



A European Perspective on False Self Employment

**- CRITERIA, CONSEQUENCES, KEY ISSUES / ACTIONS IN NINE EU COUNTRIES –
PRESENTATION FOLLOWED BY A PANEL DISCUSSION -**

Organized by VGSD e.V. together with EFIP in the PresseClub Munich, 3rd November 2015
as part of our ongoing campaign for more legal security: www.vgsd.de/schein



False Self-Employment in Germany

- PRESENTED BY CHRISTA WEIDNER,
SLIDES BY DR. ANDREAS LUTZ, VSGD E.V. -

Munich, 3rd November 2015

Criteria for (-) false / (+) real s.-e. / (o) neutral criteria

in Germany

Legal

(-) subject to directives (in terms of time, place and way of doing), e.g. trainer

(-) integration in working processes

Administrative practice (examples)

(-) only one client, (o) several clients

(-) lack of commercial risk (equipment, offices, vehicles, warranty claims...),
typical iPros are seen as not having such a risk

(-) work equipment (e.g. computer, software) provided by client

(-) billing by client (credit note), (o) billing by freelancer

(-) freelancers in certain industries like promotion/events, physiotherapists ...

(-) billing by hours or day, (+) by delivered project

(+) has own employees

(-) has been employed before (or has accepted a job) by client

(-) working at client office, interacting with employees, (o) working at home

Consequences of false self-employment

in Germany

... for the client

- full pension contributions for current and last four years (19% of all fees)
- with intent: criminal offence
- repay value added tax paid to freelancer and claimed back from tax office

... for the self-employed

- lots of bureaucracy to prove that they are “real self-employed”
- immediate loss of contract
- companies stop giving contracts to freelancers on large scale
- pressure freelancers into temporary employment
- pay own share of pension contributions for last 3 months (9,5% of income)
- if not seen as false self-employed but employee-like self employment: pay full pension contributions for current and last four years (19% of income)

Key issues and actions

taken by VGSD e.V.

Key issues

- Fight against legal uncertainty caused by current administrative practice
- Stop “Law against abuse of (service) contracts” (about to be proposed)

Actions taken / planned

- working group wrote position paper / prepared campaign
- campaign website: vgsd.de/schein
- election on “better criteria”
- lecture road show (six cities), event tonight, telco events with politicians
- “Ask your MP” – Members spoke to ca. 100 members of parliament
- initiative with other associations, common position paper/ PR/ events



False Self-Employment in France

- PRESENTED BY JOANNA BOIVIN (SLIDES BY MICHEL PAYSANT) -

Munich, 3rd November 2015

Criteria for (-) false / (+) real s.-e. / (o) neutral criteria

in France

Legal

- False employment falls under article L.8211-6 of French Labour code as **illegal work** (alongside illegal supply of workers, illegal subcontracting and employing foreigners without work permits) and is defined as **concealed work**;
- Established when « **Work subject to payment falls within the framework of a legal relationship of subordination between the interested parties** », regardless of the qualification given by the parties to their work relationship.
- **Labour inspectors & judges appreciate a body of evidence (several required) and decision is sovereign**: working conditions (hours worked, place of work), autonomy (work directed by company or self), ownership of equipment used, economic dependence, compliance by the company with obligations of Labour Code;
- (-) Company does not declare his employees, not provide payslips or indicates false information (undeclared overtime), or the use of commercial contracts instead of employment contracts;
- An 'auto-entrepreneur' working like an employee;
- (+) Worker is presumed independent when officially registered at Register of Commerce & Companies, trade register or the register of commercial agents; must provide a service contract with a SIRET number, an insurance certificate (professional liability) and one or two invoices paid by previous clients.

Consequences of false self-employment

in France

... for the client

- Criminal conviction if proven that company has **intentionally** evaded the fulfillment of employer obligations: 3 years imprisonment and fine from 45 000 to 225 000€;
- Payment of social contributions for the time of 'false self-employment';
- Labour inspectorate recalculates revenue paid based on minimum wage and overtime (35 hours);
- Compensation for breach of contract paid to worker (6 months salary);

... for the self-employed

- Can be sanctioned by social institutions if it appears that he has accepted this work knowingly;

...anyone who knowingly profited or assisted in its implementation may be punished.

