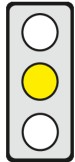


## KEY ISSUES

**Objective of the Recommendation:** The protection of workers and the self-employed by social protection schemes is to be improved and harmonised EU-wide.

**Affected parties:** Workers, self-employed, employers



**Pro:** (1) Improving the transferability of benefit entitlements promotes mobility and flexibility on the employment market.

**Contra:** (1) Uniform requirements regarding the scope of the insurance obligations of workers and the self-employed give rise to higher costs for contributors.

(2) The standard EU definition of the word “worker” is in breach of the principle of subsidiarity.

The most important passages in the text are indicated by a line in the margin.

## CONTENT

### Title

**Proposal COM (2018) 132** of 13 March 2018 for a Council **Recommendation on access to social protection for workers and the self-employed**

### Brief Summary

Note: Unless otherwise indicated, numbers and page references refer to the proposed Recommendation COM (2018) 132.

#### ► Context and objectives

- Globalisation and technological and demographic changes have led to an increase in “non-standard forms of work” - employment relationships that are not permanent full-time jobs - [p. 1 et seq.]. In 2016, of the EU workforce [p. 3 et seq.]
  - 60% were employed in permanent and 8% in temporary full-time contracts,
  - 13% were employed in permanent and 4% in temporary part-time contracts and
  - 14% were self-employed.
- Non-standard employees and the self-employed in the EU do not have access to all social protection schemes. And even if they are insured, it is not always possible for them to build up adequate coverage [SWD(2018) 70, p. 9 et seq.].
- The European Pillar of Social Rights stipulates that workers, regardless of the type and duration of the employment relationship, and the self-employed, have a right to adequate social protection [Principle No. 12].
- The Recommendation aims to contribute to the implementation of Principle No. 12 of the European Pillar of Social Rights [p. 1], by recommending minimum standards for the social protection schemes of the Member States [No. 1 and 2].
- This will inter alia [p. 2]
  - close gaps in the social protection available to non-standard employees and the self-employed,
  - facilitate the transition between dependent employment and self-employment,
  - improve labour productivity and promote competition and sustainable growth.

#### ► Personal and substantive scope of the Recommendation

- The Recommendation applies to [No. 4]
  - workers, regardless of the type of employment relationship, and
  - the self-employed.
- The term “worker” within the meaning of the Recommendation is given a standard EU definition [No. 7a].
- Varying rules may apply to workers and the self-employed [No. 6].
- The Recommendation applies to all public, occupational and private social protection schemes [No. 2], that provide the following social benefits [within the meaning of Art. 3 of the Regulation on the coordination of social security systems (EC) No. 883/2004] insofar as these are available in the Member States [No. 5]:
  - unemployment benefits;
  - sickness and healthcare benefits;
  - maternity and equivalent paternity benefits;
  - invalidity benefits;
  - old-age benefits;
  - benefits in respect of accidents at work and occupational diseases.

► **Formal coverage by social protection schemes**

- All workers and the self-employed should be formally covered, i.e. should have access to the aforementioned social protection schemes under legal provisions or collective agreements [No. 7g].
- Formal coverage
  - for all workers, should be mandatory for all of the aforementioned benefits [No. 8];
  - for all self-employed people, should be
    - voluntary for unemployment benefits [No. 9b];
    - mandatory for all other benefits [No. 9a];

► **Effective coverage and transferability of benefit entitlements**

- All workers and the self-employed should have effective coverage, i.e. should have the opportunity to claim “adequate” benefits from the social protection schemes under which they are insured [No. 7h].
- Member States, while preserving the sustainability of social protection schemes and avoiding abuse, should ensure that [No. 10]
  - rules on contributions and entitlements enable benefits to be accrued and accessed by workers and the self-employed;
  - differences between the rules applicable to workers and the self-employed in the relevant social protection schemes are proportionate and reflect the specific situation of beneficiaries.
- Member States should ensure that entitlements under mandatory and voluntary social protection schemes can be accumulated, preserved and transferred whether the beneficiaries are workers or are self-employed, such as by aggregating all contributions and preserving all entitlements accumulated throughout the beneficiary’s career [No. 11].

