

Abstract

PREVENTION AND REPRESSION OF THE SPREAD OF FALSE SELF-EMPLOYMENT

The Court of Audit has examined the way the federal authority addresses the spread of self-employment. The so-called "false self-employed" are persons that registered unduly as self-employed. In doing so, they are not subject to the labour law concerning the protection of wage workers, thereby resulting in a shortfall in the resources available to fund the wage workers' branch of the social security system.

The law stipulates that the person working under the authority of another person is a wage worker, while the one who does not is a self-employed worker. As the audit indicated, the social security institutions have given the notion of "authority" a differing interpretation. Similarly, it appears from the case law that the very notion as such provides an insufficient ground to distinguish between a wage worker and a self-employed worker.

Public authority has no sufficient insight into the nature and the size of this issue. How many false employed persons are there? In which industry sectors do they work? What job do they have? What are the financial consequences for the social security contributions? Failing a robust preparation and assessment of the policy, most questions remain unanswered. Among the four measures drawn up since 1990 to tackle this issue, one has never been implemented in practice and one was quashed by the State Council.

When someone gets registered as a self-employed worker, public authority does not perform any check over the status chosen, except when one person changes from the wage worker system to the self-employed system. In such a case, this person needs to mention this change in the registration form as self-employed professional and the INASTI, the National Institute for the Social Security of the Self-employed, communicates this to the ONSS, the National Institute for Social Security, which examines the matter. During the period 1991-2001, for some 800 cases, the ONSS found out that the person involved was an employed worker and not a self-employed person. In half of the cases, the INASTI was not of the same opinion. This resulted in a deadlock for none of both institutions is bound by the other's opinion. Besides, no control has been implemented to check whether the obligation to report a change from one system to the other was duly complied with.

The registered status control is mainly carried out ex post facto; this is mainly the case for the social inspectorate and the social security inspectorate. However, the social laws inspectorate, the INASTI inspectorate and the ONSS for the provincial and local administrations also play a role. Working out an accurate strategy and control method is made difficult by the lack of clear-cut distinctive criteria and of sufficient insight into the case. Collaboration between the inspectorate services is confined to a mere range of operational activities, such as joint controls. As a major player in this false self-employed issue, the INASTI is not even involved in the various main types of collaboration in place. At the social laws inspectorate and the INASTI inspectorate, there is an urgent need to improve the control guidelines and the training of the staff responsible for the performance of controls. Besides, as a whole, statistical data with regard to the activities of the inspectorate services are missing.