

UACES 44th Annual Conference

Cork, 1-3 September 2014

Conference papers are works-in-progress - they should not be cited without the author's permission. The views and opinions expressed in this paper are those of the author(s).

www.uaces.org

Bogus Self-employment in the European Union

Christer Thörnqvist

University of Skövde, Sweden

Paper for the UACES Panel 'Vulnerabilities of regular labour migration in the EU', Cork, Ireland, 1-3 September 2014

Stating the puzzle: what is bogus self-employment?

It is not all easy to find a commonly accepted, encompassing definition of bogus self-employment. Already the word 'bogus', however, hints that it is something not fully accepted, a relation in which someone is being cheated or at least unfairly treated. In scholarly debates, a smallest common denominator of definition is often that bogus, or false, self-employment is 'employment *disguised* in order to circumvent collective agreements, labour laws, employment tax and other employer liabilities that would otherwise be implied in a standard contract of employment'.¹ As, among others, Jan Cremers, former General Secretary of the European Federation of Building and Woodworkers, has pointed out, bogus self-employment can also be seen as 'disguised employment', occurring when someone who has an employee status in practice is not classed as an employee in order to hide the true legal status and to avoid costs such as taxes and social security contributions. According to Cremers, bogus self-employment has two forms: 'by giving the employment

¹ Annette Thörnqvist (2011), 'False Self-employment: A Topical but Old Labour Market Problem' in Annette Thörnqvist and Åsa-Karin Engstrand (eds), *Precarious employment in perspective: Old and new challenges to working conditions in Sweden*, Brussels: P.I.E. Peter Lang, p. 102.

relationship the appearance of a relationship with a different legal (commercial) nature, or by repeatedly renewing contracts in order to avoid giving the employee the rights and benefits of regular employees'. Deregulation within the European Union (EU), Cremers claims, 'made it possible to become a selfemployed from one day to another'.²

Although bogus self-employment might lead to unfair competition between employers too, it is the trade unions and political parties left of centre that have been most eager to cope with the issue. Or as British Labour Party MP Rachel Reeves expressed it at the 2012 TUC Conference in Brighton: 'Bogus self-employment is a scandal that continues to undermine employment rights and hit taxpayers' pockets'.³ But does it really 'undermine employment rights'? Bogus self-employment most certainly undermines workers' power resources, but the 'rights' *per se* are still the same, just encompassing fewer people. The thing is that the workers are forced to leave the legally regulated area of social protection in order to get any income at all. In the words of the British construction workers' union, UCATT: 'False self-employment is used by many employers to evade taxes and engage workers without having to respect employment rights and entitlements such as holiday pay, sick pay and pensions. It is immoral though not illegal'.⁴ The main reason why the unequal power relation exists is not primarily legal, it is rather the intertwined relationship between self-employment as a mode of exploitation and as a strategy for survival.⁵ The vast majority of people in bogus self-employment are labour immigrants with small possibilities to find other income channels. The falsely self-employed are out in some kind of legal limbo: on the one hand trade unions have managed to get certain rather strict rules for what constitutes the 'employee concept' accepted in most EU states,⁶ it is, as will be seen below, very difficult to maintain the concept in practice.

Bogus self-employment as precarious work

From what is stated above, it is rather clear that bogus/false self-employment is a fraction of the larger concept of 'precarious work'. The concept has, as its counterpart 'decent work', been widely debated and published over the last decade in European debate; yet still the boundaries of what is

² Jan Cremers (2010), *Non-standard employment relations or the erosion of workers' rights*, Solidar Briefing Paper # 23, <http://dare.uva.nl/document/496385>.

³ European Parliament (2013), *Social Protection Rights of Economically Dependent Self-employed Workers*, Directorate General for Internal Policies, Policy Department A: Employment Policy p. 85.

⁴ UCATT, 'What is false self-employment?', <http://www.ucatt.org.uk/false-self-employment>, retrieved July 2014.

⁵ Thörnquist (2011), p. 104.

