Self-Employment and Bogus Self-Employment in the European Construction Industry

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Expert Report

Self-employment and bogus self-employment in the construction industry in Italy

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SELF-EMPLOYMENT AND BOGUS SELF-EMPLOYMENT IN THE CONSTRUCTION SECTOR - ITALY

Introduction

The Italian strategy against the bogus self-employment focus more then before on rewarding the regular businesses, which is to say to appreciate the businesses which correctly enforce labor, social security and safety regulations by means of incentives and facilities when facing orders, tenders and so on.

As a matter of fact, in addition to an effective repressive apparatus, it appeared necessary to convey the notions of prevention, information and training in view of the creation – by institutions, workers and entrepreneurs altogether - of an overall culture of labor that is positive and regular.

The aim is to make regular work more convenient than undeclared work while maintaining an effective level of social protection.


1.1. The statutory approach

The statutory approach focuses on the definition of “employee”.

As to the legal provisions you can refer to the followings:

- **Article 2094 of the Italian Civil Code** sets forth the definition of employee (i.e. an individual, serving under the control and the instructions of the employer, who receives a salary to perform his/her duties).

- **Article 2222 of the Italian Civil Code** sets forth the definition of self-employment (i.e. an individual performing his/her activities without being under the control and the instructions of an employer).

Since the statutory distinction between employees and self-employment is not clear, the courts apply various forms of test; every test is open-ended in application, freely incorporating all factors related to the (i) integration into the employer’s business and the relevant employer control, (ii) duration of relationship, (iii) work scheduling and the relevant employer control, (iv) location of work, (v) skills degree and self-determination, (vi) freedom to serve other employers, (vii) investment in business, (viii) if the worker has employees ((as relevant case law of the Italian Supreme Court, see Cassazione civile, sez. lav., February 1, 2006, no. 2249; Cassazione civile, sez. lav., February 10, 2006, no. 2904; Cassazione civile, sez. lav., October 9, 2006, no. 21646)

The tendency of the courts is to assign a wide definition of "employee" for purposes of protection.

Article 2222 of the Italian Civil Code is the legal matrix of the type of work that are **not** encompassed in the definition of “employee”.

To such worker status belong the (i) independent contractor, (ii) the co-operation relationships that may be implemented in an ongoing continuable supply of services
“CoCoCo” – i.e. collaborazione coordinata e continuativa), (iii) the project work (Lavoro a progetto) that is an ongoing continuative supply of services related to a specific project.

The Italian legal system sets forth a variety of rules based on such worker status. The main rules regarding the bogus self-employment are the following:

- **Article 409 of the Italian Code of Civil Procedure** stating that co-operation relationships that may be implemented in an ongoing continuative supply of services, mainly personal, though without subordinate status. By means of this rule, practitioners and labor courts defined this type of self-employment as “CoCoCo” (or “lavoro parasubordinato”).

- **Article 61 of Act no. 30 of 2003** (the so-called Riforma Biagi) stating that the ongoing continuative collaborations, mainly personal and without subordinate status, as per article 409, no. 3, of the Italian Code of Civil Procedure, must be included in one or more specific projects, works or stages of the same, that are determined by the principal and autonomously managed by the collaborator according to the result; this must be performed in observance of the coordination of the principal and independently of the working time. This regime aims at limiting the use of CoCoCo.

- **Article 1, par. 772, of Act no. 296 of 2006** (Collective bargaining and Lavoro a progetto) stating that at all events, the salaries paid to workers shall be proportional to the quantity and quality of the work performed and shall take into consideration the salaries usually paid for similar services rendered, also according to the reference national collective agreements.

- **Article 1746 of the Italian Civil Code** stating that by means of an agency agreement, a party permanently undertakes to promote, on behalf of the other party, against pay, the execution of agreements in a specific area.

It is not easy to give a definition of self-employment/bogus self employment in the Italian labor legal system that may encompass their different forms.

