



ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts

Austria

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*Marcel Fink / IHS
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European Social Policy Network (ESPN)

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Summary

Self-employment and different forms of non-standard employment are of substantial significance in Austria. Regarding self-employment, the number of single-person businesses and of the so-called 'new self-employed' (*Neue Selbständige*)¹ has grown considerably over the last two decades. The most important forms of non-standard employment are so-called 'freelance contracts' (*Freie Dienstverträge*), temporary/fixed term employment, subcontracted agency work (*Arbeitskräfteüberlassung* or *Leiharbeit*) and so-called marginal part-time employment (*geringfügige Beschäftigung*) and marginal freelance contracts (the latter two with income below the lower earnings limit for social insurance).

Regarding self-employment, one crucial question is the definition of self-employment and the 'legal certainty' that derives from this definition. In Austria, the definition of self-employment derives from case law and leaves some room for interpretation. It would be helpful to have a more clear-cut distinction between self-employment and dependent employment.

Also the definition of freelance contractors derives from case law. Again, room for interpretation is substantial, and it appears to be questionable whether such a quasi-intermediate form of employment makes sense in any case. This construction offers an opportunity to circumvent most of the existing labour law regulation, including EU legal acts aiming at the coordination of minimum labour law regulation in all EU Member States.

Since the mid-1990s, reforms in Austria have pursued the aim of integrating all types of earned income from employment into social security. In doing so, the coverage of social insurance – and the obligation to pay social insurance contributions – was extended to the new self-employed and freelance contractors in 1996, in terms of pension insurance, health insurance and accident insurance. Later on, freelance contractors were integrated into unemployment insurance, while the self-employed can opt in to unemployment insurance on a voluntary basis. The same holds true for people solely employed in marginal employment in terms of health insurance and pension insurance.

Also, the Austrian system of social insurance is fragmented, in the sense that in some sectors of social protection different systems of social insurance exist for self-employed and dependent jobholders, although the system still provides a considerable degree of inclusiveness and transferability.

What is more problematic than the question of the coverage of social insurance in Austria is the question of working conditions and the realisable earnings of people in self-employment (especially single-person businesses and the new self-employed) and of people in different non-standard forms of employment. Although empirical evidence on these questions is rather sparse (as no up-to-date, in-depth research exists), there are still signs that substantial challenges exist in this respect.

One major problem of the Austrian social insurance scheme is that – via the principle of equivalency (of contributions and benefits) – it reproduces inequalities of earned income to a large degree, e.g. in the case of unemployment, but also old-age pensions. Furthermore, discontinuous employment (found more often in the context of non-standard employment than in standard dependent employment) may lead to situations where people who become unemployed do not meet the eligibility criteria for unemployment benefits.

Against this background, what is necessary in the Austrian case is a more detailed assessment of how these changes in the structure of the labour market have evolved

¹ The 'new self-employed' perform work on the basis of a 'contract for services' (*Werkvertrag*). They are not registered with the Economic Chamber (*Wirtschaftskammer*) and are not covered by labour law.

over the past 10 years, and – in a wider sense – of the degree to which the largely Bismarckian design of the Austrian welfare state (especially regarding health insurance, pensions insurance and unemployment insurance) is suited to dealing with the related challenges. Such an in-depth analysis is beyond the scope of this report.

1 Context: self-employment and non-standard work relationships in the national economy and labour market

1.1 Numerical development of self-employment and non-standard work

In 2015, the share of self-employed people² as a percentage of all employed people³ amounted to 11%⁴ in Austria. It has remained fairly stable since 2006, varying between 10.8% and 11.3% over the past decade. Overall, the Austrian rate of self-employment is somewhat lower than the EU-28 average (2015: 14.1%⁵).

In 2015, around 60%⁶ of all self-employed people in Austria were self-employed without employees (own-account workers), and around 40% were employers. The share of self-employed without employees is somewhat lower than the European average (EU-28 in 2015: 71.5%⁷).

In absolute terms, the number of self-employed has grown in Austria from 430,100⁸ in 2008 to 446,900⁹ in 2015. This largely derives from a rising number of self-employed people without employees, which increased from 249,300 in 2008 to 267,600 in 2015. In the first instance, it is the number of self-employed women without employees that has grown substantially – from 102,200 in 2008 to 115,800 in 2015.

No valid numbers are available to determine the extent to which self-employment has taken the form of 'bogus' or 'dependent' self-employment (for the definition of self-employment in Austria, see section 2.1 below). However, employment on the margins of dependent employment and self-employment, and 'wrongly declared' self-employment (i.e. self-employment which is de facto dependent employment) are an issue in Austria.

It appears that such problems concentrate on specific sectors of the labour market, like construction, transport and cleaning services, as well as financial, insurance and facility services. A study by Danzer et al. (2014) on single-person businesses in different sectors came to the conclusion that for up to 40% of those interviewed, several indications exist that the status as self-employed could be put into question. Flecker et al. (2014) highlight the fact that jobs in private parcel-delivery services, and in the distribution of newspapers and advertising, are almost exclusively done by self-employed subcontractors. Research results by Riesenfelder and Wetzlar (2013) show that bogus or dependent self-employment in the construction sector also appears to be a substantial problem.

Bogus or dependent self-employment may be performed by single-person businesses with a trade certificate (*Gewerbeschein*), registered with the Economic Chamber (*Wirtschaftskammer*), or by so-called 'new self-employed' (*Neue Selbständige*), who perform self-employed work without such registration. The latter type of work is possible for activities/professions not dealt with under the Austrian Trade Regulation Act

² Source of the following data on self-employment: Labour Force Survey (LFS), Eurostat database, indicators *lfsa_egaps*, *lfsa_esgan* & own calculations.

³ Aged 15–64.

⁴ Men: 13.3%; women: 8.4%.

⁵ Men: 17.8%; women: 9.9%.

⁶ Ca. 53% in the case of men and ca. 72% in the case of women.

⁷ Ca. 69% in the case of men and ca. 76.5% in the case of women.

⁸ Of whom 281,300 were men and 148,800 were women.