⁶ Interview by the author with Mattias Landgren, Head Lawyer and responsible for Europe-related issues at the Swedish Building Workers' Union, October 2011.

and what is not precarious work are fuzzy. In 2011, the European Commission suggested that the most important indicators of precariousness should be job security, access to occupational training, career prospects, pay and productivity. The International Labour Organization (ILO)'s definition in the same year laid the main stress on security matters in the labour market; precarious employment was defined as a 'work relation where employment security, which is considered one of the principal elements of the labour contract, is lacking. This term encompasses temporary and fixed term labour contracts, work at home and sub-contracting'.⁷

The scholarly debate has mostly focused on the combination of instability, lack of protection, insecurity and social and/or economic vulnerability⁸ or on 'atypical' employment contracts, leading to limited social benefits or statutory entitlements, high degrees of job insecurity, low job tenure, low wages and high risks of occupational injury and disease.⁹ Another, yet similar way of facing the issue, employed by Julia S. O'Connor, is to lump different aspects together under three fundamental and somewhat 'flexicurity-inspired' umbrellas of job security, income security and social protection. According to O'Connor, the combination of these characteristics makes the problem of precarious work much wider than insecure employment alone and thus emphasizes the urge for both active labour market policies committed to transition security and a social protection system responsive to labour market failure.¹⁰ Others, such as Porthé and colleagues, have pointed to the fundamental issue that people in precarious work are first and foremost disadvantaged in terms of power relations, with fewer rights than apply to permanent workers with the consequence that employment relations are controlled by uncertainty.¹¹

In conclusion, bogus/false self-employment – which is a concept that is not 100 per cent easy to define, but fairly easy to at least find some smallest common denominator for – is a fraction of precarious work – a notion that has an affluence of different, though related, definitions. The

⁷ Sonia McKay, Steve Jefferys, Anna Paraksevopoulou and Janoj Keles (eds) (2012), *Study on Precarious Work and Social Rights: Final Report*, European Commission, VT/2010/084, p. 82.

⁸ Gerry Rodgers (1989), 'Precarious Work in Western Europe: The State of the Debate', in Gerry Rodgers and Janine Rodgers (eds), *Precarious Jobs in Labour Market Regulation: the Growth of Atypical Employment in Western Europe*, Brussels: ILO & Université Libre de Bruxelles, p. 1; Lefteris Kretsos (2010), 'The Persistent Pandemic of Precariousness: Young People at Work' in Joerg Chet Tremmel (ed.), *A Young Generation Under Pressure? The Financial Situation and the 'Rush Hour' of the Cohorts 1970–1985 in a Generational Comparison*, New York: Springer.

⁹ John Evans and Euan Gibb (2009), *Moving from Precarious Employment to Decent Work*, Geneva: ILO, GURN discussion paper # 13.

¹⁰ Julia S. O'Connor (2013), 'Precarious Employment and European Union Employment Regulation', in Gaby Ramia, Kevin Farnsworth and Zoe Irving (eds) *Social Policy Review* vol. 25.

¹¹ V. Porthé, E. Ahonen, M.L. Vázquez, C. Pope, A. Agudelo, A. García, M. Amable, F. Benavides, and J. Benach (2010), 'Extending a Model of Precarious Employment: The Case of Spain', *American Journal of Industrial Medicine*, vol. 53(4).

empirical part of this paper below draws on data from a project about precarious employment in 12 EU countries, financed by the European Commission and finished in 2012. The project took a rather pragmatic view of the definitions, trying to encompass as many aspects as possible, which will be further described below. Yet, the definitions are not the only methodological problem; as precarious work is related to job insecurity, the welfare state context in which it occurs is for obvious reasons important too. Employing the 2006 Eurobarometer survey data in combination with national data from a various sources, Fullerton and colleagues found that insecurity is higher in countries with low union density, low levels of part-time and temporary employment, and little social spending on unemployment benefits.¹² In addition to this, the international legal regulation is limited, which makes national contexts even more crucial. True, there is an ILO Recommendation (# 198 on the Employment Relationship) stating that governments should have national policies that distinguish employment relationships from self-employment and thus combating disguised employment relationships. Yet, while this is merely a recommendation, its importance lies in drawing attention to the difficulty of identifying the employer, which is particularly problematic for workers in precarious work in general and bogus self-employment in particular. Accordingly, before we look at the empirical data, it might be useful to recapture a few well known facts about different welfare state regimes and the EU attempts to create a social welfare model.

