

EN

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Access to social protection for all

CESI Resolution

Acess to social protection for all

The proposal for a Council Recommendation on access to social protection for workers and the self-employed¹ provides many useful propositions on how to ensure formal, effective and adequate social protection for all forms of employment, including bogus self-employment. Many of the suggestions of CESI – conveyed through a social partner consultation in 2017-2018² – have been taken on board.

The Presidium of CESI agrees in particular with:

- a **definition of the term ‘worker’**, based on existing case law of the Court of Justice of the EU, as a *“natural person who for a certain period of time performs services for and under the direction of another person in return for remuneration.”* This allows to grasp all those in de facto employment relationships, including in bogus self-employment, in the scope of the initiative (recital 25, article 7a);
- an **extension of basic aspects of access to social protection** to *“all workers, regardless of the type of their employment relationship”* in terms of mandatory formal coverage (article 8), effective coverage (article 10) and adequate coverage (articles 12 to 14);
- an **accumulation, preservation and transferability of social security entitlements** “across all types of employment statuses” and all economic sectors (article 11);
- **greater transparency towards workers** on the applicable conditions and rules of social security , including *“regularly updated, comprehensive, accessible, user-friendly, and clearly understandable information free of charge about their individual entitlements and obligations”*; and
- provisions to stress that the text should not prevent Member States from *“maintaining or establishing more advanced provisions on social protection than the ones recommended”* (recital 35) and that it should neither be used to *“reduce existing rights set out in existing Union legislation”* nor constitute *“valid grounds for reducing the general level of protection [already] afforded to workers”* (recital 32).

¹ Available online at <http://ec.europa.eu/social/BlobServlet?docId=19158&langId=en>

² Available online at http://www.cesi.org/wp-content/uploads/2014/03/CESI-Second-phase-social-partner-consultation_Access-to-social-protection_201801_final-1.pdf

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These ideas should not be watered down during the adoption phase of the proposal by the Council.

The major drawback of the document put forward by the European Commission is its legal nature - a proposal for non-binding recommendations. The Presidium of CESI fails to relate to the European Commission's choice of legal instrument (Choice of the instrument in the explanatory memorandum accompanying the proposal). A binding directive would have been preferred, and legally possible under the Treaties.

The Presidium of CESI questions whether proposed enforcement tools such as the European Semester and the Open Method of Coordination (articles 19 and 20) will be sufficiently strong to bring about changes in the Member States. To incentivise Member States to implement the Council recommendation, the Presidium of CESI calls on the European Commission to give flesh to its proposal to support the objectives of the text with EU funding (article 22).

Article 21 foresees an evaluation on the effectiveness of the adopted text by the European Commission after three years with the possibility for the European Commission to decide on "*making further proposals*". The Presidium of CESI hopes that this backdoor for a Directive yet to come, together with financial incentives under article 22, will **push Member States to implement an ambitious Council recommendation.**