

Economic Dependence as a Criterion for the Protection of the Self-Employed under EU Law and in Selected Member States

Tomasz Duraj

PhD habil., Associate Professor, Sub-department of Labour Relations Law, Faculty of Law and Administration, University of Lodz, correspondence address: Kopcińskiego 8/12, 90-232 Łódź, e-mail: tduraj@wpia.uni.lodz.pl

 <https://orcid.org/0000-0003-1561-5916>

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Abstract: This paper presents the cornerstones of the conceptual distinctions necessary to map out a separate category of workers, namely “economically dependent self-employed workers” (who fall between dependent subordinated employees and independent self-employed entrepreneurs) from the perspective of the EU law and the laws of selected Member States. The author considers how the economic dependency of self-employed workers should be defined, which method(s) of protection should be applied to these workers, and what scope of protection they should enjoy. The observations in this paper serve as a basis for *de lege ferenda* recommendations for the Polish legislator. At present, there is no separate category of “economically dependent self-employed workers” in Polish law.

1. Introductory Remarks

Self-employment has been known in the European Union for many years as a manifestation of individual entrepreneurship aimed at economic activity that provides the individual with a source of income. For a long time, this form of gainful activity has been an important element of the EU labor market, and the scale of self-employment is constantly growing, displacing the classic employment relationship based on an employment contract. The main reason for expanding self-employment is primarily the desire to reduce labor costs by shifting a significant part of those costs to contractors

and the search for more and more flexible forms of employment.¹ According to data published by the OECD, the average level of self-employment in all European Union Member States in 2021 was 15.27% of the total workforce² and has been gradually increasing over the past few years. The highest level of self-employment in the European Union in 2021 was recorded by the OECD in southern European countries (Greece – 31.82%, Italy – 21.83%), while the lowest in countries such as Latvia (12.98%), France (12.61%), Hungary (12.51%), Austria (11.91%), Lithuania (11.63%), Sweden (10.60%), Luxembourg (10.23%), Denmark (8.84%), and Germany (8.75%).³ According to OECD data, in 2021, based on the statistics presented above, Poland's level of self-employment significantly exceeds the EU average and amounts to 19.73%. The largest share of self-employment is recorded in the service sector, where about 60% of employees are gainfully self-employed.⁴ The development of modern technologies, computerization, and digitization undoubtedly contribute to the further spread of self-employment in the EU. This has resulted, among other things, in the expansion of platform work, which is very often provided in self-employment conditions. Currently, as many as 11% of EU citizens work through online platforms, and for three million people, it is a stable source of income. Currently, more than 28 million people in the EU, usually self-employed, work through digital platforms, and the European Commission estimates that this number will reach 43 million in 2025.⁵

The widespread use of self-employment in the EU, in which gainfully employed persons very often operate in conditions similar to those of employees (especially in conditions of economic dependence on

¹ For more information, see: Tomasz Duraj, “The Future of Civil Law Employment Relations,” *Acta Universitatis Lodzianis. Folia Iuridica* 88 (2019): 5 et seq.

² “Self-Employment Rate,” OECD, accessed March 10, 2024, <https://data.oecd.org/emp/self-employment-rate.htm#indicator-chart>.

³ Ibid.

⁴ Self-employment is most common in construction, transport, trade, business, hospitality, gastronomy, IT, professional and scientific activity, health care, finance, and insurance.

⁵ See: Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work, COM/2021/762 final, accessed March 10, 2024, <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX:52021PC0762>. Cf. Aneta Tyc, “Gig Economy: How to Overcome the Problem of Misclassifying Gig Workers as Self-Employed?,” *Revue Européenne du Droit Social* 56, no. 3 (2022): 35 et seq.

the contracting entity), has forced us to reflect on the necessity of extending protection to this category of contractors, which until recently was reserved only for employees.

This is important because work provided based on self-employed falls outside the scope of labor law regulations, which only govern work based on dependent employment (nowadays often referred to as voluntarily subordinated work). It is a type of arrangement in which a worker (employee) undertakes to perform, personally and in exchange for remuneration, activities of a specified type for the client (employer) and under the employer's direction at a place and time designated by the employer and at the employer's risk.⁶ In contrast, a self-employed worker performs work under conditions of independence, autonomy, and non-subordination vis-à-vis the client (in particular with regard to the manner in which it is carried out) and on behalf of and at the risk of the worker rather than the client.⁷ Consequently, self-employed workers in many EU countries are, as a rule, not eligible for the statutory protection guaranteed to employees under labor law. Generally, self-employed workers enjoy no regulatory protection regarding their life and health, remuneration for work, employment permanence, maximum working time standards, daily and weekly rest time, paid time off and other paid breaks, or collective rights.

The problem is that self-employed workers, in particular those providing their services personally to only one client, are usually heavily dependent on this client, who – taking advantage of the dominant negotiating position – tends to impose unfavorable working conditions. This dependence is very different from the subordination of an employee to the employer. It is multifaceted and manifests, among other things, by economic dependence if work for a given client is the sole (main) source of income; supervision and oversight by the client; accountability of the self-employed worker for the results of the work, potentially resulting in cuts to remuneration or termination of the contract; elements of subordination in terms of place and time of work, and work order and organization. While the core nature of

⁶ Tomasz Duraj, *Podporządkowanie pracowników zajmujących stanowiska kierownicze w organizacjach* (Warsaw: Difin, 2013), 21 et seq.

⁷ Tomasz Duraj, "Praca na własny rachunek a prawo pracy," *Praca i Zabezpieczenie Społeczne*, no. 11 (2009): 24 et seq.

the relationship differs from the subordination of an employee to the employer,⁸ the situation of self-employed workers resembles that of employees in numerous areas and to a significant degree, thus generating the need for extending statutory protection to these workers.⁹ This is also reflected in international law, which already guarantees these workers far-reaching standards of protection at work, often at a level comparable with the protection enjoyed by employees. This is particularly clear in the standards enacted by the United Nations and the International Labour Organization, which issue protective regulations covering all workers (not only employees), regardless of the type and legal form in which they provide work, very often using the term “worker” in a broad sense in English (and *travailleur* in French). The protection guaranteed under international law to these workers covers, in particular, life and health, dignity, non-discrimination, equal treatment in employment, remuneration for work, childcare, leisure, and collective rights.¹⁰

This issue has gained recognition both at the level of the European Union and in several Member States, including Spain, Germany, and Italy. A new category has consequently emerged: economically dependent self-employed workers. These workers are in an intermediate position between employees and truly independent entrepreneurs.¹¹ The overarching

⁸ The economic dependency of the self-employed worker in relation to the client may not, in any case, be conflated with the subordination of an employee in an employment relationship. For more information, see: Tomasz Duraj, “Zależność ekonomiczna jako kryterium identyfikacji stosunku pracy – analiza krytyczna,” *Praca i Zabezpieczenie Społeczne*, no. 6 (2013): 8 et seq.

