



Pravna fakulteta  
Univerza v Ljubljani

ZBORNİK  
ZNANSTVENIH  
RAZPRAV

2020

LETNIK LXXX

Perspectives on the  
European Pillar of Social Rights

*Sara Bagari\**

## **The European Pillar of Social Rights – An EU-level Response to the Social Protection of the (Economically) Dependent Self-Employed?**

### **1. Introduction**

The economically dependent self-employed represent a non-standard form of employment.<sup>1</sup> Due to economic dependence, they are exposed to an increased risk of precariousness.<sup>2</sup> Compared to the “traditional” independent self-employed, the negative effects of a lack of legal protection are larger in several areas. For example, the risk of the termination of business cooperation by the (main) client will be much higher for the economically dependent self-employed than in the case of the independent self-employed, who cooperate with several clients and can still rely on other sources of income. To reduce this risk, the possibility of providing some employment protection exists.<sup>3</sup>

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\* *Sara Bagari, Master of Law, Teaching Assistant at the Faculty of Law, University of Ljubljana, and Researcher at the Institute for Labour Law at the Faculty of Law, University of Ljubljana, Slovenia; sara.bagari@pf.uni-lj.si.*

<sup>1</sup> International Labour Organization, *NON-STANDARD EMPLOYMENT AROUND THE WORLD: UNDERSTANDING CHALLENGES, SHAPING PROSPECTS* (2016), p. 7.

<sup>2</sup> Precariousness can be found both within standard and non-standard employment. Therefore, the term risk of precariousness seems more appropriate. In the ILO’s report “Non-standard employment around the world: Understanding challenges, shaping prospects”, the term “insecurities associated with work” is considered instead of labelling non-standard employment as precarious.

<sup>3</sup> For example, in Slovenia some restricted labour law protection is already provided to an economically dependent person under certain conditions by the Labour Relations Act (*Zakon o delovnih*

On the other hand, economic dependency can also result in the need for special social protection, assuming that those who undertake their professional activities in an economically dependent way are more affected by social contingencies than those working in an autonomous and individual way. In the last few decades, many European countries have been faced with the challenge of how to apply employee-oriented systems to a group of self-employed persons.<sup>4</sup> As this group has changed,<sup>5</sup> now the (new) challenge is how to guarantee a sufficient level of social protection to the “newer” non-standard self-employed, taking into consideration the fact that forms of independent work, traditionally recognised in European Union Members States, have changed. It is safe to say that non-standard forms of self-employment pose several challenges to social security systems across Europe, which have not been fully adapted to the new forms of work in general.

The article focuses primarily on the challenge of adapting the social security systems to the demands of the economically dependent self-employed or, in general, the challenges deriving from the legal recognition of economically dependent self-employed work in the social security system.

The first question that needs to be answered before addressing the challenge of providing (special) social protection for this group is the definition of an economically dependent self-employed person. This is a challenging task, primarily due to the unclear boundaries between the concepts of a dependent self-employed person, an economically dependent self-employed person, and a bogus self-employed person. The concepts are intertwined, and their use in literature is different. The first part of the article analyses the definition of an economically dependent self-employed person.

In addition, the second question is, what level and extent of legal protection should be afforded to an economically dependent person. Economic dependence can be the basis for limited labour protection, a greater scope of social security rights, or both. In a social security system, the economically dependent self-employed may be, on the one hand, equated with other self-employed persons and, on the other hand, their legal position may be closer to that of dependent employees. Therefore, the second part of the article focuses on the specific legal status (and the rights deriving from this) of the economically dependent self-employed in social security systems. In this regard, I will, at least partly, examine how different Member States deal with the insertion of the eco-

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*razmerjih* – ZDR-1, Official Gazette of the RS, No. 21/13, last amended in 2017) Restricted labour law protection includes the prohibition or cancellation of a contract in cases of unfounded reasons for cancellation.

<sup>4</sup> Social security systems in most European countries were primarily developed for a typical worker with a permanent, full-time employment contract for an indefinite period, upon which standard social security is built. In the past few decades, there has been an expansion in many different forms of non-standard, atypical work arrangements and the number of atypical workers has grown.

<sup>5</sup> Not only a non-standard form of employment relationship (such as part-time work, temporary employment), but also non-standard forms of self-employment, are on the rise.

nomically dependent self-employed in social security systems, as well as try to look for some other possible solutions.

In the final part, I will address the position of the economically dependent self-employed in the light of international and European legal acts. I will focus on the European Pillar of Social Rights (EPSR) and documents that further develop the principles established by the EPSR. The problem of the economically dependent self-employed has been highlighted in various reports at the beginning of the 21<sup>st</sup> century and remains relevant today. Dealing with this issue seems particularly appropriate due to the growing number of economically dependent self-employed, an increase in the cross-border provision of services and the variety of approaches taken by different countries in this area. In this regard, the social protection of the economically dependent self-employed is an issue that concerns the European Union as a whole.

## 2. Economically Dependent Self-Employment: A New Type of Self-Employment

In Europe, trends indicate that a significant number of self-employed are becoming economically dependent. Data on the number of economically self-employed in different European countries is not accurate; they can be quantified only in countries that have legally recognised dependent self-employment and maintain proper records.<sup>6</sup> Nevertheless, it is clear that a segment of the workers treated by statistics as self-employed is economically dependent on the customer or client in the performance of their activity.