The European Union and Precarious Work

The notion of the welfare state began to spread in Western Europe during the economic boom following the Second World War. A wave of reforms from the late 1950s through the early 1970s accounted for a dramatic increase in welfare spending, leading to new social insurance schemes, national social service programmes in health and welfare, expansion of education, etc. The outcome however differed quite a lot between countries. The by far most influential attempt to distinguish the different mainlines of the development was published in 1990 by Danish sociologist Gøsta Esping-Andersen. Taking stock of the 18 or so richest capitalist democracies in the early 1980s, Esping-Andersen demonstrated that they could be distinguished not only in terms of relative generosity and spending but, more fundamentally, by their institutional logic for assigning welfare functions to the state, the market, and the family. He found three basic forms of welfare state regimes: the ‘strong’ social democratic, the ‘middle’ corporatist, and the ‘weak’ liberal regime.¹³

¹² Andrew S. Fullerton, Dwanna L. Robertson and Jeffrey C. Dixon (2011) ‘Re-examining the Relationship Between Flexibility and Insecurity’, in David Brady (ed.) *Comparing European Workers Part A (Research in the Sociology of Work)* Vol. 22.

¹³ Gøsta Esping-Andersen (1990), *The Three Worlds of Welfare Capitalism*, Cambridge: Polity Press.

There is no need to go deeper into the distinctions here. Esping-Andersen has been criticized, or perhaps one should better say ‘taken further’ on several aspects. First, feminist scholars argued that the gender dimension had to be developed.¹⁴ Further there have been problems to ‘squeeze’ Mediterranean countries into the model, which has led to attempts to distinguish a special model for Southern Europe.¹⁵ Esping-Andersen’s first categorization stuck, as mentioned, to ‘capitalist’ welfare state regimes. When the Soviet bloc collapsed, the different countries took paths that were not always possible to adapt to the existing categorizations. After a period of rather brutal neoliberalism, a new, ‘post-communist’ welfare state began to develop with its own characteristics. According to Linda J. Cook, a main distinction is ‘that democratic feedback mechanisms are much weaker in the postcommunist context and that downward economic pressures on welfare have been far more severe than in the industrial democracies’.¹⁶

One thing is clear: the complexity has not declined since Esping-Andersen wrote his first book on the topic; on the contrary, the wide range of features that differs the welfare state models from each other seems to be growing. But, one may ask, how does the European Union cope with this variety? Can the Union handle precarious work and issues such as bogus self-employment in the same way no matter the national starting-points? A social policy dimension was introduced already at the creation of the European Economic Community (EEC) in 1957. It was however a minor consideration that had to stand back for the overarching goal of economic integration. At pace with the expansion of the union, more traditional welfare states got represented in what finally became EU-15 in the mid-1990s, the social issues grew more important.¹⁷ A ‘European Social Model’ was defined, in large part by contrasting it with the Soviet Union model on the one hand and the United States’ free-market liberalism on the other.¹⁸

Yet, faced with the deep recession of the early 1990s, the EU’s policy on social matters, such as social exclusion and social dumping, changed. To keep the jobs within the Union, it was argued, external competition had to be met with measures aimed to reduce public deficit, reduce inflation and stabilize the national currencies. These measures implied a greater acceptance of more precarious jobs, a larger wage-spread, a more ‘flexible’ and intensive use of employees and

¹⁴ Janet Lewis (1992), ‘Gender and the Development of Welfare Regimes’, *Journal of European Social Policy*, vol. 2(3).

¹⁵ Rossana Trifiletti (1999), ‘Southern European Welfare Regimes and the Worsening Position of Women’, *Journal of European Social Policy*, vol. 9(1).

¹⁶ Linda J. Cook (2007), *Postcommunist Welfare States*, Ithaca & London: Cornell University Press, p. 6.

¹⁷ Mark Kleinman (2002), *A European Welfare State? European Union Social Policy in Context*, Basingstoke: Palgrave, p. 82-83.

