

Chapter 5

The social situation of the self-employed in Europe: labour market issues and social protection

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Introduction

Self-employment is being promoted at national and EU level as a way to create ‘more and better’ jobs. For more than a decade, self-employment¹ has indeed drawn the attention of national policymakers throughout Europe as an economic and social policy tool. At EU level, the EU’s Employment Guidelines suggest that Member States boost demand for labour and facilitate the creation of quality jobs by promoting entrepreneurship and self-employment (European Commission 2017a). Importantly, during the economic and financial crisis, self-employment became an instrument of labour market and social policy. In some cases though, it has been used by companies to reduce labour costs for salaried employment and to gain a competitive advantage by avoiding social security contributions and circumventing labour law regulations.

Self-employment is widespread in such traditional sectors as construction (Behling and Harvey 2015) and transport as well as in the growing service sectors and in new business models as a substitute for salaried employment (ILO 2016). In this context, hybrid forms of employment – such as ‘dependent’² and ‘bogus’³ self-employment – have emerged, especially in the platform-driven section of the economy (ILO 2016 and 2017; Williams and Lapeyre 2017; Degryse 2016; Kenney and Zysman 2016).

As will be argued below, these hybrid forms of employment have increased to a point where they represent a challenge for national labour and social legislation as well as for the financing of social security systems. The question should therefore be asked whether the promotion of self-employment really leads to ‘more jobs’ and ‘better quality jobs’. Indeed, the labour situation of people in self-employment differs widely and self-employment comes with an elevated risk of precariousness (Eurofound 2017; European Parliament 2016). In addition, the self-employed generally have less statutory and effective access to social protection than employees (Spasova *et al.* 2017). At a macro level, a rise in self-employment could threaten the sustainability of social protection

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1. The concept of self-employment refers to an employment situation where people work on their own account with or without employees.
 2. A dependent self-employed person often depends on one or a small number of clients and receives direct guidelines on the scope of the task and the work process (ILO 2016). For the purposes of this chapter we also use interchangeably the term ‘economically dependent workers’.
 3. ‘Bogus self-employment’ is defined as the deliberate (mis-) classification of a worker’s employment status as self-employed despite the fact that their working situation meets all of the criteria of salaried employment (ILO 2016).

systems, as self-employed people without access to certain social protection schemes may have to rely on last-resort social assistance benefits.

In this context, policymakers at national and EU level have recently been looking at ways to ensure better (and innovative) social protection for self-employed workers (Eurofound 2017; Spasova *et al.* 2017; Behrendt and Nguyen 2018), including in the context of the European Pillar of Social Rights. In 2018 the European Commission indeed put forward a proposal for a Council Recommendation to ensure access to social protection for non-standard workers and the self-employed (European Commission 2018a).

Against this backdrop, this chapter provides first an account of the numbers and profiles of the self-employed today, clustering the ‘many faces’ of self-employment in Europe (Section 1). Section 2 describes statutory and effective access of the self-employed to social protection schemes. Section 3 briefly discusses how the social protection of the self-employed has been addressed in recent EU discourse and initiatives. The final section summarises the key findings.

1. Exploring the diversity of self-employment in Europe

1.1 Trends in self-employment

The proportion of self-employed in the European Union has not increased since the beginning of the 21st century, remaining, according to Eurostat, fairly stable at around 14-15% of the EU28 workforce. However, this general trend masks four interesting developments. Firstly, the share of the self-employed with employees is slowly decreasing (5% in 2002, 4.2% in 2016). For the EU15 we can observe a trend over a longer time, showing a fall from 5.6% in 1995 to 4.3% in 2017.

Secondly and conversely, the share of self-employed workers without employees is slowly increasing, from 10.1% in 2002 to 10.4% in 2017 in the EU28. This is *inter alia* linked to the shrinking size of agriculture in the European economy, a sector with a high self-employment rate. Roughly half of the workforce in this sector is indeed self-employed, and almost 9 out of 10 of these do not employ staff. Thus, the shrinking agricultural sector offsets an upward trend in the self-employed without employees in the other sectors – from 7.1% in 2002 to 9.0% in 2017.

Thirdly, the share of self-employment is counter-cyclical and to some extent corresponds with unemployment – the higher unemployment is, the higher the self-employment rate. Since 2002, the self-employment rate in the EU28 was highest in 2004 and 2010 (15.4% and 15.3% of the workforce), years when unemployment was also high (9.3% and 9.6%). Since 2012, self-employment has been declining, preceding the decline in unemployment.

Finally, trends in self-employment differ greatly between countries. Between 2008 and 2015 (just before and after the crisis), the strongest increases were observed in the Netherlands (up 3.6% pts), Latvia (2.9% pts) and Luxembourg (2.7% pts). The biggest decreases were in Portugal (down 6% pts), Croatia (5% pts) and Cyprus (1.2% pts). The

aforementioned shrinking agricultural sector is a strong driver of the decrease in the latter countries.

1.2 Who are the self-employed?

The most recent Eurostat figures for 2017 show that 4% of the labour force are self-employed with employees, while 10% are self-employed without employees. Within the EU, the proportion of the former is highest in Greece (7%) and Italy (6%) and lowest in Romania (1%) and Cyprus (2%). The proportion of self-employed without employees is highest in Greece (22%) and Romania (15%) and lowest in Denmark (4%) and Germany (5%).

For each self-employed woman, there are more than two self-employed men in the EU28. Nearly half of the self-employed (47%) are male and do not employ staff. Women self-employed without employees account for about 25% of all self-employed. Roughly one in five (21%) of the self-employed are male and employ staff, while the smallest group are women self-employed with employees (8%). The self-employed are also older than employees: 39% are aged 50 or more, compared to 30% for all employed persons.