► **Adequacy of benefit entitlements**

- Social protection schemes should provide an “adequate” level of protection by way of “timely” and “sufficient” benefits ensuring that [No. 12]
  - there is appropriate income replacement,
  - the standard of living is maintained and
  - beneficiaries do not fall into “poverty”.
- Contributions should be proportionate to the “contributory capacity” of workers and the self-employed [No. 13].
- Reductions and exemptions for low-income groups should apply regardless of whether the beneficiaries are workers or self-employed [No. 14].
- Contributions and entitlements by self-employed people should be based on an objective and transparent assessment of their income base, take account of income fluctuations and reflect actual earnings [No. 15].

► **Transparency of social protection schemes**

- Conditions and rules of all social protection schemes should be transparent [No. 16].
- Beneficiaries should receive “regularly updated, comprehensive, accessible, user-friendly and clearly understandable information, free of charge, about their entitlements and obligations”, e.g. by [No. 16]
  - the introduction of online tools to simulate benefit entitlements or
  - the creation of one-stop online and off-line information centres and accounts.
- The administrative requirements of social protection schemes for workers, the self-employed and employers, notably micro-enterprises and small- and medium-sized enterprises, should be simplified [No. 17].

► **Data collection and implementation by Member States**

- The Member States should
  - within 12 months, submit action plans with the corresponding measures taken at national level [No. 20];
  - within 18 months, collect and publish reliable statistical data on the social protection schemes affected by the Recommendation, broken down inter alia according to self-employed or employed status, the type of employment relationship, gender, age and citizenship [No. 18].
- Implementation of the Recommendation will be monitored in the context of the European Semester and the Open Method of Coordination [No. 20].

## Main Changes to the Status Quo

- A social-insurance obligation is to be brought in for the self-employed, the scope of which will correspond to that of workers with the exception of unemployment cover.
- The term “worker” has been given a uniform EU-wide definition within the scope of the Recommendation.
- Benefit entitlements should be transferable when changing between dependent employment and self-employment.

## Statement on Subsidiarity by the Commission

Some Member States have reformed their social protection schemes. However, these reforms have been neither comprehensive nor systematic and therefore fail to close the existing “gaps in access” to social protection for non-standard workers and the self-employed. If the EU fails to provide a common framework there will be no incentive for Member States to improve access to social protection because the costs that may be incurred by companies in this regard could put them at a disadvantage as compared with companies in other Member States [p. 7 et seq.].

## Policy Context

The proposed Recommendation on social protection forms part of the “Social Fairness Package”. This package also includes, in addition to this proposal, a proposal for the establishment of a European Labour Authority [see [cepPolicyBrief 24/2018](#)]. The Commission is also preparing a proposal for the introduction of a European social insurance number.

## Status of Procedure

13 March 2018 Adoption by the Commission

## Options for Influencing the Political Process

Directorates General:	DG Employment, Social Affairs and Integration (leading)
Federal Ministries:	Employment and Social Affairs (leading)
Committees of the German Bundestag:	Employment and Social Affairs (leading)
Decision-making mode in the Council:	Unanimity: The Federal Government has a right of veto.

## Formalities

Legal competence:	Art. 292 in conjunction with Art. 153 (1) (c) and (2) para. 3 (Social policy) and Art. 352 TFEU
Type of competence:	Shared competence (Art. 4 (2) (b) TFEU)
Type of procedure:	Non-legislative procedure

# ASSESSMENT

## Economic Impact Assessment

### Ordoliberal Assessment

The increase in non-linear employment histories requires greater flexibility in social protection schemes. In order to prevent gaps in social protection it is therefore appropriate to develop social protection schemes in such a way that they fulfil their protective purpose regardless of the type of employment relationship or whether a person is self-employed. At the same time, however, the peculiarities of the Member States, including the role of the social partners, must be taken into account. In economic terms, therefore, the proposed Recommendation - though not legally binding - is only partially appropriate, for the reasons set out in more detail below.

**Uniform requirements regarding the scope of formal coverage, i.e. of the insurance obligations of workers and the self-employed, are not fit for purpose. They lead, depending on how the social scheme is designed, to higher direct and indirect costs for contributors, i.e. workers, employers and the self-employed, as well as for the government and for households. In the economically weaker Member States in particular, this may lead to a fall in flexible employment models and in the number of self-employed and thus have a detrimental effect on the productivity and competitiveness of the affected economies.** The Commission’s argument that the improvement in social protection leads to higher productivity among beneficiaries and thus to more growth, is unconvincing in economic terms. The opposite is true. Coverage may reduce the incentive to work among beneficiaries which could have negative consequences for productivity. Instead of imposing uniform requirements, regarding the scope of the insurance obligations of workers and the self-employed, on the varied social protection schemes of the Member States, the Recommendation should allow more scope for variations in formal coverage.