⁹ See: Tomasz Duraj, “Funkcja ochronna prawa pracy a praca na własny rachunek,” in *Ochronna funkcja prawa pracy. Wyzwania współczesnego rynku pracy*, eds. Anna Napiórkowska, Beata Rutkowska, and Mikołaj Rylski (Toruń: TNOiK, 2018), 37 et seq.; Tomasz Duraj, “Protection of the Self-Employed – Justification and Scope,” in *Pravni Rozprawy, New Features and Law* (Hradec Králové: Magnanimitas, 2018).

¹⁰ For more information, see: Tomasz Duraj, “Ochrona osób pracujących na własny rachunek w świetle aktów Organizacji Narodów Zjednoczonych i Międzynarodowej Organizacji Pracy – wnioski z projektu badawczego Narodowego Centrum Nauki Nr 2018/29/B/HS5/02534,” *Acta Universitatis Lodzianis. Folia Iuridica* (2024), (forthcoming).

¹¹ See: Anna Musiała, “Prawna problematyka świadczenia pracy przez samozatrudnionego ekonomicznie zależnego,” *Monitor Prawa Pracy*, no. 2 (2014): 69 et seq.; Agata Ludera-Ruszel, “Samozatrudnienie ekonomicznie zależne a konstytucyjna zasada ochrony pracy,” *Roczniki Nauk Prawnych* 27, no. 1 (2017): 43 et seq.; Kinga Moras-Olaś, “Możliwe kierunki regulacji ochrony pracy samozatrudnionych ekonomicznie zależnych,” *Acta Universitatis*

objective of separating this category of self-employed workers is to ensure that they enjoy a certain scope of protection (smaller than employees) while not being considered a subset category of employees.

This paper aims to outline the main components of this concept, as reflected in the legal regulations in selected EU Member States. Key issues include the definition of economic dependency of the self-employed workers, the method(s) of providing protection, and the scope of guarantees that should be extended to this category of workers. The conclusions will serve as comments *de lege ferenda* for the Polish legislator, given that the Polish law currently contains no separate provisions applicable specifically to economically dependent self-employed workers.

2. Economic Dependency as a Criterion for the Protection of the Self-Employed in EU Law

At the EU level, the first indications of the emerging need to designate a separate category of economically dependent self-employed workers, who require protection due to the similarity between their working conditions and those of employees, can be traced back to as early as 1999. At that time, a group of academics led by Alain Supiot submitted a report to the European Commission, drawing attention to the existence of a new group of workers who could not be classified as employees but were in a situation of economic dependence on the entity contracting them to work. The authors of the report recommended that these workers should be able to benefit from the social rights since, due to the economic dependency, they remain in a “grey area” between dependent employment and self-employment, deprived of protection extended to employees under the labor law regulations.¹² The necessity of conceptualizing the category of economically dependent self-employed workers was also noted by the European Commission in the 2006 green paper, *Modernising*

Lodziensis. Folia Iuridica 101 (2022): 105 et seq. Cf. Ulrike Muehlberger, *Dependent Self-Employment* (London: Palgrave Macmillan, 2007); Hugh Collins, Keith D. Ewing, and Aileen McColgan, *Labour Law: Texts and Materials* (Portland, OR–Oxford: 2005); Silvana Sciarra, *The Evolution of Labour Law (1992–2003)*, Vol. 1, *General Report* (Luxembourg: Office for Official Publications of the European Communities, 2005).

¹² “Transformation of Labour and Future of Labour Law in Europe: Final Report,” European Commission, Brussels, 1999, accessed February 1, 2023, <http://bookshop.europa.eu/en/transformation-of-labour-and-future-of-labourlaw-in-europe-pbCE1998302/>.

*labour law to meet the challenges of the 21st century.*¹³ A similar view can be found in the opinion of the EESC (the European Economic and Social Committee), dated February 26, 2009, on “New trends in self-employed work: the specific case of economically dependent self-employed work.”¹⁴ In this opinion, the EESC notes that economically dependent self-employed work is an issue of current concern in the European Union and that a number of Member States specifically recognize in their legislation the concept of economically dependent self-employed workers as such, locating them in an intermediate category between dependent employment and truly independent self-employment. The objective being pursued is not to turn self-employed but economically dependent workers into employees but rather to give them a specific status, entitling them to specific protection based on their economic dependency. The EESC observes that in the states which recognize it, the status of economically dependent self-employed workers has been a means of extending greater legal protection to workers who are not employees but genuinely self-employed, albeit in a situation where they cannot take advantage of the economic protection, they would be afforded were they able to work for several clients. The EESC suggests that with the development of cross-border services, employment statuses need to be harmonized, starting with a European definition of economically dependent self-employed work. The EESC realizes that the diversity of national regulations and practices will likely make it difficult. However, failure to act on behalf of the European bodies can generate large disproportions between Member States. In countries where no separate category of economically dependent self-employed workers is specified, and certain rights are granted, a growing sector of European workers risks being left without protection. On the other hand, the EESC notes that there is reason to fear that recognition of economically dependent self-employed work, followed by increased legal protection for workers who provide such work, might lead to people hitherto defined as employees being transferred to the category of economically dependent self-employed work, for example in connection with companies’ outsourcing strategies. This, in turn,

¹³ COM(2006) 708 final, 11–12.

¹⁴ O.J.E.C. C18, 19 January 2011, 2011/C 18/08. See also the opinion of the EESC dated May 30, 2007 on the Green Paper – Modernising labour law to meet the challenges of the 21st century COM(2006) 708 final, O.J.E.C. C175, 27 July 2007, 2007/C 175/17.

could increase so-called bogus self-employment, which merely serves to hide what is, in fact, dependent employment.