¹⁸ Anthony Giddens (2007), *Europe in the Global Age*, Cambridge: Polity Press, p. ix.

resorting to numerous lay-offs and anticipated retirements. Another means to improve competitiveness was to facilitate the creation of highly qualified jobs in the expanding industries, which widened the inequality gap even more. When the recession diminished, however, the direction of the EU policy, at least to some extent, turned back again. In the end of the last century the overriding political objective of the EU, as reflected in the Treaty of Amsterdam in 1997, was to reduce unemployment, at all costs. If the Maastricht Treaty, which was signed in February 1992 and came into force in November 1993, was the high point of the adoption of neoliberalism by the EU, then Amsterdam might be seen as an attempt to mitigate its effects, without sacrificing the underlying economic policy objectives.¹⁹

The treaties of Nice (2003) and Lisbon (2009) have not changed the fundamental friction between neoliberalism on the one hand and a social dimension on the other. The friction rather intensified with the eastbound expansions of the Union in 2004 and 2007. Hence, there is no evidence of a convergence between different European welfare models, despite the official stressing of the European Social Model.²⁰ But although they often overlap, welfare state regimes and national industrial relations systems may differ on crucial points and might develop in different directions. In their empirically very well researched study of economic internationalization in 20 OECD countries 1970–98, Franz Traxler and colleagues found that the national system of industrial relations converged on either of two main paths: neo-liberalism or ‘lean corporatism’. When Keynesianism disappeared from the political agenda due to the stagflation in the 1970s, the possibilities of maintaining ‘classic’ corporatism got lost with it. As a result, countries with weak social partnership institutions, such as the Anglo-Saxon ones, rapidly moved from pluralism to neoliberalism. But countries with stronger corporatist traditions, on the other hand, moved towards ‘lean corporatism’. Both ways are adaptations to market discipline. Yet under neo-liberalism, market forces are simply imposed on industrial relations, and due to a tough monetary policy, wages are moderated largely through unemployment increases. In contrast to this, under lean corporatism ‘market forces are so inserted into labour relations that their actors’ sensitivity to monetary signals . . . increases: all forms of coordinated bargaining strongly respond to monetary policy, in stark contrast to uncoordinated bargaining’.²¹

¹⁹ Kleinman (2002), pp. 92-94.

²⁰ Colin Hay (2006), ‘What’s Globalization Got to Do with It? Economic Interdependence and the Future of European Welfare States’, *Government and Opposition*, p. 19.

²¹ Franz Traxler, Sabine Blaschke and Bernhard Kittel (2001), *National Labour Relations in Internationalized Markets: A Comparative Study of Institutions, Change, and Performance*, Oxford: Oxford University Press, pp.

Lean corporatism creates a network-style of labour market governance with strong acceptance for social partnership and governmentally imposed welfare measures. Therefore such a system would be much better off to cope with features such as precarious work and bogus self-employment. The following section will give a hint about how this works in reality.

Bogus self-employment in practice: experiences from the *Precarious Work and Social Rights* study

As mentioned above, the empirical evidence in this paper is taken from material from the research project *Precarious Work and Social Rights* (PWSR). The project was financed by the European Commission and coordinated from the Working Lives Research Institute at London Metropolitan University. A final report was published in April 2012.²² The study was launched in the wake of the global economic crisis of 2008 and 2009, that is, in a period of great uncertainty, as the crisis had increased unemployment while cuts in welfare provision and entitlements were widespread. The aim of the study was therefore to analyze the overall picture of precarious work in 12 Member States of the European Union: Bulgaria, France, Germany, Greece, Ireland, Italy, Latvia, the Netherlands, Poland, Spain, Sweden and the UK. Bogus self-employment and labour migration were just two of many parameters. The methods used involved – besides an extensive literature review – 153 face-to-face interviews with a range of employment relations actors, a questionnaire survey of 265 employment experts, 36 case studies, 24 national reports and more than 30 small cameo portraits detailing the experiences of workers in precarious work. The survey and the interviews were conducted in late 2010 and 2011. In other words, there is quite a lot of material to draw from, even if we just isolate one or two special forms of ‘precariousness’.²³

False/bogus self-employment was defined as a relationship where the work offer is dependent on a relationship with a single ‘buyer’, rather than a range of clients, and where individuals are engaged for a job only where they are prepared to declare themselves as self-employed. Because self-employment generally excludes workers from social insurance and social protection, bogus self-employment is a method of shifting the burden of the risks associated with employment from the employer to the worker, in other words, a situation of great unequal power, far away from the neo-

²² Sonia McKay, Steve Jefferys, Anna Paraksevopoulou and Janoj Keles (eds) (2012), *Study on Precarious work and social rights: Final Report*, European Commission, VT/2010/084.