The notion of **bogus self-employment** refers to the situation of many workers whose status might appear as "ambiguous" (i.e. although the worker is a self employed one, the job he/she performs seems to classify him/her in an intermediate category between employee and self-employed worker).

Law also defines the **semi-dependent employment** as “disguised work” (Act no. 296 of 2006 refers to the notion of “lavoro non correttamente utilizzato”).

The disguised work stems from the collapsed distinction between employee/self-employed individual regimes. The disguised work is considered a malpractice; workers do not achieve the full protection coverage under the applicable law and collective bargaining.

The employer can mainly benefit from the reduction of the following items:
(i) Cost of payroll taxes
(ii) Administrative costs
(iii) Wage liabilities
(iv) Obligation to bargain with unions

As last remark, it is worth to note that there is no definition of **undeclared work**. You can draw such definition from the measures implemented by the Italian legal system to regularize undeclared work. Such measures refer to a "tautological" notion: undeclared work is work that is "not declared" to the competent authorities. However, it is worth noticing that Act no. 296 of 2006 has recently included semi-dependent work in the notion of undeclared work.
This is not disputable. In fact, the legal measures to regularize the undeclared work, set forth by Act no. 296 of 2006, apply to both phenomena: (i) undeclared work and (ii) semi-dependent work.

1.2. **Statistical observations**

The construction sector reached the following business target/development in the last decade:

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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Building sector</td>
<td>93,529</td>
<td>102,726</td>
<td>109,729</td>
<td>119,361</td>
<td>125,017</td>
<td>132,816</td>
<td>139,296</td>
<td>145,618</td>
<td>154,676</td>
<td></td>
</tr>
<tr>
<td>Houses</td>
<td>42,067</td>
<td>45,593</td>
<td>47,166</td>
<td>49,387</td>
<td>51,959</td>
<td>55,407</td>
<td>61,147</td>
<td>66,396</td>
<td>71,451</td>
<td></td>
</tr>
<tr>
<td>Non-residential buildings</td>
<td>51,462</td>
<td>57,133</td>
<td>62,563</td>
<td>69,974</td>
<td>73,058</td>
<td>77,410</td>
<td>78,149</td>
<td>79,222</td>
<td>83,224</td>
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</tbody>
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**ISTAT data**

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<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Building sector</td>
<td>105,795</td>
<td>115,436</td>
<td>124,463</td>
<td>132,844</td>
<td>137,691</td>
<td>147,264</td>
<td>153,085</td>
<td>160,033</td>
<td>165,601</td>
<td>165,047</td>
</tr>
<tr>
<td>Ordinary repairs</td>
<td>22,532</td>
<td>24,444</td>
<td>25,703</td>
<td>26,996</td>
<td>27,863</td>
<td>29,265</td>
<td>30,591</td>
<td>31,705</td>
<td>33,009</td>
<td>34,165</td>
</tr>
</tbody>
</table>

**Gross investments**

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</tr>
</thead>
<tbody>
<tr>
<td>128,328</td>
<td>139,880</td>
<td>150,166</td>
<td>159,841</td>
<td>165,554</td>
<td>176,529</td>
<td>183,677</td>
<td>191,738</td>
<td>198,610</td>
<td>199,212</td>
</tr>
</tbody>
</table>

**CRESME data**

<table>
<thead>
<tr>
<th>Workers</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Building</td>
<td>1,507,8</td>
<td>1,553,9</td>
<td>1,656,0</td>
<td>1,697,8</td>
<td>1,749,1</td>
<td>1,786,7</td>
<td>1,866,4</td>
<td>1,884,4</td>
<td>1,930,3</td>
</tr>
<tr>
<td>Workers – building sector</td>
<td>946,2</td>
<td>985,6</td>
<td>1,057,3</td>
<td>1,107,0</td>
<td>1,146,4</td>
<td>1,160,2</td>
<td>1,228,9</td>
<td>1,258,9</td>
<td>1,284,2</td>
</tr>
<tr>
<td>Self-employed – building sector</td>
<td>561,6</td>
<td>568,3</td>
<td>598,7</td>
<td>590,8</td>
<td>602,7</td>
<td>626,5</td>
<td>637,5</td>
<td>625,5</td>
<td>646,1</td>
</tr>
</tbody>
</table>

