



Brussels, 26.4.2017  
C(2017) 2610 final

## **CONSULTATION DOCUMENT**

**of 26.4.2017**

**First phase consultation of Social Partners under Article 154 TFEU on a possible action addressing the challenges of access to social protection for people in all forms of employment in the framework of the European Pillar of Social Rights.**

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### **First phase consultation of Social Partners under Article 154 TFEU on a possible action addressing the challenges of access to social protection for people in all forms of employment in the framework of the European Pillar of Social Rights.**

## **1. INTRODUCTION**

**The purpose of this document is to consult the social partners, in accordance with Article 154(2) of the Treaty on the Functioning of the European Union (TFEU), to request their views on the possible direction of European Union action to address the challenges of access to social protection and related employment services for workers in non-standard employment.**

European Union action may also be pursued to address the challenges of access to social protection and related employment services for people in self-employment if based on Article 352 TFEU. Since Article 154(2) TFEU does not apply in this case, it is therefore on a voluntary basis that the Commission also invites social partners to share their views on how the challenges of access to social protection affecting people in self-employment could be addressed.

This consultation relates to a possible new Commission initiative on ‘Access to social protection’<sup>1</sup>, which would be launched in the framework of the European Pillar of Social Rights (also referred to as ‘the Pillar’)<sup>2</sup>. The initiative would be a response to issues raised by many stakeholders during the public consultation on the European Pillar of Social Rights<sup>3</sup>. Furthermore, how to ensure social protection for people in all forms of employment was a central topic at the January 2017 European Conference on the European Pillar of Social Rights<sup>4</sup>. In its response to the consultation the European Parliament called<sup>5</sup> for an EU initiative on adequate social protection and employment services for people in all forms of employment. The initiative “Access to social protection” is intended to address challenges, through concrete EU-level action, directly related to several principles and rights set out in the European Pillar of the Social Rights, and in particular:

Principle 4 on ‘**Active support to employment**’, which states that *‘a. Everyone has the right to timely and tailor-made assistance to improve employment or self-employment prospects. This includes the right to receive support for job search, training and re-qualification. Everyone has the right to transfer social protection and training entitlements during professional transitions. b. Young people have the right to continued education, apprenticeship, traineeship or a job offer of good standing within 4 months of becoming unemployed or leaving education. c. People unemployed have the right to personalised, continuous and consistent support. The long-term unemployed have the right to an in-depth*

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<sup>1</sup> European Commission (2016): *Commission Work Programme 2017 - Delivering a Europe that protects, empowers and defends*, point 11, available [online](#).

<sup>2</sup> Available [online](#).

<sup>3</sup> SWD(2017) 206, available [online](#).

<sup>4</sup> Available [online](#).

<sup>5</sup> Available [online](#), in particular see points 22 and 23.

*individual assessment at the latest at 18 months of unemployment’.*

Principle 5 ‘**Secure and adaptable employment**’, which provides that ‘*a. Regardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment regarding working conditions, access to social protection and training. The transition towards open-ended forms of employment shall be fostered. b. In accordance with legislation and collective agreements, the necessary flexibility for employers to adapt swiftly to changes in the economic context shall be ensured. c. Innovative forms of work that ensure quality working conditions shall be fostered. Entrepreneurship and self-employment shall be encouraged. Occupational mobility shall be facilitated. d. Employment relationships that lead to precarious working conditions shall be prevented, including by prohibiting abuse of atypical contracts. Any probation period should be of reasonable duration’.*

Principle 12 on ‘**Social Protection**’, which 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’.*

In parallel, the Commission is also conducting a consultation of social partners on the possible direction of European Union action concerning a revision of the Written Statement Directive (Directive 91/533/EEC) (see Consultation document C(2017)2611). The aim is to open a debate on the possibility to clarify the scope of application of the Written Statement Directive, and also to define core labour standards for all workers in order to reinforce convergence towards better performance. A revision of this Directive would not, however, relate to any right or obligation linked to statutory social security schemes.

## 2. THE CHALLENGES

The main arguments for addressing deficiencies in de facto access to social protection and employment services for people in all forms of employment are examined in this chapter. First, the general problem, its historical roots and current and future relevance is set out. Next, key aspects of insufficient access across the EU are presented. Finally, the negative consequences of the current situation and the difficulties of addressing it are discussed. Core terminology is explained in the box below.

### ***Key definitions***

***Non-standard employment*** refers to all forms of work other than full time, open-ended employment in a subordinate and bilateral employment relationship<sup>6</sup>.

***Self-employment*** refers to employment in which persons pursue a gainful activity for their own account.

***New forms of employment*** are characterised by unconventional work patterns and places of work, or by the irregular provision of work. They can be based on non-standard contractual arrangements or on self-employment status. Eurofound<sup>7</sup> identifies nine employment forms as new — or of increasing importance — since 2000: employee sharing, job sharing, interim management, casual work, ICT-based mobile work; voucher-based work; portfolio work;

<sup>6</sup> ILO (2016): *Non-standard employment around the world*, available [online](#).

<sup>7</sup> Eurofound (2015): *New forms of employment*, available [online](#).

crowd employment; and collaborative employment.

***Social protection*** encompasses all social benefits in cash and kind, with typical ones being benefits in case of: unemployment, sickness, accidents at work and occupational diseases, invalidity, old-age, pre-retirement, death (i.e. survivors' pensions and death grants), maternity/paternity, parental and family obligations, and need for health care or long-term care.

***Related employment services*** encompass benefits in kind included in active labour market policies such as guidance, counselling and placement, training and updating, rehabilitation and re-insertion measures, typically facilitated by public employment services.

## 2.1. The problem

Offering access to social protection and related employment services for people in all forms of employment is crucial not just for the economic and social safety of the workforce, but also for well-functioning labour markets that create jobs and growth. Yet, there are groups of employed who are left without sufficient access to social protection benefits and employment services.

There are marked variations across Member States in the coverage of social security systems and in the groups of people who do not benefit from the same access to social protection as standard employees. Nonetheless, it is estimated that up to half of people in non-standard work and self-employment are at risk of not having sufficient access to social protection and/or employment services (see also Annex I)<sup>8</sup>. This is particularly relevant for people in new forms of non-standard work and of self-employment<sup>9 10</sup> (see box above for key definitions).

Today people in all categories of self-employment constitute 15% of the workforce in EU Member States and people in all categories of non-standard employment form another 20-25%. Since these forms of work constitute a rising share of job-opportunities, notably for the young (see Annex I – figure 14), there is a risk of leaving a growing part of the working population without the social security and employment support that people need to manage life-long working careers in rapidly changing labour markets<sup>11</sup>. Moreover, the accumulated effects of such disparities in entitlements are likely to give rise to new inter- and intra-generational inequalities between those that have or manage to gain employment on standard contracts with full social rights and those who do not.

*Historically*, social protection has primarily been developed in relation to workers in standard employment. Other groups of employed people, like self-employed and people in non-standard work, have been more marginally covered, creating important gaps in access to social protection in most Member States<sup>12</sup>.

Faced with the need of achieving higher levels of employment and labour market flexibility while maintaining adequate levels of security for workers, Member States have made efforts since the 90s to give the 'classical' social protection package in cash and kind a more active orientation<sup>13</sup> and couple it with increased access to employment services and training. Whereas workers in non-standard employment often have been included in this wider 'security

<sup>8</sup> IZA (2013) Research Report No. 54: *Social Protection Rights of Economically Dependent Self-employed Workers*, available [online](#).

<sup>9</sup> IZA (2013) Research Report No. 54.

<sup>10</sup> European Parliament (2016): *Precarious employment in Europe – patterns, trends and policy strategies*, available [online](#).

<sup>11</sup> European Commission (2015): *An ever closer Union among the peoples of Europe? Rising inequalities in the EU and their social, economic and political impacts*. DG RTD, available [online](#).