Key issues and actions

taken by France

Key issues & Actions

- Fight against legal uncertainty caused by current administrative practice → write a **paper on 'best practices'** targeting businesses and self-employed to clarify conditions for self-employment work relationships as opposed to classic payroll employment; also consider **training** for businesses on 'best practices'
- Consider the **heterogeneous profiles of self-employed and widespread development of new forms of work**: self-employment, fixed-term or temporary, part-time work, hybrid forms; → The 'Mettling report' commissioned by French Minister of Labour proposes a list of measures to rehabilitate work and included into the French general social security system. In the continuity of the Personal Activity Account* the idea is to build a base of rights attached to the person and transferable from one company to another and / or from one status to another. ;
- **Better & greater use of new forms of work** → create a **'tool box' of solutions adapted to the needs of independent workers** (see simplified version of sole proprietorship and cooperatives of collective entrepreneurship in France & Umbrella employment in Europe);



False Self-Employment in the UK

- PRESENTED BY ANDY CHAMBERLAIN-
- DEPUTY DIRECTOR OF POLICY AND EXTERNAL AFFAIRS, IPSE

Munich, 3rd November 2015

False self-employment or 'DISGUISED EMPLOYMENT' *in the UK*

Legal

- IR35
- Managed Service Company legislation
- 'Onshore' reporting requirements – making the agency liable
- New proposals on travel and subsistence expenses

Administrative practice (examples)

- IR35 based on case law
- Substitution
- Mutuality of Obligation
- Supervision, direction & control
- Part and parcel" of the organisation (Postman Pat)
- Training, team meetings, team building
- Access to company facilities - car park, staff canteen
- Did you go to the Christmas party?!

Consequences of false self-employment

in the UK

... for the client

- Nothing! (But that might be changing)
- ... potential for reputational damage

... for the self-employed

- A (potentially) big tax bill
- A long and disruptive investigation
- Difficult negotiations with the client
- Increasingly difficult legislation – onshore, travel & subsistence, IR35

Key issues and actions

taken by IPSE

Key issues

- IPSE was created to fight IR35 in 1999
- Now a business organisation but tax campaigning is still a big issue
- The Government wants to strengthen IR35 – make the client liable
- Supervision, Direction OR control

Actions taken / planned

- 1999 IPSE 'green carded' Parliament
- 2001 judicial review – we lost ☹ ... but the Judge described IR35 as “inflexible and confusing”
- Since then IPSE has taken a more strategic approach
- Lobby senior decision makers – IR35 Forum & other business groups
- Survey our members
- We have a brand new idea – the Freelancer Limited Company – but that's another presentation!



False Self-Employment in [Republic of Ireland]

- GERARD KIERNAN, PCSO -

Munich, 3rd November 2015

Criteria for (-) false / (+) real s.-e. / (o) neutral criteria

in [Republic of Ireland]

Legal

- Determination via Dept of Social Protection, (Class of National Insurance)
- Sole Trader v Ltd Company – Legal structure of Supplying Service
- Ltd Company > 50% Shareholder automatically self employed. May be legal changes to this shortly
- Revenue Commissioners Code of Practice

Administrative practice (examples)

- Control of another person
- Labour only contracts
- Provision of tools or equipment
- Supply of materials
- Risk & Reward
- Project Fee V's fixed pay
- (above does not recognize modern flexible work practice)

Consequences of false self-employment

in [Republic of Ireland]

... for the client

- Employment rights, holiday pay, maternity pay, sick leave, unfair dismissal claims
- 10.75% National Insurance contribution
- Pension contributions in certain industries to certain schemes e.g Construction
- Deduction of unpaid PAYE where there is a non-compliant self-employed individual
- Uncertainty on flexible workforce rules

... for the self-employed

- Disallowance of business expenses
- Reduced rates of fee income
- Movement of MNC from jurisdiction
- Reduced opportunities
- Inability to Sub-contract work

Key issues and actions

taken by [PCSO]

Key issues

- Revenue Commissioners & State agencies, lack of Clarity & Understanding around IPROs & the Modern flexible workforce
- Dept of Social Protection delays in determinations and appeals
- Revenue & Dept of Social Protection currently have area under Review, may be legislative changes implemented
- Misunderstanding of the flexible workforce