²³ A more detailed description of the material can be found in the final report.

classical illusion of a general equilibrium and the free exchange between sellers and buyers of labour.²⁴

Accordingly one, not very surprising, conclusion from the project was that bogus, or false self-employment are, together with informal and casual work, the relationships most associated with precarious work as offering workers least levels of protection of employment and welfare. The sector that was found most infested by false self-employment was construction, but the problem was also widespread in occupations less often associated with precarious work, such as journalism, civil engineering and information technology. It was further most common among second and third country immigrants. Regarding the second country immigrants, that is, people moving from other EU countries, it could be described as a ‘false posting’ of workers. Moreover, bogus/false self-employment was argued to be a relationship located somewhere between subordinate and independent work; the form of the employment relationship could be classified as that of an independent, ‘real’ self-employed contractor but the conduct of the relationship mirrors that of subordinate relationships.

What the interviews revealed

Several of the expert interviewees claimed to have noted increases in bogus self-employment. A trade unionist from British construction argued that ‘false self-employment was increasing, despite a context of the loss of around a quarter of a million jobs in the sector as a consequence of recession’. A Greek government respondent described bogus self-employment as a ‘grey zone’, difficult to penetrate, but existing. The same term was used by some Italian trade union respondents. One of them described ‘a growth of a grey zone between subordinate and self-employed work, the so-called “semi-dependent” work’, referring to growth of so-called Co.Co.Co’s collaboration contracts over the last decade. These can be best described as false ‘partita IVA’ contracts: a form of internship contract in the public sector that do not entail basic employment rights. A French trade unionist and a government representative from the Netherlands further both argued that the growth of work relationships concerning people without open-ended contracts and in an unclear legal position were probably also a sign of a growth of the falsely self-employed. Such employment relationships were described by the Netherlands interviewee as when: ‘a self-employed person

²⁴ The PWSR study did not find a single, satisfactory way of identifying the larger notion of precarious work. Precariousness came, the project argued, from a combination of factors both specific to the employment relationship and particular to the category of work or to the individual circumstance.

works for one single client without choosing the situation, but being forced to accept it by their circumstances’.

Besides describing a supposed growth in false self-employment, the examples from the interviews describes a relationship of highly unequal power, where the offer of work depends on a relationship with a single ‘buyer’, that is, only one company or public sector authority. In a case of genuine self-employment, the seller of the service would rather have a range of clients. Beneath also lurks a process where an individual seller is hired on the precondition that s/he declares that s/he is self-employed. Despite that the working relationship is in practice the same as for a worker under an employment contract, it is more convenient for the buyer, involves less administration and provides greater flexibility, while it is often accepted or sought after by the worker because it can provide short-term benefits through reduced tax or social insurance obligations. An Irish trade unionist told of several cases where employers had dismissed workers on redundancy terms only to rehire them as ‘self-employed’ contractors, to cut costs and to avoid fully complying with Irish employment law.

Although the project was not able to develop any useful quantitative scale, affluent anecdotic evidence showed that bogus self-employment was considered ‘widespread’ in Greece, Italy, Latvia, the Netherlands, Poland, Spain, Sweden and the UK, that is, in eight of the 12 countries in the study. A British trade unionist pointed to evidence of ‘wide-scale tax evasion, with figures for 2008 suggesting that as many as 400,000 individuals are falsely self-employed’. As mentioned, construction seems to be the industry most infested by false self-employment. However, bogus self-employment was both identified among many professional workers, especially in civil engineering and journalism, and in industries with high concentrations of low-skilled manual workers, such as agriculture and care homes. Third country immigrants were seen as being forced into false self-employment in circumstances where immigration laws did not permit them to work as dependent workers, leaving self-employment as the only employment relationship available. A trade union interviewee from the Netherlands provided an example of tax officials providing information on self-employment to labour migrants who were denied dependent work by the existing legal rules.

