**Key concerns about Undeclared Work**

# Bogus self-employment: definitions and scope

DEFINITION  
There is no definition of Bogus self-employment or BSE at European level. The OECD has described BSE or ‘false’ self-employment as

*“people whose conditions of employment are similar to those of employees. They have no employees themselves, and declare themselves (or are declared) as self-employed. However, their goal is simply to reduce tax liabilities, or employers’ responsibilities’.”*

DISTINCTION WITH DEPENDENT SELF-EMPLOYED

‘Bogus self-employment’ is in a ‘grey area’ and is often used as the equivalent of ‘economically dependent workers’ and vice versa. However, each concept emphasises a different feature.   
  
- The ‘bogus’ denomination underlines the intention to circumvent labour, tax, social security rights and regulations, to reduce costs and avoid payments and obligations.

- For the ‘economically dependent’ status, the economic dependence of a worker to one contractor/employer could be an outcome more than a deliberate construction.

SCALE

There are few estimates of the scale and extent of BSE. The main source of information is Eurofound. In 2015, they examined the scale of BSE and who is involved. This distinguishes five groups of self-employed, among which the stable own-account workers. They represent 26% of BSE workers (e.g. shopkeepers, hairdressers, plumbers).

Although BSE has long been widespread mainly in manual occupations and sectors such as construction, it has recently spread to non-manual occupations and other sectors.

PROBLEM FOR ENFORCEMENT AGENCIES

The main difficulty for enforcement agencies, is that BSE is in a grey area in legal terms. They cannot judge in clear ‘black or white’ distinctions.

THE NETHERLANDS - EXAMPLE

In response to this grey area, a new system has been introduced in **the Netherlands** to try to make the distinction between employment and self-employment much clearer in the tax system. BSE is one of the legal structures that companies use to economise on labour costs, for instance in the cleaning industry. The labour inspectorate decided to tackle the BSE cleaning practices in fast food restaurants. They approached senior managers, who often couldn’t tell how cleaning was carried out in their establishments. This action by the Inspectorate raised their awareness.

# Why do we need to tackle bogus self-employment?

- The bogus self-employed do not receive the same level of protection as employees (e.g. insurances, holidays, etc.). They are also affected by low job quality (e.g. working hours, work-life-balance).

- BSE is a way of cutting costs, so it creates unfair competition.

- Employers may use BSE as a way of avoiding health and safety responsibilities.

- BSE leads to tax and social security revenues being lower than they could be.

- Some cases of BSE also involve undeclared work or illegal work, or are sometimes linked to organised crime.

- The scale of the problem appears to be increasing.

- BSE often involves young people, as a way to prevent their being unemployed instead.

# Existing efforts to tackle bogus self-employment

IN GENERAL

We have noticed that Member States rarely have legislation relating specifically to BSE. It tends to be addressed as part of general enforcement activities.

The most important measures, often domestic ones, are those that seek to deal with the misclassification of dependent employees as self-employed. They establish criteria to determine what is self-employment and dependent employment. Such criteria, however, do not exist in all Member States or differ across Member states.

Therefore a range of criteria is used to distinguish between employment, self-employment and BSE.

Commonly used criteria are  
- the number of clients for which the worker provides services;   
- whether the client provides tools and machines;   
- whether the worker is permitted to determine how their work should be organised.

Some countries have attempted to improve the clarity of distinctions through changes to their labour laws.

EXAMPLES

In **Austria**, there has been a proposal for a new law to enable workers to determine if they are in a BSE situation using a questionnaire.

In **the Netherlands**, there is now a set of standard contracts for self-employed persons and their clients and it is the clients who are liable for BSE.

Some countries, moreover, have ‘hybrid’ categories of employment status, which don’t necessarily solve the problem of BSE.

**Austria - three categories of self-employed workers**

There are a three types of self-employment in Austria, as follows:

* Dependent self-employed,
* New self-employed,
* One-person companies.