<sup>12</sup> IZA (2013) Research Report No. 54: *Social Protection Rights of Economically Dependent Self-employed Workers*, available [online](#).

<sup>13</sup> At EU-level these developments have been reflected in initiatives such as the *Commission Recommendation 2008/867/EC on Active Inclusion*, available [online](#), and more recently the *2013 Social Investment Package (COM(2013) 83)*, available [online](#).

package'<sup>14</sup>, access has remained limited for the self-employed.

The ongoing digital change, and in particular the collaborative economy, creates opportunities in terms of income, job creation and entrepreneurship, including for socially disadvantaged people with difficult access to traditional employment. While bringing new opportunities for jobs and innovation, it also intensifies the need for new flexible work arrangements as it breaks down many space, time and organizational boundaries of work and opens more options in terms of where and when to work. Some of these new forms of work, like the 'tripartite relationship between the platform, the customer and service provider', or the 'economically dependent contractor' may lead to the use of self-employed status in situations where de facto a subordinate employment relationship exists. In cases where the status of self-employment significantly changes the right to be covered and the obligation to pay social insurance contributions, people may be either forced or tempted to become formally self-employed to lower non-wage labour costs. Whichever the reason, the effects are similar: the playing field between similar work situations is skewed and social, employment and health risks significantly increased.

Some may argue that, in the platform economy, citizens who offer services in a private function and only on an occasional basis might not be in need of the full range of the labour and social protection regulation, as compared to those who conduct a professional activity. However, the majority of occasional providers in the platform economy provides services as a supplement to their main job or combines a series of occasional services to reach a full income. Should they be given the opportunity, they are likely to want - for the services provided under such conditions - social protection proportionate to the hours worked and/or to the income received.

The way in which the right and obligation to social protection often is linked to the type of contract and to the labour law status of people in employment is becoming increasingly problematic<sup>15</sup>, due to the growing number of people in self-employment or in jobs not governed by standard contracts and due to the growing number of transitions between and combinations of dependent employment and self-employment. In fact, this deficiency of many social protection systems, until now of relative marginal importance, is likely to constitute a growing impediment to the well-functioning of labour markets, to the sustainability of social protection systems and to the welfare of a rising share of the workforce.

## 2.2. Key aspects of insufficient access

The first important issue to be considered is the growing **gap in access** to social protection and employment services. As mentioned, people in non-standard forms of employment or self-employed are often not granted access to social protection on a par with workers in standard contracts. For the self-employed, social insurance contributions are often voluntary, flat-rate or the income basis on which they are calculated self-declared (subject to minima). Because younger people are more likely to have non-standard contracts or enter new forms of self-employment, they are also more at risk of being excluded from entitlement to social protection. This results from their employment not being included in compulsory coverage and/or from not having accumulated sufficient work and contribution periods. Over time this will not just bar them from qualifying for short term benefits such as in case of unemployment or health insurance, but significantly affect their ability to build entitlements to a pension that can protect them from poverty and allow them a decent standard of living in old age.

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<sup>14</sup> At EU level this has been reflected in initiatives such as the 2007 *identification of common principles on Flexicurity*, available [online](#) and more recently in the 2012 *Employment Package (COM(2012) 173)*, available [online](#).

<sup>15</sup> EESC (2016): *The changing nature of employment relationships and its impact on maintaining a living wage and the impact of technological developments on the social security system and labour law*: Available [online](#).

In Member States where occupational rights are important in national social protection provision, the self-employed and people in non-standard employment are disadvantaged as usually they have no possibility to obtain such rights and have limited access to alternatives.

Even when access to social protection is formally granted, individual myopia may play a role in securing sufficient social protection during one's working life. Actual acquisition is therefore a crucial part of access. Those with low and/or irregular income, in particular self-employed without employees and people working on short term non-standard contracts, are more likely to forego or reduce contributions. This leads to frequent under-insurance against social and health risks and results in a tendency to fall back on safety nets of last resort. The ways in which formal coverage is implemented are therefore key for an effective access and take-up. There may for example be a need to tailor contributions and benefits better to the peculiar income situation of people in non-standard work and self-employment.

#### **Gaps in access to social protection<sup>16</sup> and to employment services**

In 12 Member States, the self-employed are subject to special public *pension* arrangements, with coverage compulsory in 7 and voluntary in 5 of those.

With less ability to contribute to public pensions and without access to occupational pensions the bulk of the self-employed and most people with long periods of non-standard employment end up with much lower pension entitlements and higher old age poverty risks compared to workers in standard forms of work.

*Unemployment insurance* is not accessible for the self-employed in 10 Member States, compulsory in 12 and voluntary in 6. Almost a third of people on temporary full-time contracts in the EU do not qualify for unemployment benefits, ranging from >70% to <3%, depending on the Member State.

In many Member States the entitlement to some or all publicly financed health coverage is primarily linked to payment of contributions. As a result self-employed and /or workers under certain labour contracts may have lower level of health coverage unless they get voluntary self-insurance, facing sometimes considerably higher premium costs<sup>17</sup>. As for *sickness benefits*, some 40% of the self-employed do not qualify, whereas for workers on fixed term contracts it is as little as 10% who are in this situation. At EU level, self-employed reported in 2009 a rate of unmet medical needs that was 35% higher than the one reported by employees. In 2015 this difference increased to 55%<sup>18</sup>.

*Employment services for self-employed*, such as training, mentoring and advice is only available in a small number of Member States<sup>19</sup>.

A second risk of growing importance is posed by the **lack of transferability** of social protection rights, when people leave the employment where they were acquired. Working an intermittent career, consisting of several fixed-term contracts, periods of self-employment or jobs with other non-standard contracts, can be a way of matching the changing requirements in labour markets with one's skills and aspirations. But if Europe's workers are to adapt to an increasing number of career transitions, the rights to social protection and related employment services they have accumulated need to be preserved and transferable. The present state of

<sup>16</sup> Matsaganis M. et al. (2016): *Non-standard employment and access to social security benefits*, European Commission, available [online](#).

<sup>17</sup> Calculated by DG SANTE, on the basis of OECD/EU: *Health at a Glance 2016 – State of health in the EU cycle*, available [online](#). Paris V. et al (2012): *Health care coverage in OECD countries*, available [online](#). R. Davies (2013), *Self-employed and social security*, available [online](#).

<sup>18</sup> Eurostat: *Unmet health care needs statistics*, available [online](#).

<sup>19</sup> European Employment Observatory Review (2010): *Self-employment in Europe*, available [online](#).

affairs may be a deterrent to their willingness to take several career transitions and therefore an impediment to the modernisation of many national labour markets.

#### **Lack of ‘transferability’ of entitlements to social protection and employment services**

**Rights in public schemes** are usually preserved and transferable, when workers change jobs, but are often negatively affected by transitions to self-employment. People in short term work and forms of self-employment may have difficulties acquiring rights and having them preserved. Acquired rights may be lost or reduced when people experience longer spells of unemployment or inactivity. Often people cannot use their acquired **rights to employment services** when changing employment classification. This may for instance apply to training vouchers and grants.

For workers **occupational rights** are the least transferable. While there may be good reasons for this in as much as such rights form part of remuneration lack of transferability nonetheless impedes labour market flexibility. Possibilities for workers to extend or transfer occupational rights when they change employment are mostly lacking or very limited. This may apply to entitlements to training, occupational pensions, supplementary accident and health insurance, sick pay and maternity leave. In several countries workers, who change employer, face uncertainty as to their occupational pension entitlements and may even find it hard to obtain information about these..

A third risk relates to the **lack of transparency** of such rights, given the insufficient opportunities to access user-friendly information and **regulatory complexity**. Growing transitions between different jobs and employment statuses obliges people to be better informed of their rights and obligations and their possible transferability in a diversity of employment situations. Again this is of double importance. Better transparency and easy ways to access information about the entitlements people have earned can help them manage their working careers. In turn this can improve the functioning of labour markets, including by making them more dynamic. However the current regulatory complexity and lack of transparency in many Member States often hampers people's ability to be aware of their rights and obligations and their possibilities of exercising them.

