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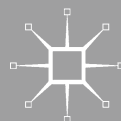
AMPARO SERRANO-PASCUAL
& MARIA JEPSEN

THE DECONSTRUCTION OF EMPLOYMENT AS A POLITICAL QUESTION

'Employment' as a Floating Signifier



The Deconstruction of Employment as a Political Question

Amparo Serrano-Pascual · Maria Jepsen
Editors

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'Employment' as a Floating Signifier

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The purpose of the seminar was to gather together experts from different countries and disciplines in order to discuss and monitor recent developments in the process of deconstruction of employment as a central category for conceiving and regulating the social sphere. This meeting produced some very thought-provoking observations on the political processes involved in the production of new reference categories for understanding, regulating and problematising employment in today's societies, as well as its impact on different social and gender categories. The meeting not only brought together several different analytical disciplines (sociology, law, economics, social psychology) and additional contributors (researchers, social and trade-union actors), but also involved experts from various countries where these processes of deconstruction of employment had taken very different forms with varying degrees of severity. We should like to express our thanks to the European Trade Union Institute, which funded and coordinated the translation work and the meeting that served as a trigger for this joint publication. The ETUI is financially supported by the European Union. Bethany Staunton at the ETUI performed an excellent task of coordinating and revising the translated texts, supported by an exceptional and efficient team of translators.

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Self-employment and the transformation of employment relationships in Europe

Alberto Riesco-Sanz
Complutense University of Madrid

Throughout the course of contemporary European history, the configuration, mobilisation and utilisation of the productive capacity of the population have increasingly – albeit not exclusively – tended to be centred on one of the different forms of salaried employment. The conditionality, arbitrariness and indeed precariousness that a salaried employment relationship produces in the interaction between people and the work they do resulted in a long and often turbulent process of institutionalisation and stabilisation of labour relations. This process was necessary, not only for the protection of the people affected but also in order to guarantee the production process itself. The institutionalisation of employment led to the recognition of the political, social and economic rights of these people, albeit to varying degrees and at different points in time in different countries. It also resulted in the establishment of a variety of mechanisms and institutions intended to minimise the risks associated with modern employment relationships, in many cases through their mutualisation. Fundamentally, these risks arose when people were unable to continue working as salaried employees due to factors such as illness, old age, unemployment, or the obsolescence of their skills and knowledge.

However, rather than automatically granting these new rights and guarantees to all of the potentially affected groups, the state introduced extensive selection and classification criteria for them. As a result, it can be argued that the establishment of the political, social and economic rights embodied in the "salaried employment regime" was accompanied by the exclusion of these guarantees for other parts of the working population in Europe. These groups included people who worked only intermittently or irregularly and people engaged in forms of employment (self-employment) or industries (e.g. domestic service and agriculture) that did not conform to the formal definition of salaried employment based on the legal principles of subordination and working in the employ of another.

However, the extent of this exclusion should be qualified. Over the course of time, most European countries have at least to some degree extended the

rights and institutions that were originally established for salaried employees (or certain groups of salaried employees) to groups of workers and types of employment that are wider and more diverse than initially envisaged. This substantial widening of the scope of the "salaried employment regime" means that its original focus on the "working class" has been superseded by a far more heterogeneous reality characterised by the convergence – not always with equal positions and rights – of groups with formerly conflicting interests such as industrial workers, agricultural workers, artists, domestic workers, middle management and even senior management, civil servants, sales executives and the liberal professions.

The fact that salaried employment is a widespread phenomenon in the world's leading economies today might cause us to erroneously assume that it is becoming more homogeneous. In actual fact, however, nothing could be further from the truth. Europe is currently witnessing a rise in the heterogeneity and multiplicity of models for utilising the productive capacity of the population. This applies both to formal salaried employment (subcontracting, temporary work, part-time work, casual work and zero-hour contracts, etc.) and its combination in various shapes and forms with different types of non-salaried work (self-employment, voluntary work, work placements, unpaid work, etc.) or even undeclared work. These unconventional ways of utilising labour frequently result in hybrid employment models and regimes that are often insufficiently or poorly formalised, but which nevertheless interact with the institutions and mechanisms of traditional salaried employment on a daily basis despite not fitting in very well with their structures. This wide range of employment models and regimes with different configurations presents significant challenges both with regard to the coordination and organisation of production and in terms of employment quality and protection. It also points to major changes in the structure of Europe's employment regimes. This chapter will focus on one of these unconventional ways of utilising labour in Europe: self-employment.

1. The two distinct trends of self-employment in the European Union[1]

In 2015, there were just over 35 million self-employed workers in the European Union (EU-28). The majority (67%) were self-employed workers without

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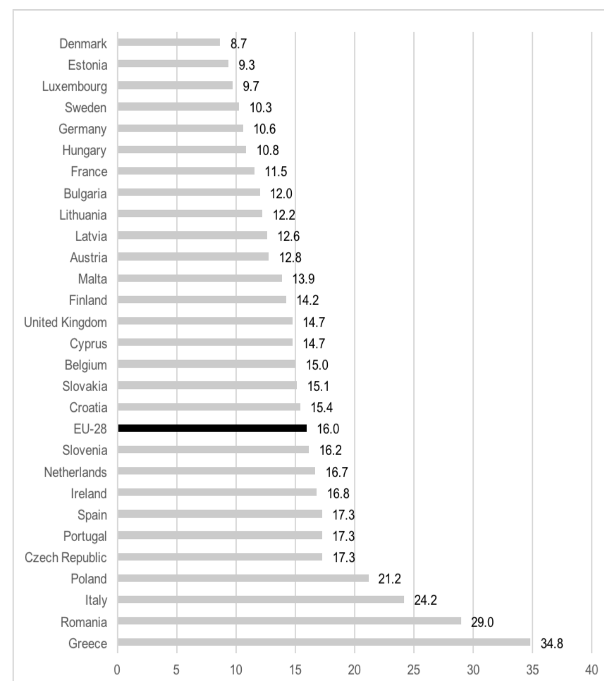
[1] The statistics used in this section are taken from Eurostat's *European Union Labour Force Survey* (annual averages for persons aged 15-74). Unless explicitly stated otherwise, the term "self-employment" is used generically to refer to all the different forms of non-salaried employment. Wherever possible, the statistics on self-employment are based on data for "non-salaried employees". "Northern", "southern" and "eastern" Europe are employed here as political rather than geographical categories.

employees. Workers formally defined as "non-salaried" thus accounted for a significant 16% of the EU-28's working population, although they were rather unevenly distributed across the member states, with the figures for some countries being well above or below the European average (see Figure 1). On the whole, the geographical distribution of the data appears to point to higher levels of self-employment in southern and eastern Europe (22% and 19% of the working population respectively) compared to western Europe and Scandinavia (12.5%). In other words, at first glance it would seem that there is a correlation between (lower) levels of economic development and (higher) levels of self-employment.

