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**Study on economically dependent work/
parasubordinate (quasi-subordinate) work
by Professor Adalberto Perulli**

**Public Hearing
'Economically dependent work/
parasubordinate work'**

Co-organised by
the Committee on Employment and Social Affairs
and
the European Commission, DG Employment and Social Affairs

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I

Executive summary

Study on Economically dependent work/parasubordinate (quasi-subordinate) work by Professor Adalberto Perulli (October 2002)

The first part of the report examines the distinction between work under an employment contract (subordinate work/employment) and self-employment, on the basis of the existing definitions in the Member States of the EU, indicating how various definition techniques are used. In particular, the report sets out the main criteria used by the law and judges to identify the two concepts and tackles the problem of categorising forms of work that lie half-way between work under an employment contract and self-employment (the so-called "grey area"). The existence of such a legal division is a constant feature of all the regulations considered and is found in international law. The distinction between work under an employment contract and self-employment has the general, very important consequence that rights and guarantees are recognised for persons of subordinate status in the legal sense. The first chapter ends by providing a set of statistical data on the distribution of subordinate work and self-employment in the Member States of the EU.

The second chapter describes the phenomenon of economically dependent work, indicating its characteristic features. There is a degree of uncertainty surrounding the definition of economically dependent work, not only because the legal framework is scant and fragmented, but also because a comparison reveals that there is a certain amount of confusion as regards both the actual designation of the phenomenon and the overlap with the different problem of false self-employed workers. The analysis conducted reveals that this is a form of work in which there is no subordinate status in the legal sense, while there exists a state of economic dependence, but one that needs to be clarified and described in legal terms. Some States have legal concepts of an economically dependent worker, while in many others it is a phenomenon that is well-known and discussed. A study of these systems makes it possible to identify the criteria used to define this type of work: primarily personal work, continuity over time, single client. Of the socio-economic factors that can explain the spread of economically dependent work, the main one is the increasingly frequent use of the practices of outsourcing or contracting out, through which numerous activities that used to be carried out in a firm by workers with subordinate status (employees) are now entrusted to self-employed workers under arrangements that tend to lead to the emergence of economic dependence which States seek to describe using the elements set out above.

Generally speaking, the approach of national legislatures and the social partners – as shown by some measures developed through collective bargaining – appears to be fairly empirical and characterised by practical aspects which, far from abstract requirements of classifying economically dependent employment in one category rather than another, are concerned with meeting the requirements of labour protection wherever they may arise.

The third chapter, which takes up the material analysed in the second chapter, pursues the analysis of the current problems of reconstructing "economically dependent" self-employment and provides a number of potential pointers to future developments in regulations. Consideration is given in particular to the prospects for reform that are currently being discussed in certain European countries: maintenance of the status quo, establishment of a third type of work between subordinate work and self-employment, expansion of the concept of work under an employment contract, creation of a minimum threshold of rights that make no reference to the designation of the relationship because they are common to all forms of work. In conclusion, it is

pointed out how any action of coordination at Community level that was steered by the social partners would not start from scratch because, in certain sectors, there is already a certain process of osmosis between the regulations on subordinate employment relationships and self-employment. The task is therefore to support and rationalise these trends.

II

Summary¹ of the study by the European Commission, DG EMPL D/3

Study on Economically dependent work/parasubordinate (quasi-subordinate) work by Professor Adalberto Perulli (October 2002)

1 Background

In recent years we have witnessed the emergence of a group of workers falling within the grey zone between the traditional notions of 'employees' on the one hand and 'self-employed' on the other. Different terms have been developed in order to describe and categorise this group. The most frequently used are: 'financially dependent workers', 'economically dependent workers', 'parasubordinate workers' or 'persons similar to wage earners'.

Economically dependent work has characteristics of both self-employment and subordinate work: Economically dependent workers work on their own risk and are not subordinate to an employer. At the same time, they are 'economically dependent' in the sense that they are more or less exclusively reliant on just one client enterprise.

In 2000 the Commission raised the issue of economically dependent work in a consultation of the social partners on the modernisation and improvement of employment relations. The responses of the social partners have clearly shown that this is a very important issue.