Agriculture alone accounts for 14% of all self-employed. Most of these are self-employed without employees. In addition to agriculture, self-employed are also overrepresented in service activities (30%, including personal and repair services), professional scientific and technical activities (30%) and construction (27%). Within these sectors, 3 out of 4 of the self-employed do not employ staff, a figure roughly in line with the overall average.

Certain occupations are historically or by nature self-employment domains. Professions such as lawyers, auditors, tax advisors, notaries, dentists, pharmacists and medical specialists can be referred to as 'liberal professions'. There is no precise and consistent definition across countries, but the European Centre for Liberal Professions (2014) lists categories of professions that could belong to that group and De Moortel and Vanroelen (2017) estimate on the basis of the European Working Conditions Survey (EWCS) that 8% of the self-employed belong to these liberal professions.

Finally, the self-employed earn on average more than employees (Eurofound 2017). Income distribution is however more skewed for the self-employed than for employees, testament to the fact that the group of self-employed includes some of the highest earning people as well as some of the lowest earners. In fact, Spasova *et al.* (2017) found that in 2015 the at-risk-of-poverty rate of the self-employed was three times higher than that of salaried workers.

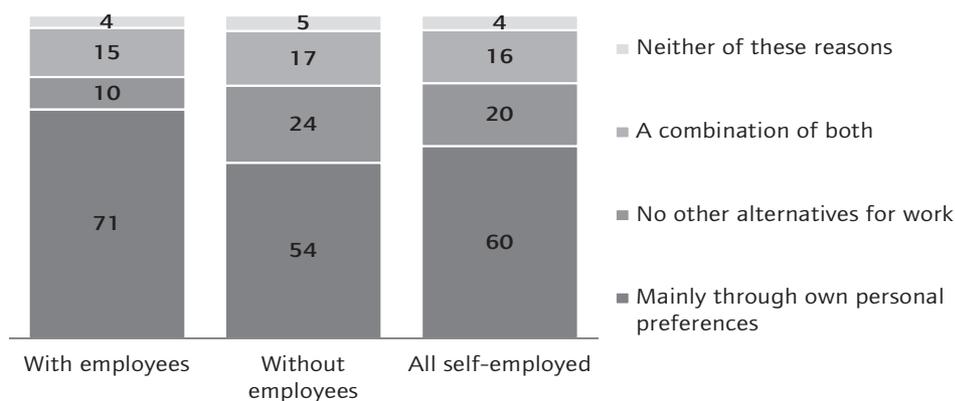
1.3 Becoming self-employed: choice or necessity?

Much of the recent policy discourse focuses on self-employment in the context of precarious work and economic dependence (see Section 3). This implies that for some, the status of self-employment may not be desirable, with employee status preferred.

Questions that arise are: *what motivates people to become self-employed? Is it choice or rather necessity?*

The 2015 EWCS asked respondents who had identified themselves as self-employed whether this option was based mainly on their own personal preferences ('opportunity') or because there were no other options for work ('necessity'). A combination of both (or neither) of these reasons could also apply. The majority (60%) of self-employed people in the EU28 became self-employed of their own preference (see Figure 1). One in five stated that they had no other alternatives for work and therefore resorted to self-employment. For 16% of respondents it was a combination of both. Clearly there is a difference between the self-employed with employees and those without: those who employ staff themselves are more likely to have become self-employed out of preference (71%) than those without staff (54%).

Figure 1 Main reasons for self-employment, EU28



Source: Eurofound (2017).

Binder and Coad (2013) find that in the UK 'opportunity' entrepreneurship is linked to higher life satisfaction than is 'necessity' entrepreneurship. Eurofound (2017) shows that those who became self-employed by choice are more likely to report that they 'enjoy being their own boss' and less likely to report that they 'find it hard to bear the responsibility of running a business' than those who had no alternative to self-employment. Self-employed workers' assessment of their situation points to the fact that not all self-employed people display traits commonly associated with entrepreneurship, such as enjoying autonomy and embracing risk. Gevaert *et al.* (2018) show that having entrepreneurial characteristics seems to be crucial for the mental well-being of the self-employed.

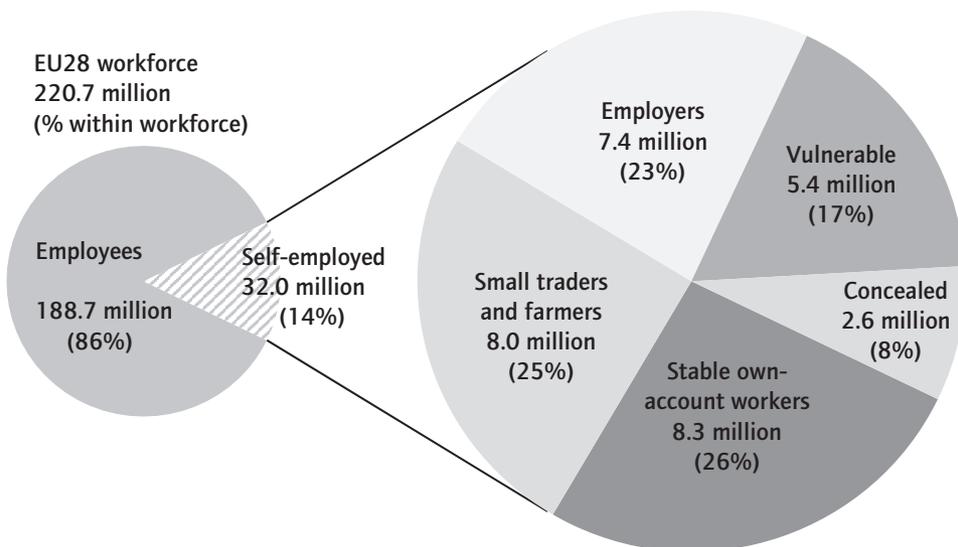
At country level, the change in the share of self-employment in the workforce between 2008 and 2015 is negatively correlated (-0.46) with the proportion of those who became self-employed because there were no other alternatives for work. Some of the highest rates of 'necessity self-employment' can be observed in countries with the steepest declines in self-employment, e.g. Portugal (34%), Croatia (38%) and Romania (37%).