The problem is that, so far, no regulation at the EU level has established the category of economically dependent self-employed workers with a specific vested protection standard. Even more alarmingly, no uniform EU definition of self-employment exists. The term is sometimes conflated with freelancing, while at other times denoting all individuals who operate an independent business (whether or not they employ other workers). The European Commission has been arguing for years for greater clarity in the legal definitions of employment and self-employment in the Member States. The above-cited green paper (2006) recognizes that the absence of an EU-wide definition of self-employment can cause problems, particularly in situations involving cross-border work and the supply of services.¹⁵ Similarly, the EESC has noted on several occasions that, despite the efforts of the Member States, no precise definition of the difference between employees and self-employed workers has been developed.¹⁶

¹⁵ The definition of self-employment has emerged from the case law of the CJEU, with the most representative case being judgment of the Court of 20 November 2001 (*Aldona Malgorzata Jany and Others v. Staatssecretaris van Justitie*, Case C-268/99, ECLI:EU:C:2001:616, ECR 2001, no 11A, I-8615), the focal point of which is the operation of a business by a sex worker in the Netherlands, where self-employment is defined as operations situated outside any relationship of subordination as far as the scope of operations, conditions of work and pay, carried out at the worker's own behalf and at their responsibility, in return for remuneration payable to that worker in person directly and in full. See also: CJEU Judgment of 27 June 1996, *P. H. Asscher v. Staatssecretaris van Financiën*, Case C-107/94, ECLI:EU:C:1996:251; CJEU Judgment of 8 June 1999, *C.P.M. Meeusen v. Hoofddirectie van de Informatie Beheer Groep*, Case C-337/97, ECLI:EU:C:1999:284; CJEU Judgment of 10 September 2014, *Iraklis Haralambidis v. Calogero Casilli*, Case C-270/13, ECLI:EU:C:2014:2185; CJEU Judgment of 4 December 2014, *FNV Kunsten Informatie en Media v. Staat der Nederlanden*, Case C-413/13, ECLI:EU:C:2014:2411; CJEU Order of 22 April 2020, *B v. Yodel Delivery Network Ltd*, Case C-692/19, ECLI:EU:C:2020:288, OJ C 2020, no 287, item 22. See Joanna Unterschütz, "Europejska autonomiczna definicja pracownika i jej implikacje dla osób prowadzących działalność na własny rachunek w sferze indywidualnego i zbiorowego prawa pracy," *Acta Universitatis Lodziensis. Folia Iuridicain* 101 (2022): 21 et seq.; Mateusz Barwański, "Self-Employment in the Light of International and Union Law," *Acta Universitatis Lodziensis. Folia Iuridica* 103 (2023): 29 et seq.

¹⁶ Opinion of the European Economic and Social Committee on 'Abuse of the status of self-employed' (own-initiative opinion) (2013/C 161/03), accessed February 1, 2024, <https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:52012IE2063&from=EN>.

When considering the notion of the economic dependence of self-employed workers at the EU level and in the legislation of selected Member States, the focus should be on natural persons operating as service providers without the option of hiring employees or using hired contractual non-employee labor, personally providing work on a B2B basis, to either one client or a few clients, over an extended period, in a relationship of dependence triggered by the fact that a significant portion of these workers' income comes from that single or those few clients.¹⁷ This is the direction followed by Adalberto Perulli, who (in a report on economically dependent employment prepared for the European Commission¹⁸) argued that a possible avenue of providing protection for self-employed workers is to establish a separate category of economically dependent self-employed workers, situating them between the categories of dependent employees and the typical self-employed entrepreneurs. Perulli argues the worker's economic dependence would consist in providing services to only one client (or a small number of clients) with no direct contact with the market, and the work results would enter the market not directly but rather intermediated by that client. Unable to spread the inherent business risk over relationships with various clients, the self-employed worker would have no economic independence (autonomy). Moreover, in Perulli's model of economically dependent self-employed work, an important feature is also the obligation to provide work personally without the help of dependent workers.¹⁹

Despite the absence of EU regulation establishing the category of economically dependent self-employed workers, there are two instances where, at the EU level, a direct reference is made to economic dependence; in both cases, it is interpreted in a manner somewhat similar to that outlined above.

The first instance is the above-cited EESC opinion dated January 19, 2012 on the abuse of the status of self-employed, in which the EESC notes the criteria that contribute to making a clear distinction between bona fide self-employed people working on their own account and sham

¹⁷ See also: Musiała, "Prawna problematyka świadczenia pracy," 69–71.

¹⁸ Adalberto Perulli, "Economically Dependent Work/Parasubordinate (Quasi-Subordinate) Work," 2002, accessed March 10, 2024, https://imago.org/wp-content/uploads/2013/10/images_pdfs_5c32fc1b528601980f68d5b8cbabde44.pdf.

¹⁹ *Ibid.*, 105–6.

self-employed. In line with this opinion, when considering the employment status of a person who is nominally self-employed and is prima facie not considered an employee, it should be presumed that there is an employment relationship and that the person for whom the service is provided is the employer if at least five (out of a total of eight) criteria are satisfied. In terms of economic dependency, the crucial criterion is that the worker depends on a single client for at least 75% of income over one year. Another important criterion is that the worker cannot subcontract the work to other persons (to substitute for the worker). These criteria clearly point to a similarity with subordinated, dependent work.

The second instance of a direct reference at the EU level to the economic dependency of self-employed workers appears *expressis verbis* in Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons (dated 9 December 2021, issued by the European Commission).²⁰ The Guidelines stipulate that the situation of these workers resembles that of employees. As a result, collective agreements covering these workers are not in breach of Article 101 of the Treaty on the Functioning of the European Union²¹ if the self-employed workers offer services solely or primarily to a single counterparty, which puts them in a situation of economic dependence. The Commission considers that a solo self-employed person is in a situation of economic dependence where that person earns, on average, at least 50% of total work-related income from a single counterparty over a period of either one or two years, meaning that the worker is not an independent player on the market and is instead dependent on the client and integrated into the business of that client.²²

In order to clarify the notion of economic dependency as a criterion for the protection of self-employed workers, it is important to reference

²⁰ 2022/C 374/02, O.J.E.C. C374, 30 September 2022.

²¹ Under Article 101 TFEU (Official Journal 115, 09/05/2008 P. 0088–0089), all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market are prohibited as incompatible with the internal market.