#### **Lack of transparency of entitlements to social protection and employment services**

In several Member States people are neither offered regular updates of their public **pension entitlements** nor a channel for accessing information about these.

In many Member States for reasons of regulatory complexity it is quite difficult to access and combine **information about the benefits and services** one may have built an entitlement to or have the right to claim and to transfer under certain circumstances.

Only very few Member States offer easy access to information about the **employment services** that people may access in case of unemployment, job shifts or transitions between or combination of dependent employment and self-employment.

If Member States are to safeguard job creation and growth coming from self-employment and non-standard work and are to avoid giving rise to widening precariousness, new inter-generational inequalities and risk of poverty, ways must be found to close these gaps that occur in many national systems.

Altogether the current situation also calls for **a strong effort of simplification** so that each individual more easily can accumulate, preserve, transfer and even convert his/her rights and have clear information about them. Improving the de facto *access, transferability* and *transparency* of entitlements to social protection and related labour market services through



*simple and easily accessible* systems would therefore be an important part of efforts to adapt social protection systems to the changing world of work and to achieve upwards convergence.

### 2.3. The consequences

A differential treatment by contract and status of people in employment in access to social protection and employment services has been criticised<sup>20 21</sup> and documented<sup>22 23</sup> as both unfair and inefficient. Such differences in treatment are seen as representing a regulatory failure that distorts the playing field between people employed on standard contracts and people in non-standard work or in various forms of self-employment<sup>24</sup>, bringing moral hazards and opening for free riding.

From an *employment perspective*, these deficiencies in social protection and employment services increase labour market segmentation, generally associated with higher levels of unemployment and lower quality of skills matching. They also threaten to erode the economic basis for standard employment as such jobs will be subject to competition from jobs exempted from the cost of social contributions. Disparities in the access to, in the transparency and in the transferability of entitlements to social protection and related labour market services are impediments to labour mobility and employment transitions. Employees may be discouraged from taking on the risks associated with self-employment, while the self-employed may be deterred from moving to the status of employee by high marginal tax rates and lack of access to labour market services. Due to lower training and higher exposure to health and social risks this would also lower the life-time productivity of these groups, which again would be particularly problematic, because in ageing societies maintaining and raising productivity is the main route to sustainable economic growth<sup>25</sup>.

In terms of its *social consequences*, insufficient access to social protection and employment services significantly raises the risks to the welfare of the affected individuals and their families. People, who earn their living from non-standard employment or self-employment under such conditions, have more precarious lives<sup>26</sup>. They may work for years without ever really obtaining entitlement to key social protection such as unemployment benefit, occupational health insurance or a future pension. They must endure greater economic uncertainty with less access to social protection and employment services tailored to their needs.

In the long run, it is the *social and economic sustainability of national arrangements* that is at stake. If the longer-term welfare of people in non-standard work and self-employment is not secured, this will not just imply a social cost to be borne by these. Currently people in non-standard work or self-employment, even if not paying social contributions, have access to social assistance, i.e. safety nets of last resort (ex. minimum income, universal minimum healthcare benefit package) generally financed by taxes. Gaps in their access to social

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<sup>20</sup> European Economic and Social Committee (EESC) (2010): *New trends in self-employed work: the specific case of economically dependent self-employed work*, available [online](#). EESC (2013): *Abuse of the status of self-employed*, available [online](#). EESC (2016): *The changing nature of employment relationships*, available [online](#). European Parliament (2014): *Social protection for all, including self-employed workers*, available [online](#).

<sup>21</sup> Many contributions to the consultation on the European Pillar of Social Rights made such points (SWD(2017) 206).

<sup>22</sup> Matsaganis M. et al. (2016), *Non-standard employment and access to social security benefits*, European Commission, available [online](#).

<sup>23</sup> European Commission (2016): *Third hearing on the future of welfare systems*, available [online](#).

<sup>24</sup> EPSC (2016): *The Future of Work*, p. 10, available [online](#).

<sup>25</sup> European Commission (2016): *Fighting poverty and exclusion through social investment: A European research perspective*, available [online](#).

<sup>26</sup> European Commission (2016): *Fighting poverty and exclusion through social investment: A European research perspective*.



protection tend to weaken the *financing of social protection systems* as people in non-standard forms of employment and self-employment often only have access to safety nets of last resort while the number of people contributing to social protection is proportionately smaller. As the demand for health and long term care increases with population ageing, this leads to inefficiencies, delays in care seeking and overuse of costly emergency services instead of primary or integrated care services.

The cost of inclusion of the self-employed and non-standard workers in social protection and employment services may of course *impact on public expenditure*. The fiscal impact of securing their access to social protection and employment services can largely be neutralised and the current costs be more fairly distributed, if the people that are to have better protection are also contributing to cover the extra cost. If so, the extra expenditure associated would be absorbed in the general economy. While such rights under all circumstances are financed out of the national economy, different options on how to organise this are available to Member States. In countries where the self-employed and people in non-standard employment are most included in the 'security package', a substantial part of the cost is financed from general tax revenue. In countries where groups of the self-employed such as professionals are well-covered, public recognition of and support for self-organised schemes often play a role.

Extending social protection and employment services to groups of employed presently without adequate access may also *affect the volume of this type of employment*. On one hand, more people could be motivated to seek employment because this would also imply access to social protection. On the other hand, the extra non-wage labour cost could lower the demand for labour. But to make room for this cost parts of the existing taxes on labour can be shifted to other sources of revenue. The EU has long recommended to Member States that they reduce the taxes on labour and shift the financing of non-wage labour costs such as social security to other sources of revenue as part of efforts to boost job creation while protecting revenue for adequate social protection and growth enhancing expenditures<sup>27</sup>. This may include revenue sources such as consumption taxes, recurrent property taxes and/or environmental taxes<sup>28</sup>. Where Member States have seen the need for stimulation of particular areas of employment or the economy they have often decided to subsidise this through a temporary exemption from part or all of the normal contributions.

If the Commission, following responses to this consultation, concludes that a 2<sup>nd</sup> stage consultation is needed it will provide further analysis of the consequences of the current situation and the likely impacts on fiscal sustainability, competitiveness, employment, SMEs, population's welfare and health and inequalities of an EU initiative aiming to ensure access to social protection for people in all forms of employment.

### **3. CURRENT EU ACQUIS AND INSTRUMENTS**

The EU acquis related to the rights and obligations in relation to social protection and employment services is implemented through a variety of legislative and non-legislative provisions. However, none of these fully address the rights and obligations of people in non-standard employment and forms of self-employment.

In the area of social protection, the 1992 recommendation on 'Convergence in social protection objectives and policies', giving a detailed rendition of many aspects of social protection, makes

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<sup>27</sup> COUNCIL DECISION (EU) 2015/1848: Employment guideline 5, available [online](#).

<sup>28</sup> See Eurogroup statement: *benchmarking the tax burden on labour*, 638/15, 12/09/2015, available [online](#).

reference to ‘workers’ but does not mention people that fall outside the standard worker category. When it comes to the self-employed, the recommendation merely states that Member States should ‘examine the possibility of introducing and/or developing appropriate social protection for self-employed persons.’

Over the years, an EU legal framework for protection of rights in some areas of non-standard employment has been developed through negotiated agreements between social partners and implemented via the Directives on Part-Time Work, Fixed-Term Work and Temporary Agency Work<sup>29</sup>. But as the Directives apply to employment conditions, their impact on social protection is rather limited. While social protection closely linked to employment as part of pay, such as occupational pensions<sup>30</sup>, maternity pay and sickness pay is covered in these Directives the Court of Justice has made clear in its case-law that the Directives do not apply to statutory social security schemes<sup>31</sup>. In the preambles to the Agreements the social partners call on Member States to ensure that social protection arrangements are adapted to fit with evolving flexible forms of work. These preambles are not legally binding and, while Member States on several occasions have stated their commitment to make social protection more employment friendly, a recent review of the extent to which this has happened suggests that in several Member States there is ample room for improvement<sup>32</sup>.

