# TACKLING NEW FORMS OF WORK IN PENSION SYSTEMS: NECESSARY SHIFT FROM 'WORK-TYPE-RELATED' TO 'INCOME-RELATED' SYSTEMS

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## 1. INTRODUCTION

The problem of changing work patterns and social security was already brought up in 1999 by Professor Danny Pieters and the European Institute of Social Security (EISS) at its annual conference held in Limassol in Cyprus. There were several important issues raised: the real extent of the atypical work phenomenon, the difficulties in assessing income of the self-employed, the problem of farmers' social protection, and the shortcomings of existing social security systems vis-à-vis self-employed and part-time workers (Pieters, 2000). After more than two decades the topic has been discussed again at the 2021 EISS annual conference in Zagreb titled *Tackling New Forms of Work in Social Security* (EISS 2021), hence pointing to the fact that the number and variety of new forms of work in practice has augmented, that the problem is still contemporary and that, unfortunately, at the policy and legislative level the problem has not been fully satisfactory solved yet.

Nevertheless, in these two decades there has been some progress on the topic. At EU level two important soft law mechanisms were adopted. The first is the European Pillar of Social Rights of 2017 with relevant provisions in principle no. 5 on secure and adaptable employment, and principle no. 12 on social protection. Namely, principle no. 5 under (a) provides that 'Regardless of the type and duration of the employment relationship, workers have the right to (...) access to social protection (...)', while under (c) it is stated: 'Innovative forms of work that ensure quality working conditions shall be fostered. Entrepreneurship and self-employment shall be encouraged. Occupational mobility shall be facilitated.' Furthermore, item (d) calls for prohibition of precarious working conditions and abuse of atypical contracts, although as shown in many studies most innovative forms of work (e.g. on-demand work and crowdwork as a type of platform work) are often connected with insecurity of income and discontinuity of work records. Principle no. 12 prescribes 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'. Hence, these provisions served as the basis for the adoption of the Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed by focusing on four aspects of accessibility of coverage: it should be formal, effective, adequate and transparent (for detailed elaboration see Schoukens and Bruynseraede 2021). These initiatives were corroborated by the growing literature and research on the topic, especially after Eurofound's (2015, 2018) and ILO (2018) studies. Namely, parallel to labour law issues, researchers have started investigating the problem of inadequate social security coverage for persons engaged in non-standard forms of employment and the self-employed (e.g. Slavina et al. 2017; Strban et al. 2018, ILO/ OECD 2018; ESIP 2019), some with a special focus on platform workers (e.g. Schoukens, Barrio and Montebovi 2018; Schoukens 2020; Vukorepa 2019, 128-131; Vukorepa 2020; Barrio 2021) as it is the most prominent example of an atypical, new form of work enabled by digitalisation as the flagship of the fourth industrial revolution.

Since the main function of pension systems is income replacement and poverty alleviation in old age, the main question is basically how we should proceed and what we need to change in order to have financing sustainability and pension benefit adequacy in this changed world of work. I am of the opinion that as the second industrial revolution urged the creation of social security systems, the fourth industrial revolution provokes us to bring it to the next level. Namely, since its function is income replacement, I am of the opinion that income itself and not the work-type should be the main element upon which social security systems, especially old-age pension systems, should be financed from and rely upon. My hypothesis is that it is necessary to make a shift from 'work-type-related' to 'income-related' pension systems if we want to bridge the gap between current incomes stemming in reality from various sources (physical work, intellectual property, financial capital, and other movable and immovable property) and future pension benefits. Although this idea has been indicated in some previous publications (Vukorepa 2018, 2021; Vukorepa 2019, 132; Vukorepa, Tomic and Stubbs 2017, 15-16; Grgurev and Vukorepa 2018, 259; Vukorepa, Jorens and Strban 2019, 332; Schoukens 2020, 449), the aim of this paper is to elaborate on it further. I will do it in two steps. The next (second) chapter briefly mentions the main types and features of new working arrangements and identifies thereto related current deficiencies in pension systems, while the third, concluding chapter, provides an outlook on the needed shift to 'income-related' systems.