⁹ Men: 285,400; women: 161,500.

(*Gewerbeordnung*), such as (but not exclusively¹⁰) lecturers, artists, scientists and experts, journalists, writers and persons who work independently in healthcare (nurses, midwives, etc.). These 'new self-employed' perform work on the basis of a 'contract for services' (*Werkvertrag*) and are not covered by labour law. According to estimates (excluding the 'traditional' liberal professions),¹¹ about 30,500 persons were insured as 'new self-employed' in Austria in 2014 (Lutz, 2015) and their number has grown considerably over the past 15 years.¹²

One other form of non-standard employment, located on the margins of self-employment and dependent employment, is pursued by 'freelance contractors' (*Freie Dienstnehmer*). Unlike the self-employed, freelance contractors normally are not required to achieve a specific task; instead, like employees, they contribute their working time and their endeavour. But unlike normal employees, freelance contractors face fewer restrictions on how they choose to perform the activity, e.g. in terms of working time, workplace, workflow, etc. In other words: the 'subordination relationship' and 'personal dependence' typical of normal employees do not apply to freelance contractors. Since 1997, freelance contractors have gradually been integrated into public social security (see section 2 below), but they are not covered by most labour law regulation, including collective agreements. The average yearly number of such contracts¹³ with income above the lower earnings limit for social insurance (see below for 'marginal employment' with income below the lower earnings limit) increased from 14,699 (men: 7,744; women: 6,955) in 1998 to 26,075 (men: 12,548; women: 13,527) in 2007, and then gradually declined to 16,721 (men: 8,072; women: 8,649) in 2015.¹⁴ This decrease took place against the background of further integration of freelance contractors into social insurance (which has increased both the absolute and the relative cost of such contracts for employers) and greater control by social insurance providers, with the aim of reducing the misuse of such contracts.

According to estimates by the Trade Union of Private Sector Employees (GPA), about two-thirds of all 'new self-employed' and 'freelance contractors' are, if the related definitions were implemented properly, standard employees.¹⁵

Part-time employment has grown in Austria in past decades. In 1995 13.3% of all persons in employment were in part-time employment.¹⁶ The share of part-time employment in total employment then increased to 21.5% in 2006 and further to 27.3% in 2015. In Austria, part-time employment is – in numerical terms – extremely female dominated, even more so than in most other EU Member States. The part-time employment rate of women (as a proportion of all employed women) increased from 26.4% in 1995 to 38.3% in 2005 and then to 46.8% in 2015. Numbers for men are: 1995: 3.3%, 2005: 5.7% and 2015: 9.8%. In terms of social insurance and labour law for people in part-time employment, generally the same rules apply as for people in full-time employment.

However, in terms of social insurance, this does not hold for so-called marginal (part-time) employment (*Geringfügige Beschäftigung*). 'Marginal employment' implies people

¹⁰ It appears that 'new self-employment' is practised in a large variety of different tasks, offering a 'low-threshold' opportunity to perform work on the margins of dependent employment and self-employment.

¹¹ In social insurance statistics, the new self-employed are not distinguished from the so-called 'traditional liberal professions'. The total number of persons insured according to § 2 Abs 1 Z 4 GSVG (new self-employed plus members of liberal professions) increased from 21,059 in 2000 (men: 13,399; women: 7,660) to 39,481 (men: 23,004; women: 16,477) in 2008 and then further to 47,054 (men: 25,910; women: 21,144) in 2015. Source: BMASK, ELIS, <http://www.dnet.at/elis/Arbeitsmarkt.aspx>

¹² See previous footnote.

¹³ Note: this is not the average yearly number of freelance contractors.

¹⁴ Source: BMASK, ELIS, <http://www.dnet.at/elis/Arbeitsmarkt.aspx>

¹⁵ See <https://www.watchlist-prekaer.at/>

¹⁶ Source: LFS; Eurostat Database, indicator: [lfsa_eppga]; definition of part-time employment: part-time employment is employment with usual hours of work being less than normal working hours.

in dependent employment and freelance contractors with gross earnings (income limits for 2016) of below EUR 415.72 per month or EUR 31.92 per day. Since 1 January 2017, only a monthly earnings limit has applied, amounting to EUR 425.70. Persons with earned income below this 'lower earnings limit' (*Geringfügigkeitsgrenze*) are – regularly – only covered by accident insurance, and not by other strands of social insurance, i.e. especially health insurance, pensions insurance and unemployment insurance. However, people employed on such contracts can choose to opt in to health and pensions insurance. The average yearly number of such contracts¹⁷ within normal dependent employment increased from 148,278 in 1996 to 273,093 in 2008 and then further to 341,735 in 2015. The share of such marginal part-time contracts undertaken by women decreased from 72% of all such contracts in 1996 to 67% in 2008 and then further to 63% in 2015. Yet marginal part-time employment, in numerical terms, is still female dominated.

The average yearly number of marginal freelance contracts amounted to something in the region of 42,000 to 45,500 in the years 2000 to 2008, but then gradually declined to 29,585 in 2015.¹⁸ Around 60% of all such contracts are undertaken by women, and this share has remained largely stable over time.

Temporary/fixed-term employment (*befristete Beschäftigung*) and subcontracted agency work (*Arbeitskräfteüberlassung*) are additional types of non-standard employment.

Looking at the age group 20–64 (and thereby largely excluding apprenticeship contracts), it is evident that temporary/fixed-term employment is not very widespread in Austria. Just 6.2% of all employees (men: 5.7%; women: 6.7%) aged 20–64 had a temporary/fixed-term contract in 2015.¹⁹ The EU-28 average is 13.2% of all employees (men: 12.8%; women: 13.7%). From a medium-term perspective, the share of temporary/fixed-term employees among all employees has increased only slightly in Austria over the past 10 years – by 1 percentage point. The fairly low prevalence of fixed-term employment is – inter alia – likely to be caused by the rather liberal Austrian regulations on termination of work contracts.