It should also be noted that migrant workers at large, second or third country immigrants alike, was found one group likely to be excluded from welfare entitlement, especially because they did not have sufficient service to get entitlement to length-of-service based benefits. Such an absence of social welfare rights makes informal employment and false self-employment more tempting, in order to

get any income at all. Consequently many respondents claimed strong social rights to be a necessary pre-condition for getting rid of precarious work.

The negative impact of bogus self-employment – and how to tackle it

The interviews verified the assumption that people in bogus self-employment overall had a much more vulnerable situation than not only a firm's ordinary staff, but also than contracted employees. This was because of the exclusion of the falsely self-employed from collective bargaining and the resultant absence of procedures dealing with disciplinary matters. In the words of an Italian trade unionist, they were 'not covered by social shock absorbers in cases of unemployment'.

EU governments recognize – with the partial exception in some countries of small farmers – responsibility for the social protection of contracted employees but not of those who are formally self-employed, regardless of the reality of the employment relationship. The fact that self-employed workers are excluded from social protection is often consequent on social insurance contribution rules that specifically omit self-employed workers. In the short run, the self-employed worker too may 'gain' from not having deductions made for social insurance; yet the employer gains absolutely and also in the longer perspective. The employer permanently saves the cost of contributing to social insurance, while the worker loses the future benefits that would accrue in case of unemployment, illness or retirement. In other words, bogus self-employment shifts the burden of the risks associated with breaks in employment entirely on to the worker.

Most respondents pointed to difficulties in regulating bogus self-employment, yet some also provided examples of initiatives addressing it. If self-employed status is imposed on a worker there is the potential for challenging the validity of the employment status. But still the worker is not always helpless, either in practice or according to law. One UK legal expert reported some success before employment tribunals in challenging bogus self-employment relationship. More importantly, both Italian legislation and Latvian Case Law have converted false self-employment into a dependent employment relationship. Latvian law now states that in cases, when people are self-employed but still have to carry out tasks instructed by employers, the legislation stipulates that these employers should provide work agreements and they should pay no less than a minimum wage. In the Netherlands the replacement of open-ended dependent employment contracts by dependent self-employment relationships has been declared unacceptable, according to a government respondent. It was suggested that it was the separation of taxation from social insurance that encouraged bogus self-employment. Hence the a merger of the two forms of taxation into one

income tax would remove the incentive for self-employed status, other than in those cases where it genuinely represented the nature of the employment relationship.

In Sweden, in particular in the Swedish construction industry, the problem with bogus self-employment first occurred when building entrepreneurs began to demand that workers should have so-called F-tax cards to be contracted. The F-tax card made them ‘self-employed’ instead of employees in the eyes of the law; therefore the contractor could avoid social expenses and related costs. This development however peaked at the time for the EU’s first eastbound extension, as construction workers in the new EU countries did no longer need work permits, and thus could make better claims. The Swedish Building Workers’ Union does no longer see false self-employment as a big problem, but has instead faced the new, trickier problem with ‘false collective agreements’, a development known in several other EU countries too. Less serious entrepreneurs have extended the use of ‘double’ employment contracts, that is, one to show that they follow the labour market legislation/collective agreements in the country where they operate, but also one that is valid in practice, but impossible to discover due to lack of transparency in subcontracting firms. A main reason why this matter is more difficult to cope with in the Swedish case is because it is up to the trade unions, not legal authorities, to control if the agreement standards are met, and if, for instance, a foreign-based construction company does not give the union access to its sites this is severely difficult.²⁵

