

BOGUS SELF-EMPLOYMENT IN THE CONSTRUCTION SECTOR AND THE POSTING OF WORKERS FROM THE SLOVAK REPUBLIC

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Abstract

This paper investigates the phenomenon of bogus self-employment, a significant form of non-standard employment, and its connection to the posting of workers within the European Union. The focus is placed on the national context of the Slovak Republic as the leader in the posting of self-employed workers, both in relative and absolute terms. In 2022, 50.7% of PDs A1 issued by Slovakia were granted to self-employed workers being posted to other Member States, in stark contrast to the EU average of 5.3%. The objective of this paper is to provide an overview of available literature and data, specifically of national and European legal sources, reports and statements from public actors (ministries, labour inspectorates, employers' associations, and trade unions), statistical data on posting and self-employment, and academic literature, which expands upon the INFO-POW project conducted between 2022 and 2024. The results highlight the challenges posed by bogus self-employment, most notably the limited labour and social protection for workers, which incentivises the use of dependent work outside traditional employment relationships. The findings highlight the necessity for further research and policy initiatives to address the fiscal, regulatory, and social challenges associated with bogus self-employment and the posting of workers.

Keywords

Bogus self-employment, posting of workers, construction sector, labour market, Slovakia, EU

I. Introduction

In the European Union, systems of social protection were built around the distinction between employees and self-employed persons, on the assumption that the entrepreneurial risk involved in self-employment is voluntary. As the self-employed can enjoy the profits from their business and have more autonomy over their work, they have been partially or totally excluded from social security systems, and they are expected to mitigate entrepreneurial and social risks in other ways. However, this assumption is not always true, as one in five self-employed people became self-employed due to a lack of employment opportunities (Eurofound, 2024). Additionally, the boundary between employment and self-employment is becoming increasingly blurred with the rise of new technologies, platform work and other work arrangements. This gives rise to the phenomenon of *bogus self-employment*, where workers performing dependent work are contracted as self-employed workers, with the intention of evading rights and obligations derived from regulations on labour and social security. Bogus self-employed workers are thus deprived of the social and labour protections enjoyed by employees (such as minimum wages, maximum working hours, or social security contributions paid by the employer), as well as the advantages of self-employment.

The use of bogus self-employment also has a detrimental effect on competition, as the costs associated with human resources are lowered and companies can provide services at a lower price (Supreme Audit Office, 2023). This comparative advantage has been exploited to a considerable extent in the context of the cross-border provision of services in the EU through posting, which enables entrepreneurs registered in one Member State to carry out business activities in other Member States.

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The instrument of posting is designed to facilitate temporary labour mobility of both employees and self-employed workers between Member States, as those posted to provide services in the host state continue being part of the social security and tax system in their home country.

The data on self-employment and the posting of workers from Slovakia suggests that the posting of bogus self-employed workers is rampant. In the past years, the number of self-employed posted workers from Slovakia has risen both in relative and absolute terms. In 2022, 50.7% of workers posted from Slovakia under Article 12 of the Basic Regulation were self-employed, compared to an EU average of 5.3%. A total of 55,502 self-employed persons was posted from Slovakia in 2022 under both Articles 12 and 13. Additionally, the Statistical Office of the Slovak Republic (2024a) estimates that 30% of the total self-employed population is falsely self-employed. This estimate supported by data gathered in the Labour Force Survey (Eurostat, 2022) and European Working Conditions Survey (Eurofound, 2023), where Slovak self-employed persons consistently stand out in indicators of economic dependence.

While the Slovak construction sector is highly internationalised and maintains a significant role in the country's economy (see Kureková et al., 2023), it is also considered to be the riskiest in terms of bogus self-employment, as almost one third of all self-employed persons in Slovakia work in construction and almost half of those working in this sector are self-employed (Eurostat, 2024a). Posting from Slovakia under Article 12 was most common in the construction sector, accounting for 49.7% of all posted workers from Slovakia. A total of 53,890 PDs A1 were issued for workers posted from Slovakia in the construction sector, including those posted under Article 13 (De Wispelaere et al., 2023). The construction sector has had the highest prevalence of violations of the rules on illegal employment since 2018 (Ministry of Labour, 2024).

Workers classified as self-employed, who are economically dependent on their “employer”, bear the main burden of this phenomenon's negative effects. The Labour Code does not afford protection to self-employed workers in matters of remuneration or the termination of employment. In addition, their low or non-payment of social security contributions is reflected in the contributory social security benefits they receive, such as unemployment benefits, maternity benefits, and most importantly in their pensions. When posted to provide services in another Member State, self-employed workers do not enjoy the same protections as employees under the Revised Posting of Workers Directive, in particular its so-called “hard core” provisions (Article 1(3) of the Posting of Workers Directive).