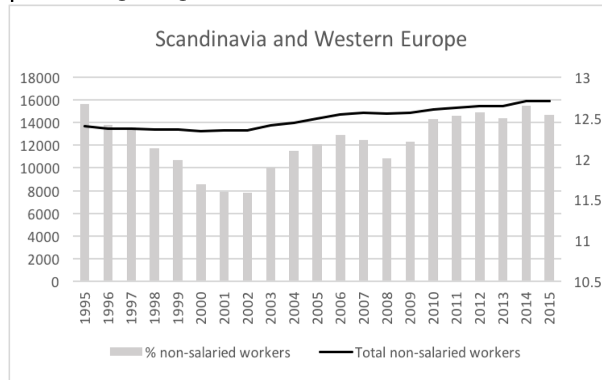
Figure 1. Non-salaried workers as a percentage of the total working population (aged 15-74) in the EU-28. 2015



Source: Author's own figures based on European Union Labour Force Survey (Eurostat). Annual figures for people aged 15-74.

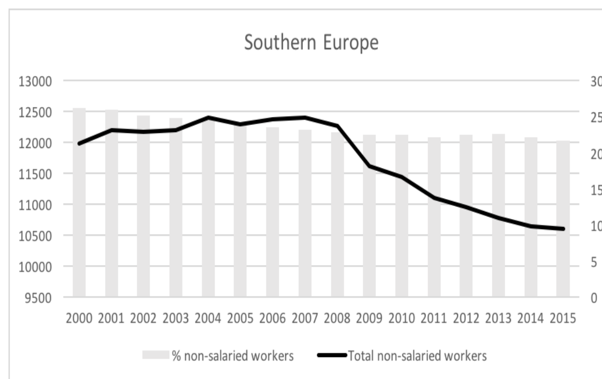
In actual fact, however, self-employment trends in Europe are not exclusively determined by differences in countries' level of development. Indeed, although self-employed work remains more widespread in southern and eastern Europe, if we consider its development over the course of time (see Figures 2, 3 and 4) it quickly becomes apparent that it is in fact the richest countries in Europe that have recorded the strongest growth in the number of self-employed workers over the past two decades. During this period, the southern European countries and the former socialist republics that are now members of the EU actually experienced a significant fall in the number of self-employed workers. In southern Europe, this decline has been especially pronounced since the onset of the financial crisis in 2008.

Figure 2. Non-salaried workers in Scandinavia and Western Europe (*), total numbers (left), percentage (right), 1995-2015.



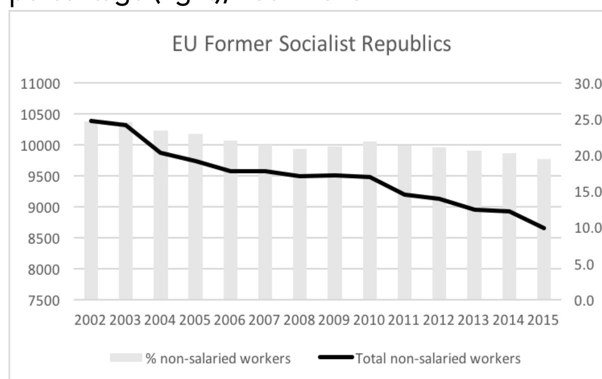
Source: Author's own figures based on European Union Labour Force Survey (Eurostat). Annual figures for people aged 15-74. (*) Germany, Austria, Belgium, Denmark, Finland, France, Netherlands, Ireland, Luxembourg, UK and Sweden.

Figure 3. Non-salaried workers in Southern Europe (*), total numbers (left), percentage (right), 2000-2015.



Source: Author's own figures based on European Union Labour Force Survey (Eurostat). Annual figures for people aged 15-74. (*) Cyprus, Spain, Greece, Italy, Malta and Portugal

Figure 4. Non-salaried workers in the EU's former socialist republics (*), total numbers (left), percentage (right), 2002-2015.

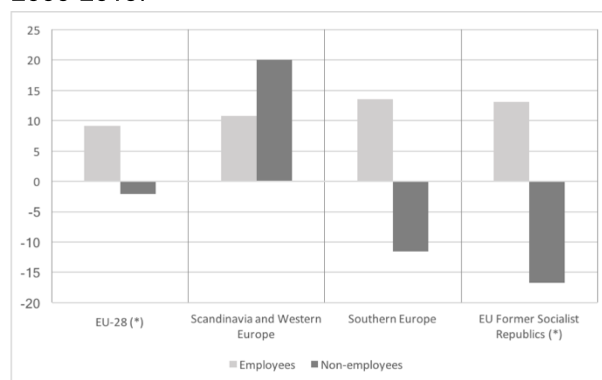


Source: Author's own figures based on European Union Labour Force Survey (Eurostat). Annual figures for people aged 15-74.

(*) Bulgaria, Croatia, Slovakia, Slovenia, Estonia, Hungary, Latvia, Lithuania, Poland, Czech Rep. and Romania.

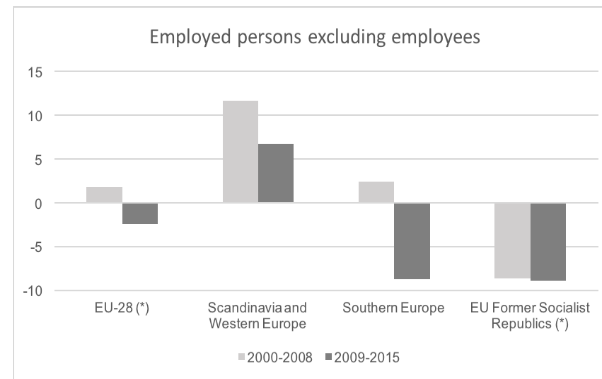
The aggregate data could therefore be providing an incomplete picture of how this form of employment is developing in Europe. Between 2002 and 2015, for example, the number of self-employed workers in the EU-28 declined by 749,000 (equivalent to a decrease of 3.4 self-employed workers per 1,000 members of the working population). This was reflected in the proportion of self-employed workers in the total workforce, which fell from 17.5% to 16%. During this same period, however, the number of self-employed workers fell by around 1.4 million in southern Europe (28.2 self-employed workers per 1,000 members of the working population) and 1.7 million in the former socialist republics (38.8 self-employed workers per 1,000 members of the working population). In stark contrast, Scandinavia and western Europe recorded an increase of 2.6 million self-employed workers over this period (21 self-employed workers per 1,000 members of the working population). Non-salaried work in Europe thus shows two distinct geographical trends: it has undergone significant growth in Scandinavia and western Europe (with a growth rate of 20% between 2000 and 2015, double the rate for salaried employment), whereas it has declined in southern and eastern Europe by 11.5% and 16.7% respectively (see Figures 5 and 6). What is the explanation for these pronounced differences in self-employment trends across different parts of Europe? In order to try and answer this question, it is first necessary to make a small digression.