**ISTAT data**

It is worth highlighting to such purpose that this business/target development has not significantly impacted on the increase in the number of self-employed and bogus self-employed:

<table>
<thead>
<tr>
<th>BUILDING SECTOR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Irregular workers (in thousands)</td>
</tr>
<tr>
<td>2002</td>
</tr>
<tr>
<td>179,4</td>
</tr>
</tbody>
</table>

| Irregular self-employed (in thousands) |
| 2002 | 2003 | 2004 | 2005 |
| 10,9 | 10,9 | 10,9 | 10,7 |

ISTAT statistics on the employment in the building sector relating to the first quarter of 2008 show that this sector reached on the whole no. 1,915,000 workers, of which 1,191,000 employees and 723,000 self-employed.

According to the latest statistics, then, self-employment represents over than 35.0% of workers of that sector (37.75%), with an increase due to business cycle (1st quarter 2008/4th quarter 2007) by + 2.6% if compared to – 6.0% of subordinate employment.
With regard to trends (1st quarter 2008/1st quarter 2007), both employment and self-employment show a negative change equal to – 1.9% and – 3.3% (- 0.1% is the overall negative change of the sector) respectively.

As of the date of the last survey, the overall share of the employment was made up of 1,014,000 Italian workers and 177,000 foreign workers, whereas the share of self-employed workers amounted to 646,000 Italian self-employed and 77,000 foreign workers (both EU and non-EU).

It should be noticed that, when analyzing the data of the last three-year period (2005 – 2007), the share of Italian self-employed workers keeps steady between 630/640,00 people, whereas the share of foreign self-employed workers is on the rise, going from 28,000 people of the 1st quarter of 2005 to 77,000 people of the 1st quarter of 2008 (+ 175.0%).

In particular, there was a constant increase of the foreign self-employment in the surveyed period: + 17.8% in 2006 if compared to 2005; + 20.75% in 2007 if compared to 2006.

ISTAT shows a trend leading to a decrease in the share of self-employment, both with regard to the Italian economy and for the building sector, ranging from 700 and 750,000 people. As said before, in the 1st quarter of 2008 self-employment reached 723,000 people.

At all events, we may say that there is a share of self-employment in this sector, that is influenced by boom and bust cycle, also linked to the situation of the market and economy; in fact, during employment downturns, the share of self-employment tends to increase, while it tends to drop if employment expands.

In the building sector there was a sharp increase by + 6.9% in the share of self-employed workers between 1993 and 1999 (except 1998), going from 34.9% to 41.5%; it later constantly decreased to 37.5% in 2006, and then increased again in 2007, by reaching 38.3%.

When talking about numbers and trends, a shift from subordinate employment to self-employment has been remarked. At first, this phenomenon has been the natural outcome of the employment crisis in the building sector, occurred in the first ‘90, the post-bribesville years characterized by a stop of public tenders.

As it continued also during the boom of the sector ('96 – '08 – now we are in a slackening that the experts define as a ”plateau”) and of employment in the building sector, such process turned into an amendment of the structure of businesses and work in the building sector.

From an analysis of ISTAT data from 1993 to 2007, we can remark that the share of self-employment work shows a growth in the entire period considered (+ 29.3% if compared with + 12.1% of subordinate work), as it did not suffer any employment crisis between 1993 and 1998 but it took in a portion of the job seekers.

The ISTAT data referring to the last three-year period (2005/2007) show nevertheless a waving trend, shifting from a light slowdown in 2005 (- 0.1%) to a stronger one in 2006 (- 2.0%), whereas the first quarter of 2007 was extremely positive (+ 3.0%) and the second one negative (- 6.0%).