The difference in taxes and contributions paid by employees compared to the self-employed primarily drives companies to subcontract dependent work outside of the standard employment relationship. This is a major concern for state institutions, not only because of the impact on the social insurance benefits of workers, but also for the state budget due to the lower tax burden of self-employed workers and the higher rate of tax avoidance (Supreme Audit Office, 2023). A calculation by the Supreme Audit Office indicates that the potential loss in revenue from taxes and contributions paid by self-employed posted workers in the construction industry in 2021 amounts to approximately 9.8 – 14.3 million euros.¹

The objective of this paper is to provide an overview of the available literature and data on the connection between bogus self-employment and the posting of workers, which is a pertinent issue in Slovakia as evidenced by its leading position in the number of posted self-employed workers. In terms of methodology, this paper is based on an analysis of legal sources at the national and European level,

¹ The figure is calculated based on the estimated number of workers posted from Slovakia in the construction sector in 2021 as self-employed individuals, who conduct dependent work. The loss in revenue is derived from the difference between the average taxes/contributions paid by an employee and a trader, with the assumption that had they been correctly classified as employees and posted.

reports and statements issued by public actors, statistical data, and academic literature. The data used is provided by the Statistical Office of the Slovak Republic (including data from the business register and the estimate of bogus self-employment), Eurostat (Labour Force Survey), Eurofound (European Working Conditions Survey), and the Social Insurance Agency (collected in the report on PDs A1 by De Wispelaere et al., 2023). The literature review includes reports and statements from public actors involved in the creating legal and public policy instruments and in leading social dialogue – namely the Ministry of Labour, Social Affairs and Family, the National Labour Inspectorate, the Supreme Audit Office of Slovak Republic, the Value for Money Division of the Ministry of Finance, the Slovak Craft Industry Federation, and the Confederation of Trade Unions. The choice of reference materials was made with a view to analysing the Slovak national context in particular, as providing a comparative perspective is outside of the scope of this paper.

This research builds upon the findings of the INFO-POW project realized in international consortium between 2022 and 2024. The research conducted for the purposes of this paper, as well as the INFO-POW project, is focused on the construction sector as a dominant industry in the posting of workers. Additionally, the construction sector is associated with an elevated risk of bogus self-employment because of its large share of self-employed workers, particularly those without employees.

The following sections provide a frame in which to understand the existing knowledge on the subject. Firstly, the legal framework applicable to self-employment in Slovakia is considered, with a focus on false and dependent self-employment and the posting of workers. The understanding of the legal framework aids in understanding the data presented in the second section, which illustrates the scale of the issue and provides a comparison with other Member States. Lastly, an overview of available literature and positions of relevant policy actors are discussed.

II. Legal framework

Self-employed workers (*samostatne zárobkovo činné osoby*, or SZČO) are natural persons, who carry out self-employed gainful activity. While there is no precise definition of self-employed gainful activity, it encompasses a range of activities, including agricultural production, regulated professions (such as tax consultancy, auditing, or psychotherapy), and artistic production (§6 of Act No. 595/2003 Coll. on Income Tax). In Slovakia, the majority of self-employed workers operate as traders in accordance with the provisions set forth in Act No. 455/1991 Coll. on Trade Licensing (Trade Licensing Act). This legislation defines trade in §2 as “systematic activity carried out independently, in the trader’s own name, on their own responsibility, with a view to making a profit (...) and subject to the conditions laid down by the Act.” In order to engage in trade, it is necessary to meet the general conditions – the minimum age of 18 years, legal capacity, and integrity (§6(1)), and a Certificate of Trade Authorisation must be acquired through the Trade Licensing Office (§10). Other conditions regarding qualification may be applicable for specific trade activities, as set forth in §7.

The Slovak Republic, along with several other European jurisdictions¹, follows a strict distinction between the employment relationship, which grants the status of the employee, and entrepreneurship, which includes the self-employed (Knapková, 2023). The definition of dependent work is laid down in §1(2) of Act No. 311/2001 Coll. (the Labour Code), and is based on the elements of superiority, subordination, inability to subcontract one’s work, direction, working time, and remuneration.² Such work may only be carried out in an employment relationship, an analogous employment agreement or exceptionally in another labour law relation. The law specifically states that dependent work may

¹ This includes Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Germany, Greece, Hungary, Latvia, Lithuania, Luxembourg, Poland, Romania, Slovenia, and Sweden (Knapková, 2023).

² Paragraph 1 subsection 2 of the Labour Code: „Dependent work is as work carried out in a relation where the employer is superior and the employee is subordinate, and in which the employee carries out work personally for the employer, according to the employer’s instructions, in the employer’s name, during working time set by the employer for a wage or remuneration.”

not be carried out in contractual relationships established under civil or commercial law (§1(3)). In the case that all characteristics of dependent work listed in §1 of the Labour Code are satisfied, such work can only be performed in an employment relationship. In the event that at least one of the aforementioned characteristics is not satisfied, the work in question must be performed under an alternative contractual arrangement, whether civil or commercial (Knapková, 2023).

In order to determine the correct classification, each case must be considered individually. While work is only considered dependent if all requirements are fulfilled, judges attribute different weights to each characteristic, with the most important being the hierarchical relationship (Value for Money Division, 2024). In other words, employment status is judged based on objective criteria which describe dependent work, rather than formal criteria (i.e. the type of contract).¹ The term ‘bogus self-employment’ is used to describe a form of non-standard employment, which is, also referred to as *dependent* or *misclassified self-employment*, or *disguised employment*. A distinction can be made between *disguised employment relationships*, the situation where the worker is treated as self-employed even though they should be classified as an employee based on the objective characteristics of their work, and *dependent self-employment*, i.e. working outside of an employment relationship but depending on a small number of clients to receive remuneration and working under their direction (Williams & Lepeyre, 2017).

The posting of workers is an instrument of temporary labour mobility, which facilitates the provision of services in another Member State. Self-employed workers may also be posted abroad to conduct business activities, or they may assume the role of employers posting or receiving workers. When providing services as a self-employed worker in another country, posting allows for the continuity of social security coverage in the Member State where work usually takes place (i.e. the home country). To be able to utilize this, the self-employed worker must apply for the issuing of the Portable Document A1. The PD A1 will only be issued by the Social Insurance Agency if the self-employed person meets the following requirements: their Trade License has been issued at least two months prior to posting; their activities abroad will be carried out for a maximum of 24 months; they are posted to an EU Member State, the EEA, Switzerland or the United Kingdom of Great Britain and Northern Ireland; and they retain resources needed to carry out work in the home country after posting (Social Insurance Agency, n.d.).