Figure 5. Change in numbers of people employed in Europe by employment type (percentage), 2000-2015.



Source: Author's own figures based on European Union Labour Force Survey (Eurostat). Annual figures for people aged 15-74.
(*) Figures only available from 2002

Figure 6. Change in numbers of non-salaried workers in Europe (percentage), 2000-2008 and 2009-2015.



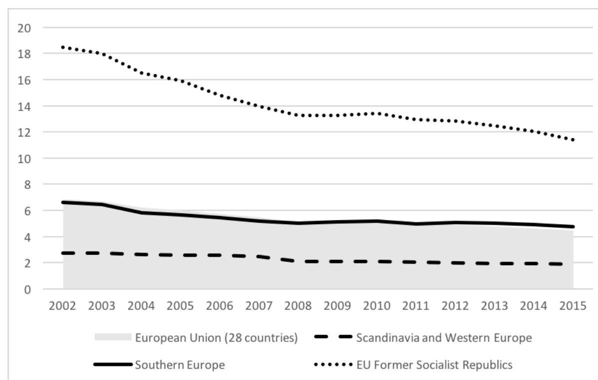
Source: Author's own figures based on European Union Labour Force Survey (Eurostat). Annual figures for people aged 15-74.
(*) Figures only available from 2002

It is clear that there has been a strong decline in self-employment in the former socialist republics since the onset of the 2008 financial crisis (see Figure 6). However, Figure 6 also shows that self-employment levels in eastern Europe were already falling at a similar rate before the crisis, meaning that the crisis cannot be held solely responsible for the decline in this part of Europe. In southern Europe, on the other hand, the pronounced reduction in self-employment does appear to be closely linked to the onset of the 2008 financial crisis (see Figure 6). However, if we consider a longer timeframe it becomes apparent that the decline in self-employment actually began before the 2008 crisis. Self-employment in Greece, for example, fell by 4.7% between 1983 and 2000 (declining from 51% to 42% of the working population). A similar phenomenon was observed in Portugal (where there was a 4.4% fall in self-employment between 1986 and 2000 and the proportion of self-employed workers declined from 31% to 25% of the total workforce) and, to a lesser extent, in Spain (a 1.7% fall in self-employment and a decline from 29% to 20% as a proportion of the total workforce)[2]. Seen over a longer timeframe, the decline in self-employment witnessed in southern and eastern Europe could therefore be at least partly attributable to a single process that occurred at different times in these two different parts of Europe: the economic "modernisation" driven by EU membership and the resulting restructuring of traditional industries (such as agriculture) that had been characterised by high levels of self-employment in the past (see Figure 7)[3].

[2] In some respects, Italy constitutes an exception, since although the number of self-employed workers also fell by 1.7% between 1983 and 2000, their number as a proportion of the total workforce remained relatively stable (falling from 29% to 28%).

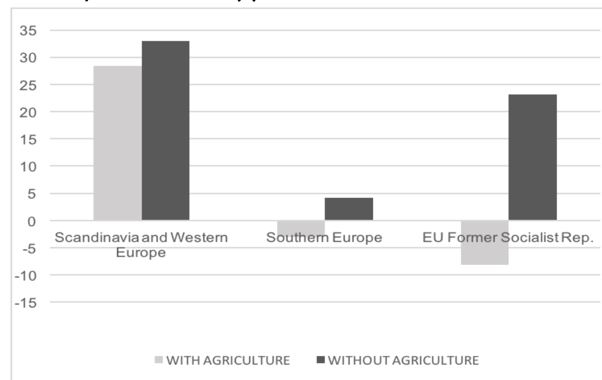
[3] In Spain, for example, the number of jobs in agriculture fell from 2.7 million in 1976 (21% of the working population) to just 737,000 in 2015 (4% of the working population). Almost 1.2 million jobs were lost between 1987 and 2015, the vast majority of which (894,000, or 72%)

Figure 7. Proportion of agricultural workers as a percentage of all workers in the European Union, 2002-2015.



Source: Author's own figures based on European Union Labour Force Survey (Eurostat). Annual figures for people aged 15-74.

Figure 8. Change in the number of self-employed workers in Europe with and without agricultural sector, 2000-2015 (*)



Source: Author's own figures based on European Union Labour Force Survey (Eurostat). Annual figures for people aged 15-74. (*) The figures refer only to self-employed workers (with or without employees). The period covered for the former socialist republics is 2002-2015.

However, the strong decline in self-employment recorded chiefly in southern and eastern Europe is not the only significant self-employment trend witnessed across Europe as a whole. As indicated above, in other parts of Europe self-employment levels have increased as a spontaneous or institutionally driven response to rising unemployment and as a means of promoting labour market flexibilisation and cheaper labour (see European Commission 2016; 2015a;

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belonged to self-employed workers. As a result, the proportion of salaried employees as a percentage of the industry's total workforce rose from 27% to 61% between 1987 and 2015 (National Statistics Institute-INE, Economically Active Population Survey). Furthermore, there is a strong positive correlation across the EU-28 between the "relative weight of agricultural work" and the "relative weight of self-employed work" (r=0.537, p=0.01). This supports the plausibility of the suggestion that a close link exists between self-employment and agriculture in Europe.

