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Subject: Proposal for a COUNCIL RECOMMENDATION on access to social
protection for workers and the self-employed
Political agreement

Delegations will find attached, in the Annex, the text of the political agreement on the above-mentioned proposal, reached by the EPSCO Council at its 3660th meeting held on 6 December 2018.

2018/0059 (NLE)

Proposal for a

COUNCIL RECOMMENDATION

on access to social protection for workers and the self-employed

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292, in conjunction with Articles 153 and 352 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Pursuant to Article 3 TEU, the aims of the Union are inter alia to promote the well-being of its peoples and to work for the sustainable development of Europe based on a highly competitive social market economy, aiming at full employment and social progress. The Union combats social exclusion and discrimination, promotes social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.
- (2) Pursuant to Article 9 TFEU, the Union, in defining and implementing its policies and activities, takes into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion and a high level of education, training and protection of human health.

- (3) Point (c) of Article 153(1) TFEU enables the Union to support and complement the activities of the Member States in the field of social security and social protection of workers. The Union action may also be pursued to address challenges of access to social protection for people in self-employment based on Article 352 TFEU, which contains a provision allowing the Union to adopt an act necessary to attain objectives laid down by the Treaties when the latter have not provided the powers of action necessary to attain them.
- (4) The European Parliament, the Council and the Commission solemnly proclaimed the European Pillar of Social Rights in their Interinstitutional proclamation of 17 November 2017. Principle 12 of the Pillar 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.
- (5) The social partners have committed to continue contributing to a Europe that delivers for its workers and enterprises.
- (6) In its Resolution on a European Pillar of Social Rights, the European Parliament underlined the need for adequate social protection and social investment throughout people's lives, enabling everyone to participate fully in society and the economy and sustaining decent living standards. In its opinion on a European Pillar of Social Rights, the European Economic and Social Committee emphasised the need to ensure that all workers are covered by fundamental labour standards and adequate social protection.

- (7) Social protection systems in their different forms are the cornerstone of the European social model and of a well-functioning social market economy. The key function of social protection is to protect people against the financial implications of social risks, such as illness, old age, accidents at work, or job loss, to prevent and alleviate poverty and uphold a decent standard of living. Well-designed social protection systems may also facilitate participation in the labour market by contributing to activation, and supporting the return to work and labour market transition for individuals who switch jobs, move in or out of work, start a company or close it down. They contribute to competitiveness and sustainable growth as they support investment in human capital and as they may help to reallocate human resources towards emerging and dynamic sectors of the economy. They also have a role to play as automatic stabilisers by smoothing consumption over the course of the business cycle.
- (8) Social protection can be provided through in-kind or in-cash benefits. It is generally provided through universal schemes that protect all individuals and financed through general taxation and/or through schemes that protect people in the labour market, often based on contributions related to their work-income. Social protection includes several branches, covering a variety of social risks ranging from old age to illness or unemployment. This Recommendation applies to the branches of social protection which are often more closely related to the participation in the labour market and mostly ensure protection from loss of work-related income upon the occurrence of a certain risk. This Recommendation does not apply to the provision of access to social assistance and minimum income schemes. It complements existing guidance, at the Union level, on social services and assistance, and more broadly on the active inclusion of people excluded from the labour market¹.

¹ Commission Recommendation of 3 October 2008 on the active inclusion of people excluded from the labour market (2008/867/EC).

- (9) Globalisation, technological developments, changes in individual preferences, and demographic ageing have driven changes in the European labour markets for the last two decades and will continue to do so in the future. Employment will increasingly be more diverse and careers will be less and less linear.
- (10) A variety of employment relationships and forms of self-employment exist in Union labour markets alongside full-time open-ended employment contracts. Some of them have already been known in the labour market for a long time (such as fixed, temporary, part-time, domestic work, or traineeships); others developed more recently and increased in importance since the 2000s: on-demand work, voucher-based work, platform work, etc.
- (11) The self-employed in particular also form a heterogeneous group. Most individuals voluntarily choose to be self-employed, with or without employees, taking the risk to become entrepreneurs, while one out of five self-employed is self-employed because he or she cannot find a job as an employee.
- (12) As labour markets evolve, social protection systems in their different forms need to evolve too, to ensure that the European social model is future-proof and that it enables Union societies and economies to make the most of the future world of work. However, in most Member States, the rules governing contributions and entitlements of social protection schemes are still largely based on full-time open-ended contracts between a worker and a single employer while other groups of workers and the self-employed have been more marginally covered. Evidence shows that some non-standard workers and some self-employed have insufficient access to the branches of social protection which are more closely related to the participation in the labour market. Only a few Member States have undertaken reforms to adapt social protection systems to the changing nature of work to better protect affected workers and the self-employed. Improvements have been uneven across countries and across branches of social protection.