Furthermore, in its legislative resolution on the Council common position on the Directive amending the Insolvency Directive², the European Parliament called on the Commission to carry out an in-depth study and to hold a joint public hearing with Parliament on economically dependent workers.

Hence, after a call for tender the Commission signed a contract with Professor Adalberto Perulli concerning the study "**Economically dependant work/ Parasubordination: legal, social and economic aspects.**" The deadline for the completion of the study was 16 October 2002.

The purpose of the study was to provide a detailed and comprehensive overview of the legal, social and economic situation in relation to economically dependent work in the Member States.

This document prepared by DG EMPL D/3 summarises the content and the findings of the study (127 pages).

2 The content of the study

The study consists of three chapters.

- I. Subordinate work and self-employment
- II. Economically dependent work
- III. Actual problems and future prospects of economically dependent work

¹ This document is an informal summary, prepared by Unit D/3 of the Directorate-General for Employment and Social Affairs, of the study "Economically dependant work/Parasubordination: legal, social and economic aspects", carried out by Professor Perulli. The contents of the study or the summary do not necessarily reflect the opinion or position of the European Commission, Directorate-General for Employment and Social Affairs.

² Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002, OJ L 270/10, 8.10.2002.

The first part examines the distinction between self-employment and subordinate work. All current European systems represent this binary model comprising two different legal categories: subordinate work (or dependent work) and self-employment. 'Subordinate work' is governed by labour law whereas 'self-employment' is governed by commercial law and general contract law. The objective of labour law is to provide protection to a worker who is considered as the weaker party to a contract, whereas in the case of self-employment the self-employed and the client are considered as equal contractual partners.

There are two different techniques used in defining the notions 'subordinate work' and 'self-employment'

- a) Legislative (Statutory approach): the notions 'self-employment' and 'subordinate work' are defined in legislation
- b) Jurisprudence (the case law approach): the task of defining the notions is left for the courts. Jurisprudence identifies a series of indicators and criteria for establishing whether a particular case falls within self-employment or subordinate work.

In some countries only one of the two techniques is used. However, more frequently these techniques are combined.

The notions formulated by the above mentioned techniques may have either

- a) *a systematic and general value*, i.e. in some cases the rules include a general and systematic notion of subordination which identifies the whole field of application of all labour law provisions; or
- b) *a particular value*, i.e. in other cases there is no general notion of 'subordinate work' but the notion has the function to establish the scope of application of a particular, limited set of provisions.

Generally, the qualification (self-employment/subordinate work) given to the contract by the parties themselves has no relevance for deciding which of the two categories the work concerned falls within.

The following countries covered by the study have a legal definition of subordinate and/or self-employment: Austria, Belgium, Finland, Italy, Norway, the Netherlands, Portugal, Spain, Sweden.

The following countries do not have a legal definition but it is based on the case law: Denmark, France, Germany, the United Kingdom, Greece, Ireland, Luxembourg.

This is rough division which does not imply that the content of the concept is clearer in the countries with a legal definition.

2.1 Subordinate work

Subordination is, in the first place, juridical (legal) notion. According to the study, subordination as socio-economic dependency is not included in the legal-technical notion.

As a legal notion, subordination expresses a structural element of the relationship: *heterodirezione* (heteronomy³). This term refers to subjecting the worker to the

³ Heteronomy is the opposite of [autonomy](#). Whereas an autonomous person is one whose will is self-determined, a heteronomous person is one whose will is determined by something outside of the person. Etymologically, heteronomy goes back to the Greek words for "other" and "law."

directorial/managerial powers of the employer (employers' prerogative). This power comprises the employer's authority and the right to

- a) give instructions to the worker concerning the way in which (and where, when) the work is carried out;
- b) to sanction possible defaults (breaches of contract)
- c) to control the worker while s/he is working

Therefore subordinate work takes the shape of a hierarchical relationship between the employer and the worker, where there exists an asymmetry of powers recognised by the legal system, but at the same time balanced by a complex system of protection of workers.

