Part I:
Starting Points: The Changing World of Work as a Challenge for Social Security

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Chapter 1
Social Law 4.0: Challenges and Opportunities in Social Protection

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I. Starting Points

1. Digitalisation, Industrial Relations and Social Protection

Digitalisation has a strong impact on our societies. It intensifies the societal process of individualisation in general, and it influences a specific type of social relationships, namely industrial relations, in particular. Those relations are already changing. The term "non-standard work" which is being used both by the ILO[1] and the OECD[2] indicates such changes – although the main part of the workforce is still working under full-time labour contracts,[3] and although it is questionable whether temporary contracts and part-time work can be regarded as non-standard at all as they have not only formed part of the labour markets for a long time, but also do not pose any difficulties with a view to identifying a legal relationship between employees and employers which follows the rules of labour law and leads to the inclusion in traditional social security systems. Nevertheless, there is no doubt that new forms of work are arising, both within industrial relations as well as outside, especially in the form of self-employment. The keywords here are short-term labour contracts and labour contracts with a marginal number of working hours (like mini-jobs, zero-hours contracts, on-call work and other forms of casual work), hybrid and

1 International Labour Organization, Non-Standard Forms of Employment, 2020, https://www.ilo.org/global/topics/non-standard-employment/lang--en/index.htm. Accessed 14 September 2020.

2 Non-Standard Work, Job Polarisation and Inequality, in: OECD, It Together: Why Less Inequality Benefits All, OECD Publishing, Paris, 2015, pp. 135-208, https://www.oecd-ilibrary.org/employment/in-it-together-why-less-inequality-benefits-all_9789264235120-en. Accessed 14 September 2020.

3 See also *Schoukens, Paul/Barrio, Alberto,* The Changing Concept of Work: When does Typical Work Become Atypical?, in: European Labour Law Journal, 8 (2017) 4, pp. 1-28, doi:10.1177/2031952517743871.

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multiple employment, proliferation of self-employment and bogus self-employment, triangular relationships with more than one person on the employees' or employers' side (like employee-sharing or temporary agency work). The outcome is an increasingly fragmented labour market, a rise in precarious and informal work, a shifting of risks from the employer to the employee, and a growing grey zone between dependent employment and self-employment.

Digitalisation is a catalyst for respective changes. It allows for new ways of communication, for more flexibility and more mobility; it enhances informality, and it enforces globalisation as territorial boundaries of human interactions lose their relevance. New employment patterns are emerging, and the most prominent one is platform work including crowdwork[4] and work on demand via apps[5].

Those changes in the labour market pose, in turn, challenges to social protection, in particular if social protection is organised via traditional forms of social security. Social security aims at protecting against the vicissitudes of life, at securing against social risks. It is, through its specific function, closely linked to societal structures. These structures are currently experiencing changes for two other reasons: the ageing of our societies leads to a change in the age structure of populations; individualisation, pluralisation and shifts of role models lead to a change of household structures. Together with changing labour markets, these different processes make it necessary to adapt the existing social security systems. While this necessity is, generally speaking, nothing new and rather forms a typical feature of institutions that are established in order to react to societal needs, the multitude of ongoing changes and their magnitude make the reform-

4 Crowdwork is a new form of employment that "uses an online platform to enable organisations or individuals to access an indefinite and unknown group of other organisations or individuals to solve specific problems or to provide specific services or products in exchange for payment", see: Eurofound, New Forms of Employment, Luxembourg: Publications Office of the European Union 2015, doi:10.2806/937385, https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1461en.pdf. Accessed 14 September 2020.

5 In the case of work on demand via apps the execution of specific services, such as transport, cleaning and running errands etc. is offered to an indefinite number of individuals by means of electronic platforms (app companies), see: *De Stefano, Valerio*, The Rise of the "Just-in-Time Workforce": On-Demand Work, Crowdwork and Labour Protection in the "Gig-Economy", in: Conditions of Work and Employment Series, International Labour Office, Geneva, 71 (2016), https://www.ilo.org/travail/whatwedo/publications/WCMS_443267/lang--en/index.htm. Accessed 14 September 2020.

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ing of social security a particularly difficult task. Necessary reforms concern all relevant features of social security, namely coverage, the definition of an appropriate level of benefits, and the financing.[6]

2. *Core Questions*

This project concentrates on the two most important questions in the context of social protection in a digitalised world, and on the two most urgent problems raised by the consequences of digitalisation for the labour market: (a) access to social protection and (b) its future financing.

a) Access to Social Protection

Social security in its traditional form is based on two binary distinctions at two different levels. The first concerns the distinction between economic and non-economic activities. Social insurance as a cornerstone of both social security and social protection is, in a certain way, a consequence of the former activities: it covers those who are economically active, which also allows for its financing through contributions – independent of whether social insurance is being organised in the shape of the so-called Bismarckian insurance scheme or following the Beveridgean model. It is a longstanding debate whether social protection should overcome this basic binary distinction or not, and this debate always pops up when changes on the labour markets occur – which is why it is no surprise that it is on the agenda again in these times of digitalisation. There are good reasons in favour of decoupling social protection from economic activities, although better reasons are still against it. In the end, it is a question of how to organise the coexistence of people in a stable, freedom-based political community. First, if we want to base our communities on individual freedoms and solidarity, and if we want to keep these fundaments, we will have to organise our communities accordingly; in this context, it is advisable to put emphasis on self-responsibility and to establish institutions which re-

6 See *Becker, Ulrich*, New Forms of Social Security? A Comment on Needs and Options for Reform in a National and Supranational Perspective, in: Pichrt, Jan/ Koldinská, Kristina (eds.), Labour Law and Social Protection in a Globalized World: Changing Realities in Selected Areas of Law and Policy, Alphen aan den Rijn: Wolters Kluwer 2018, pp. 205-211.

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mind us that this is one basis of our life together. Second, companies should not be excluded from assuming social responsibility. They profit from market economies, and they thus must also take on their share of responsibility – which means that they should have the obligation to financially support institutions which are necessary in order to reconcile individual freedom and markets with human dignity and participation in an open society.