Conversely, necessity self-employment is low in countries that have witnessed growth in the proportion of self-employment, e.g. the Netherlands (9%), Luxembourg (13%) and the UK (14%). This seems to imply that the recent increases in the self-employment rate are the result of self-employment becoming relatively more attractive as an alternative to dependent employment. In the Netherlands, tax incentives for self-employment have contributed greatly to the surge in self-employment (Bosch *et al.* 2012).

1.4 The many faces of self-employment

It has become clear that the self-employed are no homogenous group, and this diversity needs further investigation. Eurofound (2017) performs latent class analysis on the EWCS resulting in five distinct clusters of self-employed in the EU28 in terms of a range of characteristics related to entrepreneurialism, economic or operational dependence and economic sustainability or precariousness⁴ (Figure 2). The main characteristics of the workers belonging to each of these groups are outlined below.

Figure 2 Clusters of self-employed, EU28



Source: Eurofound (2017), based on the EWCS.

On one side of the spectrum we find two of the five clusters – labelled ‘**employers**’ and ‘**stable own-account workers**’ – together represent about half of the self-employed. These groups tend to be more independent and enjoy greater powers of decision over their work, are engaged in economically more viable and sustainable activities

4. See the technical report for more details on the model (De Moortel and Vanroelen 2017).

and are more likely to be self-employed out of choice. Compared to the other groups of self-employed, their levels of health, wellbeing and satisfaction with their working conditions are higher.

The self-employed '**employers**' fit the positive image associated with entrepreneurs, as they have larger businesses employing multiple employees across multiple subsidiaries. Unsurprisingly, high earners are overrepresented in this group and a majority claim to be financially secure in case of sickness. The 'employers' are economically independent, as almost all of them have multiple clients from which to generate income. Also, more than half (53%) of the self-employed in this group find it easy to find new clients. The 'employers' have a high degree of discretion over their work situation, both in terms of laying off employees and of taking time off for personal or family matters.

The '**stable own-account workers**' by contrast do not employ any staff, while being economically and operationally independent. Only a small fraction (12%) of the self-employed in this cluster became self-employed out of necessity, and, like the 'employers', many have more than one client (93%) and can easily find new ones (53%). Nine out of ten within this group can take time off when they wish. They tend to earn more than the other clusters except for the 'employers'. This cluster is most strongly represented in the country that has witnessed the strongest growth in self-employment in the last decade: the Netherlands. However, less than half of the self-employed (41%) in the Netherlands can be classified as 'stable own-account workers'.

On the other side of the spectrum we find one in four self-employed belonging to the '**vulnerable**' (17%) or '**concealed**' (8%) clusters. The self-employed in these groups are generally in more precarious situations, with lower levels of income and job security, greater dependence and with less working autonomy. They experience, overall, unfavourable working conditions and this seems to correspond to lower levels of health and wellbeing.

The self-employed in the '**vulnerable**' cluster are labelled as such because they are low earners and financially insecure in case of sickness (54%). It is also difficult for them to change their situation as they are economically dependent: 55% have only one client and 48% find it difficult to find new clients. Generally, a large share of the self-employed in this cluster do not assess their work situation very positively – 40% became self-employed out of necessity. The 'vulnerable' self-employed are overrepresented in agriculture and the shrinking relative size of agriculture in employment explains the largest drops in self-employment.

The '**concealed**' self-employed display many features similar to those of the 'vulnerable' (economic dependency, precariousness) but their most striking characteristic is that they have little discretion in how they organise their work. For example, only 15% have the authority to dismiss other workers and, for 33%, it is difficult to take time off at short notice, potentially indicating the sort of subordination one would typically expect in an employee-employer relationship (hence the term 'concealed' self-employment). Two-thirds (65%) of the self-employed in this group are paid on a weekly or monthly basis. Overall, the 'concealed' self-employed have a very similar work situation to employees,

without having the same rights (e.g. dismissal protection, leave entitlements) or social protection. The UK – a country which has seen a strong increase in self-employment – has by far the strongest representation of this type of self-employed (21%).

Finally, one in four self-employed people are members of perhaps a more traditional group: **‘small traders and farmers’**. The picture is more mixed for this group, combining both favourable and unfavourable working conditions. People in this group tend to be economically independent and work autonomously, but find it hard to do their job – 40% indicate they ‘find it hard bearing the responsibility of running a business’. This is most likely because of their long working weeks: more than 7 out of 10 of these ‘small traders and farmers’ work 6 days or more a week.

The cluster analysis above confirms previous research (see Section 2) showing the blurring of boundaries between employment and self-employment, as the working and employment conditions of some of the self-employed – the ‘vulnerable’ and ‘concealed’ – are close to those of employees. The situation of these self-employed has sparked a lively debate in many Member States concerning the legal status of some groups of self-employed, as more and more workers seem to fall into an ‘in-between’ category of ‘economically dependent workers’ (or also) ‘dependent self-employed’ and ‘bogus (or sham) self-employment’ (Eurofound 2017).