Subcontracted agency work (*Arbeitskräfteüberlassung*) showed a substantial dynamic of growth between the years 2000 and 2007, with the number of people engaged in such jobs rising from 30,120 in 2000 to 68,081 in 2008.²⁰ The financial and economic crisis first led to a reduction in the number of people engaged in subcontracted agency work (57,230 in 2009); during the subsequent economic recovery, growth in such jobs was lower than in the early 2000s. In 2014, an average of 62,384 persons each year were working as subcontracted agency workers, and the figure was 62,555 in 2015.²¹ Subcontracted agency work is male dominated – ca. 75% of all persons performing such work are men.

Social protection of the self-employed and of people in non-standard forms of employment has been a political issue in Austria since the mid-1990s. In the second half of the 1990s, a first wave of measures was introduced to (partly) integrate the so-called 'new self-employed' and 'freelance contractors' into social insurance; meanwhile people in marginal part-time employment received the possibility to opt in to health and pensions insurance (see below section 2). Furthermore, as from January 2008, freelance

¹⁷ Note: this is not the average yearly number of persons employed according to such contracts.

¹⁸ Source: BMASK, ELIS, <http://www.dnet.at/elis/Arbeitsmarkt.aspx>

¹⁹ Source: LFS, Eurostat Database, indicator lfsa_etpga.

²⁰ Source: Statistik Austria, reference-date data (not yearly averages!).

²¹ From 2014, the methodology of the statistics on subcontracted agency workers was changed from reference-date data to yearly averages. For this reason, data on the years from 2014 onwards are not directly comparable with data on earlier years. Data for 2014 refer to the average number of subcontracted agency workers between 1 July 2013 and 30 June 2014; data for 2015 refer to the average number of subcontracted agency workers between 1 July 2014 and 30 June 2015. Source: Statistik Austria, https://statistik.at/wcm/idc/idcplg?IdcService=GET_NATIVE_FILE&RevisionSelectionMethod=LatestReleased&DocName=080299

contractors have been covered by unemployment insurance and the severance pay scheme (so-called *Abfertigung neu*); since then, they have also had the right to receive sick pay from the employer. Since January 2009, the self-employed have been able to opt in to unemployment insurance.

Overall, these reforms have aimed at increasing the coverage of public social insurance for the self-employed and people in non-standard employment. However, given the rather strong 'principle of equivalency' (i.e. the link between the duration and the amount of contributions paid and the level of social transfers from social insurance) within the Austrian system of social insurance, in terms of social security and social inclusion, the outcomes for these groups have tended to be more often problematic than for 'normal' employees. The principle of equivalency tends to reproduce inequality of earned income, whereby the self-employed and people in non-standard employment are more often affected by in-work poverty than are normal employees.

According to EU-SILC 2015, about 8% of all employed people in the age group 20–64 were recently at risk of poverty, i.e. were affected by in-work poverty.²² For the self-employed, the risk-of-poverty rate was 12%,²³ for freelance contractors and new self-employed it was 11%,²⁴ for people in part-time employment with less than 12 working hours per week (serving as a proxy for marginal part-time employment) it was 18%, and for workers on temporary fixed-term contracts it was 16% (Statistik Austria, 2016: 75).

People deciding to work as self-employed and to start a business have access to different forms of public support and subsidies in Austria. The New Business Support Foundation Act (*Neugründungsförderungsgesetz*; NEUFÖG) exempts, under specific conditions, both new businesses and business transfers from various fees and levies.²⁵ Counselling and subsidies are also available via various other instruments of the Federal Republic, the federal provinces and the Public Employment Service.²⁶

2 Description and assessment of social protection provisions for self-employed and people employed on non-standard contracts

2.1 Description of social protection provisions for self-employed and people employed on non-standard contracts

In Austria, a number of criteria are applied to distinguish between self-employment and dependent employment. These assess the characteristics of a given concrete activity. According to decisions by the Austrian Supreme Administrative Court (*Verwaltungsgerichtshof*),²⁷ the following characteristics are typical of dependent employment relationships: performing the activity on the premises of the customer, regularity and longer duration of the activity, obligation to personally provide the activity, restrictions on the freedom of choice of the employee in terms of performing the activity (subordination relationship/personal dependence), reporting requirements, work equipment provided by the employer, only one or a small number of clients/principals, restrictions on working for other customers (non-competition clause), payment of a remuneration. For an employment relationship to be defined as 'dependent employment', not all criteria have to be met. The most important criterion is that of subordination

²² Source: EU-SILC 2015, Statistik Austria (2016); poverty threshold: 60% of the national median equivalised household income.

²³ Professional status in the year of the survey, i.e. 2015.

²⁴ Low validity of data due to low number of cases in the survey.

²⁵ For more details see: <https://www.gruenderservice.at/>

²⁶ For an overview of the different instruments see: <https://www.wko.at/service/foerderungen.html> ; for services provided by the PES: http://www.ams.at/docs/001_UGP_Infoblatt.pdf

²⁷ See, for example, the decision by the Supreme Administrative Court of February 22 2006, ZI. 2005/09/0012, https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vwgh&Dokumentnummer=JWT_2005090012_20060222X00

relationship/personal dependence. That refers to the question of whether the employer/customer determines the working time, workplace, workflow, etc. Regarding social insurance, specific laws and institutional bodies exist in Austria. The most important source of law specifically addressing the self-employed is the so-called Trade Social Insurance Act (GSVG – *Gewerbliches Sozialversicherungsgesetz*),²⁸ while the SVA (Social Insurance Provider of Trade Industries; *Sozialversicherungsanstalt der Gewerblichen Wirtschaft*) deals solely with the self-employed in terms of specific social risks.²⁹

'Freelance contractors' (*Freie Dienstnehmer*) represent a specific form of employment on the cusp between self-employment and dependent employment. Unlike the self-employed, freelance contractors normally are not required to achieve a specific task; instead, like employees, they contribute their working time and their endeavour. Yet, unlike normal employees, freelance contractors face fewer restrictions in terms of their freedom of choice on how to perform the activity, e.g. in terms of working time, workplace, workflow, etc. In other words, the 'subordination relationship' and 'personal dependence' typical of normal employees does not apply to freelance contractors. Freelance contractors are – as with the self-employed – not covered by most labour law regulations, and they also have themselves to arrange to pay income tax.³⁰ Yet, at the same time, it is their employer who is responsible for registering them with social insurance and for paying their social insurance contributions. Freelance contractors are insured with the same social insurance institutions as normal employees.