It is not necessary to go further into this debate here as our project takes into account the interdependencies between both binary distinctions, but concentrates at least in its starting points on the second binary distinction at a second level, i.e. a rather operational one. Traditional social protection in the form of social security as it still forms a fundament of all European welfare states, is not only based on economic activities, but also draws a distinction between dependent and independent work. The reason for this categorical distinction at the level of constructing concrete schemes is rooted in the 19th century and the times of industrialisation. Dependent work became a new form of economic activity, and those who had to rely on it became those in need of social protection as the traditional societal safety nets lost their protective role.

Nowadays, new forms of work are those brought about by the digitalisation of the labour market. Most welfare states are, for good reasons, convinced that "digital workers" are also in need of social protection. As with all forms of "new" economic activities, there are two different strategies of how to deal with them and how to include them into existing social security systems.[7] The first is a "doctrinal" solution: every distinction between dependent and independent work has to be based on a respective legal term (like "employed earner", or "Beschäftigung"), and the interpretation of this term as exercised by administrative authorities and courts might be flexible enough in order to cover "new forms" of work. The second solution is a political one that may be pursued in two different ways: a legislator can try to define new categories of persons and to make them part of an existing social protection system, be it one for dependent workers, be it one for the self-employed; or it can set up a new social protection system for a newly defined group – which will in most cases be an (re-)assemblage

7 For more details *Becker*, *Ulrich*, Die soziale Sicherung Selbständiger in Europa, in: Zeitschrift für europäisches Sozial- und Arbeitsrecht (ZESAR), (2018) 8, pp. 307, 315 et seq.

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of already well-known social security tools.[8] All this is anything but new: in many countries, so-called "homeworkers" are a legally defined group of economically active persons explicitly covered by social protection – not so much as a reaction to changes in the labour market but as a reaction to a too narrow definition of employed earners in the initial phase of social insurances. It is not by chance that a modernised understanding of homeworkers may also cover a vast range of new digital work. Yet, the extent to which solutions actually open up possibilities in order to rearrange access to social protection, and what solutions are appropriate, depends very much on the institutional pathways that exist in a given country. If, for example, social protection for the self-employed does not exist or is of a rather rudimentary nature, this naturally restricts options for including digital workers into social protection. In many countries, the weaknesses and gaps in social protection for the self-employed have become visible through the COVID-19 crisis, which functions like a magnifying glass in this respect.[9] That efforts have to be taken to improve access to social protection is obvious. Within the EU, a respective (political) obligation follows from the Council Recommendation on access to social protection for workers and the self-employed of 8 November 2019[10] (see also below, Section II.4.) according to which member states are recommended to "provide access to adequate social protection to all workers and self-employed persons" (1.1.) – in the sense of not only formal, but also effective coverage (pt. 9. of the Recommendation).

b) Financing of Social Protection

Financing social protection has already become a major challenge due to demographic processes such as the aging of our societies. Digitalisation will pose additional problems. This does not hold true in the first place be-

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8 *Chesalina, Olga*, Extending Social Security Schemes for "Non-Employees": A Comparative Perspective, in: Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht, (2020) 1, pp. 3-12.

9 See *Becker, Ulrich/He, Linxin/Hohnerlein, Eva Maria/Seemann, Anika/Wilman, Nikola,* Protecting Livelihoods in the COVID-19 Crisis: Legal Comparison of Measures to Maintain Employment, the Economy and Social Protection, MPISoc Working Paper 7/2020, https://www.mpisoc.mpg.de/fileadmin/user_upload/data/Sozialrecht/Publikationen/Schriftenreihen/Working_Papers_Law/MPISoc_WP_7_2020_Corona_Livelihood_Nov.pdf. Accessed 6 November 2020.

10 OJ C 387/1, 15 November 2019.

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cause digital work is often seen as being rather "informal" – although it is often being carried out without written contracts and formal registration. Yet, this does not necessarily mean that the collection of contributions would have to experience additional difficulties. Rather to the contrary: if contributions were based on the revenue from the rendering of services, or on the expenses for these revenues respectively, the underlying transactions will already be existent in digital form and thus easily traceable. In this regard, digitalisation also opens up opportunities for social protection – given that the relevant data will be made available: it enables, and it will also urge, the administration involved to make use of digital technologies.

Nevertheless, digitalisation may lead to a reduction of social security contributions as more economic activities will be performed in form of self-employment and as employer's contribution will be missing. This hints to a well-known problem of social security regarding the self-employed: it is comparatively costly for the insured. As a consequence, state subsidies may seem to be an unavoidable remedy, or else the level of social protection will remain rather low.[11] A general solution to these problems is to open up new sources for financing. The most prominent example is certainly the French general contribution (*contribution sociale généralisée* – CSG).[12] It is questionable, and has even been qualified differently by the highest French and European courts, whether the CSG is a tax or a social security contribution.[13] In any case, it shifts financing into the direction of taxes – which might be suitable for those branches of social security that aim at providing a certain infrastructure such as health insurance, but also leads back to the question of how to organise social security in general and to the role of financial sources in particular.

If one wants to maintain a contributory financial basis of social security, at least for a major part, other and more targeted solutions should be found. There is an interesting example in Germany that comes from the social insurance for artists (*Künstlersozialversicherung*) introduced by the Artists' Social Insurance Act[14] in 1983. Artists and publicists have to pay

11 See for example *Becker*, ZESAR 2018 (fn. 7), pp. 307, 314.

12 See for the CSG and the *contribution au remboursement de la dette sociale* (CRDS) information of the French Treasury, https://www.economie.gouv.fr/particuliers/contribution-sociale-generalisee-csg. Accessed 7 November 2020.

13 See for a qualification as contribution: ECJ of 15 February 2000, C-169/98 (Commission/France), ECR 2000, I-1049, recit. 34 et seq.; *Cour de Cassation* of 31 May 2012, 11-10,762; *Conseil d´Etat* of 27 July 2015, n° 334551. Arguing for a specific tax *Conseil Constitutionnel* of 19 December 2000, Déc. n° 2000-437.