## 2. NEW FORMS OF WORK AND THERETO RELATED DEFICIENCIES IN PENSION SYSTEMS

The contemporary market pressure environment (in the form of global competition, investors' pressures for increased returns and uncertainty in demands due to economic crisis and the COVID-19 pandemic) coupled with technological advancements (automatisation, digitalisation, and cyberspace platformisation) have been a driving force for business restructuring and employment-related changes, urging entrepreneurs, on the one hand, to improve efficiency and increase profits, and on the other hand, to reduce costs, including also labour costs by changing human labour with robots and software wherever possible and by changing 'standard' workers (those with full-time open-ended employment) with 'non-standard' workers, i.e. workers working in employment arrangements that deviate from standard employment. In the comparative literature other umbrella terms can be found as well, such as 'atypical work' (Schoukens and Barrio 2017), 'flexible work arrangements' (Grgurev and Vukorepa 2018), or 'new forms of work' (Eurfound 2015). Importantly, these new working forms are growing in number and modalities. Some of them are already well-known and regulated by law (such as temporary or short-term contracts, part-time work, agency work, domestic work, apprentices and student work), while some are newer and even more atypical such as on-demand work, intermittent contracts, casual work (including zero-hour contracts), voucher-based work, platform work, portfolio work, interim management work, owner-managers together with bogus self-employment and dependent self-employment (Eurofound 2015, 2018; ILO 2016).

There are several features linked to most of these atypical working arrangements. The first is labour and income instability (e.g. due to flexible or shorter working hours linked to *ad hoc* work demands, followed by lower and/or instable remuneration). The second is the lack of a bilateral employment relationship, especially in platform work, agency work and voucher-based work (Schoukens and Barrio 2017). The third is diversification and possible aggregation of employment (e.g. combining a full-time job with an additional job as a platform worker in the delivery or transport sector). The fourth is less subordination to the employer (due to the fact that platform providers or service users stimulate engagement of self-employed persons) and more subordination to the customer ratings and reputation systems. The fifth is the problem of limited or no access to social security schemes.

More specifically regarding pension systems, the main problem connected with most of these alternative working arrangements is that they provide weaker pension protection. Firstly, this is linked to the intermittent periods with no work and no or lesser income. Furthermore, based on some previous research (Spasova et al. 2017, 35-37; ILO/OECD 2018; ESIP 2019, 13; Vukorepa, Jorens and Strban 2019, 328-333; Schoukens and Bruynseraede 2021, 50, 58-60) it can be concluded that in contributory-based work-related systems (be it public or occupational) lesser pension protection is usually connected with participation obstacles, which may in practice take various forms, such as: 1) limited personal scope (excluding some groups, e.g. self-employed or students working on a student contract), 2) qualifying periods in the form of insurance or work records, also waiting and vesting periods, and 3) various participation thresholds (time-related thresholds in the form of minimum hours worked, or income-related thresholds). Participation obstacles for atypical workers and self-employed affect their accrual of pension benefits, hence future pension benefit adequacy, but they also create labour market distortions by making such work cheaper than work performed in standard employment. On the contrary, residence-based schemes predominantly financed by taxes and providing a fixed amount of pensions are generally not perceived as problematic from the participation point of view, since they cover all residents, including all types of workers and self-employed.

However, apart from participation obstacles and the problem of individual pension benefit adequacy, another problem undermining standard labour and sustainable financing of all pension systems is caused by differences in taxation rules (relevant especially for non-contributory tax-financed pension schemes) and by differences in pension contributions (relevant for all contributory pay-as-you-go and funded schemes) when applied to atypical workers and self-employed. This is especially so in the case of applying lower taxes or tax relief for certain types of atypical work or up to a certain income threshold, or when prescribing lower contribution bases (especially if fixed in amount and in practice lower than the real income) or lower contribution rates than for 'standard' workers. These more favourable measures in taxation and social security contribution collection represent implicit state subsidies for atypical work, which not only undermines standard labour, but also undermines the financing of pension systems, and hence its sustainability and future pension benefit adequacy.

## 3. OUTLOOK ON NEEDED CHANGE FOR LONG-TERM SUSTAINABILITY AND BENEFIT ADEQUACY: SHIFT TO INCOME-RELATED PENSION SYSTEMS

Taking into account all of the above, there are several important improvements that need to be made if we want to ensure stable financing and pension benefit adequacy.

The first and easiest self-imposing conclusion is that countries should consider providing for full integration of emerging new forms of employment and self-employment within the scope of pension protection by eliminating all participation obstacles.