Types of posted workers can be distinguished according to the article of Regulation 883/2004 on the coordination of social security systems (Basic Regulation) under which they are posted. Article 12 provides that persons who pursue activities in another Member State remain covered by the social security system of their home country for up to 24 months under certain conditions. Article 12(1) concerns employees who normally carry out work on behalf of their employer in their home country and are posted to another Member State. Self-employed persons are covered by Article 12(2) of the Basic Regulation if they choose to pursue similar activity in another Member State. Article 13 concerns the pursuit of activities in multiple Member States, where the applicable social security legislation is determined on the basis of where the substantial part of their activities takes place, or alternatively on the basis of other criteria. While Article 12 only covers employees and self-employed workers, Article 13 also covers situations in which a posted worker is employed in one Member State and self-employed in another (Article 13(3)) or is employed as a civil servant by one Member State and is employed or self-employed in one or more other Member States (Article 13(4)). Table 1 gives an overview of the paragraphs of the Basic Regulation which are applicable, depending on the number of Member States where work is carried out and the employment status of the worker.

¹ This is why companies contracting self-employed workers to perform work which meets the requirements for dependent work are generally referred to as employers (or “employers”), even though there is no formal employment relationship.

Table 1: The posting of workers according to the Basic Regulation (Regulation 883/2004)

	To one Member State	To two or more Member States
Employee	Article 12 subsection 1	Article 13 subsection 1
Self-employed	Article 12 subsection 2	Article 13 subsection 2

Source: Created by the author based on the text of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

The posting of workers concerns multiple areas of law – social security, labour, tax, and migration law. While posted workers do not become part of the labour market in the host country and do not enjoy the same protection as regular employees, certain labour rights become applicable to them; this aims to protect workers from exploitation and social dumping. The “hard core” of labour rights includes working time, leave, remuneration, occupational health and safety, the protection of vulnerable workers, equal treatment, and reimbursement of transport and accommodation expenses. However, the self-employed are not subject to this labour law regime applicable to posted workers, i.e. the “hard core” conditions do not need to be observed in the case of self-employed posted workers.

The definition of dependent work and the classification of workers as employees or self-employed varies between Member States. The employment status of workers posted from Slovakia to another Member State will be determined in accordance with the law of the host state, i.e. the state to which the worker is posted (National Labour Inspectorate, 2024). A report published by the Embassy of the Slovak Republic in Vienna indicates that sanctions are often imposed on Slovak companies by Austrian authorities as a consequence of the misclassification of workers, particularly in the construction sector. The relevant authorities follow the distinction provided in Austrian legislation, according to which a worker is falsely self-employed, if they carry out activities comparable to those performed by employees, irrespective of the contractual arrangement. Self-employed workers posted to Austria are not reported to the Financial Police, and their wages are not dependent on the applicable minimum wage. Therefore, it is assumed that “employers” engage self-employed workers in order to avoid financial responsibilities and circumvent regulations protecting employees (Embassy of the Slovak Republic in Vienna, 2020).

III. Data

Self-employment in Slovakia

Based on data from the Business Register, in 2022, a total of 403,234 economically active¹ subjects were registered as natural persons – entrepreneurs (i.e. self-employed), of which 376,991 were operating under a trade licence. A large share of self-employed workers was active in the construction sector (25.6% of all natural persons – entrepreneurs), although most of the self-employed in construction were traders (27.4% of all traders) (Statistical Office, 2024b). Data from the Labour Force Survey confirms that in 2022 almost a third (29.4%) of all self-employed workers in Slovakia were engaged in the construction sector (Table 2) (Eurostat, 2024a).² 14.6% of the working population in Slovakia is self-employed, while almost half (43.4%) of those working in the construction sector is self-employed (Eurostat, 2024b). The share of self-employed workers in this sector is thus significantly higher than in the overall economy. This is true also in comparison to the EU average of 13.1% in total employment and 24% in the construction sector (Eurostat, 2024b).

¹ An economically active entity is one that had employees, sales, or investment in the given year.

² Number provided by the Statistical Office of SR and Eurostat differ due to the differences in methodology and definitions of self-employment.

Self-employed workers can also be employers. In 2022, 309,000 of the self-employed in Slovakia were own-account workers, i.e. those without employees, which constituted 82.8% of self-employed individuals. The share of own-account workers was higher in the construction sector, amounting to 98,100 workers (89.5% of all self-employed in construction industry) (Table 2). The construction sector is considered to be an industry of elevated risk regarding bogus self-employment, due to the large share of self-employed workers, particularly those without employees. A higher rate of self-employment in the Slovak economy was only observed in one other sector – other service activities (53.2%). While the rate of own-account workers among the total self-employed population was higher in four other sectors, the number of self-employed workers without employees was significantly higher in construction in absolute terms (Eurostat, 2024a).

Table 2: Employment and self-employment in the EU and Slovakia in 2022

	EU-27	Slovakia
Employment (total)	197,525,300	2,559,900
<i>Employment (construction)</i>	13,435,200	252,500
Self-employment (total)	25,826,300	373,300
<i>Self-employment (construction)</i>	3,225,300	109,600
Self-employment without employees (total)	17,620,700	309,000
<i>Self-employment without employees (construction)</i>	2,083,100	98,100

Source: Created by the author based on the findings of the Labour Force Survey (Eurostat, 2024a; Eurostat, 2024b).