2. Access to social protection for the self-employed: making sense of diversity

The question then is how the wide diversity among the self-employed described in Section 1 affects their access to social protection⁵. Research shows that in general the self-employed are less protected than salaried workers in terms of both ‘statutory’ and ‘effective’ access to social benefits (Spasova *et al.* 2017; Matsaganis *et al.* 2016; Fondeville *et al.* 2015; Fachinger and Frankus 2015; Westerveld 2012), though major nuances exist.

Thus, although the situation varies greatly from country to country, in general the self-employed have the same statutory access to non-insurance (non-contributory)⁶ based schemes as salaried employees. Most often, these are universal schemes, i.e. social assistance, long-term care and family benefit schemes, financed by general taxation and not dependent on employment status.

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5. The main social protection schemes considered in this chapter are healthcare, sickness, maternity/paternity, old-age pensions, unemployment, social assistance, invalidity, accidents at work/occupational injuries and family benefits. Statutory access refers to the right enshrined in law to access social protection, while effective access is linked to meeting eligibility conditions in order to accrue entitlements and receive benefits.
 6. Insurance-based schemes (contributory schemes) are based on social security contributions paid by the worker and/or the employer. Non-insurance based (non-contributory) schemes are financed by taxes (e.g. family allowances, some forms of healthcare and long-term care and certain means-tested benefits as social assistance benefits). These are granted regardless of an individual’s employment status. Distinguishing between non-insurance-based (non-contributory) and insurance-based (contributory) social protection schemes is a difficult task for several reasons. In some countries, there may be a mix of benefits (contributory and non-contributory) for the same risk. Moreover, the same scheme can be contributory in one country and non-contributory in another.

However, the self-employed often do not have statutory access to certain insurance-based (contributory) schemes (Spasova *et al.* 2017; Matsaganis *et al.* 2016; Fachinger and Frankus 2015; Westerveld 2012; Dekker 2011). In addition, even if they legally have access to social protection, their effective access is often hampered by eligibility conditions tailored to salaried employment, issues of transferability of benefits between schemes and under-insurance due to contributions paid on low minimum required incomes⁷. Moreover, the self-employed may be subject to longer waiting periods and enjoy shorter periods of receipt of benefits than salaried workers (Spasova *et al.* 2017; Fondeville *et al.* 2015). This section focuses mainly on statutory access (Section 2.1), while providing some insights on effective access (Section 2.2).

2.1 Statutory access to social protection for people working in a self-employed capacity

2.1.1 Access to insurance-based schemes

Why does statutory access to certain benefits, such as sickness or unemployment benefits, matter for the self-employed? Surely a well-off, self-employed individual belonging to one of the economically most viable ‘employers’ or ‘stable own-account’ clusters (Section 1) may not need to be insured against these risks. In fact, some argue that risks such as unemployment are entrepreneurial risks inherent to setting up and running an entrepreneurial venture (BusinessEurope 2018a). However, how would a ‘vulnerable’ or a ‘concealed’ self-employed person cope with the same situation? If the latter groups are not protected, there is a greater risk of them ending up in poverty and social exclusion and having to resort to social protection safety nets. Statutory access thus relates to equal access to social rights, i.e. the possibility of enjoying mandatory coverage or of having the possibility to opt into a social protection schemes.

Insurance-based schemes can be divided into two groups as regards the social protection situation of the self-employed⁸. The first group can be considered as mainly linked to gainful employment⁹, made up of schemes to which in general the self-employed have statutory access: healthcare insurance, invalidity, old-age pensions and maternity/paternity benefits. The second group comprises benefits mostly related to a salaried employment relationship, to which the self-employed mostly do not have access, or may join only on a voluntary basis. The main gaps in statutory access indeed relate to sickness, unemployment and occupational injuries and accident-at-work benefits. As shown in Table 1, no less than fifteen Member States do not provide access to unemployment

7. In general, when possible the self-employed ensure at the minimum required income level (e.g. BG, RO, ES). In some countries (e.g. BG, RO), the self-employed have the choice to insure at the level of the minimum wage (for more details see Spasova *et al.* 2017).

8. It should be noted that statutory access to these schemes is further complicated by the possibility of opting in, opting out and by exemptions for certain self-employed categories. The self-employed may also be entitled only to means-tested benefits (non-contributory) from some schemes which comprise contributory and non-contributory benefits, while salaried workers can have access to both.

9. According to the ILO (2016), there are four types of social protection schemes related to the employment relationship: those linked to (1) a contract with a specific employer; (2) salaried employment; (3) participation in ‘gainful employment’, i.e. including earnings from self-employment; and (4) residence status (ILO 2016).

benefits, twelve do not provide access to accident at work/occupational injuries and three to sickness benefits. Importantly, research shows that the self-employed consider precisely these schemes to be the most important branches of social protection in which to be insured, after old-age pensions (Codagnone *et al.* 2018).