14 Act of 27 July 1981 (BGBl. I, 705).

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their own contributions which amount – like in other traditional insurance schemes – to 50 percent of the overall financial sources of the insurance system. For the other half, a third is paid from the state budget (as a state subsidy). The remaining two-thirds have to be paid through a specific fee or levy. This levy is imposed on the remunerations paid by a "marketer" to the independent artists and publicists in a calendar year, irrespective of whether the recipient is insured under the Artists' Social Insurance Act or not. Of course, this legal construction led to the question whether such an obligation of every marketer was in line with the constitution, in particular with the right to equal treatment: why would marketers have to pay for insurance, but others not, although the artists work independently? In this respect, the German Federal Constitutional Court made the remarkable statement[15] that it would be inappropriate "to deny that artists and publicists are in need of social protection and that marketers have a social responsibility simply because there is no formal employer-employee relationship"; it put emphasis on the fact that this relationship might be the most important case of a "social responsibility" as a justification for the obligation to contribute to a social insurance scheme which protects third persons, but that it is not exclusive; more generally, it follows that laws have to take social facts into account, that they should react to these facts and establish institutions fitting the particularities of a given economic activity "instead of making it a condition in advance that this form of existence be dissolved and transferred to a formal employment relationship".[16]

Today, laws have to answer how to organise social protection for digital workers. The reality of working conditions of many platform workers is comparable to the case made by the German Federal Constitutional Court.

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15 Decision of 8 April 1987, 2 BvR 909, 934, 935, 936, 938, 941, 942, 947/82, 64/83 and 142/84, BVerfGE 75, 108.

16 BVerfGE 75, 108, 159 et seq.: „Es würde die Eigenart künstlerischen und publizistischen Schaffens verkennen und wäre daher sachwidrig, eine soziale Schutzbedürftigkeit der Künstler und Publizisten und eine soziale Verantwortung der Vermarkter ungeachtet dessen nur darum zu verneinen, weil rechtsförmlich kein Arbeitgeber-Arbeitnehmer-Verhältnis vorliegt. Denn dieses ist, wie dargelegt, zwar der hauptsächliche und weithin typische, aber nicht der ausschließliche Fall einer sozialen Verantwortlichkeit, die die Heranziehung zu fremdnützigen Sozialversicherungsbeiträgen rechtfertigt. Das Recht findet die Eigenart der Existenzform als Künstler oder Publizist vor, die mit dem Sachgehalt dieser Tätigkeit in Zusammenhang steht. Es ist dann sachgerecht, bestehender sozialer Schutzbedürftigkeit in einer Weise Form und Gestalt zu geben, die dieser Eigenart Rechnung trägt, anstatt vorab zur Bedingung zu machen, daß diese Existenzform sich auflöst und in ein förmliches Arbeitnehmerverhältnis übergeht."

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Platform providers can, and may be urged to, take over financial responsibility as a consequence of their social responsibility. Under what conditions that could and should be realised, and how to implement such an obligation to pay social security contributions has to be discussed further. In this context, the technical problems are of secondary importance. The questions of how to impose which obligation and how to enforce it, must first of all be answered from a legal perspective. And this answer becomes especially challenging as many platform activities cross at least one national border. This is why coordination, and, to some degree, also harmonisation will be needed, both at the EU and the international level. That is one reason why a potential remedy for the challenges to social protection in the age of digitalisation must always take the transnational perspective into account.

3. *Aim of the Project and State of Research*

a) Insights from Innovations in Social Protection

Our book undertakes an analysis of the impact of labour market changes in the digital age on social security law and addresses the challenges to social security which arise through these changes by putting emphasis on platform work. It seeks to examine innovations: solutions and mechanisms for ensuring social security on the one hand, and those for financing social security on the other. In this regard, different national approaches – ones that have already been implemented (through legislation, collective agreements or private actors) or are presently under discussion (in the literature or draft laws) – are analysed in a comparative perspective. Although it is first and foremost the task of states to adjust their social protection systems, transborder issues will – as stated above – become even more important in the digital age. Therefore, we include the present and future role of the European Union: on the one hand, new coordination problems may arise; on the other, new forms of financing will also have an impact on the basic freedoms and basic rights, and we will have to ask whether it is possible or necessary to opt for new regulatory approaches at European level.

The overall aim of the book is to provide new insights on what a "Social Law 4.0" should look like. With respect to methods and the question of how to find these insights, we base our analysis on a systematic legal comparison which takes account of the existing empirical (social science) evidence, but also focus on case studies in order to give concrete and detailed

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examples of the different ways of adapting social security systems to the present challenges.

b) Innovations in Research

Although research on the impact of digitalisation on industrial relations is anything but new, contents and methods of our book are based on two innovative points.

First, we concentrate on a *social law perspective*. While labour law classification, working conditions and labour law protection for platform workers have already been the subject of numerous sociological, economic and political studies[17] and other legal publications,[18] so far only few studies