Measuring bogus self-employment

The Statistical Office of the Slovak Republic has been collecting data on bogus self-employment since the year 2010. However, it is difficult to attain an accurate estimation of the total number of misclassifications, as each case must be evaluated on an individual basis. The number of bogus self-employed workers is calculated based on the findings of the Labour Force Survey, specifically the questions on the employment form of the respondents' main employment, and on the characteristics of dependent work as defined in the Labour Code. The calculation indicated that the number of false self-employed workers increased from 84,000 in 2010 to 107,000 in 2021, representing a 26.9% increase over the 11-year period (Supreme Audit Office, 2023). The most recent data from the fourth quarter of 2023 suggests that 121,300 bogus self-employed workers were active on the labour market, which is 30% of the total self-employed population (Statistical Office, 2024a).

The proportion of bogus self-employed workers in Slovakia is considerable in comparison with other Member States. In 2017, the Labour Force Survey included a module on self-employment, wherein the number of clients was examined as one of the indicators of bogus self-employment. Based on the 2017 data collected by Eurostat, 23% of self-employed workers in Slovakia worked for only one client, which is the highest proportion observed among EU countries, with the average being 8.4%. The percentage of those engaged in self-employment with only one client or one dominant client is the second highest in the EU – 31.4% compared to an average of 16.2%. This is preceded only by Hungary (Eurostat, 2022; Supreme Audit Office, 2023).

The European Working Conditions Survey (ECWS) contains several questions designed to identify economically dependent self-employed workers. These are related to the number of clients, the ability to hire employees, and the ability to make the most important decisions about running their business (Eurofound, 2013). Based on the 2010 wave of the EWCS, self-employed persons without employees who fulfilled less than two out of these three criteria were considered to be economically dependent. In total, only 0.9% of all workers in the EU27 fell under this description. The highest percentage of such workers was found in Cyprus (2.5%), Italy (2.0%), Slovakia (1.8%) and Greece (1.8%) (Eurofound, 2013). The latest data from the ECWS, conducted by telephone in 2021, also highlights the exceptional situation on the labour market in Slovakia. Economically dependent solo self-employed (EDSSE) workers made up 1.3% of the overall workforce and 9% of solo self-employed workers in EU27, while the highest share of EDSSE in the workforce was found in Slovakia and Poland (3.2%), followed by Greece (2.8%) (Eurofound, 2024).

On average in the EU, 88.8% of self-employed persons generally have more than one client or customer (Eurofound, 2023). The percentage of such workers is the lowest in Slovakia, where only 78.1% of self-employed workers generally have multiple clients. Similarly, self-employed workers in Slovakia receive the highest proportion of revenue from their most important client – 49.5% receive over 75 per cent of their revenue from one client, compared to the EU average of 23%. Only 54.7% of self-employed workers have the authority to hire or dismiss employees (compared to the EU average of 70.4%). When asked about whether respondents make the most important decisions on how their business is run, only 44.6% of Slovak respondents strongly agreed with the statement, as opposed to 67.6% overall. However, the difference between respondents is minimised when those who tend to agree with the statement are added (Eurofound, 2023).

Posting of (self-employed) workers

In 2022, the Slovak Republic issued a total of 122,494 PDs A1, of which 87,025 were issued under Article 12 (71.4%), i.e. for workers posted to one Member State (Table 3).¹ The average number of times a worker was posted to another Member State was 1.5, and consequently, the number of individual persons posted (58,419) is lower than the number of PDs A1 issued. The sector in which posting under Article 12 was most prevalent was the construction sector, which accounted for 49.7% of all posted workers from Slovakia. With the addition of those posted under Article 13, a total of 53,890 PDs A1 were issued for workers posted from Slovakia in the construction sector (44% of all postings from the country) (De Wispelaere et al., 2023).

While the Posting of Workers Directive is not applicable to self-employed workers, the number of such postings is known on the basis of data on PDs A1 issued by the Social Insurance Agency. A total of 44,119 self-employed workers were posted from Slovakia under Article 12(2) (Table 3), which constituted 50.7% of postings to one other Member State (Figure 1). The proportion of self-employed workers posted from Slovakia is the highest in the EU, with the EU average standing at 5.3%. This figure has increased by sixteen percentage points between 2014 and 2022 (Figure 2). The number of self-employed workers posted from Slovakia was also the highest in absolute terms between 2014 and 2021, apart from the year 2019, when more self-employed workers were posted from Germany under Art. 12 (De Wispelaere et al., 2023).²

¹ Articles 12 and 13 of Regulation 883/2004 on the coordination of social security systems indicate whether workers pursue activities in one or multiple other Member States (see Table 1). In the description of data, the focus is on postings under Article 12. This is due to the different nature of the Articles, as well as the complexity of posting under Article 13, which encompasses for example those working as employees and self-employed simultaneously, or self-employed persons pursuing activities in multiple Member States at once. Other types of situations included in the data on PDs A1 (civil servants, contract staff, mariner, and others) are not considered in this paper, as they only amount to 0.1% of PDs A1 issued by Slovakia in 2022.

² In 2019, 51,417 such workers were posted from Germany and 39,616 from Slovakia. In 2022, the total amounted to 48,771 and 44,119, respectively.