As for the other subsidiary indicators suitable for defining the content of the legal notion of subordination it should be noted that:

- a) the typology and the number of subsidiary indicators varies greatly from one state to another.
- b) there is no formalised hierarchy between different indicators.
- c) the simultaneous presence of all the indicators is not required, but the concurrence of one or more thereof.
- d) their presence or absence does not appear decisive for the purposes of the qualification of the relationship/contract. They are mainly considered as indicators which can be freely valued by judges.

According to the study the 'subordination indicators' which on the basis of a cross- Member State comparison appear the most significant in defining the actual content of subordination are:

- insertion into the organisation of the employer
- the absence of an economic risk connected to the results of the productive activity (entrepreneurial risk)
- the way of payment of wages
- observance of specific, given working hours
- the materials and equipment used for work are not owned by the worker.

The combined use of *heterodirezione* and the above indicators, is able to provide us with the content of the legal notion of subordination.

2.2 Self-employment

By and large, the European countries identify self-employment through 'inverse' categorisation, that is, by ascertaining that certain work does not have the characteristics of subordinate work. (I.e. what is not considered as subordinate work is self-employment). As a consequence, self-employment does not constitute a general and a unitary category but a theoretical abstraction which includes multiple and fragmented judicial regimes. It is a complex and diversified phenomenon.

Self-employment as a notion covers several forms of contractual relationships:

- work contract
- contract for services
- agency
- provision of services
- intellectual professions (doctors, consultants, advertising agents)

There are also some new contractual arrangements that often have not been explicitly regulated by legislation:

- franchising
- engineering
- factoring
- leasing
- management contract
- transfer of know-how
- production and provision of software

As far as the identification of self-employment is concerned, there is the further difficulty in distinguishing whether self-employment is distinct from the concept of an undertaking, and if so, which is the criterion that distinguishes self-employment from the entrepreneurial activities. According to the study the tendency is to treat self-employment and entrepreneurial activities as separate concepts. However, in the study the distinction between these two has not been followed rigorously. Owing to the similar situation of economic and legal dependency both in the case of micro-undertaking (i.e. where a subject, a physical person, carries out very small-scale activities through the legal structure of an undertaking) and in that of self-employment, for the purposes of the study the activities of a micro-undertaking are considered as falling within the category of self-employment.

In conclusion, self-employment is a concept that comprises a growing number of different types of work and legal regimes regulating them. Therefore, it would be a methodological error to start from the presupposition that self-employment is a compact and unitary category which can be contrasted with subordinate work.

2.3 Grey Zone between self-employment and subordinate work

The recent years have witnessed rapid and profound changes taking place in the world of work, both in regard to work organisation and the content of work. 'Post-fordist' undertakings are increasingly having recourse to new forms of work organisation such as outsourcing and contracting out. This tendency has contributed to the emergence of economically dependent work which represents a form of work falling within a grey zone between dependent work and self-employment.

A recent study⁴ indicates that economically dependent work is most common in the service sector and in activities such as restaurant business, catering, media (newspapers, journals, TV, radio, editing), teaching and training, ICT, marketing, telemarketing, advertising, entertainment, administration, accounting and social services. The phenomenon is, however, also present in a more traditional sectors such as transport, building industry and domestic work.

Furthermore, the collective agreements concluded in certain sectors indicate other activities involved: in Italy there are company collective agreements dealing with the problems related to economically dependent work in the following sectors: call centres, market survey companies, telemarketing, public administration and non profit organisations.

The professions and jobs which are involved in economically dependent work are: telephone operators, interviewers, market surveyors, computer technicians, 'professionals' (journalists, translators, chemists, biologists, engineers etc).

⁴ EIRO comparative study "Economically dependent workers, employment law and industrial relations", Euroserver 4/02.

Generally speaking there is an absence of data concerning the sectors and professions involved in economically dependent work in Member States as well as concerning the number of economically dependent workers.

Given that the legal rules and principles which apply to self-employment on one hand and subordinate work on the other are different, it is clear that such a grey zone involves problems related to the legal treatment of economically dependent workers.