2015b; European Employment Policy Observatory 2014; European Parliament's Committee on Employment and Social Affairs 2013; Abdelnour 2013; Eurofound 2010; 2002; D'amours 2009; Muehlberger 2007)[4]. Although this second trend is especially apparent in Scandinavia and western Europe, where the transformation of the economy's traditional structures occurred much earlier, we believe that it is not solely confined to these countries. For instance, if we consider the development of self-employment with and without "agricultural jobs" (see Figure 8), it becomes evident that "non-agricultural" self-employment has risen across the whole of Europe, albeit to different degrees. In other words, the decline in self-employment in southern and eastern Europe resulting from the restructuring of the agricultural sector (and the impact of the 2008 financial crisis) has been accompanied by a simultaneous rise in self-employment in other industries and professions in these countries. This increase in self-employment throughout the whole of Europe points to wider changes in the field of employment. For several decades now there has been an ongoing drive in Europe to make the labour market more flexible, resulting in various combinations of "typical" and "atypical" employment that go beyond the simple use of self-employed labour[5]. Accordingly, the different interventions and reforms affecting self-employment in Europe over the past few decades should be framed and analysed in the context of these wider changes.

2. Self-employment as a target and instrument of European public policy

Although *entrepreneurship* has been the subject of debate and public policy in Europe since at least the 1980s (Eurofound 2011a, 7), its importance has clearly grown in recent years[6]. Self-employment has ceased to be regarded as an

[4] The Pearson correlation coefficient indicates a strong negative correlation ($r = -0.632$; $p = 0.01$) between the prevalence of self-employment in the labour market and the development of labour costs in Europe since 2010 (in other words, an increase in one of these two variables causes a decrease in the other). The Pearson coefficient also reveals a slightly weaker but nonetheless significant positive correlation ($r=0.474$; $p=0.05$) between the prevalence of self-employment and the level of unemployment (in this instance, an increase in one of the variables leads to an increase in the other). However, this simple statistical test does not in itself provide evidence of a causal relationship between the two variables.

[5] We addressed some of these phenomena in more detail – albeit still provisionally – in another recent paper. For further details, see (Célérier, Riesco-Sanz, and Rolle 2016a).

[6] This is illustrated by the numerous recent EU initiatives geared towards promoting and supporting small and medium-sized enterprises and *entrepreneurship*: the *European Charter for Small Enterprises* (2000), the *Modern SME Policy for growth and employment* (2005), the *Small Business Act for Europe* (2008), the *European SME Week* (2009), the *European Progress Micro-Finance Facility* (2010), the *Europe 2020 Strategy* (2010), the *Employment Package* (2012), the *Entrepreneurship 2020 Action Plan* (2013), the *Green Action Plan for SMEs* (2014),

indicator of economic backwardness and is instead now championed – under the guise of *entrepreneurship* – as a strategic instrument for promoting innovation and sustainable economic growth in the EU (see European Commission 2010). At the same time, self-employment has attracted a lot of interest among policymakers as a potential means of creating employment. Although not the main one, it has certainly become one of the mechanisms that are regularly included in Europe's active employment policies. For instance, one recent study on the use of *entrepreneurship* as a means of combatting unemployment in Europe found that all of the EU's member states had incentives (at national, regional or local level) for unemployed people to start their own businesses (European Employment Policy Observatory 2014). Similarly, an earlier study (Eurofound 2011b) calculated that between 2008 and 2011 approximately 180 initiatives had been launched in Europe to promote self-employment as a means of creating jobs. These included measures facilitating access to finance, tax incentives, cutting red tape, the promotion of an "entrepreneurial culture", advice services, help with recruitment, reforms of labour market and social security regulations, etc.[7].

The interest in self-employment and *entrepreneurship* as a tool for combatting unemployment is also reflected in the fact that many European countries now sanction or even promote part-time *entrepreneurship* and the simultaneous compatibility of employment regimes that could not have been combined in the past. In some cases, for example, unemployed people are provisionally allowed to do self-employed work while still drawing unemployment benefit. In total, at least 15 EU member states (Belgium, Bulgaria, Czech Republic, Germany, Estonia, Greece, Spain, Hungary, Lithuania, Poland, Portugal, Austria, Sweden, Slovakia and Finland) have introduced schemes providing non-refundable benefits and allowances to help unemployed people start a self-employed business. In some countries (Denmark, the Netherlands and France) these *entrepreneurship* allowances may even be claimed at the same time as (full or partial) unemployment benefit. However, it is more usual for the allowances to be granted either instead of unemployment benefit (Belgium, Germany, Austria, UK, Finland) or as a conversion (capitalisation) of unemployment benefits into a lump sum for setting up a business (Bulgaria, Spain, France, Luxembourg, Portugal) (European Employment Policy Observatory 2014, 16–21).

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etc. (European Commission 2016; European Employment Policy Observatory 2014; European Employment Observatory 2010).

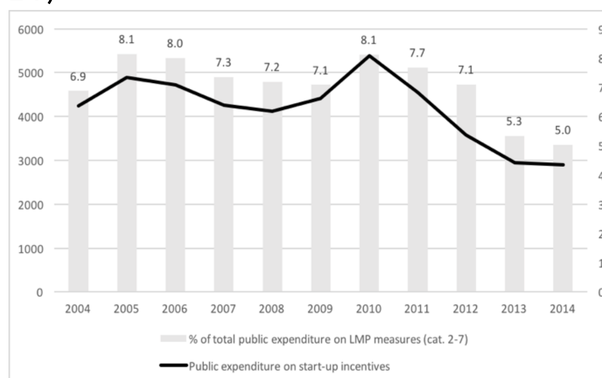
[7] For a more detailed country-by-country breakdown of the content and characteristics of many of these *entrepreneurship* measures, see (OECD/European Union 2015; European Employment Policy Observatory 2014; Eurofound 2011b).

Just like the decline in non-salaried employment in Europe, many of these measures were not solely a product of the 2008 financial crisis and in fact often date back to the 1980s (although at that time they perhaps received less media coverage and institutional support than they do today). This was borne out by one of the author's previous studies of the situation in France and Spain (Célérier, Riesco-Sanz, and Rolle, 2016b) as well as other studies which found that one third of EU member states have launched *entrepreneurship* incentives for unemployed people since the mid-1980s (and that most of the remaining EU countries have done so since 2000) (European Employment Policy Observatory 2014, 14–15). While the employment crisis that followed the 2008 financial crisis may have revived interest in this type of measure, their existence and content are far from new in a European context.