- (13) In the long run, the gaps in access to social protection may put at risk the welfare and health of individuals, contribute to increasing economic uncertainty, poverty risk and inequalities, and may also lead to suboptimal investment in human capital, reduce trust in institutions and limit inclusive economic growth. Such gaps may also reduce the revenues of social protection if a growing number of people do not contribute to the schemes.
- (14) Workers and self-employed people can be identified as formally covered by a specific social protection branch if the existing legislation or collective agreement set out that they are entitled to participate in a social protection scheme in that specific branch. Formal coverage can be provided via mandatory or voluntary schemes. The latter give the opportunity to individuals to adhere to a scheme (opt-in clauses) or cover all individuals of the target group by default giving them the opportunity to leave the scheme if they so wish (opt-out clauses). Evidence shows that voluntary schemes with opt-out clauses have higher rates of adherence and therefore provide better coverage than voluntary schemes with opt-in clauses.
- (15) Workers and self-employed people can be identified as effectively covered in a specific social protection branch if they have the opportunity to accrue adequate benefits and the ability, in case of materialisation of the corresponding risk, to access a given level of benefits. A person may be granted formal access without de facto being able to build and take up entitlements to benefits.
- (16) Social protection is considered as adequate when it allows individuals to uphold a decent standard of living, to replace their income loss in a reasonable manner and to live with dignity and prevents them from falling into poverty while contributing, where appropriate, to activation and facilitating the return to work.

When assessing the adequacy the Member State's social protection system as a whole needs to be taken into account, this means all social protection benefits of a Member State need to be considered.

- (17) In some Member States, certain categories of workers such as short part-time workers, seasonal workers, on-demand workers, platform workers and those on temporary agency contracts or traineeships are excluded from social protection schemes. Moreover, workers who do not have full-time, open-ended contracts can encounter difficulties in being effectively covered by social protection, because they may not fulfil entitlements criteria for receiving benefits from contributions-based social protection schemes. The self-employed are completely excluded from formal access to key social protection schemes in some Member States; in other Member States they are able to adhere to them on a voluntary basis. Voluntary coverage may be a suitable solution in the case of unemployment insurance, which is more closely associated to the entrepreneurial risk; it is less justifiable for other risks such as illness, which are largely independent from their status in the labour market.
- (18) The rules governing entitlements may work to the disadvantage of non-standard workers and the self-employed. In particular, income and time thresholds (qualifying periods, waiting periods, minimum working periods, duration of benefits) may constitute an unduly high obstacle to access social protection for some groups of non-standard workers and for the self-employed. In general, two sets of issues have been identified: firstly, existing differences in rules between standard employees and people in non-standard employment or self-employed may unnecessarily penalise one group; secondly, the same rules applied to all groups may lead to poorer outcomes for people outside standard employment and may not be adapted to the situation of the self-employed. In both cases, there may be scope to better tailor the rules to the situation of the specific groups while maintaining a general principle of universality so that no-one in the labour market is left uncovered upon the materialisation of a social risk. Specific measures may be needed to avoid people contributing to overlapping schemes, for example when exercising ancillary activities while already fully covered in their main job.

- (19) Social protection rights are not always preserved, accumulated and/or transferred when individuals are transiting between different labour market statuses, for instance going from employment to self-employment or unemployment, combining salaried employment and self-employment, starting or closing down a business. The preservation, accumulation and/or transferability of rights across schemes are however crucial to allow people who combine or change jobs or pass from a worker status to a self-employed status and vice versa to effectively access benefits in contributory schemes and to have adequate coverage, but also in order to encourage their participation in case of voluntary social protection schemes.
- (20) Benefits may be inadequate, i.e. insufficient or untimely to uphold a decent standard of living, to live with dignity and prevent individuals from falling into poverty. In this case, there may be scope to improve adequacy, while also being attentive to enabling measures that facilitate the return to work. The rules governing contributions may skew the level playing field and work to the disadvantage of some categories of workers and the self-employed. For instance, social protection contributions for self-employed may include contributions independent of income, or be set based on past incomes or assumptions about future income. This can create cash flows problems for the individual when their income drops below the estimates. If a Member State decides to determine an income threshold under which the worker or self-employed concerned is not subject to the obligation of insurance contributions payments, these reductions and other progressivity measures should apply, where appropriate, equally to workers and the self-employed, but should not induce to under-reporting of income. In general reductions and other progressivity measures may also be used to promote transitions to less precarious forms of employment and to tackle segmentation.