According to Eurostat's 2017 Labour Force Survey (LFS) *ad hoc* module,<sup>7</sup> in 2017, 18.2 per cent of the self-employed in the EU-28 reported having just one client or a dominant client.<sup>8</sup> One in three economically dependent self-employed wished to work as an employee. For the purpose of the above-mentioned *ad hoc* module, the economically dependent self-employed were defined as self-employed that earn at least 75 per cent of their income from one client, are without employees, and have worked for only one client or a dominant client during the last 12 months, and this client decided on their working hours. Considering this definition, in 2017, only 3.4 per cent of the self-employed population in the EU-28 was economically dependent. However, the chosen

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<sup>6</sup> Although Slovenia has recognised economically dependent persons as a specific category in the Labour Relations Act, no register is being kept.

<sup>7</sup> The module targets the self-employed and persons at the boundary between employment and self-employment. Moreover, it aims to measure the degree of economic and organisational dependency of the self-employed, defined on the basis of the number of clients and the percentage of income coming from a client, as well as in terms of control over working hours. See: Self-employment statistics, URL: [https://ec.europa.eu/eurostat/statistics-explained/index.php/Self-employment\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php/Self-employment_statistics).

<sup>8</sup> In Slovenia, the number exceeds 20 per cent.

definition of the economically dependent for the purpose of the 2017 module is problematic because it ties economic dependency to organisational dependence. The defining element of the organisation of the work is more appropriate for the broader group of dependent self-employed.<sup>9</sup>

It is necessary to deal with this issue to define first the economically dependent self-employed or at least try to define who should be considered an economically dependent self-employed for the purpose of the extension of social rights. Moreover, different criteria should be used to define the economically dependent self-employed and at the same time, avoid the identification of workers that are genuine employees or independent contractors.

### 2.1. Definition of the Economically Dependent Self-Employed

The economically dependent self-employed are an intermediate category between a dependent employee (a salaried worker) in an employment relationship and an independent self-employed person pursuing an independent economic activity.<sup>10</sup> Different definitions of economically dependent self-employment, as well as different terms of economically dependent self-employed, can be found in the legal discourse (such as “para-subordinate worker” or “quasi-employee”)<sup>11</sup> and they also differ from country to country. For example, the Slovenian Labour Relations Act uses the term economically dependent person. From this concept, one could easily assume that an economically dependent person could also be an employee. However, one of the defining elements of the economically dependent person, according to the Act, is that the person is self-employed.<sup>12</sup>

The European Economic and Social Committee (EESC)<sup>13</sup> describes economically dependent work as “pursuing independent activity in the terms of economic dependence on the (main) contracting authority.” Moreover, the economically dependent self-employed are understood as a new category of workers that can be classified as an interme-

<sup>9</sup> On the issue of the statistical definition of the dependent self-employed, see: Hunter, Leslie, Statistical definition and measurement of dependent “self-employed” workers, URL: [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/meetingdocument/wcms\\_636042.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/meetingdocument/wcms_636042.pdf).

<sup>10</sup> When discussing the broader term of dependent self-employment Eichhorst et al. use the term “a hybrid legal category”, which addresses the grey area between dependent employment and self-employment. See: Eichhorst (et al.), Social protection rights of economically dependent self-employed workers, URL: [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507449/IPOL-EMP\\_L\\_ET\(2013\)507449\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507449/IPOL-EMP_L_ET(2013)507449_EN.pdf), p. 32. Similarly, the European Economic and Social Committee uses the term “intermediate category between salaried employment and independent self-employment”.

<sup>11</sup> It could easily be concluded that a certain degree of uncertainty exists surrounding the definition of economically dependent work.

<sup>12</sup> Article 213 of ZDR-1.

<sup>13</sup> Opinion of the European Economic and Social Committee on ‘New trends in self-employed work: the specific case of economically dependent self-employed work’ (own initiative opinion), 2011/C 18/08.

diate category between employees and the self-employed. In its Green Paper on modernising labour law to meet the challenges of the 21<sup>st</sup> century published in 2006,<sup>14</sup> the European Commission notes that

“economically dependent persons do not have a contract of employment and may not be covered by labour law since they occupy a ‘grey area’ between labour law and commercial law. Although formally ‘self-employed’, they remain economically dependent on a single principal or client/employer for their source of income.”

For a long time, the economically dependent self-employed have also been on the agenda of labour law and social security law experts. A group report led by Supiot<sup>15</sup> in 2000 already acknowledges the existence of “workers who cannot be described as employees, and yet are economically dependent on a single client.” One of the findings of the report is that because of their economic dependency, these workers should be entitled to certain social rights. Pedersini<sup>16</sup> notes that economically dependent workers are a group that belongs between the traditional categories (employed and self-employed), since, despite formal self-employment, they are mainly dependent on the income they receive from one client.

## 2.2. The Economically Dependent Self-Employed as a (Sub)Group of the Dependent Self-employed

Before going further, a distinction between bogus self-employment and the definition of an economically dependent self-employed person should be made. An economically dependent self-employed person is not subordinate to the client. Subordination still represents a central element in the legal definition of a (dependent) employee and employment relationship in the vast majority of the Member States.

Bogus self-employed persons who find themselves in a disguised employment relationship, are generally considered to have fulfilled all the elements of the employment relationship, including the element of subordination. The boundary between the economically dependent self-employed and dependent employees is more difficult to determine when, in addition to economic dependence, there exist no differences in the type and way the work is carried out. For example, when an economically dependent person works on the client’s premises and uses his or her equipment, it is more difficult to determine the boundary between work, performed by the self-employed person, and that of an employee. In the latter case, the competent authority (in Slovenia, labour inspectors

<sup>14</sup> Commission of the European Communities, Green Paper – Modernising labour law to meet the challenges of the 21<sup>st</sup> century (2006).