On the whole, these *entrepreneurship* measures have had little impact in terms of job creation since the onset of the crisis. Although there was an increase in public spending on this type of policy in Europe during the years immediately after the crisis (2008-2010), spending on them has fallen significantly since 2010. As a result, their share of total public spending on employment measures fell from 8.1% in 2010 to 5% in 2014 (see Figure 9). A similar trend can be observed for the number of participants in European *entrepreneurship* programmes. While their numbers and relative weight compared to other employment measures increased throughout the 2000s (an increase that thus predates the financial crisis), they have declined in absolute terms since 2010 and in relative terms since 2012, falling from 11% of the total number of participants in employment measures in 2012 to 9% in 2014 (barely 800,000 workers across the whole of Europe) (see Figure 10). Even in those countries with a stronger tradition of policies to promote self-employment among the unemployed, initiatives of this type usually affect little more than 1% to 2% of people officially registered as unemployed. Furthermore, they create very few additional jobs over and above the job of the self-employed individual themselves (European Employment Policy Observatory 2014, 38–42)[8].

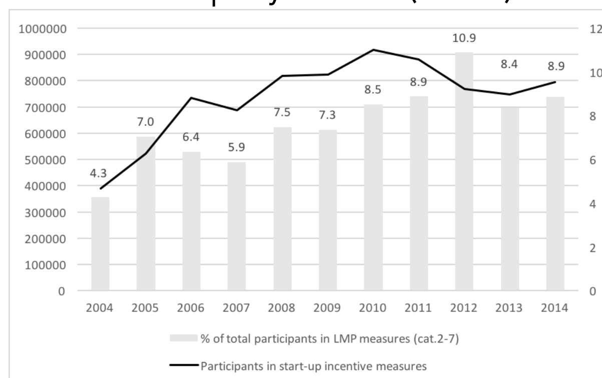
[8] For instance, the European Commission's report on employment in Europe (European Commission 2016, 42) found that just 2.7% of people registered as unemployed in Europe in 2013 had become self-employed (without employees) in 2014 (the equivalent figure for the economically inactive population was 5% and 4.5% for salaried employees). The figures are even lower for people who became "self-employed with employees": 0.7% of unemployed persons, 1.2% of the economically inactive and 3% of salaried employees.

Figure 9. Public spending on start-up incentive measures and as a percentage of total public spending on labour market policy measures (cat. 2-7)



Source: Eurostat. Unit: million EUR

Figure 10. No. of participants in start-up incentive measures and as a percentage of total participants in labour market policy measures (cat. 2-7)



Source: Eurostat. Unit: annual average stock

The underwhelming results of these *entrepreneurship* measures in terms of job creation are compounded by the extensive list of risks associated with them: fluctuating and often inadequate income; the fact that there is less or in some cases no social protection for self-employed workers; their tendency to promote "false self-employment" and the use of weakly protected forms of self-employment such as "economically dependent self-employed work"; the displacement of salaried employees into a high-risk form of employment, etc. (European Commission 2016; European Employment Policy Observatory 2014; Eurofound 2011a). In view of the above, how can we explain the apparent enthusiasm that Europe's political leaders and policymakers have shown for these types of measures over many years?

Part of the explanation is undoubtedly to do with the fact that some political leaders and public bodies have been seduced by the purely ideological elements of the *entrepreneurship* discourse (individualism, free enterprise, private initiative, independence, innovation, etc.) and that these principles are

similar to those driving other reform processes in Europe (e.g. social welfare reforms, the boom in active employment policies, the shift from welfare to workfare, etc.) (Barbier 2011; Serrano Pascual and Magnusson 2007; Kosonen 1999). Be that as it may, the increased prevalence of "entrepreneurship" initiatives on the European agenda should also be seen in the light of more pragmatic considerations. Other studies (European Employment Policy Observatory 2014, 11) have pointed out that although *entrepreneurship* programmes have little impact on unemployment figures, they are cheaper for the public purse than many other widespread measures such as income transfers to unemployed individuals and households. In other words, *entrepreneurship* programmes allow Europe's leaders and institutions to placate public opinion by being seen to be doing something about the politically important issue of unemployment without placing an excessive burden on the public finances[9].

In short, these measures – together with others that can be described either as massaging the figures (use of narrower definitions of "unemployed" by various institutions and statistical reports) or masking the real situation in society (using the proliferation of part-time work, short-term contracts, mini jobs, etc., to boost the official number of people in work) – allow Europe's political leaders and policymakers to put off any attempt to tackle the real causes and effects of Europe's employment crisis. It should be noted that the causes of this job crisis cannot be solely attributed to the current economic crisis and will therefore not necessarily disappear once Europe returns to a path of stable growth. This strategy makes it possible to avert any public discussion of the *de facto* job sharing that is already occurring in Europe under the worst possible conditions for its citizens: lower incomes (often even below the poverty indicators); irregular, erratic career paths; increasing precariousness and loss of rights; "involuntary" switching between periods of activity and inactivity, the proliferation of "atypical" forms of employment with fewer rights, etc. Seen through this lens, one might conclude that Europe's *entrepreneurship* policies have been more successful in terms of their impact on public opinion and in the political arena than in terms of actually combatting unemployment and that they have thus been better at influencing people's views than at creating jobs.

Nevertheless, it would be wrong to suggest that self-employment interventions in Europe are simply a reflection of the ideological obsessions, political strategies or concerns of Europe's leaders. The use of *entrepreneurship* as an instrument for combatting unemployment is not the only significant aspect in the debate on self-employment in Europe, nor is it the only type of public

[9] In 2011, public spending on *entrepreneurship* measures came to just 0.036% of Europe's GDP (European Employment Policy Observatory 2014, 11).

intervention in this area. Of equal or even greater importance to the debate on the transformation of employment in Europe are the reforms being introduced by many European countries to regulate and protect the self-employed.

3. The reform of self-employment in Europe: towards the establishment of hybrid employment regimes?

At the beginning of this chapter, we explained that the transformation of self-employment in Europe is characterised by two distinct trends. On the one hand, it is becoming less common in some countries due to the decline of industries such as agriculture where this form of employment had traditionally been widespread. On the other hand, however, self-employment is becoming more prevalent in many other industries due to the flexibilisation of the European labour market, the emergence of platform capitalism and the changes in the organisation and operation of companies as one of the actors responsible for procuring and combining different production factors. We have also seen how the rise in certain forms of self-employment in Europe is not an isolated phenomenon and should be understood in the context of a wider diversification of ways of utilising labour, of which the use of self-employment is just one expression (International Labor Organisation 2016). It is in this context that we should frame and analyse the growing number of reforms of self-employed work being introduced by many European countries, in particular with regard to certain ambiguous forms of self-employment that fall somewhere between independence and subordination, such as "economically dependent self-employed work"[10].

