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**Notat  
om**

**EU-medlemsstaternes definition af begreberne  
”lønnet beskæftigelse” og ”selvstændig virksom-  
hed”**

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## Cyprn

How does your Member state define the terms "activity as an employed person" and "activity as a self-employed person", Article 1, litra (a) and (b) in Regulation 883/2004

"activity as an employed person"

Activity as an employed person is defined in Part I of the First Schedule of the Social Insurance law N. 59(i)/2010. In particular this consists of

- Gainful employment in Cyprus of a person under a contract of employment or apprenticeship or under such circumstances from which the existence of an employee-employer relationship may be inferred including employment by at the service of the Republic,
- Employment of a person under such contract or circumstances as mentioned above who falls under the scope of Regulation 883/2004 and is employed on a ship flying the Cyprus flag,
- Employment in any prison in the Republic of a person going imprisonment
- Employment of a person under any circumstances by a private company of which he/she is a shareholder of
- Members of the clergy
- Employment as local staff of a person who is citizen of the Republic at Diplomatic Missions abroad provided that this person does not fall under the legislation of the host state

"activity as a self-employed person"

Activity as a self-employed person is defined under part I of the Second Schedule of the Social Insurance law N. 59(i)/2010. In this respect all gainful activities which do not fall under Part I of the First Schedule (above) is considered as self-employed activity

Which minimum requirements are there for considering a person's activity as "an employed person" or a "self-employed person"?

The detrimental factor in considering a person's activity as "an employed person" is the existence of an employer –employee relationship. To this extent on the basis of jurisprudence the following, non-exhaustive, criteria are evaluated:

- The existence of an employment contract
- The extent and degree of control the employer has in respect of the location and the way the activity is performed
- The existence of standard working hours
- The setting of a specific amount as salary

## Finland

Definition of the term "activity as an employed is needed for the purposes of the residence based social security only. A person may be entitled to residence based benefits like family benefits on the basis of employment even though he/she does not reside permanently in Finland. A person moving from an EU/EEA state to work is covered by residence based social security during their period of employment if he/she is employed in Finland for a consecutive period of at least four months and work meets the minimum requirements concerning working time and earnings (18 hour /week and earnings must comply with the collective agreement in the sector concerned).

A person not residing in Finland may be entitled to residence based social security on the basis of self-employment in Finland when he/she has uninterruptedly been self-employed for at least four months. A four months period is a minimum requirement in order to be considered as a self-employed person and covered by the Pension Scheme for Self-employed.

In other cases it is require that a person is insured under the Employees Pensions Act as an employed person with income in minimum about 56 euros (in 2014) /month.

## Ireland

The definition of an employed contributor is provided in Part 2, chapter 2, Section 12 (1) of the Social Welfare Consolidation Act 2005 <<http://www.irishstatutebook.ie/2005/en/act/pub/0026/index.html>>.

Employed contributors and insured persons.

12.—(1) Subject to this Act—

(a) subject to paragraph (b), every person who, being over the age of 16 years and under pensionable age, is employed in any of the employments specified in Part 1 of Schedule 1, not being an employment specified in Part 2 of that Schedule, shall be an employed contributor for the purposes of this Act, and

(b) every person, irrespective of age, who is employed in insurable (occupational injuries) employment shall be an employed contributor and references in this Act to an employed contributor shall be read accordingly,

The definition of a self-employed contributor is provided in Part 2, chapter 3, Section 20 (1) of the Social Welfare Consolidation Act 2005<<http://www.irishstatutebook.ie/2005/en/act/pub/0026/index.html>>.

Self-employed contributors and insured persons.

20.—(1) Subject to this Act—

(a) every person who, being over the age of 16 years and under pensionable age (not being a person included in any of the classes of person specified in Part 3 of Schedule 1) who has reckonable income or reckonable emoluments, shall be a self-employed contributor for the purposes of this Act regardless of whether the person is also an employed contributor,

## **Kroatien**

The term employee is defined within the Labour Law as a person who, on the basis of the employment contract performs certain tasks for the employer.

There is no definition of the self-employed person, but self-employment activity is defined within the Act on Contributions as:

- an activity of self-employed craftsmen or similar activity recorded in the register of crafts, according to the Crafts Act, which is the main occupation of the person who is compulsory insured on the basis of that activity ;
- an activity of a sole trader registered at the Commercial Court as a sole trader, in accordance with the Companies Act, which is the main occupation of the person who is compulsory insured on the basis of that activity;
- free occupation of a person who is on the basis of this activity compulsorily insured, if this activity is registered in the register of the relevant authorities or institutions responsible for issuing of the approval for performing professional activities in accordance with special regulations, or registered in the register of tax payers (income tax as well as profit tax) of self-employment freelance profession on the grounds of membership in professional associations or vocational chamber or at his/her request ;
- an activity of agriculture and forestry performed by a person as a main activity, who is on the basis of this activity compulsorily insured, registered in the register of authority/institution responsible for agriculture, or registered in the register of tax payers (income tax as well as profit tax), if a person is subjected to income tax or profit tax;
- other self-employment activity characterised by independence, permanence and with the intention of creating source of income, if the activity is registered in the appropriate register or does not

require authorisation or registration and if it is the main activity of a person, who is on the basis of this activity compulsorily insured.