- (21) The current regulatory complexity and lack of transparency regarding social protection rules in many Member States may hamper people's ability to be aware of their rights and obligations and their possibilities of exercising them. They may also contribute to a low take-up rate, or low participation in social protection schemes, especially in the case of a voluntary scheme. Transparency can be achieved in different ways, for example, by sending updates on individual entitlements, setting up online simulation tools regarding benefit entitlements, creating online and off-line one-stop information centres or personal accounts. Digitalisation can, in particular, contribute to improving transparency for individuals.
- (22) Lack of statistics on coverage by social protection broken down by type of employment relationship, age, sex and citizenship may limit the possibilities of improving the capacity of social protection systems to adapt and respond to the changing world of work.
- (23) The gaps in access to social protection may have detrimental effects, in terms of economic and fiscal impacts, which are felt across the Union. They are a matter of common interest for the Member States and they potentially present obstacles to the achievement of key objectives of the Union.

- (24) Union legislation already ensures the principle of equal treatment between various types of employment relationships, prohibits any direct or indirect discrimination based on sex in matters of employment, occupation, social protection and access to goods and services, ensures portability and preservation of rights in case of mobility between Member States and guarantees minimum requirements for the acquisition and preservation of supplementary pension rights across borders, as well as minimum requirements in terms of transparency of occupational schemes. This Recommendation should be without prejudice to the provisions of the directives and regulations already setting out some rights to social protection².

² Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC – Annex : Framework agreement on part-time work (OJ L 14, 20.1.1998, p. 9), Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ L 175, 10.7.1999, p. 43), Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9), Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (OJ L 283, 28.10.2008, p. 36), Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (OJ L 354, 23.12.2016, p. 37), Directive 2010/41/EC of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (OJ L 180, 15.7.2010, p. 1), Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23), Council Directive 1979/7/EC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ L 6, 10.1.1979, p. 24), Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004, p. 37), Council Directive 2010/18/EC of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (OJ L 68, 18.3.2010, p. 13) and proposal of 16 April 2017 repealing it (COM(2017) 253 final), Council Directive 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels (thirteenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) (OJ L 307, 13.12.1993, p. 1), Regulation (EC) 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1) and proposal for a Directive on transparent and predictable working conditions in the European Union, COM/2017/0797 final of 21 December 2017.

- (25) Council Recommendation 92/442/EEC³ identified commonly held objectives in the area of social protection and invited Member States to "examine the possibility of introducing and/or developing appropriate social protection for self-employed persons". Those commonly defined objectives have opened room for the Open Method of Coordination in the field of social protection and social inclusion, an essential instrument to support the definition, implementation and evaluation of national social protection frameworks and to foster Member States' mutual cooperation in this area.
- (26) In the framework of the European Semester, the Annual Growth Survey 2018 recalls that improving the adequacy and coverage of social protection is crucial to prevent social exclusion while the 2018 Guidelines for the employment policies call on the Member States to modernise social protection systems.
- (27) In its Social Protection Floors Recommendation of 2012, the International Labour Organisation recommends its members, in accordance with national circumstances, to establish as quickly as possible and maintain their social protection floors comprising basic social protection guarantees.
- (28) The Commission has undertaken a two-stage consultation with the social partners⁴ on access to social protection for people in all forms of employment, in accordance with Article 154(2) TFEU. The procedure of Article 154(2) TFEU is not as such applicable to Union action to address the challenges related to the self-employed on the basis of Article 352 TFEU. The Commission invited the social partners to share their views as regards persons in self-employment on a voluntary basis.

³ Council Recommendation 92/442/EEC of 27 July 1992 on the convergence of social protection objectives and policies (OJ L 245, 26.8.1992, p. 49).