Actions taken / planned

- Submission to Revenue Commissioners in relation to Registration and Declaration document for IPROS
- PCSO members have agreed not to deal with certain industries that could be seen as non-Professional service providers. E.g Construction, trades, logistics
- Media campaign to get recognition for IPROs in Ireland



False Self-Employment in Italy

- PRESENTED BY FRANCESCA PESCE, ACTA -

Munich, 3rd November 2015

Criteria for (-) false / (+) real s.-e. / (o) neutral criteria

in Italy

Legal (since beginning 2015)

- (-) If at least two of the following 3 conditions are met:
 - the collaboration with one same client lasts for over 8 months per year in two consecutive calendar years;
 - the remuneration coming from clients of one same group represent more than 80% of one's total annual income for two consecutive calendar years;
 - the worker has some kind of workspace at his client's company

then inspectors can immediately suspect false self-employment.

Administrative practice (examples)

- (+) Very high skills
- (+) high income
- (+) regulated profession (lawyer, architect, doctor, etc.)

Consequences of false self-employment

in Italy

... for the client

- He/she has to prove that the worker is not a false self-employed
- Otherwise the law considers that worker as a salaried worker since the start of the collaboration
- So the client has to pay past social contributions and salaries

... for the self-employed

- If it is really false self-employment, he/she stops being exploited
- If it is not, he/she has to help the client prove it isn't, with a great waste of time
- He/she somehow has to admit to his client that he doesn't have many other clients or income.

Key issues and actions

taken by ACTA

Key issues

- Make the government/parliament and unions understand that Ipros are not in majority false self-employed
- Request that legislation therefore takes into account Ipros as workers who have chosen to be freelancers.

Actions taken / planned

- Debates and meetings with trade unions, parliamentary commissions, government members who are writing the new statute of independent workers.



False Self-Employment in Croatia

- PRESENTED BY MATIJA RAOS, HDNP -

Munich, 3rd November 2015

Key issues and actions

taken by CIPA

Key issues

- legal uncertainty caused by the lack of clear information / directives / administrative practice
- Freelancers working through contracts (for foreign clients or online platforms) forced into opening a company which adds level of pressure, bureaucracy and tax burdens

Actions taken / planned

- research
- informing and legal/business counseling
- publicity – pushing freelance/self-employed testimonials/stories to media
- collaboration with other profession oriented associations
- Open(ing) dialogue with the public institutions

Criteria for (-) false / (+) real s.-e. / (o) neutral criteria

in Croatia

Legal

- (o) outdated laws, slow administration and legal processes
- (o) subjective (individual) interpretation of directives by clerks (in terms of time and ways of doing work)

Administrative practice (examples)

- (-) only one client, (+) several clients
- (-) billing by client, (o) billing by freelancer
- (-) repeated billing month-by-month, (+) by delivered project
- (-) working for foreign companies on regular (monthly) basis via contracts
- (-) working at client office, interacting with employees, (o) working from home office, shared office or coworking space
- (o) At the moment public institutions promote self-employment (as opening of new companies) to fight the unemployment rates

Consequences of false self-employment

in Croatia

... for the client

- high penalty fees
- stop giving contracts / outsourcing
- sceptic to work with freelancers

... for the self-employed

- high penalty fees, immediate loss of contract
- lots of bureaucracy to prove their legal position
- less clients/contracts
- even more uncertainty
- pressured into temporary employment

False Employment in the Netherlands

Denis Maessen, PZO-ZZP



Criteria

- Self Employed are entrepreneurs
- Criteria for entrepreneurs imposed by the “Dutch Tax and Customs Administration”
- We do this by income tax
 - Highly diverse target group
 - Major sectoral differences makes it difficult to a clear circumscribed definition of self employed

Definition of false self-employment

“These are individuals who pretend to be entrepreneurs by willingly and consciously incorrectly presenting facts and circumstances so as to make use of fiscal facilities as well as social security legislation whereby the corresponding legal requirements- such as payment of (social) contributions- are evaded.”