Within the pension insurance, insurees (or insured persons) are listed within the Pension Insurance Act divided into two groups:

1. employees, salaried civil/public servants and similar persons, according to the special regulations
2. craftsmen, merchants, as well as self-employed persons who conduct professional activity such as lawyers, doctors, dentists, artists, journalists, educators, lecturers, translators, farmers mainly engaged in agriculture or forestry, and the members of family farms, persons engaged in activities which do not require authorization or registration, but have the characteristic of independence, permanence and the intention of creating a source of income (which actually means „self-employed persons“, although the term is not explicitly specified)

Similar personal scope (employees and "self-employed persons") is prescribed with the Act on Compulsory Health Insurance.

## Malta

In the case of Malta, Article 2 of the Employment and Industrial Relations Act (Chapter 452 of the Laws of Malta) defines self employment and employment in terms of the person not of the activity. Indeed it is stated that "self-employed persons" means all persons pursuing a gainful activity on their own account. Moreover, an "employee" is defined as any person who has entered into or works under a contract of service, or any person who has undertaken personally to execute any work or service for, and under the immediate direction and control of another person, including an outworker, but excluding work or service performed in a professional capacity or as a contractor for another person when such work or service is not regulated by a specific contract of service. One may also wish to note the attached Employment and Industrial Relations Act (Cap. 452) Employment Status National Standard Order, 2012 (LN 44/2012) which further elaborates on the classification between employed and self employed.

## Nederlandene

### Article 1a 883/2004: activity as an employed person

- In the Netherlands we define ‘activity as an employed person (*‘werkzaam in loondienst’*) as anyone insured under Dutch public employee insurances. The Dutch public employee insurances are

linked to the term '*werknemer*' (employee). The law regulates who is an employed person.

- The core provision of the term '*werknemer*' (employee) is as follows: (article 1, paragraph 1, unemployment law): an employed person is a natural person younger than the statutory pension age and is privately or publicly employed. Private employment is the labour relationship based on a labour contract as defined in Civil Law. A work relationship can be considered to be a labour contract, if it meets the following criteria: (1) the employed person is obliged to personally execute the work/labour (2) the employer is obliged to pay out the salary and (3) the relationship employer-employee contains an element of authority. A work relationship under public law is applicable to civil servants.
- Then there is final category of people who are employed without a labour contract, but can be considered to be employed persons, because on the social-economic position. Examples are small contractors of work, trade agents and home workers. In case someone is working as an independent worker, then this person cannot be considered to be an employed person.

### **Article 1b 987/2009: activity as a self-employed person**

In the Netherlands 'activity as a self-employed person' is translated to '*werkzaamheden anders dan in loondienst*' (literally: work activities different from employment). This category is constituted by anyone who is not insured for the Dutch public employment insurances. Dutch employment insurances do not contain a definition of 'self-employed', which sometimes difficult to define whether someone is employed or self-employed, with subsequent consequences for the obligation to pay employment insurance contributions. The employment insurance agency and the tax collecting agency have formulated policy rules, which are used for the assessment of an employment relationship, and which determine the obligation to and access to the employment insurances.

## **Polen**

There is no one definition of "activity as employment or self-employment persons" and it is generally related with social insurance/social security. In Poland generally persons are covered by Social Insurance Systems Act (for employee and self-employment persons) and Farmer's Social Insurance Act (for farmers). Other categories can be also recognize as "activity as employment persons" under the specific terms, if they are subject to insurance/social security or special systems for professionals.

## Spanien

**Article 1.a) of Regulation 883 /2004** provides that the term " employed activity " means any activity or equivalent situation treated as such for the purposes of the social security legislation of the Member State in which such activity or this situation occurs.

According to this provision, **Article 7.1.a ) of Royal Legislative Decree 1/1994 of 20 June**, approving the revised text of the General Law on Social Security , establishes the scope of the System Social Security for purposes of contributory benefits, being that, the employed persons providing services under the conditions set by **Article 1.1 of the Statute of Workers** in the different branches of economic activity or assimilated to them , whether temporary, seasonal or permanent, even batch job, and included mobile workers, regardless , in all cases , the qualification of the employees, the form and amount of remuneration received and the common or special nature of employment relationship .

Under this provision, **article 1.1 of Royal Decree 1/ 1995 of 24 March** by the Workers' Statute should be cited to delimit the scope of application of this Act to whom provide voluntarily their paid services by others and within the scope of organization and direction of another person, natural or juridical, called employer or employer.

Workers employed or assimilated included in paragraph 1.a) of Article 7 of the General Social Security Law shall be compulsorily included in the General System of Social Security.

- **Article 1.b ) of Regulation 883 /2004** provides that the term " Self-employment " means any activity or equivalent situation treated as such for the purposes of the social security legislation of the Member State in which such activity or this situation occurs.