The first quarter of 2008 has shown a negative trend (- 3.3% between the first quarter of 2007 and the first quarter of 2008).

The overall increase in self-employed workers of the building sector amounts to 125/130 thousand people from 1993 to 2007.

We are facing a true fragmentation of the sector, as also shown by the data of the Casse Edili, where there is an average of workers equal to 5.3 as at September 30, 2007.

1.3. The incidence of the bogus self employment in the building sector according to the social partners

It is difficult to define, in absolute values or in per cent, the incidence in the building sector of the bogus self-employed workers on self-employment in general, since there are neither tools nor systems to verify a practice actually existing and, according to the Social partners, in steady increase.
It is possible to identify some indicators corroborating this trend. Some of these indicators show that this phenomenon is in strong increase, also for the easiness with which is possible, in Italy, to open a VAT number and enter the building market.

The building sector is experiencing for years the elusion of full-time subordinate employment contracts full time by means of various devices. If, thanks to DURC (Documento Unico di regolarità contributiva), strongly requested by the unions, there has been a considerable increase in the supervision and the performance of inspections in the building yards, the undeclared work is going to be overcome and replaced by the so-called "disguised work".

Among them, the wide use of "part time" in building yards. The data drawn from Casse Edili of the 12 urban areas examined, the recourse to this contractual form was virtually inexistent in 2000, whereas in 2007 the number of workers hired with this kind of contract reached 32,000 people, with an increase by + 75.0% in 2006.

Other forms of elusion are for example a distorted use of the articles of apprenticeship, whereas another emerging phenomenon, though marginal for the time being, is that of joint-ventures.

The disguised work is difficult to be quantified, though there are some indicators. The social partners data show therefore that the bogus self-employment is increasingly growing, especially as far as foreign workers are concerned.

Finally, the social partners are focusing on the definition of disguised work and the prevailing trend defines a ceiling for contractors. It is undoubted, in fact, that a "one-firm" worker with a VAT Number, working exclusively for a single business, actually hides an employment relationship and therefore a subordinate employment.

Another signal is the possession of work tools, whose ownership or not may be another indicator. They are devices by means of which many businesses of the building sector try to reduce labor costs, thus carrying out an unfair market competition.

Another indicator is the type of job performed. Self-employment in the building sector is widespread, or else linked to certain kind of jobs, above all the most qualified: floor layer, tiller, etc.

Perhaps, in case of "low-skill jobs", it is very likely to be in the presence of bogus self-employment.

How is it possible to stem this phenomenon according to the social partners? A solution should be, in the building sector, that of recording, by means of a separate management, the self-employed workers in the Casse Edili. This would allow to control the flow from self-employment to subordinate employment and vice-versa, as well as to compare the data with the applications to the Chambers of Commerce to register for a VAT number.

This would allow, on the one hand, to monitor the building market as a whole and, on the other hand, to extend also to self-employed workers services and assistance supplied by the Casse Edili to subjects who do not benefit so much, or at all, from the Italian welfare.

2. The impact of regulation and deregulation in this field.

The latest deregulation of Italian labor market (the so-called Pacchetto Treu - Act. No. 196 of 1997 - and the so-called Riforma Biagi – Act no. 30 of 2003), slightly reduced the phenomena related to bogus self-employment, disguised work and irregular work.

On the contrary, the latest reform of the labor inspections system (Act no. 30 of 2003 and Legislative Decree no. 124 of 2004) had a significant impact on such phenomena. We will describe that hereafter.

It is quite common to see employees and (putative/bogus/ambiguous) self-employed workers sitting side by side and performing the same activities without any visible distinction.
According to the prevailing case law, each form of work (and thus also self-employment/bogus self-employment) and its relevant protection (social security regime and work conditions regime) depends upon its own facts (Cassazione civile, sez. lav., February 11, 2004, no. 2622; Cassazione civile, sez. lav., December 17, 1999, no. 14248; Cassazione civile, sez. lav., November 23, 1998, no. 11885).