17 E.g. Digital Labour Platforms and the Future of Work: Towards Decent Work in the Online World, International Labour Office – Geneva, ILO, 2018, https://www.ilo.org/global/publications/books/WCMS_645337/lang--en/index.htm; Employment and Working Conditions of Selected Types of Platform Work, Luxembourg: Publications Office of the European Union, 2018, https://www.eurofound.europa.eu/publications/report/2018/employment-and-working-conditions-of-selected-types-of-platform-work; *Zachary, Kilhoffer/De Groen, Willem Pieter/Lenaerts, Karolien/Smits, Ine/Hauben, Harald/Waeyaert, Willem/Giacumacatos, Elisa/Lhernould, Jean-Philippe/Robin-Olivier, Sophie*, Study to Gather Evidence on the Working Conditions of Platform Workers, VT/2018/032, Final Report, 13 March 2020, European Commission, 2020; *Pesole, Annarosa/Urzí Brancati, Maria Cesira/Fernández-Macías, Enrique/Biagi, Federico/González Vázquez, Ignacio*, Platform Workers in Europe, EUR 29275 EN, Publications Office of the European Union, Luxembourg, 2018, ISBN 978-92-79-87996-8, doi:10.2760/742789, JRC112157, https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157_pubsy_platform_workers_in_europe_science_for_policy.pdf; *Forde, Chris/Stuart, Mark/Simon, Joyce/Oliver, Liz/Valizade, Danat/Alberti, Gabriella/Hardy, Kate/Trappmann, Vera/Umney, Charles/Carson, Calum*, The Social Protection of Workers in the Platform Economy, Study for the EMPL Committee, European Union, Brussels, 2017, http://www.europarl.europa.eu/RegData/etudes/STUD/2017/614184/IPOL_STU(2017)614184_EN.pdf. All accessed 14 September 2020.

18 Blanpain, Roger/Hendrickx, Frank/Waas, Bernd (eds.), New Forms of Employment in Europe, Alphen aan den Rijn: Wolters Kluwer 2016; *Prassl, Jeremias*, Humans as a Service, Oxford: Oxford University Press 2018; Meil, Pamela/Kirov, Vassil (eds.), Policy Implications of Virtual Work, Cham: Palgrave Macmillan 2017. The chapter by *Wynn, Michael/Paz-Fuchs, Amir*, Flexicurity Outside the Employment Relationship? Re-engineering Social Security for the New Economy, in: Westerveld, Mies/Olivier, Marius (eds.), Social Security Outside the Realm of the Employment Contract" (Cheltenham: Edward Elgar Publishing 2018), focuses "rather on changes in the labour market than on welfare institutions" (p. 32), whereas we analyse the interrelationship between employment and social policy,

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and publications have been conducted on the social protection of platform workers from a legal perspective.

Second, this book does not want to merely add another study to the already existing publications that reflect specific single aspects of social protection in the changing world of work[19]; rather, it takes a holistic approach that systematises new insights concerning the future of social protection in the digital age. As this approach is based on a legal comparison and includes transnational perspectives, our study is at the same time a contribution to the more general topic of how welfare states develop, and it sheds light on a common European core of the concept of welfare state.

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between labour law and social law from the social law perspective. The volume Casale, Guiseppe/Treu, Tiziano (eds.), Transformation of Work. Challenges for the Institutions and Social Actors (Alphen aan den Rijn: Wolters Kluwer 2019), addresses the changes affecting the world of work in national systems of labour law and social security. The main research themes of this volume and our undertaking overlap only insignificantly (e.g. concerning new forms of social security, required interrelationship (closer link) between social security and employment policies). The other six research themes of this volume – informal workers; migrant workers; global trade and labour; organisation, productivity, well-being at work; transnational collective agreements; the role of state and industrial relations – are mostly related to labour law and are not subject of our research project. The book by *Tiraboschi*, *Michele*, Labour Law and Welfare Systems in an Era of Demographic, Technological, and Environmental Changes, (Adapt University Press 2019) also focuses on labour law, in particular on the impact of the "Fourth Industrial Revolution" in Italian labour law and policy, and addresses the demographical challenges for welfare systems.

19 E.g. the contributions in: Pichrt, Jan/Koldinská, Kristina (eds.), Labour Law and Social Protection in a Globalized World: Changing Realities in Selected Areas of Law and Policy, Alphen aan den Rijn: Wolters Kluwer 2018, by: *Hajdú, József*, Social Security and the Modern and Post-Modern Forms of Work, (pp. 191-203); *Laborde*, *Jean-Pierre*, Social Security: A New Idea for the Twenty-First Century (pp. 183-190); *Martin Štefko,* Guaranteed Minimum Income for All? Task for the ILO" (pp. 213-220) and *Jorens*, *Yves*, Migrant Workers and European Social Law: Of a Respectable Age or Time for a Rebirth? (pp. 233-246). See also *Schoukens, Paul/Barrio, Alberto/Montebovi, Saskia*, Social Protection of Non-Standard Workers: The Case of Platform Work (pp. 227-258) and *Stevens, Yves*, Social Security and the Platform Economy in Belgium: Dilemma and Paradox (pp. 259-286), both in: Devolder, Bram (ed.), The Platform Economy. Unravelling the Legal Status of Online Intermediaries (Cambridge – Antwerp – Chicago: Intersentia, 2019).

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II. Structure and Contents

1. Background

The following chapters of this book start with a background paper on "*Platform Work: Critical Assessment of Empirical Findings and its Implications for Social Security*" (*Olga Chesalina*).

The main goal of this chapter is to find out implications for social security from empirical findings and practical evidence. The author stresses that careful attention must be paid when interpreting the figures and trends from such empirical research on platform work due to its numerous shortcomings. The chapter discusses the novelty of platform work in comparison to other forms of non-standard employment and the specifics of the business model of online labour platforms, the motivation of platform workers and their access to social protection, as well as dependence patterns. In the author's opinion, the category of financial dependence on platform work as explored in empirical studies is not suitable for justifying the classification of platform workers as employees and for justifying a social responsibility of platforms for workers; it is only a socio-economic characteristic of platform workers that reflects labour fragmentation, which is characteristic also of other types of non-standard work. It concludes that even if many challenges related to platform work are similar to the challenges of non-standard employment, the heterogeneity of platform workers and the fact that platform work is chiefly carried out as a side job – which is not typical for self-employment – should be taken into account. Numerous issues for future investigations are offered in the chapter (e.g. concerning changes of the platform operator's policy in relation to extending or reducing its social insurance responsibility; insurance schemes dedicated to platform workers; research questions for interviews with platform workers that can help to estimate and prevent fraud through the receipt of social assistance benefits etc.).

