

# Tackling false (bogus) self employment

## Different types of self employed –hybrid forms

- Dependent self employment occurs in various ways: hybrid employment categories like „new self-employed“ free service contractor, „or „ contractors of work and services“
- No uniform or clear cut definition
- „traditional forms of self employment, free service contract (dependent contractors): ongoing service on freelance basis, often fixed-term, often completely dependent on their quasi employer but formally not subject to the instruction of the client and free to schedule their working time (hybrid), new self-employed workers i.e. holders of a contract for work without a trade licence )covered by social insurance
- - in reality working situation resembles largely that of dependent workers, common feature that they do not employ other people and mostly work for one (main) client
- Free service contract workers – or independent contractor : are ensured under the terms of the General Social Insurance Act like employees (covered by health, accident, pension and unemployment insurance. In terms of social security like workers. Labour Law does not apply no wages according to collective agreements, no holidays...

## De facto situation

- Share of self employed workers relative stable , 13% of all employees, share of self employed with employees hardly changed from 2000-2011, but high increase of Single Person Companies
- In general little data. 70 % of all companies are one person undertaking. In 2013 around 267.000 persons. (acc. Chamber of Economy) High increase since 2006 (In 2006 number was 180.000). But data rather unclear
- Increase also due to liberalisation of trades in 2003 (i.a. Eu requirement) (Absurd trade licences for self employed cooks, secretaries, carrying of heavy goods , cleaning of tools on construction sites...) Should not be registered as trade, nevertheless, the trade licences exist.
- Existing Case law: Simple tasks cannot be self employed work requiring a trade licence (nevertheless, de facto these trade licence are accepted)
- Employer`s justification: „outsourcing tasks because of high level of protection under labour law“ = form of social dumping

## Independent Contractors , free service contract workers (dependent self employed workers) - Criteria

- No personal dependence
- No binding instructions or directives concerning working time, place of work.
- Free of restrictions on personal behavior
- Essential operating resources provided by the employer
- Performing services mostly in person
- Remuneration according to period of time spent on work, rather than based on performance
- No application of vacation law, Working Hours Act, Act on Rest Periods, no minimum wage collective bargaining wages (overtime)...
- Hybrid legal category but since the 90s included in Social Security like employees and since 2008 Member of Chamber of Labour, Unemployment Insurance, Compensation in Case of Insolvency, Maternity Pay (social security like employees)
- If employee or self - employed decided on case basis, test for employee status in case law, balancing the factors
- Trade Unions: All labor law should apply

## New self employed workers

- Liberal professions without trade licence , Contract of works- authors, psychotherapists , has the means and structure, no need to perform personally
- Insured like self employed (since 1997, „new“ self employed), unemployment insurance on a voluntary basis
- Not member of the Chamber of Labour nor Economic Chamber, Interests of this group not represented

## Widespread use of dependent self-employment –negative consequences

- Widespread use of dependent self-employment: collective bargaining and collective interest representation via trade unions and works councils is undermined
- In many cases circumvention of labour law standards (higher costs)= social dumping, lowering of standards and wages, increased instability in terms of job security
- Undermines job quality and solidarity (going back to the 19th century) – against the European Social Model
- Difficult to establish difference between Independent Contractors, New Self Employed and Self Employed with trade licence

## Special Sector Construction Work

- Around 274.00 employees working in approx. 31.000 firms
- Share of one person firms , no figures regarding dependent self employment but increasing
- Austrian Construction and Wood Workers Union: increasing the number of dependent self employed comes at cost of regular jobs, social dumping-deterioration of labour standards, undercutting labour law and unfair competition
- Increase in dependent self employment associated with relevance of free professions (trade liberalisation) , professions weakly regulated, easy to register as self employed
- Many migrants, linked to free movement (posting)
- Subcontracting, Trade Unions propose to restrict chain in public tenders to 2. Otherwise no transparency ,enforcement of laws almost impossible.
- EU promotes false self employment: Trade Union claims that Enterprise Europe Network advises Czech companies to register workers als self employed workers because this gives them a competitive advantage: Clear breach of legislation and dir 96/91
- EU Dir. Proposal on Single Person Company can be seen as invitation for false self empl

## Construction Work

- Construction Sites controlled i.a. by the Construction Workers Holiday and Severance Pay Fund. In 2012 more than 242 suspect cases at 97 construction sites (tip of the iceberg). More than 60% stated that they worked for only one employer and that they got the salary regularly and not just after finishing the work. They could name a person who gave instructions and did not use their own tools
- Construction Site Data Bank allows more oversight concerning sub contractors
- „Independent“ construction workers earn less than their employed colleagues (no minimum wages)

## Elderly Care in Households

- Sector which also shows that self employment is very often not voluntarily chosen.
- Due to pressure on prices there is a high number of self employed elderly care providers from CZ, SK, PL who are „coordinated“ by Austrian agencies. They often have to take care, 24hrs a day, 2 weeks in a row. Trade Unions consider this as false self employment, They should be employed and not pushed in self employment
- Labour Inspectorate does not control in Households.

# Measures

- Apply social security: Independent Contractors (dependent self employed) are covered by accident, health and retirement insurance (over the marginal earnings threshold of 391,-) like employees
- New self employed are insured according to the Self Employed Insurance Law
- When registering with the Insurance, the insurance will check if it is really self-employment or rather dependent contractors or employees (checklist with some questions)
- Since 2008 dependent contractors are also insured against unemployment
- Compensation in Case of bankruptcy
- Member of the Austrian Chamber of Labour (Counselling and representation at court) (Trade Unions also represent dependent self employed workers)

## Measures

- Importance of effective implementation and control of the law
- Act against wage and social dumping , Control by Finance Police and Construction Workers Holiday and Severance Pay Fund, Health Insurance, sanctions in the case of underpayment  
Criminal sanctions in the case of non payment of social insurance contributions
- Prominent Court Case: Federal Chamber of Labour v. Vienna: Councillors on Waste Management have worked for Vienna for 6 ongoing years with clear instructions. Court decided that this was a classical employment relationship (hope that this will be an example for more cases)
- Member of the Provisions Funds for Employees (Severance Pay System)
- Entitled to sick pay and income related maternity allowance
- People in several marginal employment relationships are also entitled to sick pay and maternity allowance

## Conclusion - Ideas

- False self employment widespread, no reliable data
- Undermines the European Social Model, social and labour rights, solidarity and social dialogue
- Erosion of the Social Model. Regression to 19th century, Welfare State in danger
- Entrepreneurial Risk is on the worker (going back to the 19th century), no securities for worker but has to be flexible (according to the wishes of the employer)
- Most important measure: Effective control and implementation of laws, Effective enforcement detecting false self employment, sanctioning. Criminal law when circumventing social security contributions (Social Fraud), coordination between different authorities
- Labour Law should also apply to dependent contractors (dependent self-employed)

## Conclusion - Ideas

- New definition of employees is needed, focus not only on personal dependence but also on economical
- Restricting the supply chain (bogus self employment and bogus companies )
- No trade licences for simple tasks, for tasks which cannot be fulfilled as a typical trade
- Problem when cross border (posting i.a.), sanctions cannot be executed
- Reversal of burden of proof, proof on employer that it is not an employment rel.
- Collective agreements on wages and working conditions for dependent self-employed workers (until now only for journalists and teachers in private education facilities, Economic Chamber blocks further negotiations)