Furthermore, according to European labour law practices in an absolute majority of EU countries, a labour relationship that corresponds to one of employment *in substance* is to be considered as an employment relationship in the eyes of national labour law. The possibilities to maintain the legislation in reality, however, are mostly dependent on the existence of either representation or labour enforcement bodies. The absence of either or both of them makes it seriously difficult to challenge bogus self-employment in practice. In agriculture and construction – industries which have been considered more challenging to reach out to – due to the mobility of the workforce, trade union representation is often absent and labour inspectorates are either not present or do not have the powers to impose sanctions for the use of bogus self-employment. We just saw the problem the Swedish trade unions faced, despite that they are considered among the strongest in the world. A reduction in labour inspection was further identified in Greece as a factor increasing the volume of undeclared work, thus likely also bogus self-employment. This view was shared by an Italian

²⁵ Christer Thörnqvist and Sebastian Bernardsson, ‘How Polish Construction Workers Posted in Sweden Experience their Job Situation’ (Working title. Preliminary accepted for *Transfer*, 2015).

employer who considered the increase in undeclared work had followed the impact of the economic crisis on state institutions and their budgets, in particular those related to inspection. A Latvian employer stated that undeclared work or bogus self-employment was not necessarily thought of as of public concern; people in general accepted the normality of not paying taxes as a reaction in response to the financial crisis. And if bogus employment do become less of a problem due to a clearer EU definition of the ‘employee’ concept, seemingly the spread of ‘double contracts’ as a new way to cut costs for less scrupulous entrepreneurs is on its way in many countries.

While our focus is on bogus or false self-employment, there is a point in also taking note of ‘genuine’ self-employment and the extent to which it might put individuals into precarious job situations. As several employer respondents noted, the economic crisis has also impacted on their own stability of employment, with businesses – in particular small businesses – facing bankruptcy or financial difficulties. As the data collected from the national reports demonstrates, those who are self-employed are excluded from much of the social and welfare protection available to those with subordinate contractual arrangements. In responding to the questionnaire survey, an employer explained:

One of the main concerns in the Netherlands regarding ‘precarious work’ is ‘the self-employed without employees’. In many ways they do not really differ from classical workers, but they lack any kind of protection under Dutch law. This number of self-employed workers is growing rapidly, which is causing another problem, that is, contribution to the social security system: all the good risks and big earners are getting self-employed, which leaves the bad risks and low contributors to finance the social security system.

In the study’s 12 Member States the proportion of the labour force in self-employment at large ranged from 34.9 per cent (Greece) to 9.9 per cent (Sweden). The figure for EU-27 was 15.1 per cent in 2010. The great spread across the countries are not unimportant, since ‘false’ self-employment must always be a fraction of the ‘real’ one and even people in ‘real’ self-employment might run a greater risk for job precarity than people on employment contracts. Still the data was not found particularly helpful since in most countries small subsistence farmers were classified as self-employed, and since agriculture work generally declines, there is a built-in tendency for self-employment to decline as well. However, in three of the 12 countries self-employment grew during the first decade of the new century: in the UK by 0.4 per cent, in Sweden by 1 per cent, and in the Netherlands by 7.7 per cent. It cannot be excluded that some of the increase is due to ‘new’ forms of self-employment, some of it that might qualify as ‘bogus’.

Are people in bogus self-employment worse off than workers in other precarious work situations?

In the survey undertaken by the *Precarious Work and Social Rights* research group, respondents across the twelve countries were asked to indicate the extent to which different forms of contract were seen as precarious and the degree of precariousness they associated with them. The 265 responses we received on this question are categorized in table 1.²⁶ The strongest perceptions of precariousness were associated with informal or undeclared work, defined in line with the European Foundation for the Improvement of Living and Working Conditions as ‘forms of employment that sidestep the norms of employment regulations. The concept is taken to mean any paid activities that are lawful as regards their nature but not declared to the public authorities, bearing in mind differences in the regulatory system of Member States.’²⁷ Yet already in second place we find bogus self-employment, followed in turn by casual employment and zero hours contracts. Other forms of precariousness are far behind. Part-time work, for example, was very rarely viewed as in the ‘most precarious’ category; on the contrary, more than a quarter of the respondents categorized it as ‘not precarious’, and two out of five viewed it as just ‘slightly precarious’. Only 14 per cent of respondents put fixed-term work as in the ‘most precarious’ category, and a roughly equal proportion of the respondents saw it as ‘slightly’ or ‘more’ precarious.