<sup>15</sup> Supiot, *BEYOND EMPLOYMENT: CHANGES IN WORK AND THE FUTURE OF LABOUR LAW IN EUROPE* (2001).

<sup>16</sup> Pedersini, Economically dependent workers, employment law and industrial relations, URL: <https://www.eurofound.europa.eu/publications/report/2002/economically-dependent-workers-employment-law-and-industrial-relations>.

and financial administration within administrative or judicial proceedings) must decide, based on actual circumstances concerning work, whether a disguised employment relationship or (only) economic dependence is in place.<sup>17</sup> A distinction between disguised or bogus self-employment and economically dependent self-employment is essential because they both require different responses from the legal system. In the case of bogus self-employment, a person performing work should be considered an employee. On the other hand, the economically dependent self-employed are still self-employed but with some peculiar features which may require additional legal protection.

Taking account of the former, the broader concept of dependent self-employment should also be distinguished in an appropriate way, considering that dependency is not necessarily economic. The dependent self-employed may depend on one or a small number of clients, from whom they receive most of their income (economic dependence), or the element of dependency may lie in the fact that they receive detailed instructions on how to get the job done (organisational dependence).<sup>18</sup> In this context, the International Labour Organization (ILO) explains that although the “grey area” between employment and self-employment has always existed,

“changes in business organisations, technological developments and new business practices have rendered the distinction between employed and self-employed workers more blurred in practice and have contributed to an increase in the number of workers within this grey area.”<sup>19</sup>

The authors of the report on Social Protection Rights of Economically Dependent Self-Employed Workers<sup>20</sup> interpret dependent self-employment<sup>21</sup> as a relationship in which the worker is self-employed, but working conditions are similar to those for persons who carry out work as employees. Although self-employed work is performed solely (or mainly) for one client, they are neither clearly separated nor fully integrated into the

<sup>17</sup> See: Rosioru, *Legal acknowledgement of the category of economically dependent workers* (2014), p. 286.

<sup>18</sup> Eichhorst (et al.), *Social protection rights of economically dependent self-employed workers* (2013), URL:[https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507449/IPOL-EMPL\\_ET\(2013\)507449\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507449/IPOL-EMPL_ET(2013)507449_EN.pdf), p. 25.

<sup>19</sup> ILO, *Non-standard employment around the world: Understanding challenges, shaping prospect* (2016), p. 36.

<sup>20</sup> Eichhorst (et al.), *Social protection rights of economically dependent self-employed workers* (2013), URL:[https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507449/IPOL-EMPL\\_ET\(2013\)507449\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507449/IPOL-EMPL_ET(2013)507449_EN.pdf).

<sup>21</sup> However, they do distinguish the expressions “economically dependent self-employment” and several times synonymously used the expressions “dependent self-employment”. The first one largely refers to the economic dependence of the agent on the principal, and the second (broader) one additionally refers to the managerial control function of the principal, and sometimes also bogus self-employment as the illicit intent to circumvent labour law or social security standards.

client's work process. Economic dependence is reflected in the fact that the worker takes (part of) the entrepreneurial risk.<sup>22</sup>

This implies the need for clear criteria and the definition of various forms of dependent self-employment, including economic dependence.

### 2.3. Defining Elements of the Economically Dependent Self-Employed

To distinguish the economically dependent self-employed from other groups of the self-employed (or the self-employed in general), establishing criteria is essential. The criteria may relate to (i) the worker himself or herself (ii) the circumstances in which the job is performed and (iii) economic dependency.<sup>23</sup> The goal of the criteria is to identify to whom particular legal protection should be granted.

As already mentioned, in Slovenian legislation, the criteria for defining an economically dependent person are stipulated in Article 213 of the Labour Relations Act. An economically dependent person is defined as a self-employed person who, based on a civil law contract, performs work in person, independently and for remuneration for a longer period in circumstances of economic dependency, and who does not employ employees.<sup>24</sup> The first criteria relate to the person performing work personally and not employing other employees (personal and direct work). The criteria that a person performs work based on a civil law contract is an example of a criterion from the second group (the circumstances in which the job is performed). The criteria related to the economic dependency itself is characterised by the fact that the economically dependent person receives his or her income or main part of it (80 per cent of his or her annual income in Slovenia)<sup>25</sup> from the same contracting entity.

We can also find comparable criteria in other countries that legally acknowledge the economically dependent self-employed with the purpose of entitling them to the specific legal (labour, social, or both) protection based on their economic dependency.

In Spain, the economically dependent self-employed (spa. *trabajador autónomo económicamente dependiente* – TRADE) represent a special subgroup of the self-employed introduced by the Self-employed Workers' Statute in 2007.<sup>26</sup> The definition of a

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<sup>22</sup> Eichhorst (et al.), Social protection rights of economically dependent self-employed workers (2013), URL: [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507449/IPOL-EMPL\\_ET\(2013\)507449\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507449/IPOL-EMPL_ET(2013)507449_EN.pdf), pp. 24–25.

<sup>23</sup> Economic dependency is not only reflected in the percentage of income coming from a dominant client but might also exist when the self-employed person is tied by exclusivity clauses to sell only the products of one single distributor, making them dependent on the continuation of that relationship. In Slovenia, this is the case for the franchisee of newsstands.

<sup>24</sup> However, the Slovenian Labour Relations Act does not define a self-employed person.

<sup>25</sup> See Article 213(2) of the Labour Relations Act.