Secondly, if we want to have a stable long-term financing of all pension systems, we need a stable source of its financing. In my opinion, this source is income, from whatever type of income (regardless whether from dependent work, self-employment or other gainful activities) or source of income (be it physical or intellectual work, artistic performance, profit from selling products or services, investment return, income from any other movable or immovable property such as renting yachts, housing, apartments, land, etc.). I think that we need a complete shift from 'work-type-related' taxation and contribution collection to 'income-amount-related' pension systems. Only in that way can we have enough resources to finance adequate pension benefits, also those with a redistributive character in the form of minimum pensions for those with low income records. This shift to income-related pension systems can be justified by the following assumptions and expectations. Firstly, payment of social security contributions and taxes on all types and amounts of income equally would be fairer. Secondly, it would probably result in a bigger density of contribution and tax payments. Thirdly, there would be a larger circle of persons paying contributions (i.e. larger solidarity circle in insurance-based systems), or taxes in general residence-based systems, leading to increased revenues of pension systems, therefore also enabling higher replacement incomes in retirement. It might also allow for lowering pension contribution rates. However, at first sight it seems that the system would be easier to implement in defined contribution schemes (that are usually funded, and where the future benefit depends mainly on the accrued value of saved contributions and investment returns) than in defined benefit schemes (where the benefit depends mainly on years of service, i.e. insurance record and salary). Therefore, in defined benefit schemes the main problem would be how to transform income into insurance periods when there is no stable employment contract. One possible option would be to divide a person's yearly income by the minimum wage or average monthly income. If the result would be lower than 12 (meaning lower than 12 months) the person would get the resulting number of insurance periods in months. However, if the result would be higher than 12 then it seems to me that there are two options: 1) to limit the insurance period in one year to 12 months, or 2) to have no limitation to 12 months as to enable coverage for previous or future periods with no income or lesser income. This second option seems to me more flexible and just taking into account the new approach. In pension benefit formulas instead of salary, the total personal income on the basis of which contributions have been paid would become relevant, which would then need to be put in correlation with the average income in a specific year of pension contribution payment. This all requires further reflections and research so that financing from total income could satisfy both defined benefit and defined contribution systems.

Finally, it must be mentioned that for income-related systems it would be advisable to simplify administrative procedures and provide for automatic collection of contributions and taxes whenever an income has been realised.

This could be easier to effectuate in the case of online payments. However, in the case of other on-demand casual work that is usually paid in cash and often represents undeclared income, payment through vouchers could be a good solution, since these would guarantee automatic payment also of taxes and social security contributions. However, in order to stimulate the use of vouchers, countries would have to think of effective ways, probably in the form of tax deductions for persons paying services with vouchers.

## BIBLIOGRAPHY

### Literature

Barrio, Alberto. 2021. *Social Security and Platform Work: Towards a more transparent and inclusive path.* PhD diss., Tilburg University.

Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed, 2019/C 387/01, ST/12753/2019/INIT, OJ C 387, 15.11.2019. 2019. 1-8. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2019.387.01.0001.01.ENG&toc=OJ:C:2019:387:TOC

EISS. 2021. 'Tackling new forms of work in social security – annual conference.' https://www.pravo.unizg.hr/rsp/istrazivanja_i_konferencije?@=8kwl#news_74944

ESIP. 2019. 'Are social security systems adapted to new forms of work created by digital platforms?' Brussels: ESIP. Accessed May 25, 2022. https://esip.eu/images/pdf_docs/ESIP_Study_Platform_Work.pdf.

Eurofound. 2015. *New Forms of Employment.* Luxembourg: Publishing Office of the European Union. http://www.eurofound.europa.eu/publications/report/2015/working-conditions-labour-market/new-forms-of-employment.

Eurofound. 2018. *Overview of new forms of employment – 2018 update.* Luxembourg: Publishing Office of the European Union. https://www.eurofound.europa.eu/publications/customised-report/2018/overview-of-new-forms-of-employment-2018-update

European Pillar of Social Rights, OJ C 428, 13.12.2017. 2017. 10-15, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32017C1213(01)

Eurostat. 'Involuntary temporary employment.' https://ec.europa.eu/eurostat/databrowser/view/tesem190/default/table?lang=en

Eurostat. 'Temporary employees as percentage of the total number of employees.' https://ec.europa.eu/eurostat/databrowser/view/tesem110/default/table?lang=en

Eurostat. 'Employed persons being self-employed without employees by sex.' https://ec.europa.eu/eurostat/databrowser/view/tqoe4a3/default/table?lang=en

Grgurev, Ivana, and Ivana Vukorepa. 2018. 'Flexible and New Forms of Employment in Croatia and their Pension Entitlement Aspects.' In *Transnational, European, and National Labour Relations*, edited by Gerald Sander, Vesna Tomljenovic and Nada Bodiroga-Vukobrat: 241-262. Cham: Springer. DOI: https://doi.org/10.1007/978-3-319-02219-2_13.