Current situations

- 5% is false self employed
- Concentrated in a few sectors with huge societal dissatisfaction
- Lot of measures harm the regular self employed
- We strive for an adequate framework

Current situations

New law is coming in 2016:

(DBA deregulating beoordeling arbeidsrelaties)

“Deregulation grade employment relationship”

- clarity about roles ordering party and contractor and
- avoiding the situation of unexpected payroll taxes
- Only a Few Model contracts for intermediaries, ordering parties and contractors
- More and more collective agreements (cao)
- More sectoral agreements

Roles and differences

A

Ordering Party



Contractor

B

Ordering Party



Contractor

Intermediar

C

Employer



Employee



False Self-Employment in SWEDEN

- PRESENTED BY

CHAIRMAN OF EGENANSTÄLLNINGSFÖRETAGENS BRANSCHORGANISATION

STEPEN SCHAD AND JOANNE BOIVIN

Munich, 3rd November 2015

Criteria for (-) false / (+) real s.-e. / (o) neutral criteria *in Sweden*

Legal

There are several laws Sweden which affects on the matter false or real self-employment. The three most import is

THE LAW FOR INCOMETAX 13 kap § 1

- (+) it must be permanent ,independent and have profitmakeing-purpose

THE LAW FOR UNEMPLOYMENT BENEFITS (§ 34)

- (-) if the person fulfils the citerias for subordination
- (+) work equipment (e.g. computer, software) provided by client
- (+) the person registrerad as a sole-trader at Bolagsverket (Swedish authority for registration of companys)
- (+) control his own worh hours and independently
- (+) has a own office, factory etc where he or she carrying out the work
- (+) have several customers

Criteria for (-) false / (+) real s.-e. / (o) neutral criteria *in Sweden*

- (-) the person who carrying out work is reimbursed för expenses

THE PERSONAL LAW – “arbetstagarbegreppet” the definition of what a employeeed is

- (-)the relation between the person who will carrying out the work and the company are agreed in a employment contract
- (-)the agreement is about that one party shall perform work for the another
- (-) the person is obligaied to perform work personally
- (-) not allowed to perform work of similar importance for another client
- (-) it's the customer which initiate the work with should be done
- (-) it's the customer which determines the working conditions, work hours and work place
- (-) it's the customer which provide work equipment (e.g. computer, software)
- (-) the person get paid per hour, mweek or month
- (-) the contract between the parties regulate a long term relationship
- (-) social criteria; the person who carrying out the work has then same status as an employee

Criteria for (-) false / (+) real s.-e. / (o) neutral criteria *in Sweden*

Legal

- False self-employment is **an old phenomenon in the grey area of the labour market** according to Swedish economist Annette Thörnquist, used in times of global recession and mass unemployment as a lode of exploitation and as a survival strategy for workers. In recent years, it has become increasingly linked to issues of labor migration and social dumping;
 - ➔ Important to **distinguish between genuine self-employment** - increasingly a voluntary step towards greater autonomy- **and false self-employment** often associated with exploitation and survival strategy.
- **Legal actions are commonly initiated by Swedish unions** -among the strongest in the world- who control if collective agreement standards are met; in each individual case an overall assessment is made to see if work relationships legally constitute self-employment or employment, but boundaries are unclear and the decision is sovereign;
 - ➔ **Criteria** that legally define employment **are regulated by Swedish Employment Protection Act (LAS)** and do not apply to commercial contracts;

Criteria for (-) false / (+) real s.-e. / (o) neutral criteria in Sweden

False self-employment (-)	Genuine self-employment (+)
Worker has own registered company (either sole-proprietorship or limited company)	Worker has own registered company (either sole-proprietorship or limited company)
Has obtained a personal permission from Swedish Tax Agency (F-tax certificate) and pays preliminary tax and social insurance contributions	Has obtained a personal permission from Swedish Tax Agency (F-tax certificate) and pays preliminary tax and social insurance contributions
Contract based agreement but no specific purpose is stipulated and worker remains continuously at the disposal of client; Tasks are varied	Commercial contract conditioned by a specific purpose (job or result); Work is limited to some or possibly certain tasks
Position is comparable (economically and socially) to employee : reimbursement of professional expenses, work equipment provided by client, working at client office, interacting with employees	Position comparable to business owner; work relationship in form of 'real' self-employment; worker bears operational costs, etc
Worker is economically dependent on a single client	Has one client or more (2009 F-tax amendment)
Subject to directives and control by client – conduct of subordinate relationship	Determines self the working conditions (work hours & work place)
Client signed collective agreement (Adreassons case 2012 – damages claimed by Union for violation of CA)	Client has no legal employer responsibilities and signs no collective agreement
Employed with high level of autonomy, comparable to business owner (case of Swedish service company)	No employment contract