²² See also CJEU Judgment of 4 December 2014, FNV Kunsten Informatie en Media v. Staat der Nederlanden, Case C-413/13, ECLI:EU:C:2014:2411, ZOTSiS 2014, no. 12, I-2411.

specific legal regulations in force in the Member States. Spain has the broadest regulation in this respect, having adopted the act 20/2007 of 11 July 2007 – Self-Employment Act (hereinafter LETA), setting out the scope of protection for this category of workers.²³ In LETA, the Spanish legislator established a separate category of economically dependent self-employed workers, to whom the law now guarantees privileges and rights previously reserved exclusively for employees. According to Article 11(1) LETA, economically dependent self-employed workers are defined as those who carry out economic or professional activities for profit, on a regular basis, personally, directly, and predominantly for the benefit of a natural or legal person (client), and who are economically dependent on that client, receiving from that counterparty at least 75% of their income from their work, business, or professional activities.²⁴ This refers to the full scope of income (monetary or in-kind), including income that could have been earned for work as an employee for another client, an employer, or even the principal client. A self-employed worker's economic dependence is verified via an income certificate as declared to the fiscal authority. Any party trying to challenge the data in this certificate bears the burden of proof, and the court may conduct its own evidentiary proceedings, too. In addition to the crucial condition of 75% of income generated from a single client, the Spanish legislator has introduced a number of additional conditions that must be met cumulatively in order for a worker to qualify as an economically dependent self-employed worker (Article 11(2) LETA). These include (1) no responsibility for hired employees and no ability to subcontract the work, in part or in its entirety, to third parties, neither for the primary client nor

²³ Ley del Estatuto del Trabajo Autónomo, Boletín Oficial del Estado of 12 July 2007 no 166. For example, see: Anna Musiała, “Prawna regulacja pracy samozatrudnionego w świetle hiszpańskiej ustawy o pracy autonomicznej,” in *Księga Pamiątkowa w Piątą Rocznicę Śmierci Profesora Andrzeja Kijowskiego*, ed. Zdzisław Niedbała, Lex 2010, 145 et seq.; Aneta Tyc, “Self-Employment in Spanish Law,” *Acta Universitatis Lodzianensis. Folia Iuridica* 103 (2023): 165 et seq.; Martín Apilluelo, “Ámbito subjetivo de aplicación,” in *Tratado del Trabajo Autónomo*, ed. Guillermo L. Barrios Baudor (Cizur Menor: Thomson Reuters Aranzadi, 2018), 35–6.

²⁴ Cf. Stefanie Sorge, “German Law on Dependent Self-Employed Workers: A Comparison to the Current Situation Under Spanish Law,” *Comparative Labor Law and Policy Journal* 31, no. 2 (2010): 252; Sylvie Célérier, Alberto Riesco-Sanz, Pierre Rolle, “Trabajo autónomo y transformación del salariado: las reformas española y francesa,” *Cuadernos de Relaciones Laborales* 35, no. 2 (2017): 403.

for other clients; (2) operating in a manner differing from hired employees of the primary client; (3) owning separate (independent of the primary client) production and material infrastructure necessary to carry out the work, if it is economically significant in the operations of the worker; (4) operating following the worker's own organizational rules but taking into account any technical instructions from the primary client; (5) receiving remuneration that is conditional on the result of the work (outcome-based remuneration), under the agreement with the primary client and after the latter has assumed the risk inherent in the work.²⁵ This set of criteria has not worked out well in practice. Due to the restrictive nature of the regulation and pervasive casuistry, the number of self-employed workers who enjoy the protective guarantees provided by LETA is negligible. Of all workers who are, in reality, economically dependent – a number estimated at about 1,200,000—only about 10,000 enjoy the TRADE status (*trabajadores autónomos económicamente dependientes*): less than 0.33% of all self-employed workers and less than 0.05% of workers in Spain in general.²⁶ These figures clearly demonstrate that the significance of this attempt at legal regulation of the category of economically dependent self-employed workers has been marginal.²⁷

German law has no comprehensive regulation concerning economically dependent self-employed workers. However, the legislator establishes this category of workers as a subcategory of the self-employed, with a view to offering these workers certain specific types of protection;²⁸ this is labelled as the category of “employee-resembling persons” (*arbeitnehmerähnliche Personen*). No definition of the term is provided.²⁹ Yet, to offer to these “employee-resembling persons” the right to enter into a collective agreement,

²⁵ For more information, see: Tyc, “Self-Employment in Spanish Law,” 170 et seq.; Esther Sánchez Torres, “The Spanish Law on Dependent Self-Employed Workers: A New Evolution in Labor Law,” *Comparative Labor Law and Policy Journal* 31, no. 2 (2010): 231 et seq.

²⁶ Adrián Todolí-Signes, “Workers, the Self-Employed and Trades: Conceptualisation and Collective Rights in Spain,” *European Labour Law Journal* 10, no. 3 (2019): 258 and 266.

²⁷ Tyc, “Self-Employment in Spanish Law,” 181–2.

²⁸ For more information, see: Rolf Wank, “Self-Employment in Germany and Austria,” *Acta Universitatis Lodzianensis. Folia Iuridica* 103 (2023): 139 et seq.

²⁹ Nicole Neuvians, *Die arbeitnehmerähnliche Person* (Berlin: Duncker & Humblot, 2002), 49 et seq.

it is assumed they are economically dependent if the work primarily for one client generates, on average, more than 50% of income (Tarifvertragsgesetz of 9 April 1949, § 12a³⁰).³¹ It is sometimes argued in this context that economic dependence should be set against a background of relationship with one client, defined by time or income.³² The law itself makes no reference to specific numbers, but case law suggests that a self-employed worker does not qualify for this status if the income generated outside the relationship with the primary client allows the self-employed worker to be independent.³³

The Italian legislator has addressed the issue of protection for self-employed workers by adopting, on 22 May 2017, the act (no. 81) on the work of self-employed persons.³⁴ The act applies to contracts regulated by the Italian Civil Code, namely, the contract for the performance of specific work and the contract for the provision of services (Articles 2222–2238). This pertains to cases in which a person undertakes to provide work or services in exchange for remuneration, primarily personally, without subordination to the principal (self-employment).³⁵ Instead of an income threshold, the Italian legislator invokes the “criterion of coordinated and permanent cooperation”.³⁶ There are two legal institutions in Italian law: “cooperation organized by the principal/client” (*collaborazioni organizzate dal committente; lavoro etero-organizzato*) and “coordinated cooperation organized by the collaborator” (*collaborazioni coordinate organizzate dal collaboratore*), where the “collaborator” is the party accepting the work (within

³⁰ Uniform text of 25 August 1969, BGB I, 1323.

³¹ There are also other laws that pertain not only to employees but also to persons with a status resembling that of employees; these laws are listed in Frank Bayreuther, *Sicherung der Leistungsbedingungen von (Solo-) Selbständigen, Crowdworkern und anderen Plattformbeschäftigte* (Frankfurt: HSI-Schriftenreihe, 2018), 18, 25.