At EU level one step towards improving the protection of individuals engaged in self-employment and the access to social protection for spouses of the self-employed workers has already been made. The Directive 2010/41/EU<sup>33</sup> on equal treatment between men and women engaged in self-employed activity grants women (including spouses of the self-employed) access to maternity leave and benefits for at least 14 weeks; levels of benefits and eligibility conditions vary widely between Member States. Furthermore where a system for social protection for self-employed workers exists in a Member State, it requires to provide an access to social protection for spouses of self-employed workers engaged in their activities.

Common objectives and indicators on access to adequate and sustainable pensions, health care and long-term care are further set out in the context of the Social Open Method of Coordination<sup>34</sup>, but with little attention to labour law and types of employment.

Guidance on access to training and employment services as well as to comprehensive social protection is finally also agreed in the guidelines for Member States’ employment policies<sup>35</sup>, which inform the European Employment Strategy and the European Semester<sup>36</sup>. The European funds, in particular the European Social Fund (ESF)<sup>37</sup>, provide financial support to training and activation measures.

Article 153(1)(c) of TFEU provides, within certain limits, for the EU to adopt legislation in the area of ‘social security and social protection of workers’ and could be used to establish new *acquis* necessary to address the challenges of access to social protection for people in non-standard employment. A combination of Articles 151 and 352 of TFEU could be the base for EU legislation seeking to address access for people in self-employment. Articles 154 and 155 of TFEU provide for the possibility to social partners, following a consultation, to negotiate agreements pertaining to workers. Furthermore, the Charter of Fundamental Rights of the

<sup>29</sup> Fixed-Term Work Directive 1999/70/EC, available [online](#); Part-time Work Directive 97/81/EC, available [online](#); Temporary Agency Work, available [online](#).

<sup>30</sup> See Joined Cases C-396 and 395/08 Bruno and others at para.41, available [online](#).

<sup>31</sup> Ibid and Case C-385/11 Moreno v INSS, available [online](#).

<sup>32</sup> ESPN (forthcoming 2017): Thematic Reports on *Access to social protection of people working as self-employed or on non-standard contracts*.

<sup>33</sup> Available [online](#).

<sup>34</sup> COM(2008) 418, available [online](#). For a presentation of the Social OMC please see [online](#).

<sup>35</sup> COUNCIL DECISION (EU) 2015/1848, available [online](#).

<sup>36</sup> Available [online](#).

<sup>37</sup> Available [online](#).

European Union provides under its Article 34 that the Union recognises and respects the entitlement to social protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in case of loss of employment.

#### **4. ACTIONS UNDER CONSIDERATION**

The challenges outlined in this document affect all Member States. In line with the principles proposed in the European Pillar of Social Rights, an EU action can support Member States to close gaps in national arrangements and ensure that all forms of employment will give people access to social protection and employment services, which will protect their welfare and productivity and help them manage demands in modern labour markets.

In full respect of subsidiarity and national diversities, such action would not seek to harmonise rights and obligations across countries or interfere with the way Member States organise their social protection systems. An EU initiative would strive to foster upward social convergence by promoting the following *common principles*:

- ***Ensuring similar social protection rights for similar work***

Access in the sense of similar rights and obligations to the ‘security package’ of social protection and employment services should apply to all employed regardless of the types of contract, forms of employment or labour law status – as both income security and support from active labour market policies are essential for successful working careers. This would allow people in non-standard employment and self-employment to be effectively covered by and contribute to national social protection and related employment services. Countries would be able to achieve a level playing field among people in different forms of employment and improve opportunities for gainful work by making it less risky to take non-standard employment or become self-employed.

- ***Tying social protection rights to individuals and making them transferable.***

Rights should begin to be acquired by individuals from the day they start working (i.e. with very limited waiting and vesting time) and should not get lost when changing employer, or contract type, moving to self-employment or taking a career break (i.e. be preserved and possible to bring along into new employment). Member States would therefore facilitate labour market transitions through the preservation and transferability of acquired rights (i.e. rights are aggregated across different forms of employment).

- ***Making social protection rights and related information transparent***

People in all forms of employment should be well-informed about their entitlements and obligations.

- ***Simplifying administrative requirements***

Information on individual entitlements to social protection and employment services should be easily accessible, in particular by providing individual accounts integrating different benefits and ensuring flexibility and adaptation to the circumstances of the individual.

<b>Making the principles operational: personal accounts</b>
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During the consultation on a European Pillar of Social Rights, the system of <i>web-based, personal accounts</i> with employment-related rights ( <i>compte personnel d'activité</i> , CPA)
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presently being introduced in France was often mentioned as an example of how principles of this kind could be made operational in an organisation of social protection and related employment services. These CPAs will allow people to use "points" accrued on past jobs for training, sabbatical/family leave, salary top-up, and more. Moving to a non-standard contract might entail accruing no further or fewer points, but the acquired "points" are not lost; conceivably these could even be used to finance a start-up into self-employment. Such personal accounts ensure more continuity in rights across job types and enhancing mobility. They would achieve a fuller take-up of social rights and to empower people to choose the benefits and services that fit best with their needs.

Several Member States have indicated they consider introducing similar systems of personal accounts.

The EU response could cover workers, dependent self-employed and genuine self-employed in its *personal scope* and all social protection benefits, key employment services and training in its *material scope*.

A range of EU instruments can be considered in the preparation of such EU initiative. Legislative instruments may find their legal base in Articles 153(1)(c) TFEU<sup>38</sup> and Art 151 and 352 TFEU. Non-legislative instruments could include, for example, benchmarks in the framework of the European Semester, the Employment Guidelines or reinforced mutual learning in the context of the Social OMC. A package, combining several of these instruments, may be appropriate to address the issues at stake taking account of the wide diversity of national circumstances and respecting the EU subsidiarity and proportionality requirements.

## **5. AIM OF THE CONSULTATION**

### **5.1. 1<sup>st</sup> stage consultation on workers in non-standard forms of employment**

According to Article 154(2) of the TFEU, before submitting proposals in the social policy field, the Commission must consult management and labour on the possible direction of Union action. An EU action could address the challenges related to access to social protection of workers in non-standard forms of employment. The questions on which the Commission would be grateful for the views of the social partners at this first stage are here below. To be noted that new forms of employment where the self-employed status is used but where de facto exists a subordinate employment relationship are also part of this consultation here.

The Commission will examine the views expressed by the social partners. If, having considered those views, the Commission concludes that there is a need for action at EU level, it will launch a second-phase consultation of the social partners on the content of any proposal for action, in accordance with Article 154(3) TFEU.