ILO. 'Extending social security to self-employed workers.' Accessed May 25, 2022. https://www.social-protection.org/gimi/Emodule.action?id=61.

ILO. 2016. *Non-standard employment around the world: Understanding challenges, shaping prospects*. Geneva: International Labour Office. http://www.ilo.org/global/publications/books/WCMS_534326/lang--en/index.htm

ILO/ OECD. 2018. 'Promoting adequate social protection and social security coverage for all workers, including those in non-standard forms of employment.' https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_646044.pdf

Pieters, Danny. 2000. *Changing Work Patterns and Social Security* (EISS Yearbook, 1999). AH Alphen aan den Rijn: Kluwer Law International.

Schoukens, Paul, and Charlotte Bruynseraede. 2021. *Access to social protection for self-employed and non-standard workers: An analysis based upon the EU Recommendation on access to social protection*. Leuven: Acco.

Schoukens, Paul, Alberto Barrio, and Saskia Montebovi. 2018. 'The EU Social Pillar: An Answer to the Challenge of the Social Protection of Platform Workers?' *European Journal of Social Security* 20, no. 3 (September): 219–41. https://doi.org/10.1177/1388262718798393.

Schoukens, Paul, and Alberto Barrio. 2017. 'The Changing Concept of Work: When Does Typical Work Become Atypical?' *European Labour Law Journal* 8, no. 4 (December): 306–32. https://doi.org/10.1177/2031952517743871.

Schoukens, Paul. 2020. 'Digitalisation and Social Security in the EU. The Case of Platform Work: From Work Protection to Income Protection?' *European Journal of Social Security* 22, no. 4 (December): 434–51. https://doi.org/10.1177/1388262720971300.

Strban, Grega, Dolores Carrascosa Bermejo, Paul Schoukens, and Ivana Vukorepa. 2020. 'MoveS Analytical report 2018: Social security coordination and non-standard forms of employment and self-employment: Interrelation, challenges and prospects.' European Union. https://ec.europa.eu/social/BlobServlet?docId=22854&langId=en

Vukorepa, Ivana, Iva Tomić, and Paul Stubbs. 2017. 'ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts.' European Union. http://ec.europa.eu/social/BlobServlet?docId=17687&langId=en.

Vukorepa, Ivana, Yves Jorens, and Grega Strban. 2019. 'Pensions in the Fluid EU Society: Challenges for (Migrant) Workers.' In *The Future of Pension Plans in the EU Internal Market*, Financial and Monetary Policy Studies, vol 48., edited by Nazaré da Costa Cabral and Nuno Cunha Rodrigues N.: 325-349. Cham: Springer. https://doi.org/10.1007/978-3-030-29497-7_18

Vukorepa, Ivana. 2018. 'Rethinking social security in the context of non-standard working arrangements.' At conference: Organisation of the labour market: stimulating innovation and the growth of skills, Rijeka. https://www.bib.irb.hr/940684/download/940684.Rethinking_SS_in_the_context_of_non-standard_work_Vukorepa_2018.pdf

Vukorepa, Ivana. 2019. 'El impacto de la economía digital en el empleo en Croacia /Impact of digital economy on employment in Croatia.' *Anuario Coruñés de Derecho Comparado del Trabajo (ACDCT)*, XI: 89-137. http://acdct.es/wp-content/uploads/2021/10/Vukorepa-ACDCT-XI-2019-7.pdf

Vukorepa, Ivana. 2020. 'Cross-Border Platform Work: Riddles for Free Movement of Workers and Social Security Coordination.' *Zbornik Pravnog fakulteta u Zagrebu* 70, no. 4: 481-511. https://doi.org/10.3935/zpfz.70.4.02

Vukorepa, Ivana. 2021. 'New forms of work: challenge for social security financing and benefit adequacy.' At EISS Conference: Tackling new forms of work in social security, Zagreb, https://www.pravo.unizg.hr/_news/12258/PPT_Vukorepa.pdf