In recent years, many of the EU's member states have in some form or other debated what the correct legal definition of self-employment should be. In practice, these debates have really been about whether or not the different and increasingly heterogeneous forms of labour market participation should be incorporated into the salaried employment regime and covered by the corresponding institutions, and about the principles, assumptions and mechanisms for doing so. The debates have been accompanied by discussion of the rights of self-employed workers (and workers engaged in other unconventional forms of employment) and potential ways of improving their

[10] Based on the data in Eurofound's 5th *European Working Conditions Survey* (2010), it can be estimated that economically dependent self-employed workers (who receive at least 75% of their income from a single client) accounted for 22% of all self-employed workers in the EU-28. This figure rises to 39% if "economically dependent" self-employed workers are defined as those who depend on a single client for at least 50% of their income. Using this definition, economically dependent self-employed workers make up 16.5% of the total workforce in the agricultural sector and 6.6% of professionals and artists. These figures demonstrate that this is not just a residual employment category in Europe.

protection. However, the scale of the changes that such reforms would involve (not only to each country's employment law but also to their tax regimes, social security systems, unemployment benefits, etc.) has in many cases limited the extent to which these discussions have translated into concrete initiatives (Eurofound 2010, 14). As a result, the legal distinction between independence and subordination that has traditionally shaped the definition of salaried employment has remained in place as the basis of employment regulation in most countries. Despite this underlying continuity, however, it is possible to discern two different strategies or approaches to addressing the challenges posed by self-employment – and in particular forms of economically dependent self-employed work – to Europe's employment and social welfare regimes.

On the one hand, countries like Germany (Eurofound 2010, 16 ff.) have tried to tackle the growing diversity and ambiguity in the ways that labour is utilised through the consolidation of the salaried employment regime, i.e. by assimilating as many atypical forms of employment as possible into this established regime. They have done this by adopting a more flexible definition of salaried employment (it is now only necessary to fulfil at least three of the criteria on a much wider list of conditions rather than complying with a strict, closed definition[11]) and by giving the labour courts a greater role when it comes to interpreting these more flexible concepts. We do not deny that other mechanisms may be resulting in precarious employment conditions in Germany (promotion of part-time work, erosion of salaried employees' rights, longer working hours, loss of purchasing power, etc.). Nonetheless, Germany and other countries such as France and Belgium seem to have taken a fundamental decision to maintain salaried employment and the corresponding regulations (although admittedly the content of these regulations has been progressively "watered down") as the basis of employment regulation and protection, and to fit in other less conventional forms of labour utilisation around this model.

In contrast – or more accurately in parallel – to this type of approach, several European countries are opting to formalise and regulate some of these "atypical" forms of labour utilisation. Instead of watering them down or assimilating them into the established salaried employment regime, this second type of approach recognises – with considerable variability in the extent to which they are formalised – forms of labour utilisation that fall somewhere between subordination and independence, creating hybrid

[11] For example: the worker does not employ other employees, the worker usually works for only one contractor, prior to this job, the worker concerned carried out the same work as an employee, the same job is also performed by regular employees, the worker has not initiated any entrepreneurial activities, etc. (Eurofound 2010, 16–17).

employment regimes that share many of the dependencies that characterise salaried employment but frequently lack their basic protection mechanisms (Martín Puebla 2012; Schmid 2011; European Economic and Social Committee 2010; Perulli 2003; Supiot 2000)[12].

Austria, for example, introduced the "free service contract" in 1997 with the aim of extending the social insurance coverage of certain types of self-employed workers. These contracts are aimed at workers who formally perform their work without a relationship of subordination but who often work for a single or principal employer and with fixed working time schedules. The contracts recognise the existence of a certain degree of dependence or subordination, notwithstanding the independence that characterises self-employment, and provide self-employed workers with some of the basic statutory protection afforded to salaried employees (health, occupational accident and pension insurance). However, they exclude other important forms of protection such as unemployment insurance (Eurofound 2010, 28). Until their recent abolition in 2016, Italy had what was known as the *contratto di collaborazione a progetto* (co.co.pro), a type of employment contract aimed at economically dependent freelance workers. To qualify, a self-employed worker had to meet at least two of the following conditions over a two-year period: to have worked with the client for more than 8 months, to have received 80% of their income from the client during this period, or to have a permanent workplace on the client's premises (Terrasse, Barbezieux, and Herody 2016, 92)[13].

The example of Spain is one of the most notable and ambitious instances of this second type of approach (Riesco-Sanz 2016) and thus merits closer examination. In 2007, Spain adopted the *Ley 20/2007, de 11 de julio, del Estatuto del Trabajo Autónomo* (LETA) (Jefatura del Estado 2007), an act introducing a Self-Employed Workers Statute. The act established a professional regime specifically for self-employed workers that would become

[12] A recent research note prepared for the European Commission (Fondeville et al. 2015, 39) found that all the EU member states provided some form of old-age pension for self-employed workers, all but 4 provided sickness benefits, and 17 provided some form of unemployment benefit. These figures do point to a certain awareness of the need to protect self-employed workers in Europe, although as we know the problem is often in the level of the benefits, which are either inadequate or voluntary in nature. This point is amply illustrated by the case of Spain which is examined in more detail below.

[13] However, this new regulatory framework which provided slightly more protection for economically dependent self-employed workers did not apply to highly-skilled work, to people whose income exceeded a threshold of €18,000, to members of professional bodies (such as lawyers), or if the client could prove that the worker was genuinely self-employed (Terrasse, Barbezieux, and Herody 2016, 92).

the regulatory framework of reference. This regulatory framework was unanimously adopted by the Spanish parliament and remained virtually unchanged when the Right returned to power in 2011, except for the largely symbolic shift in emphasis from (the protection of) "self-employed workers" to (the empowerment of) "entrepreneurs"[14]. In other words, as well as recognising economically dependent self-employed work like other countries had done, Spain also introduced a specific regime for self-employed work. The framework for the regulation and protection of this modern form of employment is not based on the principle of legal subordination and adopts a positive definition of self-employment rather than simply defining it as anything that is not salaried employment. But has Spain's adoption of a specific employment regime for self-employed work actually resulted in a clearer differentiation of this type of work from formal salaried employment? We would argue that it hasn't and that if anything the opposite is true.