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

II. Which branches of social protection and employment services do you consider to be most relevant for an EU initiative covering access for *workers in non-standard forms of employment*?

a. Social Protection

- i. unemployment benefits
- ii. sickness benefits
- iii. benefits in respect of accidents at work and occupational diseases
- iv. old-age benefits
- v. invalidity benefits
- vi. survivor's benefits
- vii. maternity and equivalent paternity benefits,
- viii. family benefits
- ix. healthcare
- x. long-term care

b. Employment services:

- i. guidance, counselling and placement
- ii. training and updating
- iii. rehabilitation and re-insertion measures

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

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

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

## **5.2. Voluntary consultation on people in self-employment**

An EU action could also be pursued to address the challenges of access to social protection and related employment services for people in forms of self-employment on the basis of Article 352 TFEU for which the procedure of Article 154(2) TFEU is not of applicable. It is therefore on voluntary basis that the Commission invites the social partners to share their views on the questions below:

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

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

a. Social Protection

- xi. unemployment benefits
- xii. sickness benefits
- xiii. benefits in respect of accidents at work and occupational diseases
- xiv. old-age benefits
- xv. invalidity benefits

- xvi. survivor's benefits
- xvii. maternity and equivalent paternity benefits,
- xviii. family benefits
- xix. healthcare
- xx. long-term care

b. Employment services:

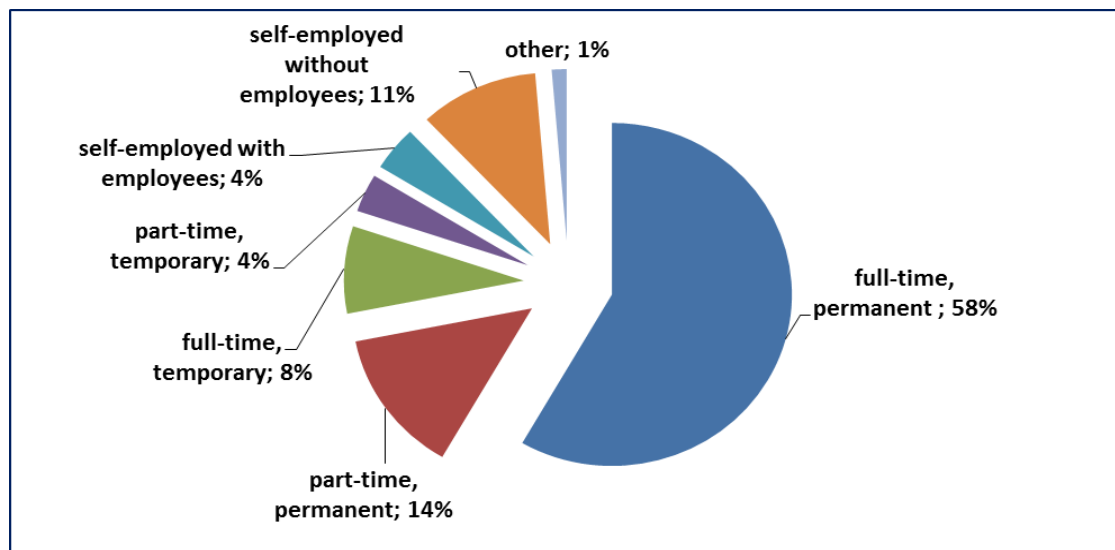
- iv. guidance, counselling and placement
- v. training and updating
- vi. rehabilitation and re-insertion measures

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



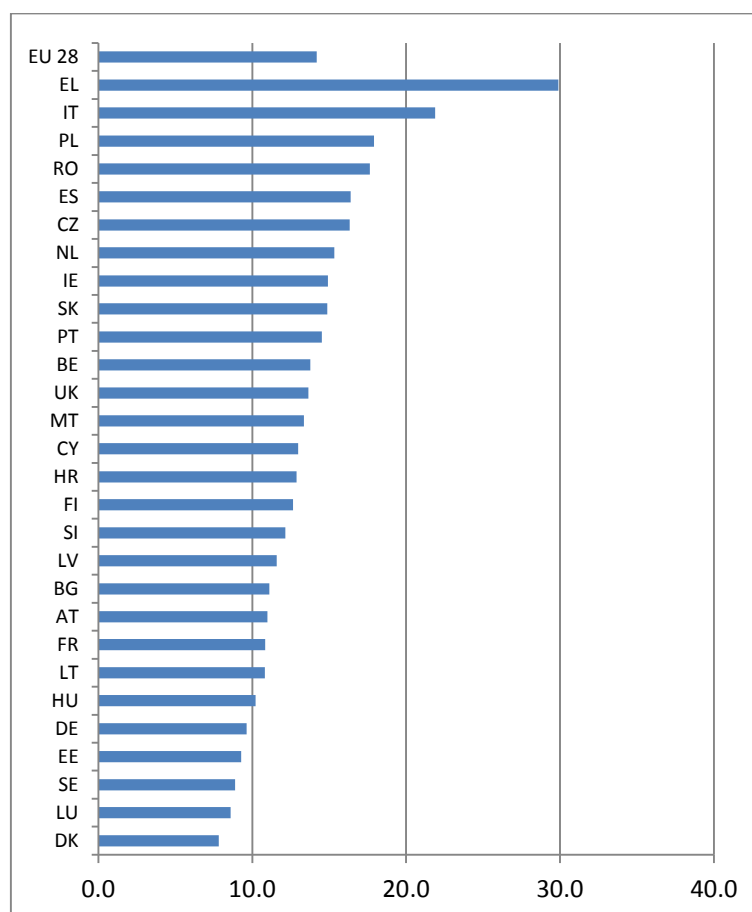
## ANNEX I

**Figure 1: Extent of different types of employment relationship in the EU28 in 2015**



Source: Eurostat

**Figure 2: Self-employed as a percentage of total employment in 2015 (age 15-64)**



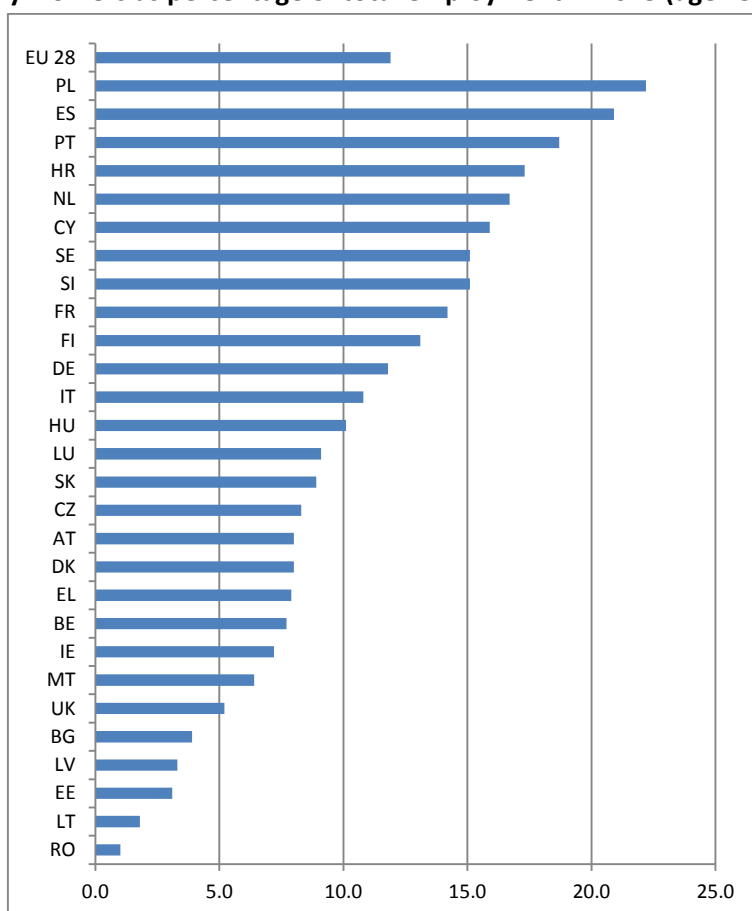
Source: Eurostat-LFS

**Figure 3: Percentage change in the total number employed and in the number of self-employed (including with and without employees), 2010-2015**