The grey zone has two different features:

1. The forms of work which have characteristics of both subordinate work and self-employment and therefore cannot easily be fitted into the binary model (uncertain status)
2. Bogus self-employment, that is subordinate employment disguised as self-employment

It has to be underlined that bogus self-employment is conceptually different from economically dependent work. Bogus self-employed are workers who are treated as self-employed, but who, from the legal perspective, clearly fall within the category of subordinate employment. These two phenomena require different responses from the legal system. The first requires interpretation (or up-dating) of the criteria used for defining subordinate work whereas second concerns the application of legislation in force. For both problems the solutions are sought through jurisprudence.

Irrespective of this grey zone **none** of the legal systems included in the study has moved from the binary model including two legal categories to a ternary (triple) model by introducing a third legal category besides self-employment work and dependent work.

2.4 Economically Dependent Work (Parasubordinate work)

The legal notion of economically dependent work does, however, exist in some Member States.

Before defining the notion of economically dependent worker, the study presents three preliminary clarifications:

1. currently economically dependent work falls within the framework of self-employment, it is self-employment which has some peculiar features;
2. economically dependent workers must not be confused with bogus self-employed workers: these represent two different phenomena both from legal and socio-economic point of view
3. the notion of economically dependent worker is presently an open and partially undefined one which cannot be used to distinguish one precise typology.

The binary model subordinate employment/self-employment remains intact but there is a tendency to include a subgroup 'economically dependent work' in the legal category of 'self-employment'.

Three Member States, namely Italy, Germany and the Great Britain, have a definition of an economically dependent worker, whereas in the following Member States there is no legal notion of an economically dependent worker, but there is nevertheless a debate concerning the possibilities to introduce legal measures concerning such workers: Austria, Denmark, Finland, France, Greece, Ireland, Norway, the Netherlands, Portugal.

In Belgium, Luxembourg, Spain and Sweden there is no definition of economically dependent worker and there is also an absence of significant political debate on the issue.

Drawing on existing legislative measures, jurisprudence and collective agreements, the study lists a number of criteria that enables us to discern the similarities between economically dependent work and subordinate work on one hand and differences between economically dependent work and self-employment on the other:

- need of social protection (personal work, limited human resources)
- lack of direct contact with the market
- number of contractual relationships from which worker earns his monthly income
- connection with the organisation of the undertaking
- lack of subordination but existence of co-ordinatory powers of the client undertaking
- length of the relationship

The scope of the category of economically dependent work is conditioned by regulatory measures: jurisprudence, legislation (assimilation to dependent work or selective extension of protection) and collective agreements.

The legislative provisions concerning economically dependent workers that exist in some Member States usually concern matters such as

- social security (pensions, occupational accidents and disease, maternity protection, sickness allowance)
- procedural rules on labour issues
- holidays
- collective agreements

Whereas e.g. in Italy there are collective agreement provisions concerning economically dependent work with regard to following subject matters:

- form of the contract (written)
- duration of the relationship
- duties
- working hours and mode of carrying out the duties
- remuneration and the method of payment
- health and safety at work
- suspension of the relationship (sickness, accidents, family reasons)
- training
- annulment of the contract
- duties of the worker
- trade union rights

As for measures at international level, the 85th International Labour Conference (1997) formulated a proposal for an ILO Convention concerning contract labour. The Convention would have applied to work "performed personally under actual conditions of dependency on or subordination to the user enterprise and these conditions are similar to those that characterise an employment relationship under national law and practice but where the person who performs this work does not have a recognised employment relationship with the user enterprise." (Article 1). The strategy proposed by the ILO in this field was to

1. to extend the scope of application of labour law beyond subordinate work.
2. to introduce a series of fundamental protection for all forms of work where a service is provided for another person, irrespective of the legal framework within which the service is provided.

Article 5 of the proposal lays down the relevant rights in the field of contract work:

- freedom of association and collective bargaining
- prohibition of discrimination
- age limits
- payment
- health and safety at work
- protection against occupational accidents and disease
- social security

The Convention has not been adopted.

3 Conclusions of the study

The following indicators are used in some Member States to establish the condition of economic dependency:

- mainly personal work
- continuity in time
- co-ordination of the work performance with the activity of the client
- performing work mainly for one single client (mono-commitment) which provides a major source of worker's income.