⁴ C(2017) 7773

- (29) The Commission also carried out a public consultation to seek the views of various stakeholders and citizens and gathered evidence to assess the socio-economic impacts to this Recommendation⁵.
- (30) The implementation of this Recommendation should not be used to reduce existing rights set out in existing Union legislation in this field nor should it constitute valid grounds for reducing the general level of protection afforded to workers in the field covered by this Recommendation.
- (31) This Recommendation should avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small- and medium-sized undertakings (SMEs). Member States are therefore invited to assess the impact of their reforms on SMEs in order to make sure that SMEs are not disproportionately affected, with specific attention for micro-enterprises and for administrative burden, and to publish the results of such assessments.
- (32) This Recommendation should not aggravate further the liquidity of undertakings – and especially of SMEs – when their financial situation has been negatively affected by late payments from public authorities.
- (33) The Member States may involve stakeholders, including social partners, in the design of reforms.
- (34) This Recommendation should be without prejudice to the powers of the Member States to organise their social protection systems. The exclusive competence of the Member States with regard to the organisation of their social protection systems includes inter alia decisions on the setting up, financing and management of such systems and related institutions as well as on the level, substance and delivery of benefits, the level of contributions and the conditions for access. Taking into account the differences between national systems, this Recommendation should not prevent Member States from maintaining or establishing more advanced provisions on social protection than the ones recommended here.

⁵ SWD(2018)70

- (35) This Recommendation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Recommendation seeks to promote the application of Article 34 of the Charter of Fundamental Rights of the European Union.
- (36) The financial sustainability of social protection schemes is essential for the resilience, efficiency and effectiveness of the schemes. The implementation of this Recommendation should not significantly affect the financial equilibrium of Member States' social protection systems,

HAS ADOPTED THIS RECOMMENDATION:

Objective and scope

1. Member States are recommended to provide access to adequate social protection to all workers and the self-employed in Member States, in line with this Recommendation and without prejudice to the powers of the Member States to organise their social protection systems.
2. Member States are recommended to establish minimum standards in the field of social protection of workers and the self employed, in line with this Recommendation. Social protection can be provided through a combination of schemes, whether publicly organised or whose organisation is devolved to social partners or other entities, in accordance with the fundamental principles of national social protection systems. Private insurance products are out of the scope of the Recommendation. Member States are competent to define the level of contributions and decide which combination of schemes is appropriate, in accordance with Article 153(4) TFEU.

3. This Recommendation covers the right to participate in a scheme as well as the build-up and take-up of entitlements. Member States are recommended, in particular, to ensure the following for all workers and the self-employed:
 - (a) formal coverage
 - (b) effective coverage
 - (c) adequacy
 - (d) transparency
4. This Recommendation applies to workers and the self-employed, including people transitioning between either status 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.
5. This Recommendation applies to the following branches of social protection, insofar provided in the Member States:
 - (a) unemployment benefits;
 - (b) sickness and health care benefits;
 - (c) maternity and equivalent paternity benefits;
 - (d) invalidity benefits;
 - (e) old-age benefits and survivors' benefits;
 - (f) benefits in respect of accidents at work and occupational diseases;
6. This Recommendation does not apply to the provision of access to social assistance and minimum income schemes.

7. The principles of formal coverage, effective coverage, adequacy and transparency defined in this Recommendation apply to all workers and to the self-employed, whilst acknowledging that different rules may apply for workers and for the self-employed.
8. This Recommendation does not prevent Member States from maintaining or establishing more advanced provisions on social protection than those contained in this Recommendation. This Recommendation does not limit the autonomy of the social partners where they are responsible for setting up and managing social protection schemes.

Definitions

9. For the purposes of this Recommendation, the following definitions apply:
 - (a) 'type of employment relationship' means one of the various types of relationships between a worker and employer(s) that can differ regarding the duration of employment, the number of working hours or other terms of the employment relationship;
 - (b) 'labour market status' means the statuses of a person as either working in the framework of an employment relationship (worker) or working on their own behalf (self-employed);
 - (c) 'social protection scheme' means a distinct framework of rules to provide benefits to entitled beneficiaries. Such rules specify the personal scope of the programme, entitlement conditions, the type of benefits, benefit amounts, benefits duration and other benefit characteristics, as well as the financing (contributions, general taxation, other sources), governance and administration of the programme;
 - (d) 'benefit' means a transfer in cash or kind made by a public or private entity to someone entitled to receive it as part of a social protection scheme;

- (e) 'formal coverage' of a group means a situation in a specific social protection branch (e.g. old age, unemployment protection, maternity/paternity protection) where the existing legislation or collective agreement sets out that the individuals of this group are entitled to participate in a social protection scheme covering a specific branch;
- (f) 'effective coverage' of a group means a situation in a specific social protection branch where the individuals in this group have an opportunity to accrue benefits and the ability, in case of materialisation of the corresponding risk, to access a given level of benefits;
- (g) 'preservation of rights' means that rights already acquired in past work experiences are not lost, even if they were acquired through schemes with different rules or under different employment relationships;
- (h) 'accumulation of rights' refers to the possibility of totalising all entitlements. This includes making qualifying periods in a previous labour market status (or in concomitant labour market statuses) count towards the qualifying periods in the new status;
- (i) 'transferability' means the possibility of transferring accumulated entitlements to another scheme;
- (j) 'transparency' means the provision of available, accessible, comprehensive and clearly understandable information to the general public, potential scheme members, schemes members and beneficiaries about the scheme's rules and/or about the individual obligations and entitlements.