This means that, although the parties define the labor relation as self-employment, a worker is always entitled to the protection arising from the work she/he actually performed.

To sum up, the main work arrangements in the Italian labor market are a preliminary step to understand the complexity of the Italian labor market and the number of the existing social security and work conditions regimes.

A list of the above follows:

- Standard employees (direct employment relationship)
- Independent contractors (including CoCoCo and Lavoratori a progetto)
- Individual entrepreneurial workers
- Labor market entrants
- Marginal workers
- Informal labor relations.

As regards protection and its relevant costs, please see below:

<table>
<thead>
<tr>
<th></th>
<th>High social security protection</th>
<th>High level of protection for work conditions</th>
<th>High level of unionization (voice, agreement, etc.)</th>
<th>High level of costs (approximately 40% of contributions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Independent contractors</td>
<td>Low</td>
<td>Low</td>
<td>Low</td>
<td>Low</td>
</tr>
<tr>
<td>Individual entrepreneurial workers</td>
<td>market</td>
<td>Low</td>
<td>Low</td>
<td>Low</td>
</tr>
<tr>
<td>Labor market entrants</td>
<td>Low</td>
<td>Low</td>
<td>Low</td>
<td>Low</td>
</tr>
<tr>
<td>Marginal workers</td>
<td>Low</td>
<td>Low</td>
<td>Low</td>
<td>Low</td>
</tr>
<tr>
<td>Informal relations.</td>
<td>No</td>
<td>No</td>
<td>Potential unionization (voice, agreement, etc.)</td>
<td>No costs</td>
</tr>
</tbody>
</table>


The prevailing case law recently stated that the self-employment relationship is considered as bogus/disguised in the event that the parties do not define a project in the contract. (Court of Ravenna, November 24, 2005; Court of Rome, May 9, 2006, no. 9650; Court of Milan, November 10, 2005, no. 4625).

This is an important result arising from Article 69 of Legislative Decree no. 276 of 2003, that introduced a legal presumption against bogus self-employment and disguised work.

It states that the ongoing continuitive collaborations created without a specific project, work or stages of the same, pursuant to article 61, paragraph 1, of Legislative Decree no. 276 of 2003 are considered as open-ended employment relations with a subordinate status since...
the very beginning of the employment relationship. If the court ascertains that the employment relationship started pursuant to the above mentioned article 61 has become a subordinate employment relationship, it will become a subordinate employment relationship corresponding to the kind of agreement actually executed by the parties.

It is worth noticing that the court's test will exclusively ascertain, in compliance with the general law principles, the existence of the project, work or stage of the same and could not be extended so as to criticize on the merits any assessments, technical and organizational or productive choices that are up to the principal.

2.2. Self-employment/ bogus self-employment and collective bargaining.

In the Italian legal system, the relationship between self-employment and collective agreement can be analyzed under two points of view.

The first one is the application of the collective agreement to self-employed workers. For the purposes of this research, we may say that, according to some collective agreements, CoCoCo may be applied to lavoratori a progetto (project workers).

Recently, Article 1, par. 772, of Act no. 296 of 2006 states that the salaries paid to self-employed workers (lavoratori a progetto – project workers) shall be proportional to quantity and quality of the work performed and shall take into consideration the salaries usually paid for similar services, also in compliance with the national collective agreements.

The second one is that collective bargaining is mainly used to regularize bogus self-employment, disguised work and undeclared work.

Collective bargaining is the framework in order to apply the due salary and social security to the workers (bogus self employed, disguised workers) on a progressive basis (the so-called “contratti di riallineamento” or “contratti di regolarizzazione”).