³² Martin Franzen, “Kommentar zu § 12a Tarifvertragsgesetz,” in *Erfurter Kommentar zum Arbeitsrecht*, eds. Rudi Müller-Glöge, Ulrich Preis, Ingrid Schmidt (München: C.H. Beck, 2021).

³³ Moras-Olaś, “Możliwe kierunki,” 109.

³⁴ Misure per la tutela del lavoro autonomo non imprenditoriale e misure volte a favorire l’articolazione flessibile nei tempi e nei luoghi del lavoro subordinato. Gazzetta Ufficiale of 13 June 2017, no. 135.

³⁵ For more information, see: Aneta Tyc, “Self-Employment in French and Italian Law,” *Acta Universitatis Lodzianensis. Folia Iuridica* 103 (2023): 185 et seq.

³⁶ Lavoro a progetto, Art. 61–69 D.Lgs. 276/03; L.92/2012; D.L. n.76/2013 convertito in L. n. 99/2013.

the framework of cooperation).³⁷ Another notable regulation is Article 3(4) of the act (no 81) on the work of self-employed persons, which stipulates that Article 9 of the act of 18 June 1998 (no 192³⁸) on the abuse of economic dependence applies *mutatis mutandis* to the relationships governed by that act (no 81). According to this Article 9, economic dependence occurs when an undertaking is able to establish, in its commercial relations with another undertaking, an excessive imbalance of rights and obligations. Economic dependence is assessed by considering the extent of the genuine capacity of the abused party to find satisfactory alternatives on the market.³⁹

3. Method and Scope of Protection for Economically Dependent Self-Employed Workers in EU Law and in Selected Member States

Unquestionably, self-employed persons who work under conditions of strong economic dependence from a client that can use their greater negotiating power to unilaterally impose unfavorable contractual provisions must be granted – just like dependent, subordinated employees⁴⁰ – a broader range of protection than self-employed persons who work under conditions of full autonomy. The Member States’ legislation uses two main methods of applying protective regulations to economically dependent self-employed workers.

The first method is labor law expansion, whereby labor law provisions that create certain rights and privileges for employees are also applied to economically dependent self-employed workers, *mutatis mutandis*.⁴¹ This method is used in Germany, where “employee-resembling persons” are covered by regulations otherwise restricted to subordinated employees (to guarantee certain specific rights). This approach is evident, for instance, in

³⁷ For more information, see: Tyc, “Self-Employment in French and Italian Law,” 194 et seq.

³⁸ Disciplina della subfornitura nelle attività produttive. Gazzetta Ufficiale, 22 June 1998, no. 143.

³⁹ Ibid., 196–7.

⁴⁰ It should be noted here that while dependent, subordinated employees are covered by statutory protective guarantees, self-employed persons are subject to a civil law regime that shapes their working conditions based on the principle of freedom of contract and freedom to shape mutual relations, which gives the economically stronger entity a dominant negotiating position and an almost inorganic capacity to unilaterally impose contractual provisions.

⁴¹ A. Ludera-Ruszel favors this method due to the similarity of forms of relationships in which work is provided; Ludera-Ruszel, “Samozatrudnienie ekonomiczne,” 56.

the German law on collective agreements (Tarifvertragsgesetz of 9 April 1949), which expands the scope of the employees' right to enter into collective agreements to the category of *arbeitnehmerähnliche Personen*⁴²; Tarifvertragsgesetz 12a allows these self-employed workers to organize and to enter into certain types of collective agreements.⁴³ It also grants them the freedom to engage in industrial action as long as it does not violate cartel law.⁴⁴

The second method is the establishment of new, separate legal solutions, creating new norms based on the provisions of the labor law dedicated specifically to economically dependent self-employed workers to fully consider the specificity and differences in the nature of work provided under the conditions of working on the worker's own account and at the worker's own risk.⁴⁵ This method is behind Spain's LETA, which not only defines in detail the category of self-employed workers (including those workers who are economically dependent on one primary client) but, above all, comprehensively and systemically standardizes the status of this group of workers, including in particular their fundamental rights and obligations, as well as the form and duration of the contract under which they provide work.⁴⁶ The Spanish legislator created a separate legal regime, which includes a list of individual and collective rights and privileges applicable to this category of workers. A distinction was also made between rights guaranteed across the entire category of self-employed workers, on the one hand, and the (much more extensive) rights reserved exclusively for the economically dependent self-employed workers who, given the similarity of their situation to that of employees, should enjoy more far-reaching protection. It is important to note here that the Spanish legislator, in principle, has excluded

⁴² In German anti-discrimination law, the protective provisions for dependent, subordinated employees are also extended to persons with a status resembling that of an employee. See: Rolf Wank, "Antidiskriminierungsrecht im Selbständigenrecht und im Gesellschaftsrecht," in *Festschrift für Uwe Hüffer* (München: C.H. Beck, 2009), 1049 et seq.

⁴³ Cf. CJEU Judgment of 4 December 2014, *FNV Kunsten Informatie en Media v. Staat der Nederlanden*, Case C-413/13, ECLI:EU:C:2014:2411.

⁴⁴ Wank, "Self-Employment in Germany and Austria," 145.

⁴⁵ Supporters of this method include: Musiała, "Prawna problematyka świadczenia pracy," 72; Moras-Olaś, "Możliwe kierunki," 116.

⁴⁶ For more information, see: Musiała, "Prawna regulacja pracy samozatrudnionego," 145 et seq.

the issues of self-employment from the general scope of labor law. Under Article 3(3) LETA, self-employment falls outside the scope of labor law, except where the law explicitly states otherwise.⁴⁷

The scope of statutory protection for economically dependent self-employed workers at the EU level and in individual Member States should arise from a combination of three key factors. Firstly, there is the need to bring the minimum level of protection into line with international law standards outlined in the UN and ILO instruments. At present, these standards guarantee protection for all workers (not only for employees), regardless of the type and legal form under which they provide work. This protection includes the protection of life and health, dignity, non-discrimination and equal treatment in employment, remuneration for work, childcare, leisure, and collective rights. Secondly, the scope of statutory protection of economically dependent self-employed workers should reflect the constitutional standards adopted in the Member States. These constitutional standards set a certain minimum threshold of rights pertaining to the conditions under which work may be provided. Thirdly, the socio-economic situation of individual Member States must also be considered since they differ significantly in their wealth and economic development levels.