The share of self-employed workers posted from Slovakia under Article 13 is also higher than that of other Member States – 32.3% as opposed to 9.3%. With the addition of workers posted under Article 13 to work in multiple Member States as self-employed (or employed in one and self-employed in another), the total of posted self-employed workers under both Articles is 56,908 (46.5%). However, the number of self-employed workers posted to Slovakia does not follow this trend. In 2022, only 6.7% of received workers were self-employed, and only 3.9% were working in construction (De Wispelaere et al., 2023).

Table 3: Number of workers posted from Slovakia in 2022

	Article 12 and 13	Article 12	Article 13
<i>PDs A1 issued</i>	122,494*	87,025	35,292
<i>Employees</i>	65,396	42,906	22,490
<i>Self-employed workers</i>	55,502	44,119	11,383
<i>Employee and self-employed in different states</i>	1,406	N/A	1,406
<i>Individual persons posted</i>	90,667	58,419	32,248
<i>Construction sector</i>	53,890	43,253	10,637

Source: Created by the author based on De Wispelaere et al., 2023.

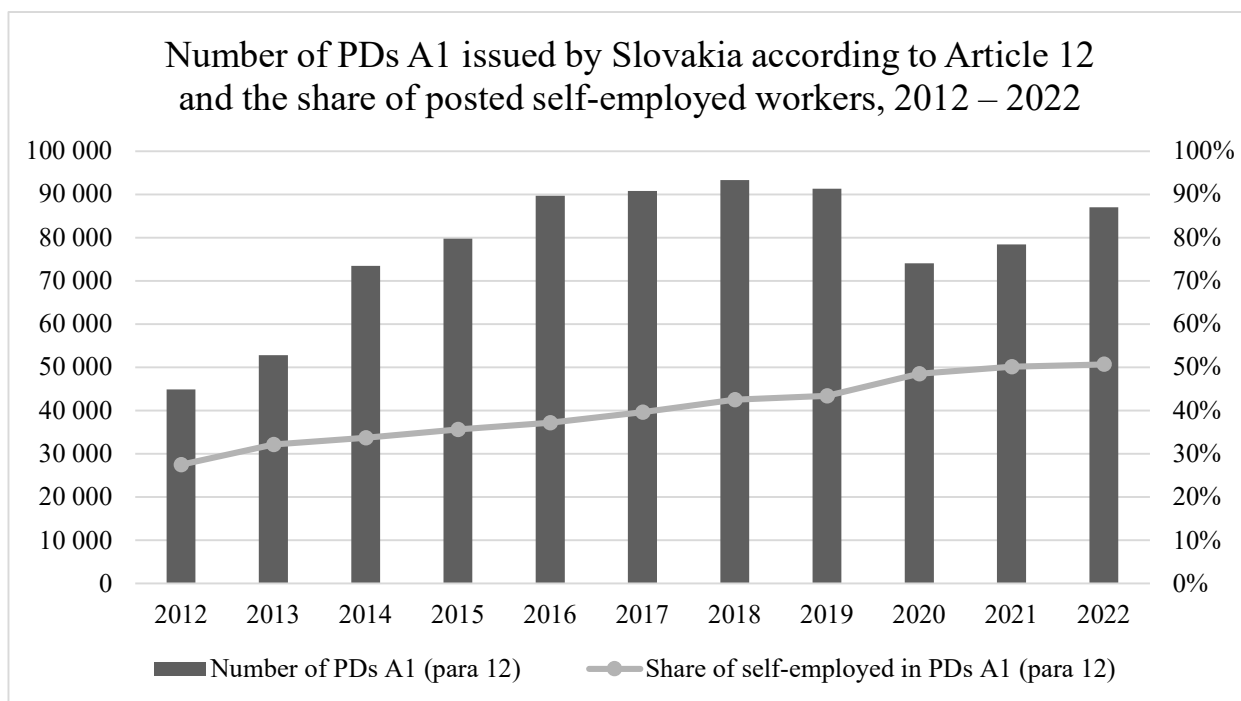
*The total number of PDs A1 includes other situations in which PDs A1 are issued, such as civil servants, contract staff, mariners. These are not included in subsequent calculations.

Social security protection of the self-employed

The motivation for companies and workers to contract work outside of the employment relationship is driven by the reduction in the tax burden. In 2021, those engaged in self-employment through a trade license paid six times less in taxes and insurance contributions during the first year of business, and 2.3-times less in subsequent years, than those working as employees. The significant discrepancy in tax obligations was enlarged by the legislative amendment in 2017. Moreover, only 51.6% of self-employed workers were registered by the Social Insurance Agency in 2021. In the years 2017 to 2021, an average of 159,000 traders did not pay social security contributions at all, as their formal earnings did not meet the threshold to be obliged to contribute. The proportion of traders who contribute only the lowest possible amount has been increasing since 2017, reaching 81.2% in 2021 (Supreme Audit Office, 2023).