The other non-standard forms of employment mentioned above – i.e. marginal part-time employment of employees and freelance contractors, temporary/fixed term employment and subcontracted agency work – are, in terms of social protection, subject to the same legal acts as for normal employees, and are covered by the same institutional structure as governs normal employees.

2.1.1 Healthcare and sickness: cash benefits and benefits in kind

Self-employed persons registered with the Chamber of Commerce (*Wirtschaftskammer*), new self-employed and liberal professions are all covered by health insurance under the GSVG (Trade Social Insurance Act) or the FSVG (Liberal Professions Social Insurance Act).

Self-employed persons registered with the Chamber of Commerce – the vast majority of the self-employed in Austria – are compulsorily insured under the GSVG as soon as their business is registered. The GSVG insurance covers health insurance, pension insurance and accident insurance. However, those self-employed with low turnover and income from self-employment can opt out of the compulsory insurance. To do so, a registered self-employed person may not have been insured under GSVG for more than 12 of the preceding 60 months, turnover may not exceed EUR 30,000 per year and earned income from self-employment may not exceed EUR 4,988.64 per year (figures for 2016).

For the new self-employed, compulsory insurance under GSVG begins once annual income from self-employment exceeds EUR 4,988.64 (income limit for 2016). This may only become clear later, i.e. at the time of the tax income statement made for the preceding year. The compulsory insurance then starts on the date on which self-employment activities commenced in that year – or, if that cannot be clearly determined, on 1 January of that year. In other words: compulsory insurance may come into force

²⁸ See <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008422>

²⁹ Other specific regulations exist for 'traditional' liberal professions in the form of the FSVG (Liberal Professions' Social Insurance Act; *Freiberuflich-Selbständigen Sozialversicherungsgesetz*) and for farmers in the form of the BSVG (Farmers' Social Insurance Act; *Bauern Sozialversicherungsgesetz*). For more details on these two groups see: SVA (2016a) and <https://www.svb.at/portal27/svbportal/content?contentid=10007.718082&portal:componentId=gtnd11a0dc4-3474-4af0-ba56-9fea2e449aaf&viewmode=content>

³⁰ That is, in terms of tax law, income from freelance contracts is treated as income from self-employment.

retrospectively. One other option is that the new self-employed declare that their income will exceed EUR 4,988.64 (income limit for 2016), and insurance then starts with this declaration. Furthermore, the new self-employed can opt in to GSVG health insurance, even if their income does not, or is not likely to, exceed the earnings limit.

As a general principle, once they are insured under the GSVG, the registered self-employed and new self-employed remain insured, even if their yearly income from self-employment turns out to be lower than the mentioned income limit. To end the compulsory insurance, the self-employment activity has to cease.

Within GSVG, the insurance contribution rate for health insurance amounts to 7.65% of earned income (not turnover). At the same time, there is a minimum contribution basis and a maximum contribution basis. Within GSVG health insurance, the minimum contribution basis (2016) was EUR 415.72 per month or EUR 4,988.64 per year.³¹ The maximum contribution basis was EUR 5,670 per month or EUR 68,040 per year. The minimum contribution basis implies that those self-employed with low earned income, i.e. not exceeding the minimum contribution basis, but who are still covered by compulsory insurance, may de facto pay a higher contribution rate than the normal 7.65%.

Regarding benefits in kind, the insured self-employed have, generally speaking, access to the same health services as insured employees. However, unlike most types of employees, the self-employed normally have to pay a patient's contribution amounting to 20% of the cost of the health services obtained.

Regarding cash benefits, those self-employed persons who are insured under GSVG and who have 0–24 employees receive a daily support benefit (*Unterstützungsleistung*) of EUR 29.23 for up to 20 weeks, payable from the 43rd day of work incapacity due to sickness. This support benefit was introduced on 1 January 2013.

Furthermore, a voluntary supplementary insurance for sickness benefit (*Krankengeld*) is available to the self-employed. The insurance contribution rate amounts to 2.5% of the contribution basis. Self-employed persons covered for more than 6 months by voluntary supplementary insurance receive a cash benefit from the fourth day of sickness for a maximum of 26 weeks. The sickness benefit amounts to 60% of the daily contribution basis.

Freelance contractors, employees on temporary/fixed term contracts and people working in subcontracted agency work are subject to the same rules of compulsory health insurance as normal employees, as specified in the ASVG (General Social Insurance Act; *Allgemeines Sozialversicherungsgesetz*).³² But what is important to note in this context is the issue of so-called *marginal part-time employment*.

All employment contracts (including freelance contracts) with income below the so-called lower earnings limit are – in principle – not subject to compulsory insurance (with the exception of accident insurance). In 2016, the monthly lower earnings limit was EUR 415.72. However, if there are various sources of earned income from dependent employment (including freelance contracts), these incomes are added together, and if total earnings from the different contracts exceed the lower earnings limit, then compulsory insurance applies in health insurance and pension insurance (with the insured person obliged to pay the related social insurance contributions retrospectively, amounting to 13.65% for white-collar employees and 14.2% for blue collar workers). Apart of that, companies that employ several persons on marginal part-time employment have to pay a general social insurance contribution to health and pension insurance if the total wage bill for those persons in marginal part-time employment exceeds 1.5 times the

³¹ This is equal to the lower earnings limit of the General Social Insurance Act (ASVG); see below on marginal part-time employment.

³² Freelance contractors are not eligible for paid sick leave. However, since 1 January 2008 they have been able to receive sickness benefit under ASVG from the fourth day of illness, with a wage-replacement rate of 50%.

lower earnings limit (1.5 x EUR 415.72 = EUR 623.58). This general social insurance contribution to be paid by the employer amounts to 16.4% of the contribution base. These rules were introduced in the late 1990s to reduce fiscal incentives for marginal part-time employment.