<sup>26</sup> Eurofound, Exploring self-employment in the European Union (2017), URL: <https://www.european-microfinance.org/sites/default/files/document/file/exploring-self-employment-in-the-europe>

TRADE is quite similar to the definition of an economically dependent person under the Slovenian Labour Relations Act. The essential difference is the definition of the circumstance of economic dependency. While in Slovenia a self-employed person is considered economically dependent if he or she earns at least 80 per cent of his or her annual income from the same client, this percentage is lower in Spain (75 per cent). Recent legislative changes<sup>27</sup> in Spain have introduced an exception, allowing TRADEs to hire one worker due to work-life balance reasons. From the end of September 2015, TRADEs can hire an employee in cases of pregnancy, maternity leave or parenting, care of children under seven years, or another family member in a situation of dependency or disability. The amendment was introduced to maintain the status of TRADE workers in the event of the occurrence of the social risks mentioned above and to avoid disruption of the relationship with a dominant client.<sup>28</sup> In both Spain and Slovenia, it is important to highlight the problematic aspect of existing regulation under which a self-employed person must notify the client of his or her economic dependence and ask his or her client to be recognised as an economically dependent person. The fear that the client could cancel the contract or terminate the business relationship in practice undoubtedly restrains the economically dependent self-employed from asking their clients to be recognised as such.

The Austrian 1997 Labour Law and Social Security Amendment Act introduced a so-called employee-like person (germ. *dienstnehmerähnliche Personen*) in 1997.<sup>29</sup> This is a person who is personally and legally independent, but economically dependent on one or a few clients. However, it must be stressed, that the term has a different meaning in social security law than in labour law.<sup>30</sup>

In Portugal, there exist different forms of employment considered as categories falling between dependent employment and self-employment, such as home work (pt. *trabalho no domicílio*), special regime labour contracts (pt. *contrato de trabalho com regime especial*), and contracts for the provision of services (pt. *contrato de prestação de serviço*). However, the status of economic dependence plays an important role outside the employment forms mentioned above (see below).

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an-union.pdf, p. 40.

<sup>27</sup> Law 31/2015.

<sup>28</sup> González Gago, CASE STUDY – GAPS IN ACCESS TO SOCIAL PROTECTION FOR THE ECONOMICALLY DEPENDENT SELF-EMPLOYED IN SPAIN (2018), p. 15.

<sup>29</sup> Rosioru, Legal acknowledgement of the category of economically dependent workers (2014), p. 288.

<sup>30</sup> Marhold, Fundamental values and interests in social security law in the consideration of changing employment (2013), p. 227.

### 3. Legal Protection of the Economically Dependent Self-Employed

Only a few Member States have specifically legally recognised the legal status of an economically dependent self-employed person. However, the coverage accorded to the economically dependent self-employed varies considerably from one country to another. It can generally be concluded that the overall objective in countries, which have recognised the special legal status of an economically dependent self-employed person, is to provide this group of persons with broader protection than the rest of the self-employed enjoy, without equating them to employees.<sup>31</sup> While regulating the legal position of the economically dependent self-employed and providing a certain amount of legal protection raises some concerns,<sup>32</sup> it offers greater legal protection for the self-employed who do not otherwise have the economic security they would have if they worked for more clients.

While being conscious of the numerous and difficult issues that dependent self-employment raises in the scope of labour law protection,<sup>33</sup> the rest of the article focuses on the scope of social protection guaranteed to the economically dependent self-employed.

#### 3.1.1. Social Protection of the Economically Dependent Self-Employed in Slovenian Legislation

Slovenian law does not guarantee the economically dependent self-employed a special legal position in the social security system. It addresses their position indirectly and to a lesser extent within the framework of the provision of Article 214 of the Labour Relations Act (Restricted labour law protection). Beyond Article 214, provisions regarding assurance of payment for contractually agreed work appropriate for the type, scope and quality of the work undertaken, taking into consideration the collective agreement and the general acts binding the contracting authority and the obligation of payment of taxes and contributions, will apply to an economic dependent person. To simplify, according to Article 214, the obligation of payments of contributions must also be taken into account when determining payment for the work performed by an economically dependent person. We could assume that the contract price must, therefore, be comparatively higher, since the self-employed person is obliged to pay the contributions in full—both the contribution of the worker and the employer. However, the status of an

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<sup>31</sup> In the countries which recognise an intermediate category between employee and self-employed status, economic dependency is the basis for specific rights not recognised for other types of self-employed workers, but less extensive than the rights accorded to employees.

<sup>32</sup> For example, the European Economic and Social Committee points out that any recognition of economically dependent self-employed work might lead to employees being transferred to the category of the economically dependent self-employed, in connection, for example, with companies' outsourcing strategies (EESC (2011), p. 1.

<sup>33</sup> Countries can and in some cases already do provide a limited scope of employment protection to the economically dependent self-employed through various measures.

economically dependent person does not function in practice and there yet exists no case law concerning economically dependent persons in Slovenia.

On top of that, the conditions for access to unemployment benefits are worth mentioning. In addition to other conditions, which are the same for all insured persons (the condition of an insurance period of at least nine months in the last two years), insured persons who have not been insured based on employment, including the self-employed, are entitled to compensation only if the deregistration from all types of social insurance scheme was the result of objective reasons. In other words, the self-employed are entitled to unemployment benefits only if they have ceased self-employed activity for reasons beyond their control. The law<sup>34</sup> also considers one of the objective reasons to be the loss of a business partner to which the business was mainly linked. It can reasonably be concluded that the client, on whom the self-employed person is economically dependent, represents the “business partner to which the business was mainly linked.”