De lege lata, there is no legislation in the EU that would harmonize the scope of minimum protection guaranteed to economically dependent self-employed workers (or even, more broadly, to those who provide work for remuneration outside an employment relationship). Hence, the emerging regulatory efforts differ from one Member State to another. In Spain, LETA guarantees self-employed workers a broad, two-tiered scope of protection, purpose-designed to reflect the realities of work provided in this mode.⁴⁸ The Spanish legislator grants all self-employed workers the right to work and the right to freely choose a profession or craft; the freedom of economic initiative and the right to free competition; the right to intellectual property over one's works or other protected objects; the right to equal treatment and non-discrimination, including on the grounds of disability; the right to respect for privacy; the right to adequate protection from sexual harassment

⁴⁷ Cf. Manuel Carlos Palomeque López, "Trabajo subordinado y trabajo autónomo en el ordenamiento laboral español," *Revista Gaceta Laboral* 10, no. 1 (2004): 63.

⁴⁸ For more information, see: Tyc, "Self-Employment in Spanish Law," 173 et seq.

and harassment on grounds of sex or any other personal or social grounds; the right to vocational training and retraining; the right to physical integrity and adequate protection of safety and health at work; the right to receive agreed consideration for the professional performance of their activities in a timely manner; the right to reconcile professional activities with personal and family life, including the right to suspend activities in the event of birth of a child, joint custody of a child, risks during pregnancy, risks during breastfeeding and adoption, and care for adoption and foster care; the right to sufficient social assistance and benefits in the case of need accordingly; the right to the individual exercise of activities arising from their professional activity; the right to effective judicial protection of their professional rights as well as access to out-of-court dispute resolution; the right to associate in a trade union or professional association of one's choice under the conditions set out in the relevant legislation; the right to associate and form, without prior authorization, specific professional associations of self-employed persons (*asociaciones profesionales específicas de trabajadores autónomos*); the right to take collective action to defend one's professional interests. However, when it comes to economically dependent self-employed workers, LETA offers more far-reaching guarantees.⁴⁹ These include, in particular, the right to transparent rules for the conclusion of contracts to provide work (*contrato para la realización de la actividad profesional*), including the requirement of the written form, registration, presumption of indefinite duration, and invalidity of prohibited clauses; the right to participate in collective bargaining leading to agreements to protect the workers' collective work-related interests;⁵⁰ the right to rest; the right to stop working on reasonable grounds; the right to have the protection of permanence of employment with a guarantee of compensation; the right to settle disputes before an employment tribunal; the right to strike.

In contrast, the legislator offers no significantly better protection to economically dependent self-employed workers in Germany. Beyond

⁴⁹ Ibid., 177 et seq.

⁵⁰ These are agreements between associations representing economically dependent self-employed workers and businesses for the benefit of which the work is carried out. The agreements define, in particular, the working conditions of these self-employed workers (but not exclusively). They are not prescriptive in nature and are only binding on the parties to the agreement.

workplace health and safety regulations, statutory periods of notice for the self-employed (621 BGB and 649 BGB⁵¹), and protection against discrimination and unequal treatment, the legislator grants to the *arbeitnehmerähnliche Personen* the additional right to organize and to enter into certain collective agreements (12a TVG), and also to engage in industrial action, as long as it does not violate cartel law.⁵²

In the face of inaction by EU bodies, these national practice and regulation disparities lead to increasing divergence between Member States. As a result, in some Member States, economically dependent self-employed workers enjoy no protection, leading to a precarious employment situation.⁵³ The relevant EU authorities are now alert to the need for legislation at the EU level to introduce a minimum protection standard for self-employed workers (or, more broadly, non-employees), but this has so far only applied to the digital platform sector. Furthermore, these efforts involve the legally questionable mechanism of presumption of an employment relationship in platform work.⁵⁴

4. Protection of Economically Dependent Self-Employed Workers: Recommendations for the Polish Legislator

My analysis of the present issues is conducted as part of the international research project financed by the Polish National Science Centre, “In Search of a Legal Model of Self-Employment in Poland. A Comparative Legal Analysis”. This paper presents a subset of findings from this project. Following

⁵¹ Bürgerliches Gesetzbuch (1896).

⁵² For more information, see: Wank, “Self-Employment in Germany and Austria,” 156 et seq.

⁵³ The precarity is associated with the absence of seven employment guarantees, which include the following: labour market security, employment security, job security, work security, skill reproduction security, income security, representation security. This follows Guy Standing, *The Precariat: The New Dangerous Class* (London: Bloomsbury, 2011), 18, 27.

⁵⁴ At present, at the EU level, work is in progress on the proposal for a directive of the European Parliament and of the Council on improving working conditions in platform work. The directive aims to achieve this objective by ensuring that the employment status of those doing platform work (especially the self-employed) is correctly defined. The proposal envisages the introduction of a presumption of an employment relationship, which (the European Commission estimates) would ensure the employment status for up to 4 million people currently performing platform work outside an employment relationship. A broader analysis of this issue is beyond the scope of this paper.

up on the discussion in previous parts of the paper, I will address the Polish regulatory efforts in this area.⁵⁵

At present, self-employed workers under Polish law enjoy the following rights: protection of life and health, which covers all self-employed persons providing work in an establishment of an entity organizing it;⁵⁶ prohibition of discrimination and the requirement of equal treatment in employment;⁵⁷ guarantee of minimum wage and the protection of remuneration for work;⁵⁸ protection of maternity and parenthood;⁵⁹ and the right of association in trade unions, which consequently leads to a wide variety of

⁵⁵ “International Research Project: In Search of a Legal Model of Self-Employment in Poland. Comparative Legal Analysis,” University of Lodz, accessed February 5, 2024, <https://www.wpia.uni.lodz.pl/en/struktura/centra-naukowe/centrum-nietypowych-stosunkow-zatrudnienia/international-research-project-in-search-of-a-legal-model-of-self-employment-in-poland-comparative-legal-analysis>.

⁵⁶ Tomasz Duraj, “Kilka refleksji na temat ochrony prawnej osób pracujących na własny rachunek w zakresie bezpiecznych i higienicznych warunków pracy,” in *Pro opere perfecto gratias agimus. Księga Jubileuszowa prof. Tadeusza Kuczyńskiego*, eds. Agnieszka Górnicz-Mulcahy, Monika Lewandowicz-Machnikowska, and Artur Tomanek (Wrocław: Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, 2022), 69 et seq.; Tomasz Duraj, “Legal Protection of the Self-Employed to the Extent of Safe and Hygienic Working Conditions – Assessment of Polish Regulation” (Comparative European Research Conference, London 2022), 103 et seq.