Table 1 Main gaps in statutory access for the self-employed

Social protection scheme	No legal access	Statutory access	
		Mandatory	Voluntary
Unemployment	BE, BG, CY, DE, EE ^a , EL ^b , FR, IE ^a , IT, MT ^b , NL, LT ^b , LV, PT ^b , UK ^a	CZ, HR, HU, LU, SI, SK ^c , PL	AT ^c , DK, ES, FI, RO, SE
Accidents at work and occupational injuries	BE, BG, CY, CZ, DE, DK, IE, LT, LV, NL ^b , SK, UK	EE, EL, HR, HU, IT, PL, LU, MT, SE, SI	AT ^c , ES ^d , FI ^d , FR ^b , PT, RO ^d
Sickness benefits	EL ^b , IE ^a , IT	AT ^c , BE, CY, DE ^c , DK, ES ^d , FI, FR, HR, HU, LU, LT, LV, MT, PT ^c , SE, SI, SK ^c , UK ^c	BG, CZ, EE, NL, PL, RO ^d

Notes: a) Access only to means-tested benefits b) Access only for certain categories of SE c) OPT- OUT and exemptions d) Compulsory /voluntary access depending on the category of SE.

Source: This table is based on previous research: Spasova *et al.* (2017), Fondeville *et al.* (2015), European Commission (2017b and 2018b). The table does not claim to be exhaustive.

In order to simplify the complex reality of national legal provisions, Spasova *et al.* (2017) classify statutory access to social protection for the self-employed in Europe in four clusters (see Table 2), using two main criteria. The first pertains to compulsory coverage of the self-employed by insurance-based schemes (i.e. similar to salaried employment). The second criterion relates to whether the self-employed are able to voluntarily opt into a scheme in cases where they, unlike salaried employees, do not have mandatory coverage¹⁰.

Table 2 Statutory access to insurance-based schemes for the self-employed in the EU

'All-inclusive' systems	'Optional access' systems	'Partially exclusive' systems	Patchwork of 'optional access' and 'partially exclusive' systems
HR, HU, LU, SI	AT, CZ, DK, ES, FI, PL, RO, SE	BE, CY, EL, FR, IT, LT, LV, MT, SK	BG, DE, EE, IE, NL, PT, UK

Source: based on Spasova *et al.* (2017).

In the '**All-inclusive access**' cluster, comprising only four Member States, the self-employed, like salaried workers, are required to be insured under all the insurance-based schemes.

10. Exceptions to the requirement to be insured may apply in certain countries in each of the four clusters. For instance, there may be income thresholds below which the self-employed are not required to be insured.

In the **‘Optional access’** cluster (eight Member States) the self-employed, different to salaried workers, are not required to be insured under one or more insurance-based but may choose to voluntarily opt into the scheme(s) concerned¹¹. For instance, in Austria, the self-employed can opt into unemployment insurance. In the Czech Republic and Poland, they may choose to take out sickness and maternity insurance.

The **‘Partially exclusive schemes’** cluster is the biggest group, made up of nine Member States where the self-employed, contrary to salaried workers, do not have access and, different to the previous cluster, they cannot opt into one or more insurance-based schemes. For instance, there is no access to unemployment insurance in seven of these countries¹².

Finally, the residual group of seven Member States is a **‘Patchwork of “optional access” and “partially exclusive”** systems, as it combines features of both clusters. The self-employed in this group are not required to be insured under one or more insurance-based schemes. They may opt into some schemes but are completely excluded from others. For instance, in Bulgaria, the self-employed can opt into the sickness scheme but are excluded from the occupational disease and work injury as well as the unemployment schemes. It should be noted that this ‘patchwork’ cluster includes some countries where the situation is rather specific (e.g. EE, IE, PT and the UK). For instance, in Ireland and the United Kingdom the self-employed do not have access to certain insurance-based schemes and do not have the possibility to opt in. However, they can qualify for a means-tested benefit covering a similar contingency.

Although the boundaries between the four clusters are not watertight, this classification clearly flags two main points. First, there is a great variety among Member States in the way they deal with statutory access to social protection for the self-employed. Second, the self-employed have less extensive rights of access to social protection than salaried workers. Only twelve EU Member States provide comprehensive access, i.e. compulsory or voluntary insurance under all statutory social protection schemes (‘all-inclusive’ and ‘optional access’ clusters).

2.1.2 Hybrid social protection for the dependent self-employed

In addition to the complex situation in terms of statutory access for the self-employed, Section 1 flagged that a second major challenge has become apparent. Since the beginning of the crisis a hybridisation of social protection for the so-called ‘dependent self-employed’ (or ‘economically dependent workers’) can indeed be observed.

In terms of statutory access to social protection the ‘dependent self-employed’ can be classified somewhere between salaried employment and self-employment. They are better protected in some countries than the rest of the self-employed, especially

11. It should be noted that the situation with regard to unemployment insurance in some countries in this cluster takes a specific form (DK, FI, SE). In these countries, there is a two-tiered unemployment system: a state benefit and a voluntary insurance scheme accessible to those in all kinds of employment.

12. BE, CY, FR, IT, LT, LV, MT.

regarding unemployment, sickness and occupational injuries and accident-at-work benefits. Yet, in some cases, the ‘dependent self-employed are subject to different eligibility and benefit receipt conditions than salaried workers (see illustrations in Table A1 in Annex).

2.2 Effective access to social protection

In addition to the patchy statutory access, there are several issues with regards to effective access to social protection for the self-employed. As an illustration, particularly telling are the perceptions of the self-employed on their access to sickness benefits. In most Member states they have (at least voluntary) statutory access to sickness benefits. However, as many as 47% of the self-employed in the EU indicate they would not be financially secure if they had a long-term illness (Eurofound 2017; Figure 3). This is particularly the case for those who became self-employed due to a lack of alternatives – these are the self-employed who consider themselves financially most vulnerable.

Figure 3 If I had a long-term sickness, I would be financially secure – % of self-employed who tend to disagree or strongly disagree, by main reasons for self-employment



Source: Eurofound (2017).