The differentiation between formal and effective coverage is appropriate in order to prevent real gaps in social protection. The Commission rightly suggests that rules on contributions and entitlements should facilitate the accrual of benefits regardless of whether the beneficiaries are employed on a non-standard basis or are self-employed. Overall coverage resulting from the interaction of various branches of the social protection schemes must also be included. Insofar as various benefits can be claimed simultaneously, a combination of social protection schemes may provide an adequate level of protection. This should be made clear in the Recommendation.

**Greater transferability of benefit entitlements** provides workers and the self-employed with economic security when transitioning between dependent employment and self-employment. It thus **promotes mobility and flexibility on the labour market** and reduces barriers to market entry. Overall, this results in a more efficient labour market structure and an improvement in the competition situation. This is only, true, however, where these advantages are not counteracted by cost increases resulting from higher insurance contributions.

The Commission's proposals that contributions should be proportionate to "contributory capacity" and that benefits paid in the event of claims be "adequate", "sufficient" and "timely", are extremely vague. This is nevertheless appropriate as it allows Member States the necessary scope for considering national peculiarities when implementing the Recommendation. For determining the reasonableness of insurance contributions, not only should the "contributory capacity" of workers and the self-employed be used as a criterion but also the payment capacity of employers and Member States.

Transparency is an important instrument for removing informational asymmetries. However, not only should workers and the self-employed have easier access to information about their rights and duties under social protection schemes, but employers should too. This is primarily important for small companies. Easier access to information may encourage not only workers and the self-employed but also employers to become more flexible and mobile Europe-wide. Positive economic effects will only occur, however, if the costs of implementation are proportionate.

## Legal Assessment

### Legislative Competency

The Council can address Recommendations to Member States insofar as the content falls within the EU's competence and the Council is empowered to do so [Art. 292 TFEU]. This is partly true in this case: The Council may adopt legislation on the social protection of workers [Art. 153 (1) (c), (2) para. 3 TFEU]. The EU does not, however, have an express competence for the social protection of the self-employed. In this regard, the Recommendation therefore has to be based on the EU's flexibility clause [Art. 352 AEUV]. As both the adoption of legislation on the social protection of workers and the assertion of the flexibility clause require unanimity in the Council, the proposed Council Recommendation must also be passed unanimously [Art. 292, sentence 3 TFEU].

### Subsidiarity

**The standard EU definition of the word "worker" is in breach of the principle of subsidiarity.** The Commission already proposed an identical definition in the proposal for a Directive on transparent and predictable working conditions [COM (2017) 797; cf. [cepPolicyBrief 22/2018](#)]. In the areas of labour and social law, Member States have developed their own definitions of the term "worker" which take account of the peculiarities of the respective national legal systems; something which would not be possible in the case of a uniform EU definition. These varying national definitions are in line with the interests of those involved and should not therefore be replaced by a uniform EU definition.

### Proportionality with respect to Member States

Recommendations are non-binding [Art. 288 TFEU]. In principle, therefore, it is a matter for the Member States to decide whether to implement Recommendations. Nevertheless, under the principle of cooperation [Art. 4 (3) TEU], Member States are obliged to take account of Recommendations. The Commission's proposal for implementation of the Recommendation to be monitored in the context of the European Semester and the Open Method of Coordination is proportionate in that it allows national peculiarities to be considered [cf. COM(2018) 130 p. 11].

### Impact on German law

Rules on compulsory insurance for the self-employed would have to be extended as compulsory health insurance does not apply to the self-employed, and other insurances, such as retirement, accident and care insurance, are only compulsory for certain self-employed workers. Otherwise, the extent to which German law would have to be amended cannot be determined due to the Recommendation's lack of clarity.

## Conclusion

Uniform requirements regarding the scope of the insurance obligations of workers and the self-employed, give rise to higher costs for contributors. In economically weaker Member States, this may have a detrimental effect on productivity and competitiveness. Improving the transferability of benefit entitlements promotes mobility and flexibility on the employment market. The standard EU definition of the word "worker" is in breach of the principle of subsidiarity.