Consequences of false self-employment

in Sweden

... for the client

- A company who violates Employment Protection Act (LAS) must pay on top of paid amount social benefits
- Considered as discrimination if not same privileges as other employees
- Considered as unfair competition

... for the self-employed

- The person loses tax advantages
- The person gets better social security benefits
- Probably more difficult to find assignments

Consequences of false self-employment

in Sweden

... for the client

- Violation of Employment Protection Act → employer pays salary and other employment benefits entitled by employee and compensation for the damage incurred (16-32 months salary);
- Violation of collective agreements → damages paid to union (see 'Andreassons Transport' case);
- High risk in case of accident of false employee;
- Considered as discrimination if not same privileges as other employees;
- Considered as unfair competition;

... for the self-employed

- **False self-employment shifts the burden of risks associated with breaks in employment entirely on to the worker;** the employer permanently saves the cost of contributing to social insurance, while the worker loses the future benefits that would accrue in case of unemployment, illness or retirement;
- **Freelancers pressured into precarious work situations** (staffing agencies, dependent subcontracting, sole proprietorship);
- **Sole proprietorship** (53% of all Swedish businesses) involves personal financial risk and entails highly complex administration (20 000 legal docs);
- **Increases risk for social dumping:** growing low-pay market in Sweden;
- Loss of social benefits if not seen as employee-like employment but false self-employment

Key issues and actions

Key issues

- The Law for unemployment benefits is not rule of law. It's create insecurity for the umbrella employees in Sweden.

Actions taken / planned

- EAB have financed several research reports and examinations about the umbrella employees working conditions
- EAB have used the reports to educate politicians and policymakers for better understanding for umbrella employments working conditions
- EAB have been a party in the process of rewrite the Law for unemployment benefits

Key issues and actions

in Sweden

Key issues	Actions taken / planned
Fight against negative association of self-employment with precarious work alongside casual and temporary work, as a form of exploitation or survival strategy, undermining employment rights and furthering tax avoidance	Lobbying to Unions and National agencies to prove that self-employment is an evolution of the labour market and a voluntary choice for a growing portion of the working population - commission research project by EC to define the concept & profile of 'self-employed' legally
Fight against legal uncertainty caused by current administrative practice & risk of falling into false self-employment	Write a paper on 'best practices' targeting businesses and self-employed to clarify conditions for self-employment work relationships as opposed to classic payroll employment; also consider training for businesses on 'best practices'
Address problem of legal limbo for self-employed due to absence of frameworks adapted to changes in work patterns and the diversification of career paths, with more flexibility for businesses and autonomy for workers without creating insecurity	Better & greater use of new forms of work; create a 'tool box' of solutions adapted to the needs of independent workers (see simplified version of sole proprietorship and cooperatives of collective entrepreneurship in France & Umbrella employment in Europe)



False Self-Employment in the EU

- PRESENTED BY MARCO TORREGROSSA, GENERAL SECRETARY OF EFIP -

Munich, 3rd November 2015

EU Initiative

European Platform to prevent and deter undeclared work

Bring together and develop common guidelines among all national enforcement bodies e.g. labour and social security inspectorates, tax and migration authorities, and EU-level representatives of employers and employees.

Objectives

- Limit avoidance of taxes and social security contributions, abuses of social rights (minimum wage, employment protection legislation, leave entitlements), cost of complying with regulation (registration requirements, health and safety regulations) and unfair competition between companies.
- Comprises both, deterrence (control, sanctions) and enabling compliance (e.g. campaigns, information and advice, incentives, amnesties, new job categories).
- Grants to finance projects supporting the achievement of the objectives of the Platform would be covered by the EU EaSI and ESF programs with a budget of €2.1 million per year.