### 3.1.2. Social Protection of the Economically Dependent Self-Employed in a Comparative Perspective

The Member States address the issue of economically dependent self-employment. Some follow from the assumption that persons who work mostly for one client (which means that they are economically dependent on them) are, in fact, employees. Others have created a special legal category according to which the person receives special treatment in the social security system *vis-à-vis* other self-employed persons.<sup>35</sup>

The Member States that acknowledge the economically dependent self-employed as a special category and have a comparable definition to that of an economically dependent person from the Slovenian Labour Relations Act are Portugal and Spain. In the former, economic dependency results in the obligation for a client to pay contributions to the worker's social security scheme.<sup>36</sup> Part of the contributions borne by the client depends on the extent of economic dependence. Following the legislative amendment, which entered into force on 1 January 2018,<sup>37</sup> the law (spa. *Código dos Regimes Contributivos*) stipulates a regime for two distinct situations. If a self-employed person annually provides more than 50 per cent of services to the same entity (or to the businesses of the same corporate group), the client (the contracting entity) is subject to a contribution rate of 7 per cent. If the economic dependency is higher than 80 per cent, the contribution rate to be borne by the contracting entity is 10 per cent. The procedure itself is quite simple

<sup>34</sup> Labour Market Regulation Act (*Zakon o urejanju trga dela – ZUTD*, Official Gazette of the RS, No. 80/10, last amended in 2017).

<sup>35</sup> Schoukens, Barrio, The changing concept of work: When does typical work become atypical? (2017), p. 316.

<sup>36</sup> Eurofound, Exploring self-employment in the European Union (2017), p. 40.

<sup>37</sup> Available at: <https://dre.pt/application/conteudo/114484243> (September 2019).

for a self-employed person, since it does not require a special notification of economic dependency to the client. Namely, the self-employed person has to file a tax return for the year subsequent to the relevant year. The social security authority then determines the amount of services provided to the contracting entities and gives notice to the contracting entity for the payment of contributions.

In Spain, TRADEs enjoy a limited scope of employment protection. However, their social protection rights are almost identical to those of other self-employed persons. The exception can be found regarding insurance against occupational contingencies (spa. *contingencias profesionales*). While insurance against temporary incapacity for work (spa. *incapacidad temporal*) is mandatory for all who are self-employed (and other workers), insurance for accidents at work and occupational diseases is only compulsory for TRADEs. Other self-employed persons can join voluntarily. On the one hand, TRADEs have an obligation to pay an additional contribution, on the other hand, they are entitled to cash benefits if they are temporarily incapable for work due to occupational disease or injury at work.<sup>38</sup>

In Austria, dependent self-employed persons might be registered as regular self-employed. Still, they can also be registered as one of three specific categories: free service contractors (germ. *Freie Dienstnehmer*), new self-employed workers (germ. *Neue Selbständige*) or contractor of work and services (germ. *Werkvertragnehmer*).<sup>39</sup> Their position in the social security system differs depending under which legal category they are registered.<sup>40</sup> A *Freie Dienstnehmer* enjoys similar treatment in the social security system as employees. In this case, the self-employed are covered by pension insurance, health insurance, unemployment insurance, and at the same time, he or she is entitled to parental leave. For the other two groups of dependent self-employed persons (*Neue Selbständige* and *Werkvertragnehmer*), inclusion in social insurance is compulsory if their income exceeds a certain threshold. The insurance threshold for 2019 is EUR 5,361.72 per year.<sup>41</sup>

In Germany, a dependent self-employed person is deemed an employee for social security purposes if he or she meets at least three out of five criteria.<sup>42</sup> The other self-employed are generally not included in compulsory social insurance schemes as employees. Some self-employed groups are, however, subject to special arrangements and are,

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<sup>38</sup> González Gago, CASE STUDY – GAPS IN ACCESS TO SOCIAL PROTECTION FOR THE ECONOMICALLY DEPENDENT SELF-EMPLOYED IN SPAIN (2018), pp. 13–14.

<sup>39</sup> See also: Eichhorst (et al.), Social protection rights of economically dependent self-employed workers (2013), URL: [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507449/IPO L-EMPL\\_ET\(2013\)507449\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507449/IPO L-EMPL_ET(2013)507449_EN.pdf), p. 35.

<sup>40</sup> Ibid., pp. 45–47.

<sup>41</sup> Mutual Information System on Social Protection (MISSOC), Social protection for the self-employed – Austria, January 2019 update.

<sup>42</sup> See, for example, Rosioru, Legal acknowledgement of the category of economically dependent workers (2014), pp. 290–291.

for example, covered by compulsory statutory pension insurance. Special social security schemes also exist for members of liberal professions and farmers as well as specific systems for members of liberal profession associations.<sup>43</sup>

In Belgium, all self-employed persons are covered by a special scheme against conventional contingencies. The self-employed are insured for the following social security branches: health care, incapacity for work or invalidity, maternity insurance, family benefits, pensions, and insurance for the self-employed in the event that they must cease their activity for certain reasons (the so-called *droit passerelle*). Their social status differs depending on the category to which the self-employed person belongs, distinguishing self-employed persons who carry out the activity as their primary occupation, those whose activity is considered as supplementary, students who are self-employed, and assisting spouses.<sup>44</sup> Economically dependent self-employed do not possess a specific legal position in the social security system.