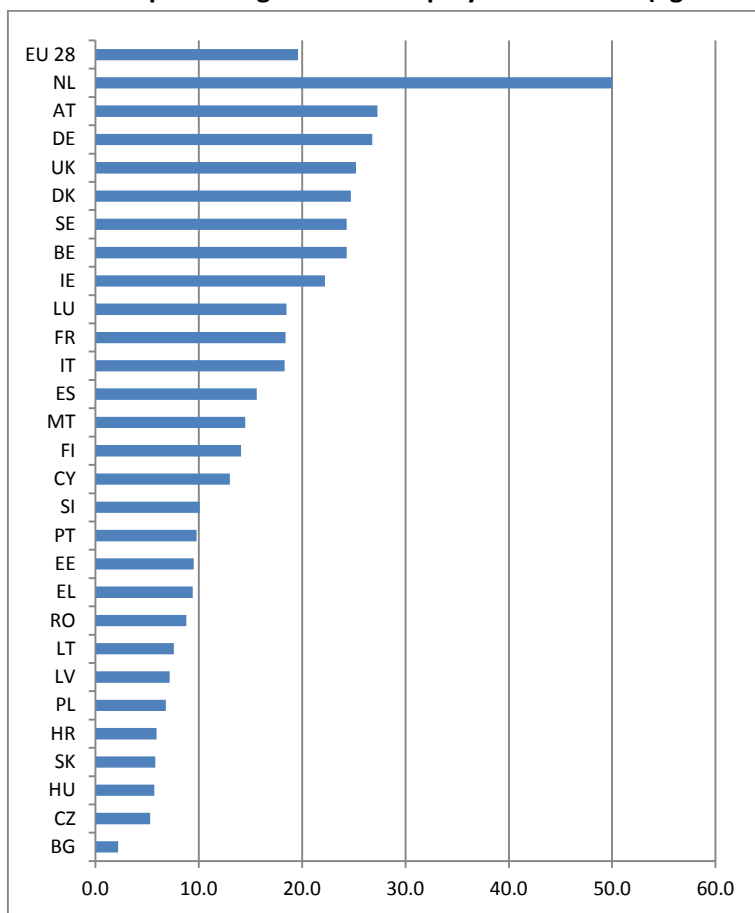
Source: Eurostat

**Figure 4: Temporary workers as percentage of total employment in 2015 (age 15-64)**



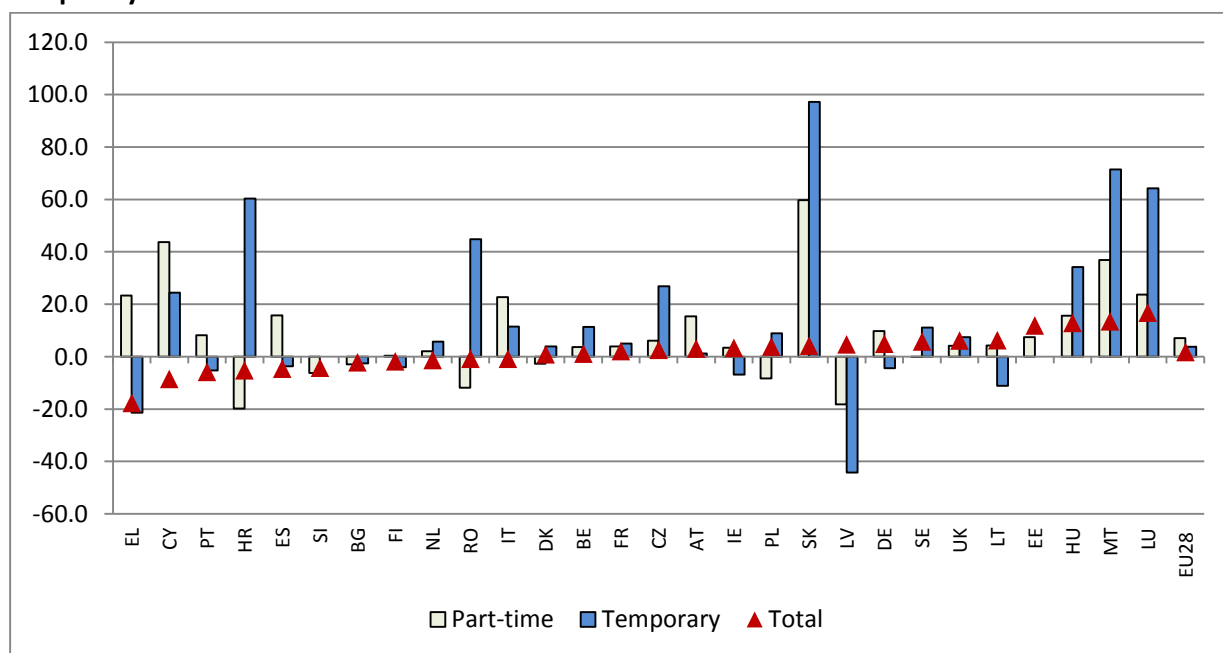
Source: Eurostat

**Figure 5: Part-time workers as percentage of total employment in 2015 (age 15-64)**



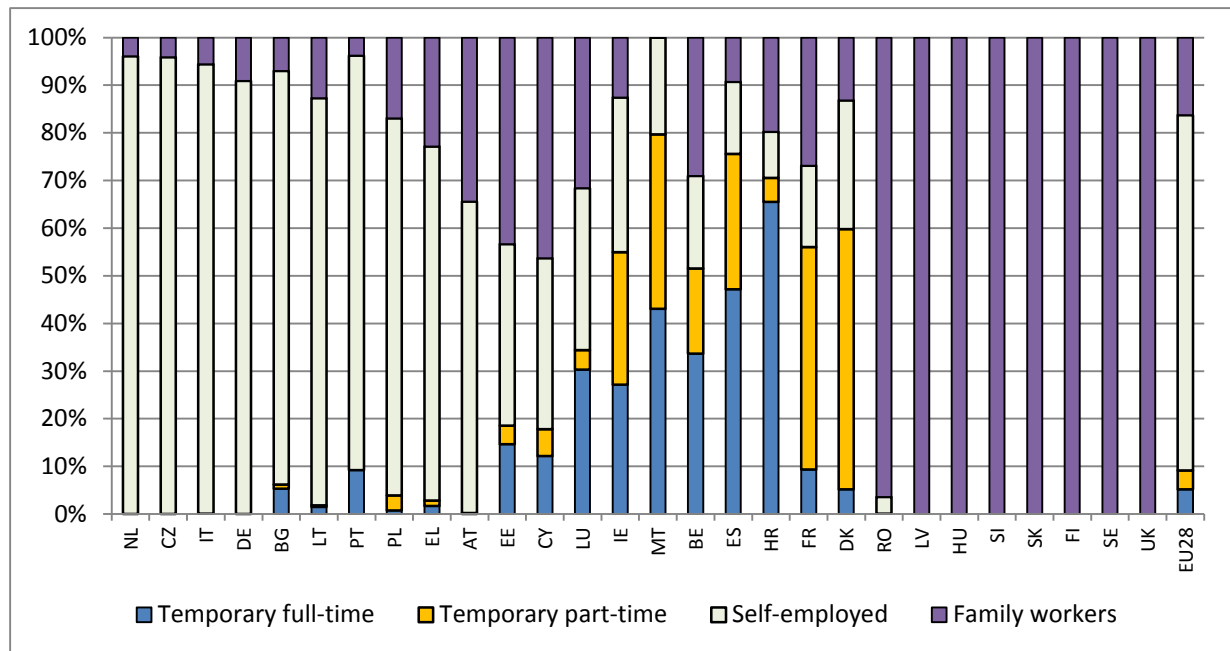
Source: Eurostat

**Figure 6: Percentage change in the total number of employed and in the number of part-time and temporary workers 2010-2015**