Since the late 1990s, persons in marginal part-time employment may also opt into health insurance and pensions insurance if no compulsory insurance applies. The monthly costs to opt in to health and pensions insurance are currently EUR 58.68 per month. In effect, this option creates a very low-cost opportunity to obtain health insurance *plus* periods of pension insurance.

2.1.2 Maternity/paternity cash benefits and benefits in kind

Regarding benefits in kind in case of maternity, the same rules apply for all persons insured by health insurance. Thus the self-employed (and their co-insured relatives) receive the same services as insured employees (and their co-insured relatives). Furthermore, unlike other benefits in kind under the health insurance, the patient contribution of 20% of the cost of the health services obtained (see above 2.1.1) is waived in the case of maternity.

An insured self-employed woman can *receive* a maternity allowance of EUR 52.69 per day for an 8-week period before and for an 8-week period after the birth (12 weeks in the case of high-risk births). A precondition of this is that the self-employed woman has to take on a replacement for at least 20 hours and 4 days per week. Those self-employed registered with the Chamber of Commerce may also opt for support benefit (*Unterstützungsleistung*, see above), amounting to EUR 29.23 per day. In this case, a replacement to take over the tasks of the self-employed woman is organised free of charge via the regional relief service association (*Betriebshilfeverein*).

For other types of insured employed people (including freelance contractors), maternity pay amounts to the average earned income over the previous 3 months plus a supplement for holiday and Christmas payment. For people in marginal part-time employment who have opted into health insurance, maternity pay amounts to EUR 8.91 per day (flat-rate benefit).

2.1.3 Old-age and survivors' pensions

For a long time, when it came to old-age and survivor's pensions, the rules that were applied to the self-employed were rather different from those applied to people in dependent employment. Still, the different systems in place by and large followed comparable principles, and the General Pension Act (*Allgemeines Pensionsgesetz*; APG) of 2005 brought a far-reaching harmonisation of the different strands of Austrian pension insurance (100% applicable to those born after 1 January 1955).

What is worth mentioning in this context as regards self-employed people is the minimum contribution basis, which for the registered self-employed (not the so-called new self-employed³³) is higher than for health insurance (see above 2.1.1). It currently stands at EUR 723.52 per month (or EUR 5,028.24 per year).³⁴ However, in the case of new business start-ups, during the first 3 years the lower minimum contribution base, as applied in health insurance, is used (equal to the lower earnings limit under ASVG; i.e. currently EUR 415.72). Clearly, especially the higher minimum contribution basis may bring with it a substantial financial burden if actual income is low. Therefore, a recent reform (also introduced for reasons of equal treatment) decided to reduce the minimum

³³ For the new self-employed, the minimum contribution basis for pension insurance is EUR 415.72.

³⁴ Before 2016, this higher minimum assessment basis also applied to health insurance for registered self-employed.

contribution basis gradually for the registered self-employed between 2018 and 2022, to the level of the lower earnings limit according to ASVG.³⁵

The social insurance contribution for pensions for all types of insured self-employed persons according to the GSVG currently amounts to 18.5% of earned income. This covers insurance for old-age, survivor's and invalidity pension.

The other types of non-standard employment mentioned above (with the exception of marginal part-time employment) are covered and treated under pension insurance in the same way as for 'normal' employees.

As already mentioned above, people solely engaged in marginal part-time employment (as a normal employee or freelance contractor) are not regularly covered by pension insurance. But they can opt into pension insurance at rather low cost. The monthly contribution for both health insurance and pension insurance is currently a lump sum of EUR 58.68.

2.1.4 Unemployment benefits and social assistance benefits

Traditionally, self-employed people did not have access to unemployment insurance in Austria. The same – for a long time – held true for freelance contractors.

Furthermore, people in marginal part-time employment are not covered by unemployment insurance. This – unlike health and pension insurance – even applies in the case of persons who have more than one contract of marginal part-time employment and where total income exceeds the lower earnings level of statutory insurance (i.e. currently EUR 415.72 per month). People in marginal part-time employment cannot, unlike with health insurance and pension insurance, opt in to unemployment insurance.

Freelance contractors (with income above the lower earnings level of statutory insurance, i.e. currently EUR 415.72 per month) have, since January 2008, been covered by unemployment insurance. The insurance contribution amounts to 6.35% of earnings, with 3.35% to be covered by the employer and 3% by the freelance contractor (same as for other employees).

Although no statutory unemployment insurance exists for the self-employed, this group may still access unemployment benefits via different routes:

- Those self-employed who have been self-employed since before 1 January 2009, and who had previously accumulated the right to receive unemployment benefits via dependent employment, continue to have this right for an indefinite period. In other words, they can receive unemployment benefit thanks to their earlier insurance via dependent employment, if they quit self-employment and become unemployed (so-called *Unbefristete Rahmenfristerstreckung*).
- Those self-employed who became self-employed after 1 January 2009, and who had previously accumulated the right to receive unemployment benefits via dependent employment, continue to have this right for an indefinite period if they had unemployment insurance for a minimum of 5 years (so-called *Unbefristete Rahmenfristerstreckung*). If they held unemployment insurance for less than 5 years, the right to receive benefits from unemployment insurance ends after 5 years of self-employment.
- Since 1 January 2009, the self-employed (with health and pension insurance under the GSVG) can opt in to unemployment insurance. However, the decision to do so has to be taken within 6 months of starting the business. There are three different options for levels of insurance contributions, corresponding to three different levels of benefits. The self-employed can choose a contribution basis amounting to 25%, 50% or 75% of the upper contribution basis. The contribution

³⁵ See e.g. <https://www.wko.at/Content.Node/Service/Arbeitsrecht-und-Sozialrecht/Aktuelle-Werte/Neugruender-2016.html>

rate is 6%. A monthly contribution (values for 2016) of EUR 85.05 corresponds to a daily unemployment benefit of EUR 22.79 (option 1); a monthly contribution of EUR 170.10 equates to a daily unemployment benefit of EUR 36.71 (option 2); and a monthly contribution of EUR 225.15 yields a daily unemployment benefit of EUR 50.77 (option 3). Rules on minimum insurance records for benefit access and maximum benefit duration are similar to those that apply to normal employees.