#### **4. Can the European Pillar of Social Rights Provide an Answer to the Challenge of Sufficient Social Protection for Economically Dependent Self-Employed?**

At the EU level, the issue of the economically dependent self-employed has already been raised by the so-called Supiot (1998) and Perulli (2002) reports. In the latter, the author notes that economically dependent workers work at their own risk and are not subordinate to the employer. At the same time, they are economically dependent in the sense that they are solely dependent on a single client.<sup>45</sup> Considering issues of regulating economically dependent work<sup>46</sup> the study suggests that

“the most appropriate solution is to intervene at the European level with ‘soft’ and programmatic provisions, which leave Member States room for adapting them to the national context concerned.”<sup>47</sup>

Since then, the EU has worked hard to integrate non-standard forms of employment and self-employment, including the economically dependent self-employed, into the so-

<sup>43</sup> Mutual Information System on Social Protection (MISSOC), Social protection for the self-employed – Germany, January 2019 update.

<sup>44</sup> Ibid.

<sup>45</sup> Perulli: Study on economically dependent work/parasubordinate (quasi-subordinate) work (2002), p. 5.

<sup>46</sup> Such as the difficulty to find a univocal solution, the problem of social dumping if the regulation of economically dependent work is left to the mercy of market forces.

<sup>47</sup> Perulli, Study on economically dependent work/parasubordinate (quasi-subordinate) work, European Parliament (2002), p. 5.

cial security systems. The European Parliament resolution of 14 January 2014 on social protection for all, including self-employed workers (2013/2111(INI)), stresses that “the working conditions of those self-employed people who are not economically independent are not radically different from those of salaried workers, their social security and employment rights ought to resemble more closely those of salaried workers where appropriate.”

It urges Member States to

“constantly optimise and modernise social protection systems in order to ensure sound, sustainable and adequate social protection for all, based on the principles of universal access and nondiscrimination, as well as the capacity to respond in a flexible manner to demographic changes and labour market developments.”

In this content and “to serve as a guide towards efficient employment and social outcomes when responding to current and future challenges”,<sup>48</sup> the EPSR was jointly proclaimed by the European Parliament, the Council, and the European Commission<sup>49</sup> in November 2017. The EPSR sets out 20 Principles that are essential for fair and well-functioning labour markets and social security systems. Principles are structured around three main categories:

1. Equal opportunities and access to the labour market,
2. Fair working conditions and
3. Social protection and inclusion.

Although the EPSR is not legally binding<sup>50</sup> and there is no sanctions mechanism in place if the principles remain unimplemented, the EPSR aims to trigger legislative and non-legislative activity at the national level, as well as it expresses joint commitment by the EU institutions to act at the EU level.<sup>51</sup>

The issue of access to social protection for non-standard workers and self-employed is also addressed in the EPSR, namely in Principle 12 (Social protection and inclusion category). Principle 12 of the EPSR states that

“regardless of the nature or duration of the employment relationship and under comparable conditions, the self-employed have the right to adequate social protection.”

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<sup>48</sup> See paragraph 12 of the Preamble of the EPSR.

<sup>49</sup> European Commission, Proposal for an Interinstitutional Proclamation on the European Pillar of Social Rights (2017).

<sup>50</sup> In this regard, see, for example, De Schutter, *The European Pillar of Social Rights and the Role of the European Social Charter in the EU Legal Order*, URL: <https://rm.coe.int/study-on-the-european-pillar-of-social-rights-and-the-role-of-the-esc-/1680903132>, pp. 45–46.

<sup>51</sup> See the Press release regarding the EPSR, Commission presents the European Pillar of Social Rights, URL: [https://europa.eu/rapid/press-release\\_IP-17-1007\\_en.htm](https://europa.eu/rapid/press-release_IP-17-1007_en.htm).

It, therefore, extends the right to social protection and all its components to employees in non-standard forms of employment and to the self-employed, which is definitely the first step to ensure that all working people have access to (all branches) of social protection.<sup>52</sup>

However, given the issues regarding, first, the definition of the economically dependent self-employed, and second, Member States' different responses to the challenges of non-standard forms of work, the initial answer to the question "Can the European Pillar of Social Rights provide an answer to the challenge of social protection of economically dependent self-employed?" is a very clear no. Such an answer is, however, exaggerated or at least given too quickly. It is, however, not an exaggeration to say that the EPSR alone cannot be the answer to all of the problems described above. Moreover, given its text, we can realistically conclude that further action is needed.

The documents that further develop the EPSR are thus essential, and that is why the Council Recommendation on access to social protection for workers and the self-employed was formally adopted on 8 November 2019.<sup>53</sup> The Recommendation highlights the problem of a lack of sufficient access to social protection for a significant proportion of economically active persons in the labour market and encourages Member States to

1. close formal coverage gaps,
2. provide adequate effective coverage,
3. facilitate transferability of social protection entitlements between schemes and
4. have transparent information about their social protection entitlements and obligations.<sup>54</sup>

Furthermore, the Recommendation also ensures that action is taken, as implementation plans and monitoring, evaluation and reporting arrangements are included.<sup>55</sup>

Although the economically dependent self-employed are not explicitly mentioned, the Recommendation recognises that "self-employment has evolved over the last two

<sup>52</sup> See De Schutter, *The European Pillar of Social Rights and the Role of the European Social Charter in the EU Legal Order*, URL: <https://rm.coe.int/study-on-the-european-pillar-of-social-rights-and-the-role-of-the-esc-/1680903132>, pp. 40–41.

<sup>53</sup> OJ C 387, 15. 11. 2019. See also European Commission, *Proposal for a Council Recommendation on access to social protection for workers and the self-employed* (2018). The initiative is part of the Social Fairness Package. See also Schoukens, Barrio, Montebovi, *The EU social pillar: An answer to the challenge of the social protection of platform workers?* (2018), p. 224.