The unions execute a shop level agreement with the employer. By means of such agreement, the parties choose the workers involved in form of bogus self-employment, disguised work o irregular work. This choice allows the employer to benefit retroactively from an amnesty but also forces the employer to hire those workers under a employment relationship in the future.

2.3. Self-employment/bogus self-employment and social protection contributions/ payment (mandatory/voluntary)

The malpractice of bogus self-employment is mainly determined by the social security contribution gap between employment relationship and self-employment. A general reduction of this gap is being introduced.

Self-employed workers are enrolled in the public social security system. There are special social security funds managed by the National Institute of Social Security (INPS) or other public entities.

Generally, self-employed workers are bound to pay social security contributions.

As regards CoCoCo or lavoratori a progetto, social security contributions are paid by the principal (there is a 1/3 withholding on the total amount of the social security contribution). Social security contributions for CoCoCo or lavoratori a progetto may approximately achieve 25% of pay.
In compliance with Act no. 296 of 2006, to CoCoCo or lavoratori a progetto, the main social security schemes (i.e. old-age, invalidity, survivors, maternity, sickness) may be applied.

3. Labor and market developments

3.1. Loss of social security, fiscal revenue for authorities

Many theorists, social partners and the competent office of the National Fiscal Authority that we contacted declare that the loss can amount to 20-30%.

4. Cross border employment effects on self-employment and bogus self-employment

There is a direct link between specific legislation and in/out migration. It mainly concerns the legal position relating to the employment of nationals of the new EU Member States, after the EU enlargements on May 1, 2004 and on January 1, 2007.

The legal provisions concerning the right to enter and work, the right to establishment, the position of family members and sanctions for individuals who did not abide by the law were ineffective and not suitable to the widen illegality already existing. The Italian legal system regarding the immigration schemes are useless against the exploitation of illegal immigration. There were transitional measures related to the nationals of the new EU Member State determining undeclared work, bogus self-employment, semi-dependent work

5. Self-employment in a triangle relation

5.1. The role of intermediaries

Such workers are similar to "leasing" employees. Such workers perform their activities for illegal intermediaries (illegal agencies and/or gang-masters), in condition of illegal subcontracting and/or posting, that supply a group of workers, usually an entire sector and/or division, to a client company.

Such workers follow the work rules and indications entered into by the client company and the intermediary. They are under the instructions and disciplinary power of the client. The intermediary collects such workers every morning in places where the workers are used to gather.

They are daily paid on the basis of such agreement; they can be paid under the minimum wage. Generally they are undeclared to the competent authorities or they perform they activities as bogus self employed and/or semi dependent workers.

Workers do not typically carry out their job at one site for more than a certain period; once a specific activity is done, they are assigned to another client.

Pursuant to Legislative Decree no. 276 of 2003, agency work occurs when a temporary work agency seconds a temporary "employee" (NOT a self-employed worker) from one firm to another for short term assignments.

This means that an agency work cannot second self-employed workers.

6. Abuse of the status of self-employment (causes, consequences, forms of abuse)

6.1. Causes and origins of bogus self-employment

The main factors are the following:
a. The decentralization of production has fostered the growth of many atypical employment (among them, self-employment and bogus self employment)
b. The "gap" between the employees and the self-employment labor rights regime. Social dumping practices are implemented.
c. The "gap" between the employees and the self-employment social security regime. Social dumping practices are implemented.
d. New work organization practices for new forms of business

By virtue of a court’s order, the self-employment relationship is considered as an employment relationship as of the commencement of the self-employment.

The court may correctly classify the workforce and the resulting liability for the employer (social security contributions, penalties, unpaid overtime, minimum wage differences, etc.). In addition, the administrative and/or criminal penalties above mentioned will apply.

6.2. **Short and long term consequences of bogus self-employment on:**

6.2.1. **Health and safety**

Legislative Decree no. 81 of 2008 has recently stated that the health and safety at work regime applies also to self employed (and thus CoCoCo and lavoratori a progetto)

As a matter of fact, Art. 2, letter a) of the above mentioned law defines a "worker" apart from the "nature of the labor agreement executed". Art. 15 sets forth the general protection measures applied to workers.