⁵⁷ Tomasz Duraj, “Protection of the Self-Employed to the Extent of Non-discrimination and Equal Treatment – An Overview of the Issue,” *Acta Universitatis Lodziensis. Folia Iuridica* 101 (2022): 161 et seq.

⁵⁸ Tomasz Duraj, “Ochrona wynagrodzenia za pracę w zatrudnieniu cywilnoprawnym – refleksje na tle ustawy o minimalnym wynagrodzeniu za pracę,” in *Prawo pracy i prawo socjalne: teraźniejszość i przyszłość. Księga jubileuszowa dedykowana Profesorowi Herbertowi Szurgaczowi*, eds. Artur Tomanek et al. (Wrocław: Uniwersytet Wrocławski, 2021), 49 et seq.; Tomasz Duraj, “The Guarantee of a Minimum Hourly Rate for Self-Employed Sole Traders in Poland,” 433 et seq. (International Masaryk Conference, Hradec Králové, the Czech Republic, 20–22 December 2021).

⁵⁹ Tomasz Duraj, “Uprawnienia samozatrudnionych matek związane z rodzicielstwem – wybrane problemy,” *Studia Prawno-Ekonomiczne* 113 (2019): 11 et seq.; Tomasz Duraj, “Uprawnienia związane z rodzicielstwem osób samozatrudnionych – uwagi de lege lata i de lege ferenda,” *Studia z Zakresu Prawa Pracy i Polityki Społecznej* 26, no. (2019): 341 et seq.; Tomasz Duraj, “The Legitimacy of Protection of Parental Rights of Persons Working outside the Employment Relationship in the Light of the International, EU and Polish Laws,” (European Research Conference, London, 28–30 October 2019, 12th International Scientific Conference), 73 et seq.

collective rights.⁶⁰ The efforts of the Polish legislature in extending legal protection to self-employed persons should, in principle, be viewed positively. However, it is difficult to speak of the existence of a legal model for the protection of the self-employed in Poland at the moment. On the contrary, even a cursory analysis of the provisions reveals a complete absence of a systemic and comprehensive approach to this issue. Instead, legal solutions adopted to protect the self-employed show considerable randomness and fragmentation. Changes in this area are often made *ad hoc*, without any coherent underlying concept, for instance, under the influence of political factors. Legal regulations on protecting persons who conduct business on their own account are not correlated properly with international and EU standards and the Polish Constitution.⁶¹ The rights guaranteed to the self-employed are scattered across many legal acts, which use diverse conceptual systems⁶² and unfounded criteria to determine the scope of this protection. These criteria are often incomprehensible from the point of view of the characteristics and objectives of the type of protection offered.

⁶⁰ Tomasz Duraj, "Prawo koalicji osób pracujących na własny rachunek," in *Zbiorowe prawo zatrudnienia*, eds. Jakub Stelina and Jakub Szmit (Warsaw: Wolters Kluwer Polska, 2018), 127 et seq.; Tomasz Duraj, "Self-Employment and the Right of Association in Trade Unions," (Proceedings. Research Track of the 9th Biannual CER Comparative European Research Conference. International Scientific Conference for Ph.D. students of EU countries. March 28–30, 2018 London), 58 et seq.; Tomasz Duraj, "Prawo koalicji osób pracujących zarobkowo na własny rachunek po nowelizacji prawa związkowego – szanse i zagrożenia," *Studia z Zakresu Prawa Pracy i Polityki Społecznej* 27, no. 2 (2020): 67 et seq.; Tomasz Duraj, "Collective Rights of the Self-Employed Following the Amendments to the Polish Trade Union Law" (Hradec Králové, Czech Republic, QUAERE 2020 X), 1348 et seq.; Tomasz Duraj, "Collective Rights of Persons Engaged in Gainful Employment Outside the Employment Relationship – An Outline of the Issue," *Acta Universitatis Lodzianensis. Folia Iuridica* 95 (2021): 7 et seq.; Tomasz Duraj, "Ochrona osób samozatrudnionych w świetle przepisów zbiorowego prawa pracy po zmianach – wybrane problemy," in *Zatrudnienie w epoce postindustrialnej*, XXII Zjazd Katedr i Zakładów Prawa Pracy i Ubezpieczeń Społecznych, eds. Krzysztof Walczak and Barbara Godlewska-Bujok, Warsaw 2021, 63 et seq.; Tomasz Duraj, "Powers of Trade Union Activists Engaged in Self-Employment – Assessment of Polish Legislation," *Acta Universitatis Lodzianensis. Folia Iuridica* 95 (2021): 83 et seq.; Aneta Tyc, "Collective Labour Rights of Self-Employed Persons on the Example of Spain: Is There any Lesson for Poland?," *Acta Universitatis Lodzianensis. Folia Iuridica* 95 (2021): 135 et seq.

⁶¹ The Constitution of the Republic of Poland, Journal of Laws 1997, No. 78, item 483, as amended.

⁶² In Poland, the legislator has not established a definition of this term *de lege lata*.

Unlike in Spain, Germany, or Italy, the Polish legislator has made no reference to the criterion of economic dependence as a premise determining the scope of protection of self-employed workers. This, in my opinion, must be assessed unfavourably.

The issue that must be viewed as the most significant shortcoming of the Polish legislation is the absence of regulations dedicated specifically to the category of self-employed workers, taking into account the specific mode of these workers' functioning within the legal realities of the market. Unfortunately, the Polish legislator has often decided to cut corners by resorting to the expansion of labor law. When granting certain rights to self-employed workers, references to labor law are widely used (to be applied *mutatis mutandis*). For example, this is the case of protecting life, health, and collective rights. These legal mechanisms must be considered inappropriate, and often even harmful, to ensure the effective protection of self-employed workers. Over-reliance on these mechanisms generates numerous interpretative dilemmas, undermining the security of the legal position of self-employed workers. Furthermore, it often results in an unjustified conflation of the protective guarantees extended to self-employed workers and to dependent, subordinated employees; for example, this is the case with the protected status of trade union activists and the right to strike and other forms of protest; the issue raises legitimate questions of both an axiological and legal nature. It constitutes excessive interference with the principle of freedom of contract (Article 3531 of the Polish Civil Code⁶³), with the constitutional principle of freedom of economic activity (Article 22 of the Polish Constitution) and with the principle of fair (free) competition (Article 9 of the act of 6 March 2018 – Enterprise Law⁶⁴).

