

ETUC Position: Proposal for a Council Recommendation on access to social protection for workers and the self-employed

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On 13 March 2018, the European Commission published its proposal for a Council Recommendation on access to social protection for workers and self-employed, to support *all people* who, due to their employment status or duration, are not sufficiently covered by social security schemes and thus are exposed to higher economic uncertainty. The initiative is presented as a concrete way to fulfil the EU's objective to promote social justice and protection and implement key rights of working people in the field of social protection[1].

The ETUC replied to both Commission consultation phases, referring to the founding principles on a social protection system equally accessible to all people in all forms of employment. A social protection system should be 1. Solidarity-based; 2. Anchored to an extended guarantee of equal treatment; 3. Highly inclusive; 4. Adequate in benefits and provisions, including safety nets for those who are not able to reach minimum entitlement thresholds; 5. Effective; 6. Sustainable, to serve inclusiveness, adequacy, fairness and equality in a wider perspective of societal and economic growth.

The ETUC welcomes the proposal for a Council Recommendation. However, the ETUC regrets that it looks less ambitious than expected, with respect to the principles of upward convergence set out in the Pillar of Social Rights (EPSR), and the political commitments undertaken by EU institutions and Member States in Gothenburg.

The present position provides a critical analysis of the Commission's proposal, highlighting both advances and loopholes and proposing action to overcome the limits of the Recommendation.

1. The choice of the instrument: ETUC calls for a stronger Recommendation with concrete flanking measures

In both consultation phases, the ETUC called for a Directive as the most effective instrument to ensure access to adequate social protection for all working people. The Commission instead justified the decision to opt for a non-binding instrument such as a Recommendation on the grounds of proportionality and subsidiarity[2].

However, the soft-law approach adopted by a Recommendation should have been more substantial and could have provided more concrete indications of ways to ensure the functioning and effectiveness of general principles.

The ETUC strongly questions the implication in Article 2 of the Recommendation that inclusive social protection can be obtained through a (unspecified) mix of public, occupational and private schemes. Social protection is a *universal* human right. It is up to Member States to guarantee the enjoyment of adequate minimum standards to all workers and residents. In the respect of the national traditions, the Recommendation should acknowledge that public and collectively financed statutory systems play a *fundamental* role in terms of universality and adequacy of social protection. Based on universality, risk-sharing, solidarity and fairness, they remain the most effective means to ensure both high levels of coverage and benefits. Thus, they must be primarily fostered and relaunched. The role of occupational and private systems can be important and yet only *complementary* – given the uncertain and uneven outcomes across Europe.

In a view of solidarity, fairness and sustainability, the ETUC supports the principle that “everyone who works can contribute and have adequate access to social protection[3].’ For the ETUC, this assumption primarily underpins the unavoidable link with the future and the quality of work and working conditions. In principle, all jobs should imply a decent level of minimum working hours, and every hour worked should contribute to building up social protection rights of workers and self-employed.

The Recommendation should thus acknowledge the need for a complementary legislative environment and a renewed employment strategy, in order that all work can provide for decent income, working conditions and social protection. In particular, the enforceability of the right to effective and adequate coverage[4] should have been supported by references to enabling conditions for the accrual of access to adequate benefits.

Instead, indications are missing, for example, on minimum and adequate remuneration, as well as on organising and bargaining rights – crucial to guarantee a wide spectrum of non-standard workers effective access to adequate benefits. Indications on rules governing contributions and entitlements could have included references to a fair sharing of contributory obligations between working people and employers/customers or equalised levels of contributions among different forms of work and employment. These features help to create a level playing field and real equality, while contributing to the sustainability of the system.

It will be fundamental for Member States and social partners to take these elements into consideration in the implementation, monitoring and evaluation phases of the initiative. It would serve in identifying concrete grounds for upward convergence, tackling measures for enlarged effective coverage and ensuring greater adequacy and sustainability of equally accessible social protection.