People in temporary/fixed-term employment and people performing temporary agency work are covered by unemployment insurance under the same regulations as normal employees.

Social assistance in Austria is provided by the Guaranteed Minimum Income (GMI) scheme (*Bedarfsorientierte Mindestsicherung*). GMI is granted on a means-tested basis, taking into account both earned income and assets (which – according to specific rules – largely have to be liquidated before GMI is granted). GMI can be granted if no earned income exists, or can act as a top-up for low earned income. In fact, the latter is the case for the majority of benefit recipients of working age who do not have severe health issues. In principle, GMI may be granted as a top-up to income both earned as an employee and as a self-employed person.

2.1.5 Long-term care benefits

Neither long-term care cash benefits nor benefits in kind designed for people in need of long-term care are linked to social insurance in Austria. They are granted on a universal and/or means-tested basis. The same rules apply to people in dependent employment, the self-employed and people in non-standard forms of employment.

2.1.6 Invalidity, accidents at work and occupational injuries benefits

Access to invalidity pension and to occupational injuries benefits is organised via pension insurance, dealt with above in section 2.1.3. Benefits for the self-employed are, in principle, granted according to the regulations governing the general scheme (applicable to normal employees). The only particular feature regarding the self-employed is a somewhat different definition of invalidity.³⁶ All the other non-standard forms of employment are dealt with according to the general scheme (applicable to normal employees).

Regarding accidents, the self-employed and people in all non-standard forms of employment dealt with above are covered by accident insurance, just the same as normal employees. This even applies to marginal part-time employees and registered self-employed with income below the minimum contribution basis of EUR 415.72 per month³⁷ or EUR 4,988.64 per year (see also section 2.1.1).

2.1.7 Family benefits

The most important types of family benefits in Austria are family cash benefits (*Familienbeihilfe*) and childcare allowance (*Kinderbetreuungsgeld*).

Family cash benefits³⁸ are granted according to universal principles and are not linked to status of employment or insurance. Family allowance is normally granted up until the child turns 18, or in specific circumstances (further education) the 24th birthday.³⁹

Childcare allowance is available according to different models (different flat-rate and income-related models). Income-related models are only available to someone who was engaged in insured employment in the 6 months preceding the birth of the child, no

³⁶ For details see SVA (2016b, 20ff.).

³⁷ This is equal to the lower earnings limit of the General Social Insurance Act (ASVG); see above on marginal part-time employment.

³⁸ For details see: <https://www.help.gv.at/Portal.Node/hlpd/public/content/143/Seite.1430900.html>

³⁹ For details see: <https://www.help.gv.at/Portal.Node/hlpd/public/content/143/Seite.1430900.html#Benefits>

matter if this was self-employment or dependent employment.⁴⁰ Flat-rate childcare allowance is granted without any precondition of earlier insurance. Childcare allowance may be granted until the child turns 3, depending on the model chosen. Family cash benefit and childcare allowance may be granted simultaneously.

Overall, family benefits in Austria show a very high degree of accessibility, irrespective of status of employment.

2.2 Assessment of the existing social provisions and of the impact of possible extension of their coverage

Since the middle of the 1990s, reforms in Austria have pursued the aim of integrating all types of earned income from employment into social security. The *coverage* of social insurance – and the obligation to pay social insurance contributions – was extended to the new self-employed and freelance contractors in terms of pension insurance, health insurance and accident insurance in 1996.

At the same time, the regulations on marginal part-time employment were reformed, so that income from such contracts, in the case of multiple jobholders, must be added to other income from dependent employment or freelance contracts. And once the lower earnings limit (*Geringfügigkeitsgrenze*) of (currently) EUR 415.72 per month is met, income from such contracts leads to coverage by health and pensions insurance, with related insurance contributions payable. Apart from that, people who are solely active in marginal part-time employment can opt in to health and pensions insurance at fairly low cost.

Furthermore, as described above, freelance contractors were integrated into unemployment insurance from 1 January 2008, and the possibility to opt in to unemployment insurance became available to the self-employed from 1 January 2009.

Overall, it would be fair to say that the question of coverage, in principle, is not a major issue in Austria for the self-employed and people in non-standard forms of employment. This evidently holds for health insurance (including benefits in case of maternity), pensions insurance (including benefits in case of invalidity) and accidents insurance. Nor generally is coverage for long-term care benefits, family benefits and the minimum income scheme any more problematic than for normal employees, since these benefits are largely provided not according to the principles of social insurance, but according to a universal model (partly combined with means tests).⁴¹ However, the self-employed reportedly often face problems in claiming GMI, partly because they have to be available for any (other) job offered by the Public Employment Service and partly because their income situation is often difficult to assess or may be rather volatile.⁴² Formally, the schemes for the self-employed by and large grant the same quality and level of benefits as are enjoyed by normal employees. The only exception is the patient's contribution, amounting to 20% of the cost of the health services obtained for the self-employed.⁴³

The Austrian system of social insurance is fragmented, in the sense that in some sectors of social protection different systems of social insurance exist for the self-employed and

⁴⁰For details see:

https://www.help.gv.at/Portal.Node/hlpd/public/content/143/Seite.1430600.html#General_information_about_childcare_allowance

⁴¹ One exception is a specific model of childcare allowance, so-called income related, where insured employment of 6 months before the birth of the child is a precondition for access. However, a lump-sum childcare allowance is also available, where no such precondition has to be met; see: https://www.help.gv.at/Portal.Node/hlpd/public/content/143/Seite.1430600.html#General_information_about_childcare_allowance

⁴² See e.g. <http://derstandard.at/2000021751673/Schwieriger-Umgang-mit-Mindestsicherung-fuer-Selbststaendige>

⁴³ This does not apply to all kinds of health services and can be reduced to 10% if the insured person agrees on a plan for health prevention. Furthermore, the list of benefits of health insurance under the GSVG (self-employed) is rather more comprehensive than the list under ASVG (dependent jobholders).

for dependent jobholders; however, it still provides a considerable degree of *inclusiveness and transferability*.