2. Ensuring Social Security: Employment Status Classification and Innovative Solutions

Access to social protection is related to a set of different conditions and to the pre-existing institutional setting. It depends on:

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- the architecture of the existing social protection schemes and whether they are employment-based like the traditional social insurance, whether they include the self-employed, and if so, to what extent;
- the status of the worker, and in particular the assessment of the work performed following the traditional distinction between the employed and the self-employed, with special emphasis on the role of the courts;
- approaches concerning the employment status classification in labour, social security and tax law used in the respective country;
- the introduction of either new forms of social protection or new approaches within the existing schemes.

Even if many countries have already undertaken social law reforms widening the access to social security for self-employed persons and non-standard workers, there are still huge accessibility gaps[20] and difficulties concerning the calculation of social benefits, as social security systems had originally been designed for standard labour relationships and are still linked to a certain employment status. As dependent employment is associated with social contributions, many employers deliberately misclassify workers.

With the emergence of platform work it has become more difficult to clarify whether platform workers are employees or self-employed persons, and whether the platform provider or the requester (client) fulfils any employer functions. Platforms describe themselves as an intermediary or a market-place. The first decisions of national courts concerning the classification of platform workers for labour and social law purposes have been controversial. Whereas in many cases, for example in the case of Deliveroo riders in Spain,[21] the employee status was recognised, in other cases platform workers were classified as self-employed persons[22]. Therefore, Chapters 3 to 8 of this book also concern the employment status classification of platform workers for labour and social law purposes. They analyse court

20 European Commission, Access to Social Protection for All Forms of Employment – Assessing the Options for a Possible EU, Initiative Publications Office of the European Union, Luxembourg, 2018, pp. 295 ff., http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8067&furtherPubs=yes. Accessed 18 October 2020.

21 See for an overview on case law of different courts *Beltrán de Heredia Ruiz, Ignasi*, Employment Status of Platform Workers, https://ignasibeltran.com/2018/12/09/employment-status-of-platform-workers-national-courts-decisions-overview-australia-brazil-chile-france-italy-united-kingdom-united-states-spain/#spa2. Accessed 7 November 2020.

22 Decision of the Labour Court of Second Instance of Munich of 4 December 2019 – 8 Sa146/19.

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decisions related to this subject, look at the outcomes of these decisions and their relevance for social law issues, and examine whether the traditional criteria have undergone changes, or whether they have to be changed in order to tackle the challenges of platform work.

Chapter 3 deals with "*The Sharing Economy in Belgium: Status due to Taxation or Non-Status?*" (*Yves Jorens*). It describes a model introduced in 2016 which is based on separate fiscal and social regulations and a separate category for certain providers within the sharing economy aimed to encourage self-employment and to combat the grey economy. In 2018 the Belgian legislator went one step further, providing instead of a reduced tax burden rate a total tax and social security contribution exemption for income from certain forms of gainful activities. The author addresses issues concerning the nature of these activities and the transfer of certain forms of labour into the sphere of spare-time work. Furthermore, problems arising from the special treatment of these activities within the framework of Belgian social security legislation are dealt with. The author reflects on the decision of the Constitutional Court whether such a treatment can be objectively and reasonably justified and articulates the need for a new vision of social security that should "also be opened up for activities that do not or not always follow the normal scope of employment".[23]

In Chapter 4, the question "*Is the Classification of Work Relationships Still a Relevant Issue for Social Security?*" is asked from "*An Italian Point of View in the Era of Platform Work*" (*Edoardo Ales*). The chapter aims at "analysing the connection between the classifications of work activities in labour law and the protective statute they enjoy in social security".[24] It describes the new approach of the Italian legislator based on a political assessment of the weaknesses of specific groups of workers (which is not necessarily associated with assessing the social needs of a certain category of workers), taking into account the new forms of integration into the organisation. The author investigates the new category of "hetero-organised" collaborations and riders as bright examples of a continuous tendency to move away from a "tailor-made protective statute" towards "a new frontier of subordination". He describes different modalities of platform work in Italian legislation: subordinate work (smart working); hetero-organised collaboration and finally (false) autonomous work. The author identifies contradictions and gaps concerning the social protection of "hetero-organised" collaborators and autonomous riders; this means riders who are classified as au-

23 Chapter 3, Section IV, p. 96.
24 Chapter 4, Section I, p. 97.

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tonomous workers and entitled to a wage, set by collective agreements, but who are simultaneously excluded from the scope of the general social insurance scheme for employees as they fall within the scope of application of the social insurance scheme for the self-employed.

Chapter 5 is entitled "*Relationship between Employment Status and Scope of Social Security Protection: The United Kingdom Example*" (*Philip Larkin*). The United Kingdom labour market has experienced the proliferation of non-standard forms of employment, in particular "zero-hours" contracts and "gig" work. The chapter examines the entitlement to social security benefits in the modern UK labour market and analyses difficulties resulting from employment status (self-employment or non-standard employment in combination with an irregularity of earnings and their precarious financial position) in the access to various social security benefits. Hereby, the author pays particular attention to Universal Credit, but also includes other benefits (e.g. Employment and Support Allowance). Furthermore, the question is analysed of whether, and how, the Welfare Reform Act can be made effective through legislative and technological reform. The author suggests that "the optimum solution to maintaining regular and stable payments of Universal Credit to gig workers in particular also lies in technology, with some form of integration of revenue authorities and digital platform software, so that gig workers have taxes automatically deducted from their earnings, relieving them of the burden of calculating this for themselves, and these calculations could be reported to the Department for Work and Pensions".[25]

Chapter 6 on "*Extending Social Insurance Schemes to 'Non-Employees': The Dutch Example*" (*Gijsbert Vonk*) presents a broad overview of the Netherlands' state of protection of non-standard employees and self-employed persons under social security law. The contribution is devoted to new approaches which have been taken into consideration in order to fill protective gaps for these persons. The author provides an analysis of policy objectives, legislative change and proposals for change made by successive governments in the Netherlands and by official advisory agencies since 2010 and an overview of lessons that may (not) be learned from the Dutch experience.