Healthcare is governed by Article 41 and following. In particular, it states that it is mandatory in the cases provided for by the regulations in force and whenever a worker (apart from the "nature of the labor agreement executed) so requires.

2. Healthcare will include (i) pre-employment medical examination aimed at ascertaining the lack of contraindications to the job to which that worker is destined, in order to assess his/her fitness to that specific office, (ii) periodic medical examination to control the workers' physical conditions and to issue a judgment of fitness for that specific office. The intervals at which such assessments have to be performed, unless provided for by the relating regulations, will be usually once a year. Such intervals may have different deadlines, fixed by the competent physician according to risk assessment. The supervisory body, by means of a grounded measure, may fix both contents and intervals with which the health surveillance has to be carried out other than those indicated by the competent physician.

6.2.2. **Vocational training**

The self employed workers (and thus CoCoCo and lavoratori a progetto) can be involved into vocational training. It is not a right; the principal can organize specific vocational training for the self employed workers.

6.2.3. **Pensions**

Self-employed workers are entitled to old age pension benefits. To calculate such benefits, age requirements as well as the contributions records are required.

6.2.4. **Social security**

The workers are insured according to the general system. The healthcare system provides benefits in kind to the whole population.
As of January 2009, due to the general recession, a significant reform of unemployment benefits is going to be implemented: the lavoratori a progetto should be entitled to an unemployment benefit that is equal to 10% of the general revenue of the previous year (Act no. 185 of 2008 – pending final approval).

6.2.5. Social inclusion

There are no measures to socially include the lavoratori a progetto. The Italian legal system does not make any reference to the concept of social inclusion, that is widely defined at European level.

Given that we can consider the social assistance provided by the Italian legal system as a measure of social inclusion, it is worth noticing that self-employed workers (CoCoCo and lavoratori a progetto) are entitled to social assistance schemes.

7. Assessment of prevention and combating measures to tackle bogus self-employment:

7.1. Investigations, checks and control

Inspections are carried out by the Ministry of Labor and/or the Social security authorities. Very high and severe civil and/or administrative and/or criminal sanctions apply to the intermediaries breaching law. Please see below.

7.2. Prevention

Legislative Decree no. 124 of 2004 sets forth a new framework for inspections proceedings. An inspector can issue (i) sanctions, (ii) persuasive orders, (iii) induce to settle, (iv) injunction orders. An inspector can also provide legal literacy to the employer in order to induce him/her to accomplish laws and regulations.

Legislative Decree no. 124 of 2003 states that there should be a permanent coordination among (i) social security administration, (ii) tax administration, (iii) police. This should facilitate the fight against undeclared work and bogus self employment. "Permanent coordination" means that each administration is obliged to share databases, information, figures, significant activities, its own inspection know-how and knowledge etc. as well as to arrange a joint program of inspections.

Each of the above mentioned administrations is represented in the so-called Cabina di regia (i.e. Central Governmental Commission) set at the Ministry of Labor.

Legislative Decree no. 123 of 2007 sets forth a series of ways to easily recognize bogus self-employed individuals and/or undeclared workers (e.g. mandatory badge, mandatory and prompt information process to inform the competent authorities about hiring, dismissal, transfer etc.).

Act no. 133 of 2008 introduces the so-called “libro unico” that in lieu of the previous documentations/registers related to hiring, attendance, payroll books, should make the inspections proceedings easier.

7.3. Combating and sanctions

There are legal provisions that affect both phenomena (bogus self-employment/undeclared work).

There are two legal arrangements that caused some decrease:
a) **The first one** is the so called DURC, i.e. the certificate that, by means of one application only, certifies at the same time the regularity of a business with regard to INPS, INAIL and Cassa Edile's accomplishments, checked in observance of their respective regulations. DURC may be requested telematically by means of the **Sportello Unico Previdenziale** (i.e., a Processing Center), that is the main modality, by filling in the questions appearing on the screen.