2. Objectives and scope: comprehensive enough?

The **personal scope of the Recommendation** (articles 1 and 4) covers both workers and self-employed, including people transitioning between or having both statuses, as well as people whose work is interrupted due to the occurrence of one of the risks covered by social protection. The ETUC welcomes such a comprehensive personal scope, enabling the creation of a level playing field for all working people and the potential reversal of downward competition between companies based on labour costs.

However, the question remains whether the definition proposed by the Commission[5] actually serves the identification of the wide scope of the Recommendation, including all non-standard, atypical workers. On the other hand, the definition of self-employed is missing too.

Definitory aspects must be consistent and in line with the scope and the objectives of the initiative and the whole EPSR. Definitions should clearly identify and cover the most vulnerable categories of working people whose protection is at the very core of the whole initiative.

Such consistency is even more important when considering the reference in the text to “different rules that may apply for workers and for the self-employed” with regards to the implementation of principles of accessibility, transferability, adequacy and transparency defined in the Recommendation (article 6). The situation of self-employed (workers) in access and adequacy of social protection must be assessed as differing from that of other atypical workers because it is less known, less transparent and traceable. The possibility for self-employed to *opt out* from schemes that are mandatory for all should be strictly bound by very limited circumstances.

With regards to the **material scope** of the proposal, it includes many areas of social security which have been highlighted by the ETUC as needing most urgently to be tackled, relating to the situation of being in employment. Nevertheless, adopting the scope of ILO-convention 102 would have ensured greater completeness[6] as well as consistency – especially as the EC promotes the ratification of this convention in his new document "Monitoring the implementation of the EPSR".

However, it is regrettable that it does not include **clear reference to social provisions ensuring minimum and adequate safety nets** to those people who *for the type and duration of their employment do not reach a minimum threshold which allows them to have access to protection against risks*. Safety nets/minimum income schemes of last resorts should be included among the branches of social protection to which the Recommendation applies (art. 5) and covered by the principle of adequacy (article 12). In fact, not only the *level* of benefits must be adequate, inclusiveness in coverage should be highly comprehensive.

3. **Formal coverage: exemptions must be strictly limited**

It is very welcome that the extension of the **formal coverage is mandatory for all workers and self-employed**.

However, no mandatory coverage even for only one of the 'items' of the material scope will be detrimental for the financial sustainability of the system as well as for its transparency. It will also not prevent the abuse of precarious employment relations aimed at circumventing labour costs.

The **voluntary option** should not be allowed or strongly restricted in systems aimed at universal coverage, based on solidarity, risk-sharing and fairness. This must be the case of unemployment benefit schemes for self-employed, to which also the mandatory coverage should apply. For the sake of fairness, and against free-riding and moral hazard, if everyone must be protected, everyone has to fairly and duly contribute to the system. For the sake of an effective protection, any derogation to the mandatory principle for self-employed **should be strictly conditional on assessment** based on data and evidence, **otherwise there would be no actual prevention of competition on their labour costs, and this would still leave them under-protected.**

4. **Effective coverage: enabling preconditions must be addressed**

Article 10 focuses on the **rules governing contributions and entitlements** as crucial to ensure effective coverage for all (para a): the design of these rules **should not create obstacles to accrual of and access to benefits** due to the type of the employment.

An important aspect that the design of these rules should take into account – and should be mentioned in the text - is the (fair) sharing of contributory obligations between working people and employers/customers. In particular, there should be provisions for transparency and monitoring.

Article 10.b seems to allow **differences in rules governing schemes** pertaining to different employment statuses, provided that these differences are “proportionate and reflect the specific situation of beneficiaries”. However, the reality of social protection across member states is that these differences already exist. The simple mention of their proportionality and specificity is too wide and vague to prevent long-term unequal treatment. Implementation and monitoring actions should clearly identify and strictly circumscribe situations where such differences may apply, set proportionality and justifying criteria, and tackle differentials that do not foster greater equality.