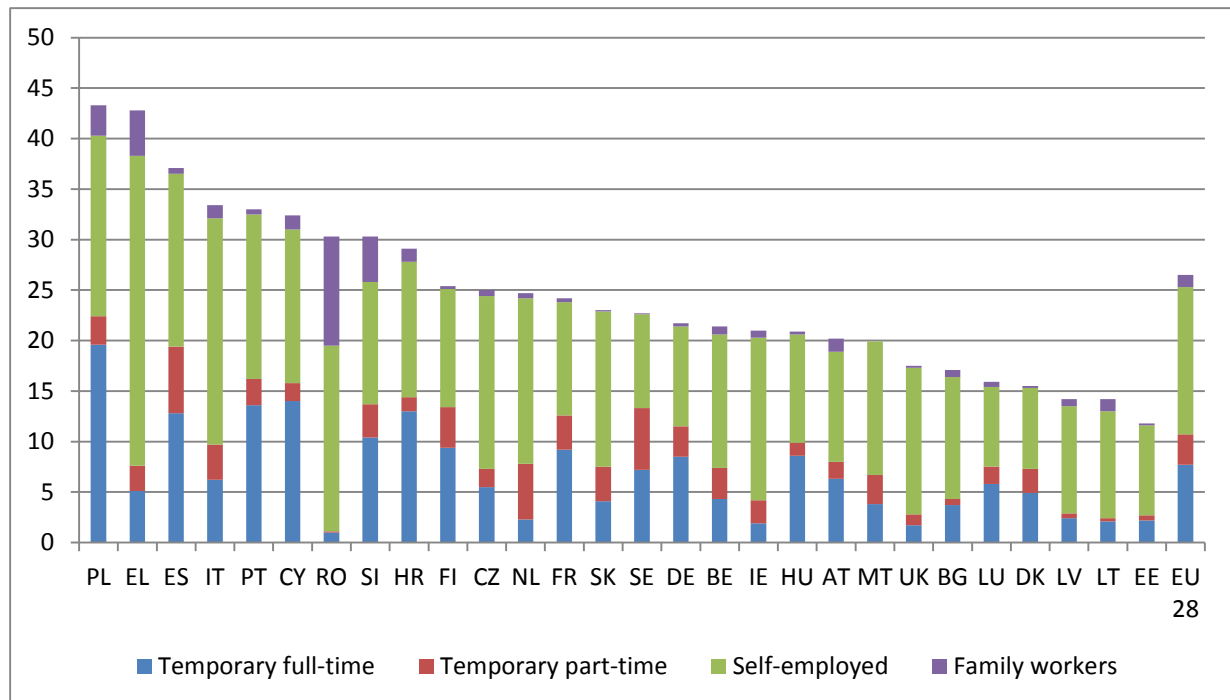
Source: Eurostat

**Figure 7: Distribution of people in employment aged 15-64 at risk of not being entitled to sickness benefits by type of employment, 2014 (% of the total of employment at risk)**



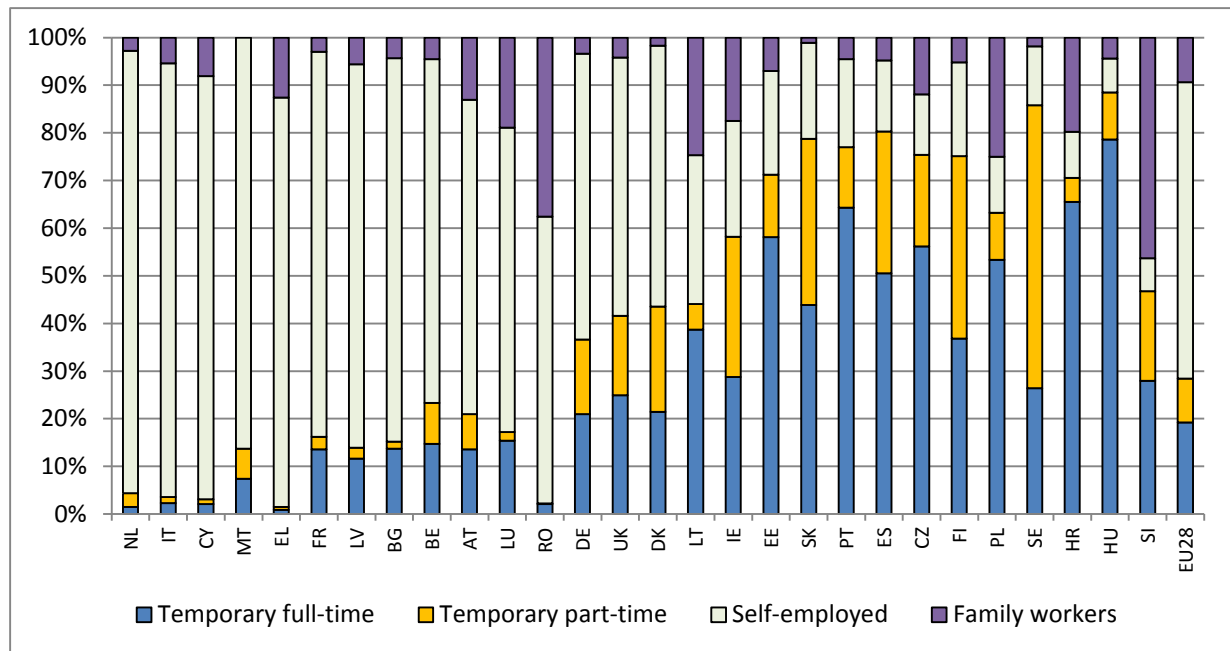
Source: Matsaganis et al. 2016

**Figure 8: Distribution of people in employment aged 15-64 at risk of not being entitled to sickness benefits by type of employment, 2014 (% of the total in employment)**



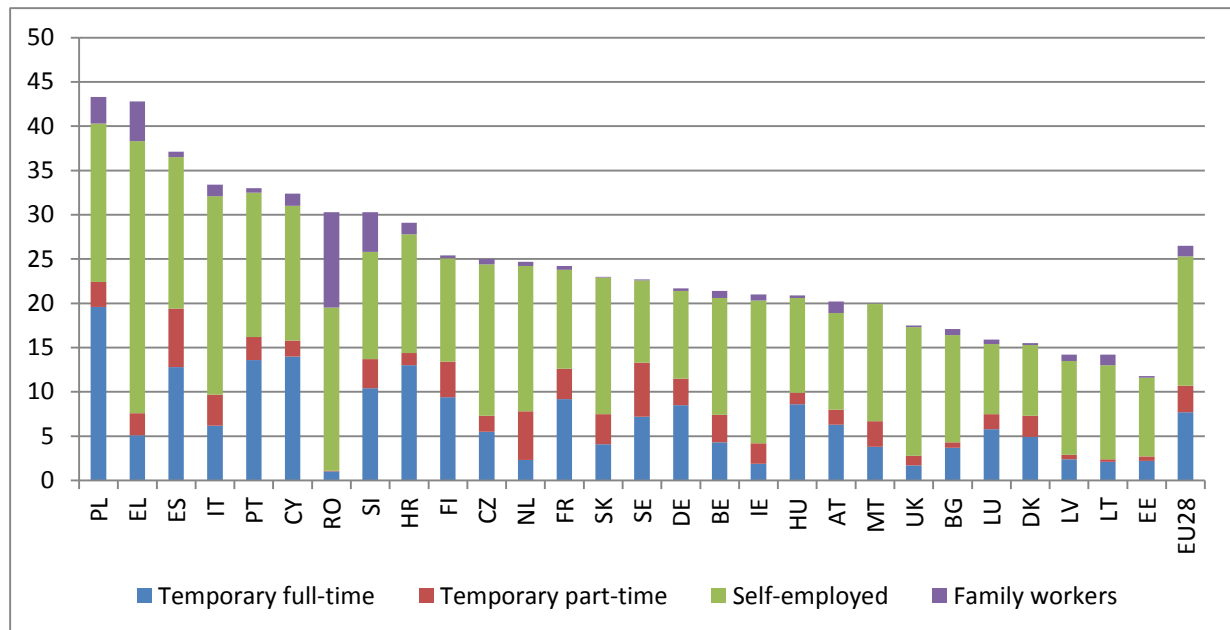
Source: Matsaganis et al. 2016

**Figure 9: Distribution of people in employment aged 15-64 at risk of not being entitled to unemployment benefits by type of employment, 2014 (% of the total of in employment at risk)**