Since effective access to social protection is very difficult to estimate due to a lack of comprehensive national data, we merely highlight four main findings of existing research (Behrendt and Nguyen 2018; Spasova *et al.* 2017; Matsaganis *et al.* 2016; Fonderville *et al.* 2015). First, in many cases the eligibility criteria for social protection are tailored to salaried employment or are tighter for the self-employed, which may hinder their access. Such eligibility criteria mostly relate to contributory periods, shorter duration of benefits as well as waiting periods (e.g. for sickness benefits)¹³. For instance, in Portugal the maximum period of sickness benefit receipt is three times shorter and the waiting period ten times longer for the self-employed than for salaried workers. These conditions undoubtedly explain the very low proportion of self-employed (2.4%) among the total number of beneficiaries of sickness benefit (2016) in Portugal.

13. AT, BE, EE, FR, HR, LU, PL, PT, SE, SI.

Second, effective access to social protection may be influenced by the possibilities for voluntary access, opt-out and exemptions. Third, the way the income assessment base upon which the self-employed pay contributions is determined¹⁴ may play a significant role in the adequacy of the benefits (see examples in Table A2 in Annex).

Fourth, effective access may be hindered by a lack of transferability of social rights entitlements. This is the case especially for pension schemes and in particular for occupational pension schemes. For instance, in some Member States where occupational pensions have very high coverage rates for salaried workers, the self-employed may have only limited access or no access at all (European Commission and SPC 2018; Spasova *et al.* 2017). Access to information and administrative procedures may also make effective access difficult, especially with regard to old-age, invalidity, and accident/occupational benefits (Codagnone *et al.* 2018).

This section has shown that Member States differ greatly in the extent to which they cover the self-employed in their social protection systems and that in many of them the self-employed do not have statutory access to some social protection schemes. Moreover, even if statutory access is guaranteed, effective access may be lacking. The next section discusses how this issue has been addressed at EU level by the European Commission.

3. When Europe becomes involved: from an economic to a social protection discourse on self-employment

In the EU policy discourse, self-employment has mainly been considered as a tool to make labour markets more flexible and boost employment. Self-employment has indeed been perceived as a means ‘of coping with restructuring needs, reducing direct or indirect labour costs and managing resources more flexibly in response to unforeseen economic circumstances’ (European Commission 2006: 8).

3.1 The social situation of the self-employed in EU discourse: antecedents

While the social situation of non-standard workers has been covered by several specific EU legal initiatives¹⁵, the self-employed have rarely been included in them. This is not so surprising as the Treaties of the EU do not refer to self-employment at all.

14. Income assessment bases play an important role for accrual of entitlements for the self-employed. On the one hand, if social contributions are paid on a very low income assessment base it may lead to a low level of benefits. On the other hand, if the reference base is too high, the self-employed person not be able to pay the required contributions. These issues may be related to the way of calculating the income base reference period: income paid on long previous periods of earnings, upfront payments (advance social security payments), payments of arrears, under- or non-reporting of income-streams, etc.

15. Such as the Council Directive 97/81/EC on part-time work; Council Directive 1999/70/EC on fixed-term work, Directive 2008/104/EC of the European Parliament and of the Council on temporary agency work (OJ L 327, 5 December 2008, p. 9). For an exhaustive list, see European Commission (2018a).

And yet, between the end of the 1990s and mid-2000, there were some EU-level discussions related to the social situation of the self-employed, covering issues such as diversity in income, working conditions and the grey area between self-employment and contractual employment (Supiot *et al.* 1999; European Commission 2006). However, the specific issue of social protection for the self-employed was rarely addressed. One exception is the 1992 Council Recommendation on the convergence of social protection objectives and policies. This Recommendation was issued during the favourable context of the ‘Delors Era’, when considerable progress was made on EU social policy. The Recommendation identified common objectives and invited the Member States to ‘examine the possibility of introducing and/or developing appropriate social protection for self-employed persons’ (Council of the European Communities 1992: 2).

Some issues relating to social protection for the self-employed were addressed indirectly during the discussions on the Green Paper (2006) on the future of Labour Law. The Paper recognised issues such as the lower social protection of the self-employed, the grey area of ‘dependent self-employed’ and their blurred rights as well as the issue of increasing transitions between one employment status and another (European Commission 2006). For different reasons, this document attracted significant criticism from both trade unions and employers, including representatives of the self-employed as well as civil society organisations, and somehow came to nothing (Westreveld 2012).

Since the onset of the economic crisis in 2008, interest for the social situation of the self-employed has however grown at EU level. EU documents have begun to point to certain issues, in particular relating to the social protection of ‘bogus’ self-employment and ‘dependent’ self-employment (EESC 2013 and 2010; European Commission 2010). Importantly, in 2010, the Directive on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity addressed social protection issues such as entitlement to maternity benefits (Directive 2010/41/EC) (European Parliament and Council of the European Union 2010). In 2016 the European Commission created a precedent by addressing a Country-specific Recommendation to the Netherlands on the topic, calling for measures to tackle issues related to the steep increase in the number of self-employed without employees, including the promotion of ‘access of the self-employed to affordable social protection’ (European Commission 2016: 5)¹⁶. A 2016 European Parliament report and Resolution also emphasised the importance for all people in all employment forms and self-employment to have access to social protection (European Parliament 2016).

3.2 The EU initiative on access to social protection for non-standard workers and the self-employed

The issue of access to social protection for non-standard workers and the self-employed became one of the key priorities on the social agenda of the EU in 2017, notably in the slipstream of the political momentum created by the European Pillar of Social Rights

16. Judging the Dutch policy response in these areas to be insufficient, the Commission reiterated the same recommendation in 2017 (European Commission 2017c).