In case of multiple employment status – e.g. when dependent employment is combined with self-employment – insurance contributions have to be paid on the sum of income from different sources, but only up to the upper earnings limit (*Höchstbeitragsgrundlage*) of currently EUR 68,040.00 per year. If persons are insured with more than one provider for health insurance (so-called multiple insured), they can choose from which provider to obtain health services. In old-age insurance, contributions paid for different types of earned income (i.e. salaries, income from freelance contracts, income from dependent employment) are registered in one common pension account, and insured periods spent in different types of employment are aggregated in one joint history of insurance.

One other measure that to some degree facilitates the move from unemployment or dependent employment to self-employment is the possibility, under specific conditions, to 'export' the right to receive benefits from unemployment insurance gained thanks to earlier dependent employment, when deciding to move to self-employment (see above section 2.1.4 on *Rahmenfristerstreckung*).

One *problematic issue* might be that marginal part-time employment and *multiple marginal part-time employments* (with aggregate income above the lower earnings limit for social insurance) do not lead to coverage by *unemployment insurance*. However, marginal part-time employment often comes in combination with some other status covered by social insurance (see Table 1 below). A comparable situation holds for people on marginal freelance contracts (see Table 2 below).

Of the approximately 306,200 people in marginal part-time employment, around 138,000 (45%) are only employed in this form of employment, and are not covered by social insurance, in the sense of simultaneously receiving a benefit from one of the systems of social security.⁴⁴ Around 74,000 persons had marginal employment as a second job, in addition to fully insured employment; some 51,000 had a simultaneous pension benefit; and about 30,000 received a benefit from unemployment insurance. A similar situation applies to marginal freelance contractors, where again many people have additional simultaneous coverage by social insurance via other channels. However, the overall situation appears to be more problematic in the case of women than men. For women, marginal employment is more often the sole status of employment or social insurance than is the case for men.

⁴⁴ In Austria, for many social benefits, it is possible to have additional earnings up to the marginal-employment earnings limit, without the benefits being cut.

Table 1: People in marginal part-time employment (reference date 1 July 2014)

Employment/social insurance status	People in marginal part-time employment		
	Total	Men	Women
Total: people in marginal part-time employment	306,158	113,168	192,990
Only marginal part-time employment	137,803	43,256	94,547
One contract of marginal part-time employment	130,657	41,840	88,817
Two or more contracts of marginal part-time employment	7,146	1,416	5,730
Marginal part-time employment plus additional social insurance	168,335	69,912	98,443
Employment covered by pension insurance	73,582	30,204	43,378
Own pension	50,691	23,094	27,597
Benefit from unemployment insurance	29,917	14,684	15,233
Childcare allowance	10,681	539	10,142
Benefit from health insurance	1,768	696	1,072
Two or more additional coverages by social insurance	1,716	695	1,021

Source: Hauptverband der Österr. Sozialversicherungsträger, Haydn (2015).

Table 2: People on marginal freelance contracts (reference date 1 July 2014)

Employment/social insurance status	Marginal freelance contracts (persons)		
	Total	Men	Women
Total: people on marginal freelance contracts	25,966	10,711	15,255
Only marginal freelance contracts	10,602	3,451	7,151
One marginal freelance contract	10,354	3,395	6,959
Two or more marginal freelance contracts	248	56	192
Marginal freelance contractor plus additional social insurance	15,364	7,260	8,104
Employment covered by pension insurance	8,775	4,104	4,671
Own pension	4,373	2,368	2,005
Benefit from unemployment insurance	1,521	657	864
Childcare allowance	405	21	384
Benefit from health insurance	99	36	63
Two or more additional coverages by social insurance	191	74	117

Source: Hauptverband der Österr. Sozialversicherungsträger, Haydn (2015).

What generally appears to be more problematic than the question of coverage by social insurance is the question of working conditions and realisable earnings of people in self-

employment (especially for single-person businesses and new self-employed) and of people in different non-standard forms of employment. Although empirical evidence for these questions is rather sparse, since there is no recent, up-to-date, in-depth research on this issue, there are still signs that substantial challenges exist in this respect. Geisberger (2013) shows that low-wage employment – with hourly wages below 60% of the median wage – occurs more often in non-standard than in standard employment. In 2010, 9.4% of all full-time salaried workers and employees were engaged in low-wage employment, but that was true of 23.7% of all part-time employed, 24% of all people in temporary/fixed-term employment, 11% of those performing subcontracted agency work and no less than 53% of those in marginal part-time employment (ibid.).

No more comprehensive research has recently been published regarding the work and income situation of single-person businesses and new self-employed. Research by Fink et al. (2006) shows a substantial differentiation within the group of the new self-employed, but that at the same time a substantial part of them is facing low income. Regarding registered single-person businesses, it is quite alarming that the median gross turnover of such businesses recently only amounted to EUR 11,553 per year, and in the case of women to only EUR 8,788 gross (men: EUR 15,171).⁴⁵

One major problem of the Austrian social insurance scheme is that – via the principle of equivalency (of contributions and benefits) – it to a large extent reproduces inequalities of earned income, e.g. in the case of unemployment, but also old-age pensions. Furthermore, discontinuous employment, which is more often found in the context of non-standard employment than in standard dependent employment, may lead to situations where people who become unemployed do not meet the eligibility criteria for unemployment benefits. Yet, this problem is not restricted to people with a history of non-standard employment. Empirical evidence on this problem is also sparse. However, according to data from the Labour Force Survey, in Austria between 30% and 35% of those people (aged 15–64) who have been unemployed for between 1 and 2 months are not registered with the Public Employment Service (PES) and do not receive benefits from unemployment insurance.⁴⁶ This points to a structural problem, with a considerable share of the unemployed not meeting the eligibility criteria for benefits from unemployment insurance, and therefore not registering with the PES.

As sketched out above, Austria has a history of extending social insurance coverage to different forms of non-standard employment.

