurogroup statement: benchmarking the tax burden on labour, 638/15, 12/09/2015, available online)

[9] 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), Brussels: European Commission.