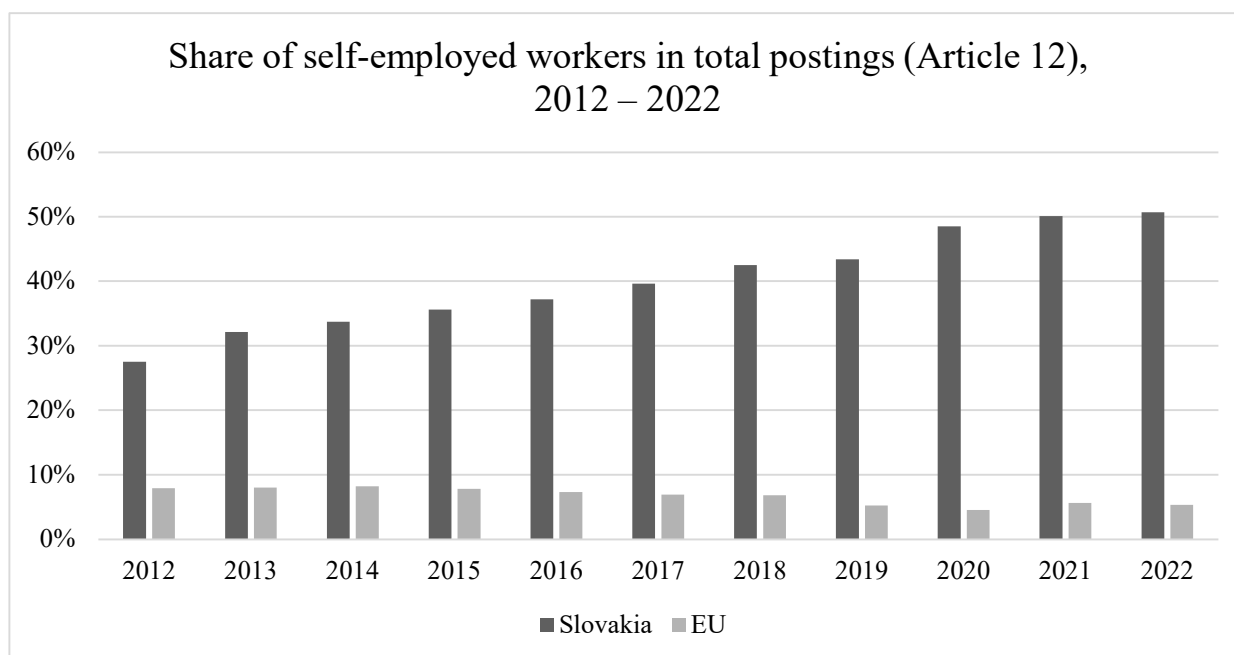
Entrepreneurs employ a range of methods to optimize their tax burden and the amount of contributions to the social system range from speculative to illegal practices. Speculative methods include brief interruptions in business activities, part-time employment within one's own company, or the payment of revenue through non-taxable items (Mihál, 2023). Other practices could be considered to be on the borderline of legality or tax evasion, such as deliberately receiving all payments from clients in a single month or keeping documented income low by receiving payment in cash.

Figure 1: Number of Portable Documents A1 issued by Slovakia according to Article 12 of the Basic Regulation and the share of posted self-employed workers, 2012 – 2022



Source: Created by the author based on the Posting of workers: Statistical database on A1 portable documents provided by Network Statistics FMSSFE (<https://hiva.kuleuven.be/en/news/newsitems/Reports-on-social-security-coordination-and-intra-EU-labour-mobility-20171212>).

Figure 2: Share of self-employed workers in total postings according to Article 12 of the Basic Regulation, 2012 – 2022



Source: Created by the author based on the Posting of workers: Statistical database on A1 portable documents provided by Network Statistics FMSSFE (<https://hiva.kuleuven.be/en/news/newsitems/Reports-on-social-security-coordination-and-intra-EU-labour-mobility-20171212>).

IV. Literature Review

The Ministry of Labour, Social Affairs and Family of the Slovak Republic presents to the government an annual Informative report on finding and combating undeclared work and illegal employment, which details the results of activities conducted by labour inspectorates. In 2023, a total of 18,485 inspections were conducted on 16,677 subjects, comprising both legal and natural persons (entrepreneurs), and 34,508 natural persons working for these subjects. As a consequence of a total of 1,172 natural persons being illegally employed, 692 employers were in violation of the rules on illegal employment. In absolute numbers, the construction sector had the highest prevalence of violations, with 431 illegally employed workers, followed by the HORECA sector (168) and wholesale and retail trade (143). The construction sector has consistently been identified as the sector with the highest risk in this regard, dating back to at least 2018.

In data collection, the National Labour Inspectorate does not differentiate between bogus self-employment and other types of illegal employment that fall under §2(2)(a) of Act No. 82/2005 Coll. on Illegal Work and Illegal Employment. This paragraph encompasses the practice of carrying out dependent work without establishing an employment relationship. In the 2023 Informative Report, it is stated that among the 666 natural persons who were found to be illegally employed under the paragraph, sixteen workers were identified as bogus self-employed, and twelve subjects were illegally employing said workers. Three such cases were resolved in 2023, resulting in the issuance of sanctions amounting to a total of 12,000 euros (Ministry of Labour, 2024). In addition to financial penalties to both employers and workers, labour inspectorates may impose non-monetary penalties on employers. These include a five-year registration on the list of subjects that have violated the rules on illegal employment, revocation of a trade license, or exclusion from government funding or public procurement (Slovak Business Agency, 2022).

Labour inspectorates conducted three exceptional inspections targeting high-risk sectors in 2023, one of which was aimed at detecting bogus self-employment. The extraordinary inspection took place in three regions of Slovakia in collaboration with the Financial Administration of SR. The Ministry of Labour has acknowledged the emerging phenomenon of dependent work being carried out outside of the employment relationship by third country nationals, who were granted temporary residence for the purpose of conducting a business. It is assumed that the bogus self-employment of TCNs is related to the significant decline in the number of employed TCNs, as well as the decline in the number of instances of illegal employment being detected. It is anticipated that further activities will be conducted by the relevant institutions, and that legislative measures will be introduced with the aim of deterring employers from violating the rules on illegal employment and of strengthening the position of labour inspectorates in this regard.

