

LEGAL UPDATE

Internet consultation launched on clarification of self-employed work

Date: 13 October 2023

On 6 October 2023, the [internet consultation](#) was launched for the draft bill 'Clarifying Assessment of Employment Relationships and Legal Presumption Act'. The draft bill is part of the labour market package presented in April with measures for more security for workers and more agility for entrepreneurs.

The draft bill

Among other things, the draft bill should provide more clarity on whether work may be done by a self-employed person or an employee. The bill contains two main sections:

1. Clarification of the 'working for' criterion
2. Introduction of a legal presumption for the existence of an employment contract

Clarification of 'working for' criterion

The criterion 'working in the service of' is part of the definition of 'employment contract'. This criterion is clarified on the basis of, in principle, three elements, with corresponding indications that will be determined and possibly supplemented by an Order in Council.

A. *Work-related direction*

Is there authority to instruct? Can the worker control the work and intervene if necessary?

B. *Organisational embedding*

Are the activities part of the organisation's core business? Are they structural in nature? Are they performed side-by-side with employees doing similar work?

C. *Working for own account and risk*

Do financial risks and outcomes lie with the worker? Is the worker responsible for tools/resources? Does the worker step out independently? Is it a short assignment or one limited to a number of hours per week?

It will first be necessary to identify whether elements A, B and/or C are present. The presence of A and/or B provide(s) an indication of the existence of an employment contract. C relates to a contra-indication. The different elements have to be weighed against each other. If the balancing is inconclusive, then element C+ will be decisive.

C+ looks at *external entrepreneurship*. Does the worker generally behave as an entrepreneur or employee in the economy society with respect to similar work? Relevant indications here are: Does the worker work for several clients per year? Does he spend time and/or money acquiring a reputation and finding new clients? Does he have business investments of any size? Does he behave as a self-employed person with regard to his administration?

The introduction of a legal presumption for the existence of an employment contract

Furthermore, the draft bill contains a new legal presumption. If a worker can prove an hourly rate lower than €32.34, an employment contract will be presumed. If the worker believes that he is self-employed, he will have to provide proof of this.

Continued legislative process

After the closure of the internet consultation (10 November 2023), the Council of Ministers will decide how and in what (possibly modified) form the bill will be submitted to the House of Representatives.

Do you have questions about self-employment? If so, contact one of our specialists from the Employment & Pensions team.

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