Dependent self-employed contractors in Austria are insured in the same way as employees, but labour law does not apply. This means that there are no collective agreements for wages, there is no holiday entitlement and no protection from dismissal.

New self-employed workers are insured in the same way as other self-employed persons. When registering for social insurance, a check is carried out to find out if it is really self-employment or rather dependent contractors or employees.

In addition, one-person companies with a trade licence are often in the same situation. Their number has increased, which is in part due to the issuing of trade licenses for simple tasks.

**Italy - convert BSE contracts into open-ended contracts**

In 2015 a reform has been introduced in **Italy** to try to convert contracts for ‘Occasional and project-based collaborations’ which were BSE into open-ended contracts. Employers who use these BSE contracts nowadays in this way are fined.

There is also a certification system. Employers and workers can receive a formal statement (issued by authorised bodies) which certifies the regularity of the contracts.

**UK - The Netherlands - online portal for determining status**

In the **UK**, an online portal enables workers and engagers (i.e. employers or contractors) to determine the status for tax purposes of workers and avoid BSE. A similar online tool exists in the **Netherlands**.

**Spain - advanced data analysis techniques to detect BSE**

A national plan was developed to raise awareness and establish new reporting mechanisms, as well as to increase sanctions. In addition, a new predictive data analysis techniquewas developed to deal with social security fraud and UDW in 2015. The tool aims to enable the Labour and Social Security Inspectorate (LSSI) to identify and select different companies/workers in a possible non-compliance situation, including BSE.

**Ireland - advisory board comprising different enforcement agencies**

There are also examples of countries establishing advisory bodies that bring together different enforcement agencies and other stakeholders, such as Ireland.

The Hidden Economy Monitoring Group (HEMG) in **Ireland** provides a discussion forum for businesses and unions to tackle the problems associated with the shadow economy. The HEMG helped to produce a ‘Code of Practice for Determining Employment or Self-Employment Status of Individuals’. It also established new procedures to sharpen the distinction between employment and self-employment.

**Greece - joint inspection activity**

Collaboration by enforcement bodies also extends to inspection activity. For example, since 2014, inspections at enterprises and work sites in Greece have been carried out by joint units of inspectors from different bodies.

**Slovenia and other countries - social partners’ aid**

Social partners can also be involved in tackling BSE. In Slovenia, the inspectorate and trade unions worked together to deliver an awareness-raising campaign to address dependent self-employment in a public sector broadcasting organisation. In other countries, the social partners have helped to develop ‘social identity cards’, which data can be shared across borders.

# Obstacles to progress in this area

These are the **key barriers** to identifying BSE:   
  
-The lack of a common definition of self-employment;  
- its low visibility;  
- a lack of reliable data;   
- and the limited sharing of information between authorities.   
- complexity of subcontracting chains  
- insufficient resources for enforcement agencies

# What more can be done to tackle BSE?

* The legislative framework should provide a clear basis for distinguishing between self-employment, employment and dependent self-employment.
* There is a need for collaborative working to tackle this issue, both amongst public organisations and the social partners.
* Enforcement bodies should share data and various data sources to better understand and target BSE.
* Enforcement bodies should share data across borders.
* The responsibilities of businesses involved in BSE subcontracting arrangements should be clarified and clearly communicated.
* Governments could review national legislation in order to determine whether it creates incentives for BSE.
* The European Pillar of Fundamental Social Rights should embed he principle of social protection for self-employed workers.

# Key learning outcomes

* BSE results from an often intentional misclassification of the employment relationship of declared work. Therefore BSE can be considered as ‘falsely-declared’ employment relations or misclassified dependent employment.
* Clear Member State criteria are required to determine what is dependent employment and self-employment.
* Policies that encourage entrepreneurship should not unintentionally contribute to BSE.
* Developing effective enforcement activity is vital if BSE is to be successfully tackled.
* Data sharing by enforcement bodies within (but also across) borders is extremely important.