**Article 7.1.b ) , paragraphs 1 and 3 of the Royal Decree 1 /1994, 20<sup>th</sup> june** , states that, for the purposes of contributory benefits , self-employed, over eighteen, whether or not holders of individual or family businesses, who meet the requirements expressly specified in the regulations will be included in the Social Security System.

**Thus, Decree 2530/1970 of 20<sup>th</sup>. August**, establishing the Special Regime of Social Security workers defines the self- employed person as the person who regularly, habitually, personally and directly performs a profit economic activity, without being fastening to a labor contract and regardless using or not others´s paid service . Unless proven otherwise, it is assumed that he/she is an self- employed for the purposes of this special scheme, if the same is the owner, tenant, usufructuary or similar legal concept of the business is running

In accordance with this regulation, it should be mentioned **Law 20 /2007 of July 11 of the Statute of Self Employed worker**. Article 1.1 includes in its scope the person performing regularly, personally, directly, by his/her own and outside the scope of management and organization of

another person, a business or profit professional activity, regardless having or not employees.

The self-employed or freelance over eighteen necessarily is included in the Special Regime of Social Security for the Self –Employed. Nevertheless, some specific groups of self-employed, may be included in other social security regimes because of their membership of a particular industry

This law also introduces the concept of **economically dependent workers**. They are those who perform usually, personally, directly an economic or profit professional activity mainly for one natural or legal person, named the client, and from whom he/she receives at least at least 75 percent of their income working or income.

The self-employed or freelance over eighteen necessarily is included in the Special Regime of Social Security for the Self –Employed. Nevertheless, some specific groups of self-employed, may be included in other social security regimes because of their membership of a particular industry.

However, the directors or managers or counsellors of the board , or those who habitually, personally and directly provide other profit services for a private corporation, will be also included in this Special Scheme for the Self -Employed , provided they have the, direct or indirect control of it. It is assumed that such circumstance occurs when the shares of the worker involve at least half of the share capital (DA 27A of the Social Security Law).

For a person to be considered an employee, several requirements should be met: voluntariness, (work voluntarily) working for others (fruits of the labor are for the employer); and retribution and dependence (subject to the employer's order). On the contrary, it is deemed to perform a self-employed individuals over eighteen when exercising regularly , personally and directly an economic or profit professional activity, without being subject to a labor contract regardless using or not of other's paid service

## Sverige

\* How does your Member state define the terms "activity as an employed person" and "activity as a self-employed person", Article 1, litra (a) and (b) in Regulation 883/2004?

- The terms are not defined in Swedish national legislation. There are provisions within the Swedish Social Insurance Code (SIC) to determine which situations to consider as work as employed and work as self-employed. According to the basic principle in SIC, a person is covered by the work-based insurance if a person works in Sweden. Work is considered as gainful employment in Sweden. A natural person who conducts business and have a permanent establishment in Sweden, shall in respect of that business, be seem as conducted in Sweden. As a rule the definition of "work" in the SIC, which is applied in the social security



field, is broader than the terms employed, worker etc. which is to be found in other legal fields.

\* Which minimum requirements are there for considering a person's activity as "an employed person" or a "self-employed person"?

- There are no such minimum requirements established in the Swedish legislation.

## **Tyskland**

"activity as an employed person":

According to the rulings of the European Court Of Justice (ECJ), a person is to be considered as employed in the sense of Art. 1 lit. (a) regulation 883/2004 if the person is covered by at least one of the branches of social security listed in Art. 3 para. 1 of regulation 883/2004. Therefore in our understanding the branch of social security stipulating the least conditions in order to be covered is decisive and its conditions apply. In Germany, the statutory insurance against accidents at work only requires that the person is employed and does not stipulate any other conditions. In Germany the term employment is defined especially in distinction to self-employment. Therefore, a person is employed if he or she works under the supervision of an employer being dependent on the employer as regards time, duration, location and modus of the work.

However, this interpretation only concerns the basic question if a person is to be considered as employed in the sense of Art. 1 lit. (a) regulation 883/2004. Concerning other situations or especially the application of other branches of social security, additional requirements may apply. For example the application of the German statutory sickness insurance requires additionally that a person receives a remuneration for its work.

"activity as a self-employed person":

The afore mentioned principles stipulated by the ECJ also apply concerning the question if a person is to be considered as self-employed in the sense of Art. 1 lit. (a) regulation 883/2004. A self-employed performs a professional activity without being employed as an employee. Therefore a self-employed person does not work under the supervision of an employer and does generally not depend on other persons concerning the time, duration, location and the modus of the work.

## **Østrig**

The Austrian social security scheme is largely dominated by the Bismarckian principle. That means that only economically active persons are covered. Thus it is also not so difficult to identify those who are cov-

ered by the Regulations as exercising an employed or self-employed activity. We regard persons as covered by that definition who are compulsorily insured as gainfully active persons under the relevant social insurance laws. This has also as a consequence that persons exercising only marginal activities and who thus are not covered by compulsory insurance in all branches cannot be regarded as exercising an employed or self-employed activity.