The Social Insurance Agency, as the institution responsible for processing PD A1 applications, is aware of the inappropriate use of the posting of workers but has not specified the extent of the misuse (De Wispelaere et al., 2022). From the perspective of a receiving Member State, the Agency reports experiences with manipulation of the PD A1 through falsification of evidence on the application of Article 13(3) of the Basic Regulation, with the objective of selecting a more favourable social system (De Wispelaere et al., 2023). Interestingly, when reporting on the inappropriate use of applicable legislation in the reference year 2021, the Agency lists bogus self-employment as an error, rather than as fraud. Another error that has been observed is the incorrect or insufficient completion of the form by the competent institution. Cases of fraud and error reported by the Social Insurance Agency from the perspective of a sending Member State additionally include the falsification of documents, use of letterbox companies, and the improperly defined position of the worker (De Wispelaere et al., 2022).

In July 2023, the Supreme Audit Office of the Slovak Republic released a policy brief focused on the issue of dependent self-employment. In this publication, the influence of legislative changes on the

number of false self-employed workers was analysed with a view to calculating the state's loss in revenue from tax and social security payments. The number of bogus self-employed individuals is responsive to changes in regulation (Supreme Audit Office, 2023). In 2013, social insurance and health insurance contributions were increased, along with the basis for calculating the amount to be paid in insurance contributions.¹ This resulted in an 18% decrease in the number of falsely self-employed workers in 2014. Another legislative change that had a significant impact on self-employment was the 2016 amendment of the Act on income tax, enabling traders to further lower the basis from which taxes and other deductions are owed.² Consequently, the number of bogus self-employed workers increased by 17.5% year-on-year, predominantly within the construction, industrial and other services sectors. However, the authors of the policy brief found that a change in trend related to the share of self-employed workers could only be observed in the construction sector, as other sectors studied have been experiencing a rise in self-employment regardless of the change. In the construction sector, self-employment rose from 60% to 72% in the first three years following the legislative change (Supreme Audit Office, 2023).

Moreover, the analysis suggests that the change in 2017 resulted in an additional 2,000 falsely self-employed workers being posted in the construction sector in 2021. The potential loss in state revenue was calculated to be between €9.8 million and €14.3 million (Supreme Audit Office, 2023). The Supreme Audit Office provides several policy recommendations, namely: the utilization of digital tools to identify instances of false self-employment, strengthening the competencies of state authorities, shifting the burden of proof in the matter of misclassification on the employer (or company subcontracting self-employed workers), the consideration of measures to bridge the gap between the tax wedge of employees and self-employed workers, and the introduction of legislative measures which keep up with new trends in the labour market (Supreme Audit Office, 2023).

In response to the research conducted by the Supreme Audit Office, the Slovak Craft Industry Federation issued a statement in which they express disagreement with the framing of the issue as of purely financial in nature. In the statement, a number of non-fiscal disadvantages of self-employment from the perspective of workers are listed. According to the Federation, the motivation for undertaking dependent work through the use of a trade license is derived from by the "employer", who benefits from the arrangement by not only lowering expenses, but also their administrative burden, costs related to health and safety, and costs related to part-time employment. Furthermore, it is stated that the large share of self-employed workers in the construction sector should be attributed to ineffective regulation related to seasonal employment. In their statement, the Slovak Craft Industry Federation (2023) criticised the system of rules which governs self-employment and proposed solutions, including lowering the tax burden on income from dependent work, supporting seasonal and part-time work, and strengthening the capacities of labour inspectorates.

On the other hand, the Confederation of Trade Unions of the Slovak Republic disputes the claim that the burden of taxes and social insurance contributions which stem from employment contracts is excessively high. In a report published by the Confederation in 2024, the author compares the tax wedge in Slovakia with other Member States based on Eurostat data for the reference year 2022. In Slovakia, net earnings amount to 63% of the total income in the case of a family with two working adults (one earning the average wage and the other two-thirds of the average wage) and two children, and 58% for a childless adult earning the average wage. This is only slightly higher than the EU27 average of 60% and 54% respectively. Similarly, when analysing the share of the burden of taxes and

¹ The assessment amount was increased from 44.2% of the average wage to 50% (Supreme Audit Office, 2023).

² The legislative change concerned the increase in flat-rate expenses (or lump sum expenses) which self-employed workers may apply to their income. From 2017, traders are able to account 60% of their revenue as expenses and thus lower their taxable income, which is also the basis for calculating their social security contributions.

social security contributions in the total price of labour, the data does not lead to the conclusion that the tax wedge is excessively high compared to other Member States (Confederation of Trade Unions, 2024).

In May 2024, the Value for Money Division of the Ministry of Finance also published a report on the phenomenon of bogus self-employment. Here, it is proposed that the use of dependent self-employed workers may be identified through an examination of accounting records, whereby companies which spend significantly less on human resources compared to the sector benchmark are identified. This is due to the fact that remuneration of services provided by the self-employed is not accounted for in this category. Additionally, an analysis of vacancies posted on a prominent job portal revealed that 10% of available offers evoke bogus self-employment (Value for Money Division, 2024).

Authors also highlight the fact that the number of third-country nationals who have been granted temporary residence permits intended for conducting business has increased considerably since 2018. This may be attributed to the difficulty of acquiring temporary residence for the purposes of employment, as well as the precarious position of TCNs on the labour market (Value for Money Division, 2024). Self-employed TCNs with residence permits in Slovakia may also be posted to provide services in other Member States. The increase in residence permits to conduct business may therefore be associated with the increased share of self-employed workers posted from Slovakia. The policy recommendations set forth in this report include measures aimed at strengthening the capacities of state authorities, e.g. through changes in the methods and tools used by labour inspectorates to identify illegal employment, and enhancing dialogue on self-employment through communication by public institutions, as well as legislative amendments, e.g. regarding work permits for TCNs.