<sup>54</sup> The answer to the question of: "Wouldn't the Directive be a more effective instrument?" is very clearly expressed in the Commission staff working document – executive summary of the impact assessment accompanying the document *Proposal for a Council Recommendation on access to social protection for workers and the self-employed* (SWD(2018) 71 final): "Although a Directive could be more effective from a strictly economic point of view in reaching the objectives of this initiative, consultations imply that it is doubtful that it would gather support from all Member States, making it the less effective instrument overall," p. 2.

<sup>55</sup> See Chapter Implementation, reporting and evaluation.

decades in the EU,<sup>56</sup> and that the self-employed form a heterogeneous group. As one of the initiative's aims is to encourage countries to ensure adequate effective coverage to all individuals in self-employment (and employment) the question remains—what is adequate and for whom? Crucially, the Recommendation states that social protection is considered to be adequate when it allows individuals to uphold a decent standard of living, to replace their income loss in a reasonable manner, to live with dignity, and to prevent them from falling into poverty.<sup>57</sup>

I believe that to comply with the Council Recommendation, it is not enough for the Member States to include the self-employed in (all) social protection systems. They should ensure that the system takes into consideration the situation of specific groups, such as the economically dependent self-employed.<sup>58</sup> Furthermore, they should consider the impact that the materialisation of a social risk has on each group individually.

## 5. Conclusion

The economically dependent self-employed are often part of a broader debate on non-standard forms of employment (work) and self-employment, which has long been on the agenda of experts in the field of labour law and social security law. In general, it can be observed that persons in non-standard forms of employment and self-employment lack adequate labour and social protection. Publications and acts<sup>59</sup> at the international and European level thus repeatedly call for the Member States to provide the self-employed with an adequate level of social security and access to rights under this system.

While the approaches to the phenomenon of economically dependent self-employment in countries are very diverse, the phenomenon itself is becoming increasingly important and can be considered part of a general trend of increasing labour market flexibility. It can be concluded that the extent of social security coverage in different Member States depends on the answer to the question, which categories of the (economically dependent) self-employed are classified for the purposes of the social security system. Slovenian legislation provides the economically dependent self-employed with a limited scope of employment protection. However, their legal position in the social security

<sup>56</sup> See paragraph 12.

<sup>57</sup> See paragraph 17 of the Recommendation.

<sup>58</sup> On this regard, see also paragraphs 18–21 of the Recommendation.

<sup>59</sup> See, for example, ILO, *Non-standard employment around the world: Understanding challenges, shaping prospect* (2016); ILO, *Social Protection Floors Recommendation No. 202* (2012); European Commission, *Green Paper: Modernising labour law to meet the challenges of the 21<sup>st</sup> century* (2006); European Economic and Social Committee, *Opinion of the European Economic and Social Committee on New trends in self-employed work: the specific case of economically dependent self-employed work (own-initiative opinion)* (2010), p. 44; European Parliament resolution of 14 January 2014 on social protection for all, including self-employed workers (2013/2111(INI)).

system is no different from the legal position of other self-employed persons. This might not be the best solution.

International and European legal sources have repeatedly suggested that countries should provide individuals in non-standard employment and self-employment with adequate social security coverage. The special situation of the dependent self-employed is repeatedly emphasised and should be addressed in a broader manner.

If we focus on the group of the economically dependent self-employed, some possible solutions already exist, and some still need to be considered. For example, Portuguese law, under which the contracting entity is obliged to bear a part of the social security contributions of a self-employed person who is economically dependent, may serve as an example. Furthermore, an example of good practices is found in Spanish legislation allowing TRADEs to hire a worker in the event of the emergence of certain social contingencies (such as maternity leave) while maintaining their special status. In the case of cash sickness benefits, the client on whom the self-employed person is economically dependent could be responsible for bearing (a part of) the financial burden. The objective pursued should be how to entitle the economically dependent self-employed to specific protection based on their distinct position of economic dependency.

In terms of the response at the EU level, including the EPSR, more attention should be given to the specifics of dependent self-employment. For example, if voluntary coverage of the risk of unemployment is accepted for the self-employed, this should not be the case for the economically dependent self-employed, where the social risk is much higher compared to other self-employed persons.

However, the focus now shifts to how the EPSR will be implemented to ensure that the adequate social protection becomes a reality for all workers regardless of their contractual arrangement and considering for “the principles listed in the EPSR to be legally enforceable, they first require dedicated measures or legislation to be adopted at the appropriate level.”<sup>60</sup>

To conclude, I believe that economic dependency itself is a reasonable reason for the distinction between different groups of self-employed. When adapting social security systems to new forms of work, we should keep in mind that self-employment covers a broad spectrum of social and economic situations, and that some of these (including the dependent self-employed), but not all, should be approached in a uniform way.

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<sup>60</sup> European Commission, Commission Staff Working Document Accompanying the document, communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, Monitoring the implementation of the European Pillar of Social Right (2018), p. 4.

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UDK: 331.102.12:349

331.102.12:061.1EU

ZBORNIK ZNANSTVENIH RAZPRAV

PERSPEKTIVE EVROPSKEGA STEBRA SOCIALNIH PRAVIC

LXXX. LETNIK, 2020, STRANI 101–118

*Sara Bagari***Evropski steber socialnih pravic – odziv na zagotavljanje socialne zaščite ekonomsko odvisnih samozaposlenih na ravni EU**

Vprašanje ekonomsko odvisnih samozaposlenih je bilo poudarjeno v različnih poročilih na začetku 21. stoletja in (hkrati z drugimi nestandardnimi oblikami zaposlitve in samozaposlitve) ostaja aktualno še danes. Obravnava te tematike se zdi še posebej primerna zaradi čedalje večjega števila ekonomsko odvisnih samozaposlenih, razvoja čezmejnih storitev in različnih pristopov držav na tem področju. Socialna varnost ekonomsko odvisnih samozaposlenih je vprašanje, ki zadeva Evropsko unijo kot celoto.