Table 1. Perceptions of precarious forms of employment

	Not precarious	Slightly precarious	More precarious	Most precarious
Informal/Undeclared work	1%	3%	11%	83%
Bogus self-employment	1%	4%	28%	63%
Casual jobs	2%	7%	29%	59%
Zero hours contracts	4%	8%	20%	54%
Temporary agency work	4%	24%	37%	29%
Seasonal work	8%	32%	34%	24%
Fixed term contracts	13%	31%	38%	14%
Posted work	16%	31%	36%	12%
Part time jobs	27%	41%	22%	5%

Source: *The PWSR survey (2011)*

Some important national differences were found. Most remarkably, nearly 100 per cent of the respondents in Italy, Latvia and Poland see informal or undeclared work as having the ‘most

²⁶ The definition of the different categories can be found in the final report.

²⁷ McKay et al. (2012), p. 33.

precarious' status. Bogus self-employment was found most troublesome in Poland, Greece and the Netherlands; it was perceived as 'most precarious' by around four out of five respondents in each country. In some respect this contrasts with the view of different welfare models' importance. Despite sometimes being referred to the corporatist welfare model, the Netherlands has always showed sign of a rather clearly social democratic welfare model.²⁸ Neither Poland nor Greece, on the other hand, has had any well-developed welfare model of this kind.

It is further worth noticing that among the 151 key respondent interviews there were significant differences between employer and trade union respondents in their views on the relation between precarious work and different forms of employment contract. While some 80 per cent of the trade union, academic and government respondents associated precariousness with forms of employment contracts, only about two out of five employers did so. The employers, and to a some extent the NGO respondents interviewed, preferred to define precariousness as resulting from an individual's personal characteristics rather than from the nature of the employment contract.

Concluding comments

The format of this short conference paper does not allow any more detailed presentation of the empirical findings from the PWSR project. Moreover, due to the difficulties measuring bogus self-employment, it is 'expert views' of the problem rather than the problem itself that has been in focus. Yet there are some findings that can be established. First of all, no European Social Model has curbed the problem, despite an expressed desire to deal with different aspects of precarious work. It is after all rather telling that of 265 'experts' active in different aspects of the labour market, only 1 per cent, or in actual figures three persons, responded that people in bogus self-employment did not have a precarious job situation. Of the remaining 262 experts, $\frac{2}{3}$ found bogus self-employment 'most precarious'.

Strong welfare systems are often described as not flexible enough to respond to new forms of employment, but one might ask at what costs such a response should be achieved. Even though the differences between the five welfare regimes mentioned above is in no way overwhelming, both the survey and anecdotic evidence indicate that the falsely self-employed are worse off in the Mediterranean, post-communist and liberal welfare systems than in the 'stronger' corporatist and social democratic ones. At the same time, though, it is the UK (liberal model) and Latvia (post-

²⁸ Robert E. Goodin, Bruce Headey, Ruud Muffels, and Henk-Jan Dirven (1999), *The Real Worlds of Welfare Capitalism*, Cambridge: Cambridge University Press.

communist model) that are the two countries that have made the greatest effort to change the legislation in order to cope with bogus self-employment.

It is also seemingly clear that the inability of the law to provide a robust enough definition of self-employment that enables the distinction between the genuinely self-employed and those who have to adopt this employment status to remain in employment is in need of reform. The EU Charter of Fundamental Rights applies whenever Member States implement EU law. All EU member states must respect the rights to human dignity, equality and solidarity. The Charter was embodied in the Lisbon Treaty coming into force on 1 December 2009, which in practice means that the European Court of Justice is supposed to pay a greater respect to ILO recommendations, which in turn might lead to a stronger position for trade unions in the struggle against precarious work and bogus self-employment.²⁹

Consequently, the inclusion of *all* ‘self-employed’ people within social insurance systems and people with an employee status in practice seems possible also under existing EU regulations. It is rather a matter of good will and the resources to scrutinize reality.

²⁹ Charles Woolfson, Christer Thörnqvist and Jeff Sommers (2010), ‘The Swedish Model and the Future of Labour Standards after *Laval*’, *Industrial Relations Journal* 41 (4).