In my opinion, *de lege ferenda* in Poland, the choice should be made in favor of adopting a legal model founded on the adoption of a new, separate law (following the example of Spain) that would attempt to comprehensively regulate all the issues related to the protection of self-employed workers, while simultaneously limiting the labor law expansion to

⁶³ Act of 23 April 1964 – Civil Code, consolidated text: Journal of Laws 2022, item 1360, as amended.

⁶⁴ Consolidated text: Journal of Laws 2021, item 162, as amended.

the necessary minimum.⁶⁵ The legislator should consider the specificity of work provision under self-employment conditions, with a view to including the aforementioned principles of freedom of contract, freedom of economic activity, and fair competition. The new act should outline a two-tier model of protection for self-employed persons. The first tier should cover all self-employed persons who personally, on their own account, and at their own risk, without supervision, provide services to at least one client in a B2B relationship. At this level, a list of basic social rights should be created for all natural persons who provide work (regardless of the legal basis). It should incorporate the standards of international and EU law and the provisions of the Polish Constitution, including the principle of social justice (Article 2) and the principle of equality before the law (Article 32). The Polish legislator should guarantee the following to all self-employed workers: protection of life and health, protection against discrimination and unequal treatment, protection of human dignity, protection of women immediately after childbirth, the right to maternity benefit, as well as the freedom of association and the resulting protection under collective agreements, and protection of the permanence of the civil-law based contracts of trade union activists. In contrast, a further degree of protection must be afforded to those self-employed persons who personally provide work to one primary client under conditions of economic dependence. A separate category of economically dependent self-employed workers, positioned between subordinated employees and self-employed entrepreneurs, should be created. It is specifically to workers in this new category that the new regulations should guarantee the widest range of rights, most akin to employee rights. In particular, economically dependent self-employed workers should enjoy the guarantees of the right to a minimum wage and the protection of this wage; the right to rest; protection of the permanence of employment for women while pregnant and for the period of paid leave (8 weeks) in connection with the birth of a child; the right to refrain from hazardous work with a guarantee of remuneration; the right to count the period of self-employment into the total number of years worked; the right to a notice period;

⁶⁵ For more information, see: Tomasz Duraj, “Self-Employment and the Legal Model of Protection in Poland,” *Studia z Zakresu Prawa Pracy i Polityki Społecznej* 29, no. 3 (2022): 257 et seq.

protection against immediate termination of the contract, the right to paid breaks in connection with holding a trade union office; the right to strike; the right to proceedings before an employment tribunal (a labor court). However, I believe that the scope of protection of self-employed workers cannot be an exact match for the protection that the legislator guarantees to dependent, subordinated employees. This would constitute excessive interference with the principles of freedom of contract, freedom of economic activity, and fair competition. It would also directly distort the relationship between labor and capital.

The adoption of the two-tier model postulated here requires the development of new Polish terminology. Crucially, terms such as “self-employed person” and “self-employed economically dependent person” must be defined. A self-employed person is a natural person who personally provides work to at least one enterprise,⁶⁶ organizational unit that is not an enterprise, or agricultural operator (the client), on their own account and at their own risk, without management and supervision from the client, as a registered business entity operating under the provisions of the Enterprise Law, without hiring employees and workers providing work under civil-law contracts. As for the definition of the “self-employed economically dependent person”, due consideration should be given to adopting a formula for defining the economic dependence that would be easily verifiable against clear, objective criteria. In practice, as demonstrated by the experience of Spain, objective verification of income criteria (such as one client accounting for at least 75% of total income) is problematic and open to abuse.⁶⁷ Therefore, it might be better to consider a time-based model of economic dependency, as proposed in the 2018 Labour Code draft. Under Article 177(1) of the proposed regulation, an economically dependent self-employed person is a person engaged in the provision of services, performing them independently for the benefit of a specific enterprise, an organizational unit that is not an enterprise, or an agricultural operator

⁶⁶ The worker’s reliance on the assistance of family members in the same household does not serve to preclude the personal nature of the work rendered.

⁶⁷ This is easily circumvented in practice, for instance, by artificially prolonging the chain of commissioning entities (by including businesses that are linked by capital).

(a client), in a direct manner, for an average of at least 21 hours per week, for at least 182 days.⁶⁸

To complement the proposed *de lege ferenda* model for the protection of self-employed workers in Poland, a mechanism to effectively counteract self-employment as a way of circumventing labor law should be implemented. Currently, there are no effective measures to prevent self-employment where employment should prevail instead; this is a violation of labor law, in particular of Article 22 of the Labour Code.⁶⁹ The number of sham, bogus self-employed workers in Poland is currently estimated at about 500,000 and rising. Many of these workers can enjoy the protection offered to employees (rather than to self-employed workers). To this end, the Polish legislator should more precisely define “management” as used in Article 22(1) of the Labour Code by stipulating that the provision refers to the type of management in which the employer issues specific, binding instructions to the worker. This element is absent in self-employed work. This would give the National Labour Inspectorate and the labor courts (that have the power to establish the existence of an employment relationship) an additional instrument to counteract the problem of self-employment designed to circumvent the provisions of labor law. Furthermore, it would contribute to drawing a clear line between dependent, subordinated employees (who enjoy the greatest scope of protection) and self-employed workers, including economically dependent self-employed workers.⁷⁰

⁶⁸ Dependence on the client based on a certain number of hours of work required by this client falls within the concept of economic dependence *sensu largo*. It must be presumed that with such a significant time commitment, the self-employed person is economically dependent on this client.

⁶⁹ Act of 26 June 1974 – Labour Code, consolidated text: Journal of Laws 2023, item 1465.

⁷⁰ For more information, see: Tomasz Duraj, “Problem wykorzystywania pracy na własny rachunek w warunkach charakterystycznych dla stosunku pracy,” in *Nauka i praktyka w służbie człowiekowi pracy: Inspekcja pracy – wyzwania przyszłości*, ed. Anna Musiała (Poznań: Wydawnictwo Naukowe UAM, 2017), 103 et seq.; Tomasz Duraj, “Kilka uwag na temat stosowania pracy na własny rachunek z naruszeniem art. 22 Kodeksu Pracy,” *Studia z Zakresu Prawa Pracy i Polityki Społecznej* 30, no. 3 (2023): 175 et seq.

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