In a research project conducted by Knapková et al. (2023), 306 traders registered in Slovakia were surveyed with the aim of identifying those who are falsely self-employed. The majority of respondents indicated that their motivation for pursuing self-employment was not associated with bogus self-employment. Nevertheless, over half of respondents agreed that they wanted to become employees, but self-employment was their only option. This suggests that it was not necessary for employers to require contractual work, but other factors contributed to the decision (Knapková, 2023). Based on the number of clients, most respondents could be considered as dependent self-employed, as they performed work for only one subject (37%) or two to three subjects (22%). Considering multiple factors¹, it was determined that 26.8% of the respondents were false self-employed workers, while 36.6% were found to be dependent self-employed workers. In the case of male respondents, those deemed dependent were most frequently engaged in construction (34%), while female respondents were primarily engaged in financial and insurance services (20%).

The results of the 2021 EWCS conducted by telephone were analysed in a 2024 Eurofound report on self-employment. The authors distinguished a group of solo self-employed workers – the economically dependent solo self-employed (EDSSE) – whose responses were compared with those of employees, self-employed workers with employees, and the independent solo self-employed (Eurofound, 2024). 30% of the identified EDSSE persons worked in other services, followed by agriculture (23%), health, industry (both 9%), and construction (8%). Compared to other groups, EDSSE scored lower on measures of job quality, including autonomy over their work (scoring similarly to employees), psychological and social environment, career prospects and intrinsic job quality, as well as health and well-being. EDSSE workers were also the most likely to face difficulties

¹ The factors being respondents having no employees, self-employment being their main source of income, and either working for only one subject (in case of false self-employment) or 75% of being income from one subject (dependent self-employment).

or great difficulties making ends meet (15%), and 52% were unable to predict their income for the next three months. This was particularly true during the COVID-19 pandemic (Eurofound, 2024).

The INFO-POW project, implemented in five EU Member States in 2022-2024, aimed to contribute to the understanding of how companies involved in the posting of workers find and use information and how this affects their ability to correctly apply the rules protecting labour and social standards in posting. The framing of the project was based on the assertion that access to information is one of the key aspects of rule compliance and is especially important for smaller companies, which are the least likely to comply with the rules and to navigate the legal framework using specialised services such as consultancies and law firms (Danaj, 2024). In the Slovak case study, information on the posting of workers was found to be fragmented across different actors and information channels. The single national posting website, provided by the National Labour Inspectorate, does not provide all the information related to posting, in particular on its social security aspects. The under-representation of public actors, including state institutions, NGOs, and social partners, gives rise to the prevalence of private actors, who often monetise the access to information channels. The barriers faced by undertakings when accessing information on the posting of workers increase the risk of non-compliance and further disadvantage small companies and the self-employed in their ability to provide services abroad (Moran & Kureková, 2024).

V. Conclusion

In sum, contracting workers who are carrying out dependent work while being misclassified as self-employed is more economically advantageous for the “employer” because of the avoidance of obligations determined by labour law legislation, in particular in relation to the minimum wage or social protection. The same principle applies in the context of posting workers, as self-employed individuals, even though they are effectively dependent workers, are deprived of the protection of the “hard core”. The posting of workers enables self-employed individuals to temporarily provide services in another Member State, while remaining subject to the tax and social security system in their home country. This creates opportunities for optimization of the tax burden and social security contributions, as well as the avoidance of responsibility regarding labour rights.

The adverse consequences of this phenomenon are felt most prominently by bogus self-employed workers, who are deprived of the social protection and labour rights attributed to the employee status, as well as the earning potential, flexibility and other advantages that are characteristic of self-employment. Additionally, competition on the labour market is hindered by the use of dependent self-employment and the misuse of the posting of workers. From the point of view of state institutions, the prevalence of bogus self-employment has a negative impact on the state’s revenue earned from taxes and social security contributions due to the discrepancy in amounts owed based on employment status (Supreme Audit Office, 2023). The Value for Money Division of the Ministry of Finance of SR (2024) reports that a free-rider problem is created in relation to social benefits, that are awarded regardless of the amount contributed to the system, namely health care benefits and minimum pensions, which are guaranteed by the state. In the long run, however, it is the self-employed who are the most affected by paying low social security contributions and the lack of access to certain benefits.

This overview of literature and data available, which forms the content of this paper, may serve as a basis for further investigation into the reasons for Slovakia’s precedence in the posting of self-employed workers in comparison to other European countries, and the large-scale misclassification of self-employed workers in construction for the purposes of working abroad. Research should explore particularly the potential role of the Slovak Republic as a country through which third country nationals are posted to provide services in other Member States with a view of lowering labour costs. The exceptional share of self-employed persons posted from Slovakia suggests that this type of social dumping may be prevalent in relation to TCNs who were awarded temporary residence permits for

the purposes of business. However, further research is needed to confirm this assertion.¹ Furthermore, researchers could focus on the legal frameworks and policies related to self-employment in Slovakia and other European countries, which positively or negatively influence the prevalence of bogus self-employment.

Acknowledgements

This work has received funding by the European Commission, DG Employment, European Social Fund+ (ESF+) Social Prerogatives and Specific Competencies Lines (SocPL), Call ESF-2021-POW and from the project VEGA 2/0079/21.

I would like to thank Lucia Mýtna Kureková for providing valuable comments on this paper.

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