Chapter 7 reports on "*Collective Agreements and Social Security Protection for Non-Standard Workers and Particularly for Platform Workers: The Danish Experience*" (*Natalie Videbæk Munkholm*). It shows the implications of the uncertain employment status of non-standard workers on access to social

25 Chapter 5, Section VII, pp. 145 et seq.

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protection with special attention on platform workers. Denmark is famous for the important role of collective agreements in the provision of additional social benefits and extending the scope of social protection. Denmark was the first country where, in 2018, a collective agreement for platform workers was concluded as a pilot project.[26] The contribution analyses the role of the social partners in developing the regulatory measures in tripartite negotiations and in negotiating supplementary social security measures in collective agreements for non-standard workers. Therefore, the author discusses the role of the social partners and demonstrates the strengths and weaknesses of the Danish experiences of providing platform workers with access to the social security systems. Special emphasis is put on the reform of the unemployment insurance system in 2017, changing this system to a more universal approach by taking into account income from all types of work. The author concludes that even if platform companies represent a new form of company and the employment status of these workers is often uncertain, these persons are still in need of social security.

Chapter 8 "*Looking for the (Fictitious) Employer – Umbrella Companies: The Swedish Example*" (*Annamaria Westregård*) provides an analysis of social security implications of the Swedish umbrella companies' business model which has been adopted in Sweden in the 1990s but became widespread with the growing of the collaborative economy. The author shows particular gaps and problems in the social security system and unemployment insurances for umbrella company workers, and she emphasises the importance of supplemental social security benefits in industry-wide collective agreements. The author seeks to answer whether or not umbrella companies are a possible way of extending social security protection to include this group of vulnerable employees and the self-employed. The contribution concludes that the different approaches concerning the concept of employment in Swedish labour, social security and tax law have resulted in a situation in which an umbrella company, from a social security point of view, pays taxes and social security contributions for its fixed-term workers who are employees according to labour legislation, while at the same time the umbrella company workers, when it comes to unemployment insu-

26 *Munkholm, Natalie Videbæk/Schjøler, Christian Højer*, Platform Work and the Danish Model: Legal Perspectives, in: Nordic Journal of Commercial Law, (2018) 1, pp. 116-145, https://journals.aau.dk/index.php/NJCL/article/view/2487. Accessed 18 October 2020.

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rance, will be regarded as self-employed persons without current assignments and, therefore, will not be entitled to unemployment benefits.

3. *Financing Social Security: Experiences and New Approaches*

The rise of the platform economy, the proliferation of self-employment and non-standard forms of employment are starting to erode the contribution base of social protection systems, threatening the sustainability of the social security systems.[27] Traditional social security systems allow for risk-sharing among employers and employees. New forms of employment, combined with a lack of obligatory contributions paid, undermine the foundations of collective solidarity and the current institutional forms of social security. Companies profit from the proliferation of self-employment and the gig economy (cheap labour, without social insurance obligations and contributions), a fragmentation of labour and a shifting of risks to the weaker contractual party (employees or self-employed workers).

The question arises whether platforms providers / clients should assume their share of (financial) responsibility towards individuals and / or towards the state (and public institutions). And if this is so, further questions concern the conditions under which contributions should be paid: in which cases are persons who provide services via digital platforms and service contracts (to a certain degree) dependent on third persons (e.g. platform providers or clients) who control their activity, and does this make the latter responsible and justify the participation of the platform providers in the financing of social protection for the service providers? Does a shift in the structure of financing and the inclusion of new sources of financing comply with the principles of social insurance systems (in particular, the principle of solidarity)? And if this is the case, which institutional changes are necessary? Those were the background considerations for the contributions of Part III of the book and its Chapters 9 to 11.

Chapter 9 deals with "*The Influence of the Platform Economy on the Financing of Social Security: The Spanish Case*" (*Borja Suárez Corujo*). In Europe, Spain is the country with the second largest number of platform workers and probably with the highest number of court decisions concerning

27 *Chesalina, Olga*, Access to Social Security for Digital Platform Workers in Germany and in Russia: A Comparative Study, in: Spanish Labour Law and Employment Relations Journal, (2018) 1, pp. 17-28.

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the classification of platform workers.[28] The aim of this chapter is to reflect on how this major technological shift could modify the financing structure of Bismarckian social security systems. The author emphasises that the financial balance of a social security model based on financing through social contributions could seriously be harmed once the platform economy gains greater weight. In the author's opinion, a progressive redesign of social security financial resources or a reconfiguration of benefits is required. The author investigates different options concerning future financing of social security in Spain in order to address the challenges posed by the rise of the platform economy.

Chapter 10 expands on the question "*Social Security in the Platform Economy: The French Example – New Actors, New Regulations, Old Problems?*" (*Francis Kessler*). While other countries are still discussing the possible options with regard to involving platforms in the financing of social security, imposing on them obligations in the field of social security and taxation and granting platform workers social security rights, France was the first country that has already introduced such regulations. In 2016, regulations concerning a social responsibility of platforms were introduced in the French Labour Code; they are applicable to self-employed persons who have access to one or more platforms offering electronic networking for their professional activities.[29] Among other things, this chapter of the Labour Code provides for social responsibility on the part of platforms for occupational accidents of platform workers. Furthermore, issues concerning the classification of platform workers in France are addressed; there are first cases where litigation has been resorted to. Classification of a worker as an employee means an obligation of platforms to pay social contributions for platform workers (e.g. Uber drivers). Furthermore, the author investigates various legislation novelties adapted until 2019: concerning the new sources of financing of social security in the gig economy, with the example of rental of furnished accommodation for short periods; anti-fraud measures concerning tax and social security obligations of online platform operators. He also provides an analysis of different legislative initiatives. The chapter concludes that – concerning the financing of social

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28 *Royo Rodríguez-Piñero, Miguel*, Spain, in: Daugareilh, Isabelle/Degryse, Christophe/Pochet, Philippe (eds.), The Platform Economy and Social Law: Key Issues in Comparative Perspective, ETUI Working Paper 2019.10, Brussels, 2019, p. 92 f., https://www.etui.org/Publications2/Working-Papers/The-platform-economy-and-social-law-Key-issues-in-comparative-perspective. Accessed 14 September 2020.