However, to the best of our knowledge, no detailed assessments are available about the concrete financial implications of these reforms. Integrating these forms of employment into social insurance has made them more costly for employers, thus reducing the incentive to replace standard employment with non-standard forms of employment. However, marginal part-time employment and new self-employment have continued to rise, irrespective of (partial) coverage by social insurance. In the case of freelance contractors, new regulations that came into force on 1 January 2008, inter alia integrating them into unemployment insurance, appear to have had a mitigating effect, and have accompanied an overall reduction in the number of such contracts. However, it may be the case that freelance contracts have increasingly been replaced by new self-employment, which has continued to rise.

⁴⁵ See: <https://www.watchlist-prekaer.at/daten-fakten/>

⁴⁶ Source: LFS, Eurostat Database, indicator Ifsa_ugadra.

3 Conclusions and recommendations

As mentioned repeatedly in this report, general coverage by different strands of social insurance and social protection is not a major problem in Austria, so far as self-employment and non-standard employment are concerned. Reforms over the past two decades have closed earlier gaps, making literally all kinds of earned income subject to social insurance (and related social insurance contributions).

However, coverage is only one point to be taken into consideration. Other issues are a) the actual accessibility of benefits (especially in terms of necessary insurance records, e.g. in unemployment insurance) and b) the design of benefit formulas. The latter may be more or less progressive, coming with different distributional effects.

The ongoing differentiation of chances and risks on the labour market comes with a growing divergence concerning continuity of employment and levels of earned income, with a substantial share of low-wage employment.⁴⁷

Against this background, what is needed in the Austrian case is a more detailed assessment of how these changes in the structure of the labour market have evolved over the past 10 years and – in a wider sense – of the degree to which the largely Bismarckian design of the Austrian welfare state (especially regarding health insurance, pensions insurance and unemployment insurance) is appropriate to deal with the related challenges. Clearly, such an in-depth analysis is beyond the scope of this report. But just to mention one point: the non-progressive wage-replacement rate of Austrian unemployment insurance (i.e. the wage-replacement rate does not increase with previous lower earnings from gainful employment) produces very low benefits after preceding low-income employment.

Regarding self-employment, one crucial question is the definition of self-employment and the 'legal certainty' that derives from this definition. In Austria, the definition of self-employment derives from case law and leaves some room for interpretation. It would be helpful to have a more clear-cut distinction between self-employment and dependent employment.

Also the definition of freelance contractors derives from case law. Again, room for interpretation is substantial and anyway, it seems questionable whether such a quasi-intermediate form of employment makes sense. This construction offers an opportunity to circumvent most of the existing labour law regulation, including EU legal acts that seek the coordination of minimum labour law regulation in all EU Member States.

One other point is that self-employed people de facto have to organise their social insurance issues themselves, and the related regulations tend to be rather complicated. The self-employed – especially those who have recently started out in self-employment – are regularly faced with having to pay social contribution arrears, as full contributions are only calculated ex-post. This is a problem that is hard to avoid, as the income of the self-employed is often very volatile over the year. Still, awareness-raising measures and counselling could be expanded in this context.

⁴⁷ In Austria recently amounting to 14.76% of all employees in the private sector (companies with more than 10 employees); Source: Structure of Earnings Survey, Eurostat Database, indicator: earn_ses_pub1t

Annex 1

SUMMARY TABLE ACCESS SOCIAL PROTECTION: SELF-EMPLOYED

	On her/his own account	With employees (self-employed employer)	Dependent on single client	Dependent on contractual relationship with client	Liberal professions (e.g. doctor, notary, lawyer)
Healthcare - cash benefits and benefits in kind	Full	Full	Full	Full	Full
Sickness - cash benefits and benefits in kind	Full	Full	Full	Full	Full
Maternity/paternity - cash benefits and benefits in kind	Full	Full	Full	Full	Full
Old age pensions (preretirement benefits and pensions)	Full	Full	Full	Full	Full
Survivors pensions and death grants	Full	Full	Full	Full	Full
Unemployment benefits	Partial*	Partial*	Partial*	Partial*	Partial*
Social assistance benefits	Full	Full	Full	Full	Full
Long-term care benefits	Full	Full	Full	Full	Full
Invalidity benefits	Full	Full	Full	Full	Full
Accidents at work and occupational injuries benefits	Full	Full	Full	Full	Full
Family benefits	Full	Full	Full	Full	Full

* possibility to opt in to unemployment insurance

SUMMARY TABLE ACCESS SOCIAL PROTECTION: CONTRACTUAL EMPLOYMENT (NON-STANDARD CONTRACTS)

	Full-time employee	Part-time employee	Fixed-term employee	Temporary agency worker	Casual and seasonal workers	On-call workers	Zero-hour workers	Apprentices
Healthcare - cash benefits and benefits in kind	Full	Full	Full	Full	Full	n.a.*	n.a.*	Full
Sickness - cash benefits and benefits in kind	Full	Full	Full	Full	Full	n.a.*	n.a.*	Full
Maternity/paternity - cash benefits and benefits in kind	Full	Full	Full	Full	Full	n.a.*	n.a.*	Full
Old age pensions (preretirement benefits and pensions)	Full	Full	Full	Full	Full	n.a.*	n.a.*	Full
Survivors pensions and death grants	Full	Full	Full	Full	Full	n.a.*	n.a.*	Full
Unemployment benefits	Full	Full	Full	Full	Full	n.a.*	n.a.*	Full
Social assistance benefits	Full	Full	Full	Full	Full	n.a.*	n.a.*	Full
Long-term care benefits	Full	Full	Full	Full	Full	n.a.*	n.a.*	Full
Invalidity benefits	Full	Full	Full	Full	Full	n.a.*	n.a.*	Full
Accidents at work and occupational injuries benefits	Full	Full	Full	Full	Full	n.a.*	n.a.*	Full
Family benefits	Full	Full	Full	Full	Full	n.a.*	n.a.*	Full

* On-call and zero-hour contracts are not allowed in Austria.

** Possibility of voluntary opt-in to social insurance.

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