(Principle 12) initiated by the Juncker Commission (Sabato and Corti in this volume; European Commission 2017d). The European Commission launched a two-stage consultation (April 2017–January 2018) of the social partners on a possible EU legislative or non-legislative initiative in the area of social protection under Article 154(2) TFEU.

Putting access to social protection, in particular for the self-employed, on the EU legislative agenda arguably represents a milestone in EU discourse and action. This is an ambitious step for three reasons. First, social protection is principally the competence of the Member States: the EU has mainly competences in the coordination, not the design of social security. Second, while the Treaties provide a legal basis for policy on the social protection of workers (including non-standard workers)¹⁷, as mentioned above, there is no legal provision for dealing with the social protection of the self-employed. Thus, the initiative addressing the latter has been based on the so-called ‘flexibility clause’ (Article 352 TFEU)¹⁸. Third, social protection for the self-employed may sound to some like a ‘contradiction in terms’, as self-employment is (too) easily associated with the idea of voluntarily borne risks (but see the cluster discussion in Section 1).

3.2.1 A two-stage consultation process

Three main issues with regard to social protection were identified during the first stage: (a) gaps in statutory and effective access to social protection; (b) lack of transferability of entitlements; and (c) lack of transparency linked to regulatory complexity and poor access to information on social security rights. The second-phase consultation document focused on the same issues, but in greater depth. For instance, as for the formal and effective coverage of social protection, the Commission weighed the pros and cons of mandatory/voluntary coverage (European Commission 2017e).

In neither stage of the consultation were the social partners able to reach agreement on entering into negotiations (for more details see Clauwaert in this volume). And yet, during both stages, the trade union side called for mandatory insurance for people in all types of employment and called on the Commission to bring forward the issue of the adequacy of social benefits. The ETUC expressed furthermore its willingness to enter into negotiations, while considering a directive to be the most appropriate instrument (ETUC 2017a and 2017b). The employers, however, emphasised that the self-employed are a wide-ranging, heterogeneous group and self-employment may become less competitive and attractive if they are obliged to contribute to social protection. An EU legal initiative was, in their view, neither needed nor appropriate, since social protection is a competence of the Member States; at EU level the issue should, therefore, be

17. Article 153 TFEU can serve as a legal basis for addressing the challenges of coverage in the area of social security and social protection for people in non-standard employment. Within certain limits, Article 153(1)(c) of TFEU provides for the EU to adopt legislation in the area of ‘social security and social protection of workers’ and could be used to establish the new *acquis* necessary to address the challenges of gaps in coverage of social protection for people in non-standard employment. Article 153(2) enables the EU legislator to adopt measures, including directives setting minimum requirements, in the field of social security and social protection of workers.

18. Article 352 TFEU (or this so-called ‘flexibility clause’) allows the EU ‘to act in areas where EU competences have not been explicitly granted in the Treaties but are necessary to the attainment of the objectives set out in the Treaty’, see additional information at https://ec.europa.eu/commission/sites/beta-political/files/role-flexibility-clause_en.pdf

addressed mainly through the European Semester and soft governance instruments. As a result, the employers did not express any willingness to enter into negotiations (BusinessEurope 2017 and 2018b).

3.2.2 A proposal for a Council Recommendation

Faced with the failure to enter into negotiations, the European Commission, on 13 March 2018, took the lead and announced a proposal for a Council Recommendation on a common set of building blocks for the design of the social protection systems of the Member States (see also Clauwaert, this volume). These building blocks are not binding, but the Commission believes they can nonetheless provide a strong basis for creating a level playing field between Member States in the way they address the gaps in access to social protection¹⁹.

Basically, the proposed Council Recommendation reiterated the same three key issues identified during the two-stage consultation process (Section 3.2.1). However, it emphasises some specific elements:

- even if there is only a subtle difference vis-à-vis the consultation documents, the discourse of the proposed Recommendation is more focused on social rights per se and only then on the importance of these for labour markets and economic growth;
- the text links up with progressive International Labour Organisation ideas and instruments calling for the establishment of national floors of social protection;
- adequacy of social protection benefits has become one of the cornerstones of the initiative;
- mandatory insurance is clearly supported as an option for people in employment and self-employment for most of the social protection schemes. Voluntary insurance is seen as a ‘suitable solution’ only for unemployment benefits for the self-employed;
- last but not least, the existence of categories of self-employed with differing social situations is clearly acknowledged. In addition, the text refers to the misuse of self-employment in cases of a subordinate employment relationship (European Commission 2018a).

The proposed Council Recommendation is a significant step forward, at least in ideational terms, recognising and raising awareness to the gaps in social protection for non-standard workers and the self-employed. The documents accompanying the two stages of consultation and the proposed Recommendation have progressively included (and further deepened) issues such as statutory and effective access, transferability, access to information as well as the adequacy of benefits (European Commission 2018a and 2018b; 2017b, 2017f and 2017e). Most of these ideas, in particular, adequacy of the benefits and the wide coverage of mandatory insurance were among the proposals by the European Trade Union Confederation during the consultation process (ETUC 2017a and 2017b).

19. The Council Recommendation requires unanimity and is based on Article 292 TFEU, in combination with Articles 153(1) (c) and 153(2), third subparagraph, and with Article 352 TFEU.