Formal coverage

10. Member States are recommended to ensure access to adequate social protection to all workers and the self-employed for all branches mentioned in Paragraph 5. In light of national circumstances, it is recommended to achieve this objective by extending and improving the formal coverage to
- (a) all workers on a mandatory basis, regardless of the type of their employment relationship;
 - (b) the self-employed, at least on a voluntary and where appropriate on a mandatory basis.

Effective coverage

11. Member States are recommended to ensure effective coverage to all workers, regardless of the type of employment relationship, and to the self-employed, under the conditions set out in paragraph 10, while also preserving the sustainability of the system and implementing safeguards to avoid abuse. To that end:
- (a) rules governing contributions (e.g. qualifying periods, minimum working periods) and rules governing entitlements (e.g. waiting periods, calculation rules and duration of benefits) should not hinder the possibility of accruing and accessing benefits due to the type of employment relationship or of labour market status;
 - (b) differences in the rules governing the schemes between labour market statuses or types of employment relationships should be proportionate and reflect the specific situation of beneficiaries.

12. According to national circumstances, Member States are recommended to ensure that entitlements – 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, throughout the person's career or during a certain reference period and between different schemes within a given social protection branch.

Adequacy

13. Where a risk insured by social protection schemes for workers and for the self-employed occurs, Member States are recommended to ensure that schemes timely provide an adequate level of protection to their members in line with national circumstances, upholding a decent standard of living, providing appropriate income replacement while always preventing those members from falling into poverty.

When assessing the adequacy, the Member State's social protection system as a whole needs to be taken into account.

14. Member States are recommended to ensure that the contributions to social protection are proportionate to the contributory capacity of workers and the self-employed.
15. In light of national circumstances and where appropriate, Member States are recommended to ensure that any exemptions or reductions in social contributions provided for by national legislation, including those for low-income groups, apply to all types of employment relationships and labour market statuses.
16. Member States are recommended to ensure that the calculation of social protection contributions and entitlements of the self-employed are based on an objective and transparent assessment of their income base, including taking account of their income fluctuations, and reflect their actual earnings.

Transparency

17. Member States are recommended to ensure that the conditions and rules of all social protection schemes are transparent and that individuals have access to updated, comprehensive, accessible, user-friendly and clearly understandable information free of charge about their individual entitlements and obligations.
18. Member States are recommended to simplify, where necessary, the administrative requirements of social protection schemes for workers, the self-employed and employers, notably micro-, small- and medium-sized enterprises.

Implementation, reporting and evaluation

19. Member States and the Commission should jointly work on improving the scope and relevance of data collection at the Union level on labour force and access to social protection, with a particular view to informing policy making on social protection of new forms of work. In this context, 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), the type of employment relationship (temporary/permanent, part-time/full-time, new forms of work/standard employment), gender and age by [ADD date 24 months from the publication of the Recommendation].
20. The Commission should, jointly with the Social Protection Committee, establish a monitoring framework, and develop agreed common quantitative and qualitative indicators to assess the implementation of this Recommendation by [ADD date 12 months from the publication of the Recommendation] and enabling its review.

21. Member States are recommended to implement the principles set out in this Recommendation as soon as possible and submit a plan informing on the corresponding measures to be taken at the national level by [ADD date 18 months from the publication of the Recommendation]. The progress in the implementation of these plans should be discussed in the context of the multilateral surveillance tools in line with the European Semester and the Open Method of Coordination for Social Inclusion and Social Protection.
22. The Commission should review progress in the implementation of this Recommendation, also taking into account the impact on small- and medium-sized enterprises, in cooperation with the Member States and after consulting the stakeholders concerned, and report to the Council by [ADD date 3 years from the publication of the Recommendation]. On the basis of the results of the review, the Commission may consider making further proposals.
23. The Commission should ensure that the implementation of this Recommendation is supported through actions funded by the relevant Union programmes.
24. The Commission should facilitate mutual learning and the exchange of best practices between Member States and with stakeholders.

Done at Brussels,

For the Council

The President