In the Member States where the issue is discussed (in particular in Italy and Germany) there are four different positions concerning the debate on the insufficiency of the protection of economically dependent workers.

1. Maintaining the status quo: it is suggested, for instance, that the general contractual principles of civil law and in particular the general clause on good faith and correctness could be applied to economically dependent workers. According to the study this is a weak way of ensuring protection, and maintaining status quo could leave economically dependent workers at the mercy of market forces.
2. To create a new type of work (a new legal category) in-between subordinate work and self-employment. Certain forms of protection would be extended through legislation and/or jurisprudence to cover this new type of work. According to the study this option should be avoided for it would create new legal problems related to the qualification of a relationship in one of the categories.
3. Redefining (enlarging) the notion of subordinate work: up-dating the notion of subordinate work (by adding other criteria for subordination) so that the notion corresponds with the changed socio-economic context. The objective of this option would be to impede the diffusion of 'apparent autonomy' and to support 'real autonomy'. This solution, however, is not widely supported. Furthermore, the enlargement of the definition of could result in the excessive expansion of the notion of the subordination.
4. To create a 'hard core' of social rights which are applicable to all work contracts irrespective of their formal qualification in terms of autonomy (self-employment) or subordination. This prospect is increasingly acquiring credit in the European doctrine.
 - Replacing the rigid self-employed/dependent juxtaposition by a continuum of activities -> common minimum protection for all forms of work + protection which gradually increases along the continuum.

- This type of proposal was suggested in the Supiot report (the first circle of rights, the second, the third and the fourth)
 - Similar proposal has been presented in the Italian political and trade union discourse (proposal for a law): "Carta dei diritti delle lavoratrici e dei lavoratori (three circles of rights).

The study concludes that

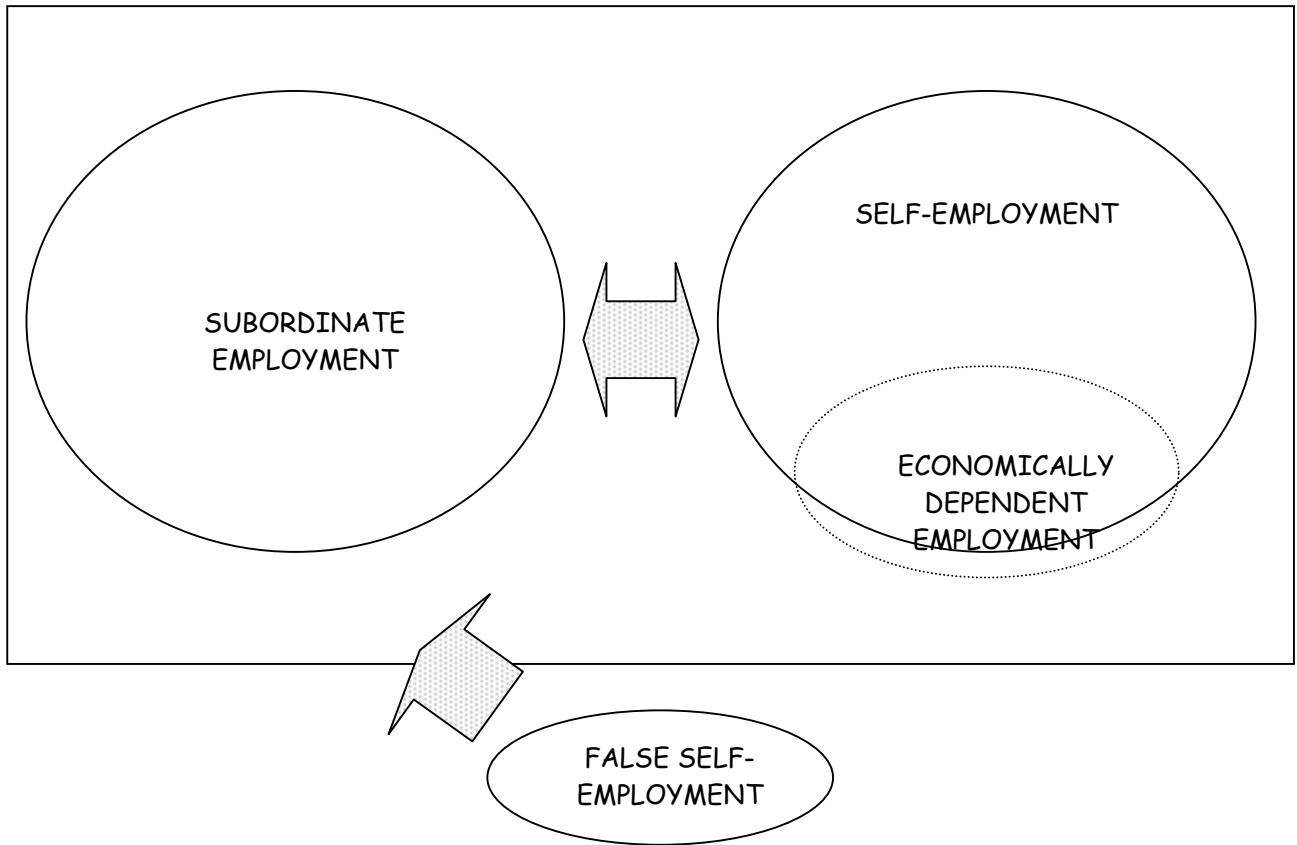
- it is not easy to find univocal solution to the problem of regulating economically dependent work
- if the regulation of economically dependent work is left at the mercy of market forces there is a risk of social dumping
- if there is a legislative intervention: there is a risk of 'rigidifying' the labour market with rules that may be inappropriate for the purpose of regulating economically dependent work
- owing to the difficulties to organise economically dependent workers and to the deficiencies in the industrial relations systems collective agreements on their own do not appear to be able to provide an appropriate and generalised solution.