The proposed Council Recommendation, within the broader context of the Pillar of Social Rights and the Social Fairness Package, is a promising step towards restoring the idea of ‘Social Europe’. It can be seen as a (admittedly late) recognition that there are important social protection consequences of the deregulation of labour markets needing to be tackled. As Crespy and Schmidt put it, ‘trying to assess to what extent countries deal with social protection is primarily a matter of evaluating their recovery after a period of implementing austerity packages and cutting welfare states across the board from 2010 to 2013’ (Crespy and Schmidt 2017). Indeed, the Commission has been putting these issues more firmly on the agenda through a variety of channels (e.g. the Annual Growth Survey 2018 or the EU Joint Employment Report 2018).

However, the future of the proposal for a Recommendation is unclear, and it is difficult to predict its fate, let alone the actual ‘bite’ it will have in directing Member State policies. The outcome will mainly depend on the political agenda of the next European Commission, the outcome of the 2019 European elections and the political and economic situations in the Member States.

Conclusions

Today, and in particular since the economic crisis, the self-employed can no longer be perceived as archetypal representatives of the well-off liberal professions. As described in Section 1, the self-employed indeed have many faces. At one end of the spectrum are well-off individuals (‘entrepreneurs’ and ‘stable own account self-employed’) working in good conditions and in high quality jobs, but at the other end there are the ‘vulnerable’ and ‘concealed’ self-employed who struggle with precarious working conditions and low incomes. Within the latter categories, over two-thirds have become self-employed involuntarily, i.e. out of necessity.

Moreover, as Section 2 illustrated, the self-employed in the EU are legally entitled to less social protection than salaried workers. Often, they do not have access to certain insurance-based schemes: mainly sickness, unemployment and accident-at-work and occupational injury benefits. In addition, they may not be able to build up adequate entitlements because of difficulties meeting eligibility criteria, low transferability of previous entitlements etc.

The consequences of the economic and social crisis and the increase in own-account self-employment have led some countries to opt for differentiated (‘hybrid’) social protection for the ‘dependent self-employed’, providing them with better protection than the rest of the self-employed. This approach is questionable in terms of social fairness, especially in contexts where it is difficult to legally distinguish between ‘dependent self-employment’ and ‘bogus self-employment’.

This context of an increasing diversity in self-employment arrangements and growing gaps in formal and effective access to social protection has been progressively matched by a growing awareness at political level. One of the major initiatives in this direction has been the 2018 proposal by the European Commission for a Council Recommendation

on access to social protection for workers and the self-employed. This initiative echoes ideas about social protection for the self-employed that were circulating in EU social discourse at the beginning of the 1990s but have been dormant ever since. The expected resistance from Member States and employers arguably explains why the European Commission has decided to revert to a 'soft governance' instrument (in this case a Council recommendation) rather than a directive on access to social protection. The choice of policy instrument, dependent on an unanimity vote within the Council, illustrates the challenge of moving from a proclamation of principles to implementing the European Pillar of Social Rights 'on the ground'.

This initiative would certainly be welcomed by those self-employed confronted with the worst of both worlds: risking economic dependency and precariousness out of necessity while not being covered by certain social protection schemes. These self-employed workers certainly deserve a response from policymakers. Beyond the specific situation of some particularly precarious forms of self-employment, national social protection systems need to continue to monitor and adapt to the changing world of work in order to ensure comprehensive social protection for all.

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Annex

Table A1 National examples of access to social protection for the 'dependent self-employed'

Country	'Dependent self-employed'
Germany	Since 1999, the 'own account self-employed' who are dependent on a single client have been subject to compulsory insurance for old-age pensions while the other categories of self-employed are not.
Italy	In Italy, an unemployment benefit was introduced in 2015 for dependent self-employed persons working on continuous collaboration contracts (co.co.pro., Collaborazioni coordinate a progetto).
The Netherlands	Only the dependent self-employed are compulsorily covered by occupational and work injury schemes. The rest of the self-employed should take out private insurance.
Spain	Accident-at-work insurance is compulsory for the dependent self-employed ('economically dependent self-employed' – TRADE) but voluntary for the rest of the self-employed.
Portugal	Only the dependent self-employed have access to unemployment benefits.
Romania	Dependent self-employed benefit from compulsory pension and health insurance (while conditional upon a certain income for the rest of the self-employed). Yet, compared to a salaried worker, the dependent self-employed do not have mandatory insurance against unemployment.

Source: this table is based on previous research (Spasova *et al.* 2017), European Commission (2017b and 2018b). This table does not claim to be exhaustive.

Table A2 Examples of issues of effective access to social protection for the self-employed (optional access and income bases)

Voluntary access, opt-outs and exemptions	Low minimum assessment bases
Romania: only 10-11 % of the self-employed are covered for old-age benefits, invalidity, sickness or maternity benefits.	Latvia: 85%-90% of self-employed pay contributions based only on a minimum monthly wage.
Czech Republic: In September 2017, 15.37% of SE (main economic activity) contribute to sickness insurance.	Spain: the average monthly base of the self-employed is approximately 36% lower than that of salaried workers. 86.1% of self-employed are insured at minimum contribution base.
Austria: coverage of the unemployment insurance which is voluntary: 0.02 % of all self-employed (117 persons insured in 2015)	Slovenia: 70% of self-employed persons pay social security contributions on the minimum insurance base for pensions.
Finland: coverage of the second-tier voluntary unemployment insurance: solo self-employed: 20% and for self-employed with employees only about 10%.	Estonia: there is a legal incentive to declare only 'passive income' instead of 'active income' (the former is not subject to social tax and income tax). Households with business income are estimated to under-report 62% of their actual active income.

Source: based on Spasova *et al.* (2017), European Commission (2017b and 2018b). This table does not claim to be exhaustive.