Prispevek obravnava izziv prilagajanja sistemov socialne varnosti ekonomsko odvisnim samozaposlenim.

Prvo vprašanje, na katerega je treba odgovoriti še pred obravnavo vprašanja o potrebi po posebni obravnavi v sistemu socialne varnosti, je opredelitev pojma *ekonomsko odvisna samozaposlena oseba*. To je zahtevna naloga predvsem zaradi nejasnih mej med pojmi odvisna samozaposlena oseba, ekonomsko odvisna samozaposlena oseba in navidezno neodvisna samozaposlena oseba. Pojmi se med seboj prepletajo, različna pa je tudi njihova uporaba v literaturi. Analizi opredelitve ekonomsko odvisne samozaposlene osebe je namenjen prvi del tega prispevka.

Poleg tega se pojavlja vprašanje ravni in obsega pravnega varstva, ki naj se zagotavlja ekonomsko odvisni osebi. Vprašanje je, ali bi bilo primerneje, da se poleg delovnopravnega varstva ekonomska odvisnost odraža tudi v posebni obravnavi v okviru sistema socialne varnosti in ali obstaja razumen, iz narave stvari izhajajoč razlog za razlikovanje med sicer enotno skupino samozaposlenih. Pri iskanju pravega odgovora na to vprašanje ne smemo pozabiti, da tudi samozaposleni uživajo različen obseg socialne varnosti v različnih državah, zato so lahko tudi odgovori različni. Ekonomska odvisnost je lahko namreč podlaga za omejeno delovnopravno varstvo, (večji obseg) pravic iz sistema socialne varnosti ali oboje. V sistemu socialne varnosti so lahko ekonomsko odvisni samozaposleni izenačeni z drugimi zaposlenimi, lahko pa je njihov pravni položaj bližje odvisnim zaposlenim. Prispevek

se zato v drugem delu osredinja na poseben pravni položaj (in pravice, ki iz njega izhajajo), ki ga imajo ekonomsko odvisne osebe v sistemu socialne varnosti nekaterih držav.

V zadnjem delu so ekonomsko odvisni samozaposleni obravnavani v luči mednarodnih in evropskih pravnih virov. Poseben poudarek je na Evropskem stebru socialnih pravic in Poročilu Sveta o dostopu delavcev in samozaposlenih oseb do socialne zaščite, ki izpeljuje načelo 20 Evropskega stebra socialnih pravic. Avtorica meni, da je treba tudi na ravni EU več pozornosti nameniti posebnostim opravljanja dela v odvisni samozaposlitvi in pri prilagajanju sistemov socialne varnosti novim oblikam dela upoštevati, da samozaposlitev zajema širok spekter socialnih in ekonomskih razmer, ki lahko zahtevajo različno obravnavo.

**Ključne besede:** odvisni samozaposleni, ekonomsko odvisni samozaposleni, socialna zaščita, sistemi socialne varnosti, Evropski steber socialnih pravic.

UDC: 331.102.12:349  
331.102.12:061.1EU

ZBORNIK ZNANSTVENIH RAZPRAV  
PERSPECTIVES ON THE EUROPEAN PILLAR OF SOCIAL RIGHTS  
VOLUME LXXX, 2020, PP. 101–118

*Sara Bagari*

### **The European Pillar of Social Rights: An EU-level Response to the Social Protection of the (Economically) Dependent Self-Employed?**

The problem of the economically dependent self-employed has been highlighted in various reports at the beginning of the 21<sup>st</sup> century and remains relevant today. Dealing with this issue seems particularly appropriate due to the growing number of the economically dependent self-employed, the development of cross-border services, and the variety of approaches taken by different countries in this area. In this regard, the social protection of the economically dependent self-employed is an issue that concerns the European Union as a whole.

The article focuses primarily on the challenge of adapting the social security systems of the economically dependent self-employed or, in general, the challenges deriving from the legal recognition of economically dependent self-employed work in the social security system.

The first question that the author endeavours to answer is the definition of an economically dependent self-employed person. This is definitely a challenging task, especially due to the unclear boundaries between the concepts of a dependent self-employed person, an economically dependent self-employed person, and a bogus self-employed person. The concepts are intertwined, and their use in the literature is different.

In addition, the second question is what level and extent of legal protection should be afforded to an economically dependent person. Economic dependence can be the basis for limited labour protection, (a greater scope of) social security rights, or both. Countries have addressed the issue of economically dependent self-employed people differently. Some derive from the assumption that persons who work mostly for one client (which means that they are economically dependent on them) are, in fact, employees. Others have created a special legal category in which the person receives special treatment in the social security system *vis-à-vis* other self-employed persons.

In the final part, the article focuses on the economically dependent self-employed in the light of international and European legal acts. Thus, the author's attention is focused on the European Pillar of Social Rights (EPSR) and documents further developing the principles established by the EPSR. In terms of the response at EU level, more attention should be given to the specifics of dependent self-employment. When adapting social security systems to the new forms of work we should keep in mind, therefore, that self-employment covers a broad spectrum of social and economic situations, and that some of these (including the dependent self-employed) should be approached in a different way.

**Keywords:** dependent self-employed, economically dependent self-employed, social protection, social security, European Pillar of Social Rights.