According to the study 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.

- the study suggests that it is up to social partners to produce appropriate rules (social partners at European level)
- the possible future solution at European level would not start from the scratch: there already exists osmosis between the regulation of self-employment and subordinate work in fields such as
 1. social protection (pensions)
 2. professional training, employment services, incentives for employment (support of employability and entrepreneurship)
 3. health and safety at work
- There is also a tendency to extend fundamental rights, individual or collective, to cover self-employment (health and safety, non discrimination, equality)
- as for contractual terms and conditions applicable to economically dependent work, regulation is lacking. The study suggests that in this field there should be a greater determination to remodel existing protection. This presupposes legislative intervention at national level concerning e.g.
 - ◆ the form of the contract (written)
 - ◆ the object of the contract (the contract should state the professional objective, indicate the characteristics of the autonomy of the performance)
 - ◆ rules on remuneration: contract should indicate the criteria for determining the remuneration, time when payments are due (sanctions for late payments)
 - ◆ maternity, sickness, accident, serious family reasons: the contract should include a right to suspension of contract in these cases
 - ◆ withdrawal of contract: contract should regulate this and provide for a obligatory notice
 - ◆ training
 - ◆ right to organise and to participate in trade union activities.

III
SELECTED FIGURES AND TABLES FROM THE STUDY

Figure 1



GENERAL FEATURES OF THE LEGAL SYSTEMS CONCERNED	
Binary division of work performance; there are no intermediate categories	
(SUBORDINATE) EMPLOYMENT	SELF-EMPLOYMENT
Definition	
<p>Work carried out under employer control (direction and supervision)</p> <p>+</p> <p>other indicators of subordination (e.g. risk, being part of the organisation, working set hours)</p>	<p>Is arrived at through a negative approach, starting from the definition of employment: absence of employer control</p>
Where is the definition found?	
<input type="checkbox"/> in law <input type="checkbox"/> in case law <input type="checkbox"/> in law and case law	
Characteristics of the two categories	
<p>a) systematic and general level of coverage: in some countries the scope of application of the legislation is broad</p> <p>b) limited level of coverage: in other countries scope of application is limited and specific</p>	<p>Composite category covering:</p> <input type="checkbox"/> contracting, agency, service provision + intellectual occupations <input type="checkbox"/> new contractual practices such as franchising, engineering, factoring, management contracts <input type="checkbox"/> micro-enterprises