29 Articles L. 7341-1 to Art. L. 7342-6 Code du Travail.

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protection – the French legislator preferred to only marginally modify the existing rules rather than to implement comprehensive reforms.

Chapter 11 reports on "*New Forms of Employment and Innovative Ways for the Collection of Social Security Contributions: The Example of Estonia*" (*Gaabriel Tavits*). The author starts by describing the Estonian social security system and the role of social taxes and contributions for its financing. He continues with the general tendencies of development of social protection and its financing. The most significant shortcoming of the social security system is the Estonian health insurance system that excludes approximately 14 percent of the whole working age population due to the discontinuity of their income and employment. The author concludes that only fundamental changes in the financing of health care and in the state tax system would allow to address this challenge. Nevertheless, Estonia is often seen as the most excellent example of e-government and digitalisation in Eastern Europe (ranking 2nd out of the 28 EU Member States concerning digital public services in the Digital Economy and Society Index 2020[30]). It has already implemented some innovative mechanisms of administering social security and taxes, and of simplifying the taxation of services. The entrepreneur account, on the one hand, represents a new way of simplifying tax liability (including social taxes) and, on the other hand, enables access to social security, in particular health insurance. However, in order to get benefits from health insurance, a social tax of at least the minimum rate (540 euros per month) should be paid, which means that working for the minimum wage does not guarantee the minimum level of social protection.

4. *Transborder Perspective: The Future Role of the European Union*

The final Part IV of the book is dedicated to the transborder perspective. As the challenges of the changing world of work in many cases go beyond the national borders, the future role of the European Union, of international organisations, and of agreements of public international law needs to be addressed. In this context, we concentrate on the role of the European Union which is currently working on a renewal of its social policy programmes and trying to set up a common agenda. The so-called Euro-

30 Digital Economy and Society Index Report 2020 – Digital Public Services, https://ec.europa.eu/digital-single-market/en/digital-public-services-scoreboard. Accessed 14 September 2020.

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pean Pillar of Social Rights shall serve as a general basis.[31] Contrary to the wording of its title, it does not contain individual entitlements but general principles that should guide both national and European policies of social protection.[32] One of these principles (No. 12) reads as follows: "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."

As part of the implementation of the European Pillar of Social Rights and based on Article 292 in conjunction with Articles 153 and 352 TFEU, the Council of the EU adopted its Recommendation "On access to social protection for workers and the self-employed" on 8 November 2019.[33] The Recommendation addresses the problem that up to half of the people in non-standard work and self-employment across the EU are at risk of not having sufficient access to social protection and/or employment services, which is a growing impediment to the sustainability of social protection systems and to the welfare of an increasing proportion of the workforce.[34] The main objective of the Recommendation is to provide access to adequate social protection to all workers and the self-employed and to establish minimum standards in the field of social protection of workers and the self-employed.

In this context, Chapter 12 on "*Building Up and Implementing European Standards for Platform Workers*" (*Paul Schoukens*) focuses on how the EU institutions address the challenge of organising social security for platform workers. The contribution examines the question to what extent the Recommendation responds to the challenges for the organisation of social security that arise from the emergence and proliferation of platform work. For this reason, the typical features of platform work that present challenges to traditional social security are assessed based on the provisions

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31 https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights/european-pillar-social-rights-20-principles_en. Accessed 14 September 2020.

32 See for its character and its possible indirect legal impact *Becker, Ulrich*, Die Europäische Säule sozialer Rechte, in: Zeitschrift für öffentliches Recht, (2018) 73, pp. 525-558.

33 Fn. 10.

34 European Commission, Commission Staff Working Document, Analytical Document accompanying the Consultation Document "Second 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", Brussels, 20 November 2017, p. 25.

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outlined in the Recommendation. Finally, the author analyses the shortcomings of the Recommendation (and its underlying EU vision on access to social protection), and what kind of EU legal action in the field of social security could still be relevant. Analysing the question whether the legal standards developed by the Recommendation are sufficient, the author comes to the result that common standards at EU level are needed. The chapter concludes that since income is generated no longer only mainly from standard employment but also from other non-standard activities and returns from goods, the traditional elements of social security systems (sources of financing, social security risks as well as eligibility conditions and calculation of benefits) should be reconsidered. At the EU level, a broad approach seems to be required: apart from the protection through social benefits, fair competition rules on the internal market should be elaborated.

Chapter 13 on "*Social Law 4.0 and the Future of Social Security Coordination*" (*Grega Strban*) changes the perspective and deals with the questions of cross-border movement. Due to digital technologies in a changing world of work many kinds of dependent and independent work can be carried out from any place in the world linked to the internet; there are diverse patterns of mobility. At the same time, EU provisions on the coordination of social security systems (Regulations 883/2004, 987/2009) and rulings of the Court of Justice of the European Union (e.g. case C-137/11 "Partena") still suppose primarily stable working arrangements and a fixed physical location.[35] The author seeks to answer how the coordination of national social security systems should be modified in order to follow the development of non-standard forms of employment and self-employment. He outlines that solutions to contemporary challenges of social security coordination lie in a more inclusive approach: not only freedom of movement of standard, but also of non-standard workers should be promoted. In order to achieve this goal, a targeted modification of the coordination regulations is required. Also, technical achievements should be used in order to provide for the exchange of information in relation to the movement of non-standard workers.

Although we can identify completely different rules on social contributions and taxes in all jurisdictions, a common problem of both types of

35 European Commission, Analytical Report 2018: Social Security Coordination and Non-Standard Forms of Employment and Self-Employment: Interrelation, Challenges and Prospects. Written by *Strban, Grega/Bermejo, Dolores Carrascosa/Schoukens, Paul/Vukorepa, Ivana*, Brussels, 2020.