The adoption of the *Estatuto del Trabajo Autónomo* in Spain has resulted in the (admittedly only partial) convergence of two employment forms and regimes that have historically been treated as separate. This convergence is for example apparent in the fact that the LETA grants self-employed workers a range of individual and collective basic rights typically associated with employees: the right of association, representation and collective defence of their professional interests; the right to an appropriate work-life balance; the right to health and safety at work, etc. The LETA and its subsequent updates (Jefatura del Estado 2010; Ministerio de Trabajo e Inmigración 2009) also grant self-employed workers various types of protection and monetary benefits that have traditionally been associated with salaried employment: healthcare for pregnant women and people suffering from common illnesses or occupational diseases, death, accident and retirement benefits, and the opportunity for self-employed people who have ceased trading to claim a monetary benefit funded through the social security contributions of self-employed workers.

The convergence of the regimes for self-employed work and salaried employment is even more apparent in a new category of self-employed worker established by the LETA, referred to as *Trabajadores Autónomos Económicamente Dependientes* (TRADEs – Economically Dependent Self-

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[14] The new, conservative Spanish People's Party government has primarily focused on introducing complementary measures to promote *entrepreneurship*, tax incentives, and recruitment allowances for self-employed workers and small businesses. Many of these measures are set out in the *Ley de Apoyo a los Emprendedores y su Internacionalización* (Act of Support for Entrepreneurs and their Internationalization) (Jefatura del Estado 2013) and the subsequent *Ley de Fomento del Trabajo Autónomo* (Act for the Promotion of Self-Employed Work) (Jefatura de Estado 2015).

Employed Workers)[15]. For instance, the LETA makes it mandatory for a written employment contract to be concluded between economically dependent self-employed workers and the companies contracting their services, specifying (among other things) the self-employed worker's weekly/annual working hours and rest periods. The LETA also grants this category of self-employed worker the right to a form of pseudo collective bargaining that can in theory lead to the conclusion of "agreements of professional interest" between the self-employed workers' trade unions or professional organisations and the companies to which they provide their services – although the effectiveness of these agreements has been questioned (Castro 2011; Cairós 2008). Last but not least, the LETA stipulates that the labour courts shall be responsible for resolving TRADE workers' employment disputes – in other words, the employment law for salaried employees also applies to them.

However, the regime convergence hypothesis described above should be qualified, at least in terms of its current extent. The new regulatory framework for self-employment in Spain maintains a separate tax regime for self-employed workers, as well as a special social security regime – the Régimen Especial del Trabajo Autónomo (RETA – Special Regime for Self-Employment). Ever since it was established in 1970, and despite undergoing a series of reforms, the RETA has been characterised by lower social security contributions and consequently also by lower benefits and more limited protection mechanisms. In 2013, for example, the average contribution base for workers registered under the General Social Security Regime was calculated at €1,739/month, whereas the average contribution base under the RETA was €1,030/month (CEPYME 2013, 35). This is hardly surprising given that, according to figures from the Ministry of Employment and Social Security (2016), as of 31 December 2015 67.3% out of a total of more than 3 million self-employed workers registered with the RETA were paying the minimum social security contribution base of €884.40. The pensions paid to self-employed workers by the social security system remain modest and are

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[15] The LETA defines economically dependent self-employed workers (TRADEs) as workers who "usually carry out, personally and directly, an economic or professional activity for financial gain and predominantly for one physical or legal person, referred to as the 'client', on whom they are economically dependent in that they receive at least 75 percent of their income from said client in return for their work or economic or professional activities". However, this new category has had very limited success: according to Ministry of Employment and Social Security figures for the number of people registered with the social security system, just 9,851 TRADE contracts had been registered as of 31 December 2015. This is despite the fact that more than one study (Agut and Nuñez 2012; Asociación de Trabajadores Autónomos 2006) has estimated that around 300,000 self-employed workers (approximately 14% of all self-employed workers) could potentially be included in this category and benefit from the corresponding protection mechanisms.

significantly lower (38%) than the pensions under the General Regime that covers the majority of salaried employees (Unión de Profesionales y Trabajadores Autónomos 2012). Furthermore, in 2012, just 21% of self-employed workers registered with the social security system were covered by the cessation of trading insurance established by the LETA – which is compulsory for TRADEs but voluntary for all other self-employed workers (Unión de Profesionales y Trabajadores Autónomos 2012) – whereas 38% of the working population as a whole was covered by this insurance (or 78% if we do not count only contributory unemployment benefits) (Instituto Nacional de Estadística, *Indicadores Sociales* 2011). Figures such as these make it clear that self-employed workers do not yet fully enjoy the same rights as salaried employees. Consequently, the employment regime convergence and establishment of hybrid employment regimes postulated in this chapter should be understood as a long-term trend that forms part of the evolution of Spain's social employment protection systems. As we have seen, this trend is also occurring in other parts of Europe, albeit at different levels and to differing degrees.

Indeed, the countries that have adopted one or other of the two approaches described above have in practice not done so to the exclusion of the other. Countries such as Germany and France, where the assimilation of new forms of employment into the traditional salaried employment regime still predominates, have nonetheless also begun to recognise some of the abovementioned hybrid employment categories. Germany, for example, has formally recognised the category of the *arbeitnehmeränliche person* for economically dependent self-employed workers (defined as self-employed workers who work for or receive more than 50% of their income from a single client), granting such workers a (limited) number of protection rights traditionally enjoyed by salaried employees (Terrasse, Barbezieux, and Herody 2016, 91). Meanwhile, the *auto-entrepreneurs* regime introduced in France in 2009 establishes a category of entrepreneurs who operate on a self-employed basis but are entitled to a number of basic employee benefits such as sickness benefits, pensions, maternity/paternity benefits, etc. (Célérier, Riesco-Sanz, and Rolle 2016b). By the same token, even though – unlike France and Germany – Spain seems to have chosen to create a specific employment regime for some of these new forms of employment that is formally distinct from the regime for salaried employees, this hasn't prevented it from also constantly reinterpreting the ever-shifting formal boundaries of salaried employment. The rulings of Spain's labour courts have resulted in types of work that were originally classified as self-employment being redefined as "salaried employment" and

thus being covered by the established employment law and institutions for salaried employees[16].