Criteria for (-) false / (+) real s.-e. / (o) neutral criteria

Legal Criteria

At EU level, undeclared work is defined as *"any paid activities that are lawful as regards their nature but not declared to public authorities, taking account differences in the regulatory systems of the Member States"*, including:

1. Provision of goods, services for households (neighbours, family members, friends or acquaintances) and for companies (payment in cash, full-time work despite part-time contract etc),
2. Bogus self-employment (for companies, households) which is de facto falsely declared work associated with undeclared work.

Example

A self-employed graphic designer sells digital services to a company in a different EU country than where she lives, but she actually works only for that one company that limits her autonomy in providing services independently. She is entirely economically dependent and should instead be on the payroll of the company and registered as a worker in the country where she is active. In practice she is therefore a false self-employed worker.

Table 1: Estimated size of the shadow economy and undeclared work in the EU

Country	Size of shadow economy (in % of GDP), 2012 ¹	Undeclared work (% of GDP), 1992–2006 ²	Country data or estimations ³ (% of GDP)	World Bank research ⁴ (% of extended labour force)	Demand of UDW ⁵ (% of respondents to Eurobarometer Survey 2013)	Supply of UDW ⁶ (% of respondents to Eurobarometer Survey 2013)	Envelope wages ⁷ (% of respondents to Eurobarometer Survey 2013)
Austria	7.6	1,5 (1995)	No data	19.7	14	5	2
Belgium	16.8	6–20	No data	10.5	15	4	4
Bulgaria	31.9	22–30 (2002)	20 (2011)	13.2	16	5	6
Cyprus	25.6	10 (2007)	19.1 (2012)	53.0	16	2	2
Croatia	29.0	No data	No data	No data	17	7	8
Czech Republic	16.0	9–10 (1998)	No data	12.5	19	4	5
Denmark	13.4	3 (2005)	No data	11.5	23	9	2
Estonia	28.2	7–8 (2007)	8 (2011)	9.8	12	11	5
Finland	13.3	4.2 (1992)	No data	11.2	11	3	1
France	10.8	4–6.5 (1998)	No data	10.3	9	5	1
Germany	13.3	7 (2007)	No data	11.9	7	2	1
Greece	24.0	24–30 (2007)	36.3 (2012)	46.7	30	3	7
Hungary	22.5	18 (1998)	16–17 (2006)	9.4	11	4	6
Ireland	12.7	8 (2002)	No data	33.0	10	2	2
Italy	21.6	6,4 (2006)	12.1 (2011)	22.4	12	2	2
Latvia	26.1	16–18 (2007)	No data	8.0	28	11	11
Lithuania	28.5	15–19 (2003)	No data	6.4	14	8	6
Luxembourg	8.2	No data	No data	No data	14	5	3
Malta	25.3	25 (1998)	No data	No data	23	1	0
Netherlands	9.5	2 (1995)	No data	12.6	29	11	3
Poland	24.4	12–15 (2007)	4.6 (2010)	21.6	5	3	5
Portugal	19.4	15–37 (2004)		22.4	10	2	3
Romania	29.1	16–21 (2007)	31.4	11.8	10	3	7
Slovakia	15.5	13–15 (200)	No data	12.2	17	5	7
Slovenia	23.6	17 (2003)	No data	14.1	22	7	4
Spain	19.2	12,3 (2006)	17 (2011)	18.8	8	5	5
Sweden	14.3	5 (2006)	No data	8.2	16	7	1
United Kingdom	10.1	2 (2000)	No data	21.7	8	3	2

Key issues and actions

Key issues

- Latest results from the Global Entrepreneurship Monitor indicate the level of “opportunity” entrepreneurship is five times higher than the level of “necessity” entrepreneurship.
- Two scenarios for Germany:
 1. Short Term: new laws backfire on genuine freelancers -> companies terminate their contracts
 2. Long Term: new laws create more legal clarity around self-employment -> better market confidence and more freelance contracts

What we call for

- Policy makers to have clear understanding of flexible labour markets
- Cut burdensome regulation, red tape and high taxation as to encourage genuine self-employment
- Smooth transition of undeclared work into genuine self-employment as to impact jobs creation
- EU countries to focus on what self-employment is (rather than what it is not) and distinguish between bogus and genuine self-employment
- Employment courts to receive guidance on common EU criteria and avoid discretion in defining workers' subordination