Consequences of the binary distinction		
Different types of law apply		
Labour law	Civil and commercial law	
Legislation based on different rationales		
Worker protection	Market forces	
Problems caused by the binary distinction		
Employment	<p>“grey area”</p> <ul style="list-style-type: none"> ❑ false self-employed persons ❑ difficult-to-classify forms of employment 	Self-employment

Employment in the EU (source: Eurostat)

	1991	1992	1995	1996	1997	1998	1999	2000
ALL								
Total employment (000)	157491	155890	154419	155272	156717	159205	161772	164702
Self-employed (% total employment)	15.6	15.8	15.8	15.7	15.6	15.4	15	14.8
Part-time employment (% total employment)	13.9	14.5	16	16.4	16.9	17.3	17.6	17.7
Fixed term contracts (% total employment)	9.2	9.4	10	10.2	10.6	11	11.3	11.4

Self-employed in the EU and Norway (% of non-agriculture civil employment)

Country	1980	1990	1995	1996	1997	1998	1999	2000	1980/ 2000 (2)
Austria	8.81	6.62	7.19	6.89	7.05	7.37	7.44	-	-1.37
Belgium	11.27	12.93	13.87	14.04	14.07	13.84	-	-	2.58
Denmark (1)	8.25	7.19	6.85	7.11	6.71	6.95	7.16	6.61	-1.64
Finland	6.04	9.29	10.16	10.26	10.00	10.00	9.85	9.71	3.67
France	10.71	9.32	8.58	8.48	8.36	8.28	8.18	8.06	-2.65
Germany	6.98	8.52	8.72	8.99	9.25	9.36	9.22	9.22	2.24
Greece	30.90	27.39	27.74	27.49	26.99	26.54	25.66	25.87	-5.03
Ireland	10.30	13.16	13.52	12.85	12.96	13.50	12.79	12.86	2.56
Italy	19.20	22.24	23.12	23.35	23.21	23.25	23.38	23.21	4.01
Luxembourg	9.19	7.12	6.08	6.01	5.92	5.75	5.62	-	-3.57
Netherlands	9.06	7.84	9.63	9.77	9.99	9.68	9.25	-	0.20
Norway	6.53	6.12	5.87	5.46	5.28	5.25	5.07	4.83	-1.69
Portugal	14.90	16.73	19.26	19.69	18.98	18.30	17.56	16.75	1.85
Portugal	14.90	16.73	19.26	19.69	18.98	18.30	17.56	16.75	1.85
Sweden	4.51	7.26	9.27	9.12	9.05	9.00	9.03	8.86	4.36
United Kingdom	7.11	12.41	12.19	11.87	11.83	11.49	11.15	10.83	3.72
EU15+Norway	10.87	12.64	12.78	12.82	12.78	12.68	12.43	12.54	1.63

Source: EIRO calculations on OECD Labour Force Data (non-agriculture civil employment), <http://www.oecd.org/>

(1) 1981 instead of 1980 (2) where data for 2000 were not available, the most recent data were used

Proportion of “employers” in self-employment category (source: OECD, *Employment outlook 2000*)

	Employers	Own-account workers
Austria	68.8	31.2
Belgium	10.3	89.7
Denmark	50.1	49.9
Finland	42.3	57.7
France	49.7	50.3
Germany	53.0	47.0
Greece	28.8	71.2
Ireland	39.9	60.1
Netherlands	37.4	62.6
Portugal	35.6	64.4
Spain	29.6	70.4
Sweden	41.0	59.0
United Kingdom	25.8	74.2

Economically dependent workers

ECONOMICALLY DEPENDENT WORKERS	
<i>Identification criteria</i>	
Negative criterion	Absence of subordination
Positive criterion	Situation of economic dependence
	<ul style="list-style-type: none"> <input type="checkbox"/> work performed personally <input type="checkbox"/> continuity and coordination of work <input type="checkbox"/> income (all or the greater part thereof) received from one principal
Legal protection	<ul style="list-style-type: none"> <input type="checkbox"/> social security (pension) <input type="checkbox"/> legal process concerning labour <input type="checkbox"/> trade union and collective bargaining rights