Despite the differences in their motivation, content and implications, all of these reforms point to an ongoing transformation of the traditional salaried employment regime. They also suggest that Europe's nations are finding it necessary to intervene in response to a global transformation in the mobilisation and utilisation of labour that they themselves have contributed to. This transformation is resulting in workers becoming increasingly decoupled from particular jobs, leading to the emergence of more complex methods and structures for utilising their labour. This begs the question of whether this increased complexity should not also be reflected in the study methods used by researchers to try and explain it.

4. Self-employed work: an opportunity to adopt a broader understanding of the wage-based society

In spite of the reforms that have been introduced, in most European countries the legal definition of salaried employment continues to be based on the existence of an employment contract, i.e. of a relationship in which the worker is dependent on their employer (Rodríguez-Piñero 1999; Montoya 1999). In this context, however, "dependence" has a very specific meaning. The legal definition does not refer to the social and economic dimensions of dependence. Instead, it is the legal construct of subordination (the power of one of the parties to direct the work performed by the other) that is employed to distinguish between salaried employment and "non-subordinate" types of work (Lefebvre 2009; Rodríguez Piñero 1999).

The principle of legal subordination has thus traditionally played a pivotal role in defining the boundaries of salaried employment and also, indirectly, in the definitions of other forms of work (Lefebvre 2009; Didry and Brouté 2006; Chauchard and Hardy-Dubernet 2003; Supiot 2000; Cruz Villalón 1999). This is not a trivial matter, since the definitions in question have informed the establishment of criteria for access (or denial of access) to the rights, regulatory mechanisms and institutions of protection provided for by the salaried employment regime that has progressively developed since the second half of the 19th century. In other words, it is the application of the legal principle of subordination that has led to the traditional treatment of salaried employment and self-employment as two formally distinct – one might even say diametrically opposed – forms of employment, despite the fact that the

[16] For an analysis of Spanish case law between 1980 and 2008, see (Martín Valverde 2002; 2009).

differences between the two are in fact not always that clear. For instance, the principle of legal subordination is often blurred in *new forms of work organisation* where (salaried) workers are habitually required to show initiative and the ability to act autonomously in the performance of their duties and in terms of how their work is organised (quality circles and semi-autonomous work groups, project work, etc.) (Durand 2012; Lahera Sánchez 2005; Boltanski and Chiapello 2002). Meanwhile, there has been a rise in the use of subcontracting and outsourcing, which involves the contracting of workers and companies that despite being formally independent are in practice often forced to comply with the organisational imperatives and schedules, instructions and strategies of the contracting companies (e.g. with regard to quality standards, manufacturing processes, working hours, etc.) (Perraudin, Thévenot, and Valentin 2013; Lebeer and Martínez 2012).

Just like all the other social sciences in the field of employment, legal theory, too, has had to recognise that it is difficult to maintain clear distinctions between the different employment regimes when dealing with the "grey areas" in the labour market (Martín Valverde 2009; Cairós 2008; Alonso 2004; Supiot 1999). In legal practice, it is frequently necessary to take a range of very different factors into account in order to establish whether or not certain employment relationships constitute salaried employment. This has led to a progressive shift in the boundaries of salaried employment which have proven to be more porous and dynamic than anyone could have imagined at the time when they were first formally established. Furthermore, the institutions associated with salaried employment (for instance the contract of employment and the system of social contributions and benefits that eventually led to the creation of a social security system) now cater to a far wider range of users than the specific segments of the working population that they were originally confined to (Friot 2012; Castel 1997; Martín Valverde 1990; Rolle 1988). As well as expanding their coverage to new groups of workers – domestic and agricultural workers, artists, management executives and professionals, sales executives and certain liberal professions such as lawyers, doctors and architects – these institutions are also no longer restricted to people who are in active employment (e.g. they also cover students, pensioners, people suffering from illness, etc.). Consequently, these structures have the potential to affect large parts of the population, if not the evolution of society as a whole. One might therefore ask whether rather than limiting our analysis to the formal definition of salaried employment we should not instead talk about a wage-based society (referred to in French as *salariat*). Is the legal definition of modern employment relationships really adequate for investigating the global changes currently occurring in the field of employment?

The state use different types of institutions – not least the social security system – to implement interventions that go beyond the strict confines of the relevant employment regime, extending some of the protection and rights traditionally associated with (the formal definition of) salaried employment to all types of workers. In doing so, they create an apparently contradictory situation where the constant proliferation of new forms of employment and employment regimes coexists with a (relative) tendency to homogenise the "conditions of use" for large parts of the workforce. This situation is perhaps less surprising if we consider the requirement for coordination and combination associated with modern networked production methods, where the involvement of large numbers of individuals in the production process does not necessarily require them to belong to an organisational structure in the mould of a company.

The regulation and reform of self-employment in Europe briefly described in this chapter serves to illustrate how the state actively participates in the establishment of common criteria for the utilisation of labour that are applicable to different employment regimes. The state thus regulates the conditions for entering and exiting the new employment regimes, formally recognising them and defining their potential compatibility with other existing employment regimes. It also intervenes with regard to the cost, duration and different forms of utilisation of these legally non-subordinate workers, as well as the definition of many aspects of their career paths and working conditions. Furthermore, it intervenes with regard to the disposable income – and thus ultimately the social reproduction and welfare – of these groups through the introduction of a range of fiscal measures and the institutionalisation of compulsory contributions and insurance against certain risks that are common to the labour activity of the wage-based society.

Seen from this perspective, the legal definitions of self-employment and salaried employment do not provide an adequate basis for their analysis – indeed, the formal distinction between these two types of work is of limited relevance. As well as undoubtedly pointing to major transformations and ruptures in the traditional salaried employment relationship, the trends shown by self-employment in Europe also indicate a diversification of the ways in which people participate in the creation and benefits of the wealth produced by society and, more generally, a diversification of ways of participating in the institutions that perpetuate and renew the wage-based society. If, as we argue here, self-employment is in fact nothing more than one of the possible models within the wider wage-based society for the (temporary) interaction between human productive capacity and activity, then any attempt to propose a tentative explanation of the current developments in and transformation of self-employed work should be framed within this wider transformation trend. In

other words, we believe that in order to advance our understanding of the transformation of employment, the changes affecting self-employment should be treated as part of the changes occurring within the wage-based society as a whole, regardless of the formal distinctions drawn between different forms of employment or employment categories and regimes. There is no doubt that the wage-based society has been transformed and that the modern reality of self-employed work is one of the many factors responsible for this transformation. However, the suggestion that it may have disintegrated completely has yet to be demonstrated (from a theoretical perspective) and explored in a practical setting (from a political and social perspective).

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