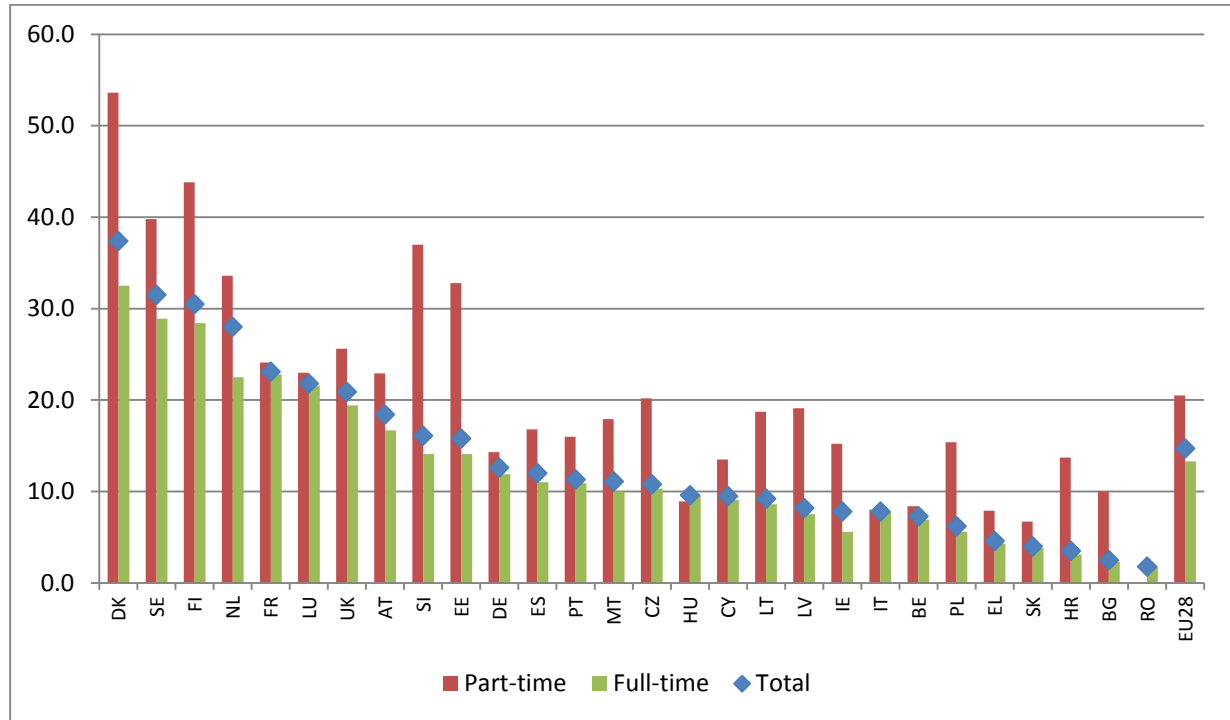
Source: Matsaganis et al. 2016

**Figure 10: Distribution of people in employment aged 15-64 at risk of not being entitled to unemployment benefits by type of employment, 2014 (% of total in employment )**



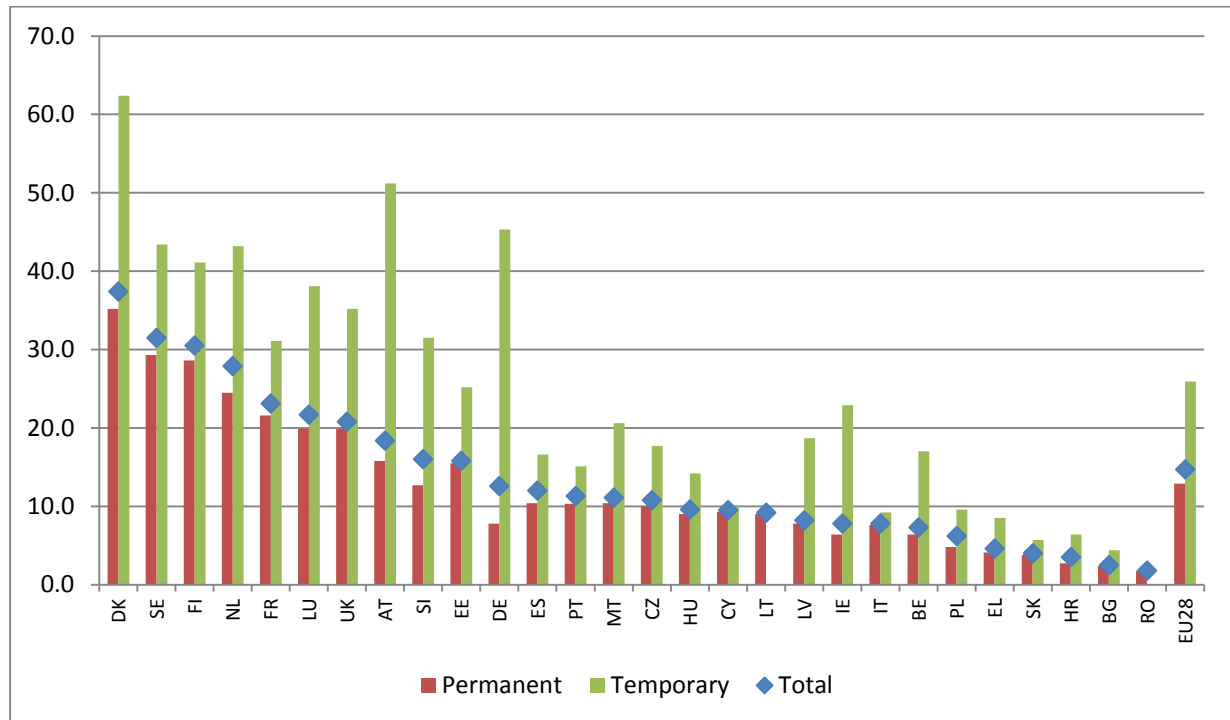
Source: Matsaganis et al. 2016

**Figure 11: Participation rate in lifelong learning by working time (age 18-64), 2015**



Source: Eurostat

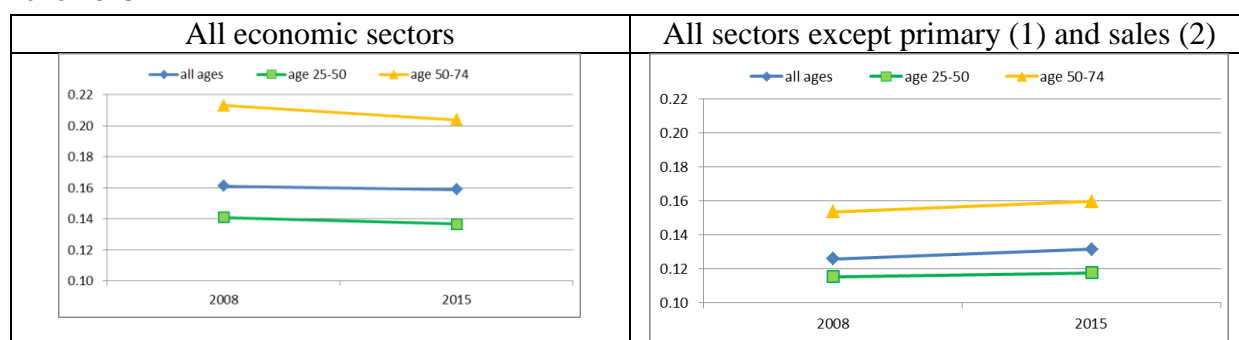
**Figure 12: Participation in lifelong learning by employment contract (age 18-64), 2015**



Source: Eurostat



**Figure 13: Proportion of self-employed among all people in employment by age group, EU28, 2008 and 2015**



Source: Eurostat

(1) Agriculture, forestry and fishing

(2) Wholesale and retail trade; repair of motor vehicles and motorcycles