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public charges is that they are based on the physical presence of taxpayers and assets. The current rules are not fit for taxing in a digital economy characterised by online or virtual companies whose location is hard to determine. This may result in legal uncertainty, tax and social contribution evasion, or enforcement problems regarding the collection of tax and social contributions. Furthermore, the division between contributions and taxes is not always clear. Many different initiatives were launched at the national and supranational levels in order to tackle the challenges concerning the taxation of the platform economy. This is taken up in the final Chapter 14 on "*Taxation of the Platform Economy: Challenges and Lessons for Social Security*" (*Katerina Pantazatou*). It provides an analysis of the main problems concerning the taxation of the platform economy. The prime aim of the chapter is to try to answer "whether there is anything for social law to learn from tax law and whether taxation, one of the main sources of financing social protection, is adequately prepared to deal with the platform economy challenges"[36]. One of the outcomes of the chapter is that a coordinated approach in social and tax law in relation to employment classification would prevent resorting to circular arguments, such as using the platform worker's tax treatment for labour law classification purposes, which may lead to contradictory results. Another point concerns anti-fraud measures: the author highlights that incentives to encourage platform workers to declare their income together with a simplified reporting system would promote the appropriate payment of social contributions and the fight against false self-employment.

III. Conclusions and Perspectives

1. As can be seen from the brief summary of the chapters provided above, they contain an overview on a variety of approaches in order to meet the challenges posed to social protection in the digital age. The contributions cover a broad range of different topics such as the legal qualification of economic activities including both legal and practical issues concerning the inclusion of digital workers, the role of different systems of social protection including the relation between contributory-based and tax-financed schemes as well as the relation between basic and supplementary security, or the difficulties to secure a stable financial basis for social security.

36 Chapter 14, Section I, p. 364.

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The contributions in this book do not only give evidence of the fact that despite recent amendments in the legislation, there are still a lot of obstacles to effective access to social protection for non-standard workers and self-employed persons. They also analyse new approaches for ensuring and financing social security, they put these approaches into the context of the overall social protection structure, discuss their pros and cons, and provide the reader with a critical assessment of whether, and to what extent, novel approaches can help to effectively meet current and actual challenges.

2. What can be learned from those different approaches presented in this book? Two points merit particular attention.

a) First, it is clear that many national solutions – or rather: the initial steps to meet challenges in the digital age at a national level – remain embedded in the national architectures of social protection institutions. There are sometimes structures of single national schemes which either open up specific gaps in social protection on the one hand, or allow for coverage without any classification of persons on the other. And also the actors involved, those playing a decisive role in shaping social protection systems, differ: where trade unions and employers' associations have a specific responsibility in this respect, they have to be actively involved in reforming social protection. Having said this, it is nevertheless rather more remarkable that not only few of the approaches described in this book might easily being transferred from one jurisdiction to another, or that such transferral would be possible with minor adjustments only. That holds especially true for rather technical approaches like making the enrolment of digital workers easier and providing economic incentives in this regard. Yet, the same transfer would be feasible when it comes to more fundamental aspects like putting certain social responsibilities on platforms and thus integrating these enterprises more closely into the systems of social protection.

b) Second, and if one wants to sum up the different approaches in reacting to digitalisation, we can observe a patchwork of single measures. Governments, and societies as a whole, not only have to deal with many details in order to maintain effectively functioning social protection. There also seems to be a certain lack of overall strategies and a certain tendency towards special solutions which often remain controversial and fragmented, or more generally speaking, a tendency towards modifications or extensions of existing social protection schemes in the light of specific developments.

This does not only call for more exchange and dialogue at EU level in order to establish a common social policy basis. It also leads to the question whether such "construction works" aimed at repairing the existing "build-

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ings" of social protection suffice in order to meet future challenges or whether these should be scheduled for demolition and be rebuilt following new plans. Or, in other words: are new, and specific forms of social security necessary for digital workers? To what extent does digitalisation urge us to change (and not only further develop) the traditional structures of existing social security systems? These questions are even more urgent if one considers digitalisation as being one of a plurality of challenges, and in a way also as a phenomenon of more general societal changes. This leads to a reconsideration of the structural fundaments of social security and the coordination of different social protection schemes within every state[37], including the question of how to share which tasks between these schemes. It also requires the reconsideration of fundamental aspects of transnational social security coordination at EU level, especially the respective roles of places of employment and of residence[38].

3. Although these questions will have to be answered, we propose to take intermediate steps and to react in two steps to the challenges posed by digitalisation. The first concerns better knowledge of the factual developments: there is still the need for empirical analysis of the impact of digitalisation on the existing social protection systems, which is an endeavour that calls for interdisciplinary research as social science methods have to be applied while, at the same time, knowing which circumstances are taken into account for the application of social protection law.

In a second step, the existing law will have to undergo changes. These changes will certainly differ from one jurisdiction and one state to the next, depending on the national social protection architecture, the actors involved, and also the legal instruments available with regard to the administrative and constitutional law background. They may lead to a more universal, and at the same time more restricted, role of social security, leaving room for more variety as regards supplemental protection.

Yet, three aspects will be of universal importance in order to realise a Social (Protection) Law 4.0 – and going beyond the fact that protection systems themselves have to become (much more) "digitalised":

– where still existent, restrictive conditions for the access to social security have to be abolished even, and in particular, within employment-based systems, namely as regards requirements of a certain amount of economic activities or their regular form;

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37 See Chapter 12, Section VI, pp. 328-333.
38 See Chapter 13, Section VIII, pp. 360-361.

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- social protection for the self-employed needs to be improved, both with a view to the social risks covered and the level of protection;
- the financial basis of social security needs to be broadened, not only through subsidies from the general state budget but also through novel forms of public charges and the redefinition of social responsibilities;
- coordination has to be improved both between different types of social protection schemes and with other financial transaction systems, in particular the tax system – as social spending and levying taxes and other contributions are the core activities of welfare states in order to define access to and participation in our societies, sharing responsibilities between their members and laying a fundament for societal life.

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