As for article 11, Member states, should ensure **cumulation, preservation and transferability** of entitlements. For the ETUC, guarantees should be set also regarding the *way* cumulation and benefit redistribution rules and conditions are designed. These should be inspired by fairness and equality.

The **transparency** principle should apply to all regulating features of schemes, including to such cumulation and redistribution rules, in order to allow clear acknowledgement of differences existing among schemes, thus preparing the way for upward convergence and fostering **transferability**.

The ETUC has repeatedly proposed tackling crucial features, de facto, to the sustainability and the effectiveness of social protection rights. Thus, implementation,

reporting and evaluation phases should take into account presence and incidence of right to organise and effective bargaining power, trade union and bargaining rights, guaranteed fair and adequate minimum remuneration.

5. **Transferability: all dimensions must be included**

The transferability principle (art. 23.m, art. 11.a and b) completely lacks the references to the cross-border dimension, which should be integrated. Implementation and monitoring actions should then be comprehensive and ambitious enough to create links and bridges with the European legislative and social partner cross-border frameworks to undertake consistent measures. Transferability should be guaranteed in all situations, including when people move from one employment status to another.

6. **Adequacy: providing safety nets and aiming for upward convergence**

The attempt of **defining an overall adequacy principle** for social protection, contained in article 12, is more than welcome. The mention of “sufficient and timely” level of protection is particularly positive, as well as of the capacity to uphold the standard of living.

However, **such definition is still incomplete and ambiguous**. A level of protection may not be *adequate* if serving just merely to *uphold* current standards of living if these standards are low. Also, the reference to “appropriate” income replacement is too vague.

The definition should also explicitly integrate the **capacity to guarantee a life in dignity and full participation in society** – pertaining to a less relative concept of adequacy. Such reference is already in recital 16[7] and should be incorporated in the body of the Recommendation.

More explicit is the recognition that an adequate level of protection should always prevent scheme members from falling into poverty.

However, some clarifications must be pointed out. There should be a hierarchy between adequate measures aimed at income replacement for working people and those aimed at “merely” preventing poverty. The adequacy of pension incomes or unemployment benefits responds to different quantitative and timing criteria to adequacy of poverty-prevention measures – and is assessed against different benchmarks. Also, as a matter of fairness, benefit levels of safety-net provisions should contemplate a difference depending on the link with any sort of contribution to social security or to basic and universal social assistance. In this sense, it would also be consistent to explicitly integrate in the recommendation adequate safety nets and minimum income provisions for working people who are not entitled (yet or any longer) to social security benefits and are trying to reintegrate into the labour market, as highlighted above. This would also help to develop comprehensive as well as precise benchmarks to assess the adequacy of social protection benefits in different circumstances[8].

The proposal of art. 14 considers **exemptions and reductions** in contributions to support low-income groups. Such measures reflect a welcome redistribution logic, although they might not be sufficient and therefore should be accompanied by minimum safety nets. For fairness, redistribution and also sustainability reasons, contributions due by the employers/customers could also vary, for example on the basis of the type or duration of employment relationship, or on the basis of the working hours.

Articles 13 and 15 refer to **contributions proportionate to the contributory capacity and to objective and transparent assessment of income** of workers and self-employed. A truly transparent and objective monitoring exercise on these grounds could provide in-depth overview of remuneration levels across different forms of employment. It should include the share of contributory obligations on employers and customers.

[1] Principles 12, 13, 15, 14 as well as 4 and 5

[2] Inter alia page 7, 8 and 12 of the Explanatory Memorandum, recital 35 of the proposal for a Council Recommendation

[3] "Chapeau" Communication on monitoring the implementation of the EPSR, COM(2018) 130 final, p. 7

[4] Article 3

[5] the same as in the Transparent and Predictable Working Conditions Directive draft proposal

[6] ref. survivor benefits and child and family allowances

[7] as well as in the explanatory memorandum, and recital 20

[8] Just as an example, proposed useful benchmarks to identify adequacy of minimum income schemes are 60% AROP rate, material deprivation and reference budgets, evolving with the cost of living.