Upon participation in the tender and until award, the business may declare that it fulfilled its contributory burdens. The certification of regularity must be requested (i) for tenders/subcontracts of construction public works, (ii) For building private works, (iii) For contracts of services:

The DURC was strongly requested and promoted by the unions.

b) **The second one** is the sanction recently introduced. Act no. 81 of 2008 states that in order to guarantee the workers' health protection and safety, as well as to fight undeclared and irregular work, the watchdogs of the Ministry of Labor and Social Security, also after the recommendations of the Public Administration according to their respective competences, may adopt measures to suspend an entrepreneurial activity should they find that the employed personnel is not registered in the payroll not in any other mandatory documentation in the workplace, as well as in the event of serious and repeated infringements of the protection of health and safety at work. The adoption of the suspension will be communicated to the **Autorità per la vigilanza sui contratti pubblici di lavori, servizi e forniture** and to the Ministry of Infrastructures, according to their respective competence, so that they may issue an interdiction order that prohibits negotiations with the public administrations and the participation in public tenders. The provisions of this paragraph shall also apply to work performed in construction sites.

Please see below some of the infringements referred to health and safety at work, grounding the above mentioned interdiction order:

Infringements that cause an exposure to general risks are:
- Non-fulfillment of the document for risk evaluation;
- Non-performance of training;
- Non-creation of a prevention unit;
- Infringements which lead to asbestos risk.

Such legal arrangements under a) and b) are almost widely applied.

8.4 **Data relating to the inspections**

The data relating to the inspections carried out in the First Quarter of 2007 provided by the Ministry of Labor are the following:
- from January 1 to March 3, no. 489 interdiction orders have been issued, of which no. 169 revoked in order to be regularized.

If one examines the data from August 12, 2006 to March 31, 2007, the interdiction orders increased to 999, of which 368 have been revoked due to the following regularization.

The Ministry of Labor mainly focused on the construction sector, for which he enjoyed the full support of the Unions and ANCE, by carrying out inspections in 5,980 construction sites that showed a number of employed workers increased by 12,646 units with regard to 2006. This demonstrated that the Ministry's initiative to carry out inspections may be fruitful and successful, as it stimulates regularization.
From August 1, 2006 until March 31, 2007 there were 94,054 recruitments in the construction sector.

After a thorough analysis of data, there has been a remarkable increase if compared to the data of the First Quarter of 2006; the inspected businesses increased by 23.37%, the irregular ones by 24.44%, while the number of workers that showed themselves as irregular increased by 69.12%, of which almost 9% were entirely undeclared workers.
Proposed policy measures at national and European level

The strategy should be focused on the businesses which correctly enforce the labor, social security and safety regulations, while an effective repressive apparatus is being maintained.

Such businesses should benefit from incentives and facilities when facing orders, tenders and so on.

The aim is to make regular work, rather than undeclared work, more convenient, in compliance with the law regulations.

The proposals are the following:

1. In order to avoid the malpractice of the bogus self-employment, national legal systems should reduce, where needed, the social protection gap between employment and self-employment, without depressing social protection of the former.

2. Furthermore, also by mean of the European Social dialogue, a European or EC Law framework should be gradually implemented on the following items:
   a. registering the worker's career/employment history from beginning to termination
   b. providing the competent authorities with such records by means of IT supports
   c. providing workers with a “official” smart card so that the records of their employment history may be tracked
   d. ensuring tax/social security benefits for the employers who hire workers coming from undeclared/bogus/semi-dependent jobs
   e. no amnesties (this means that the employer should no longer benefit from any kind of amnesty; this is to avoid that employers benefit twice from the bogus/disguised/undeclared work and the relevant amnesty).
   f. providing, as a second best to open-ended contracts, tenure track contract along with a strong and effective social security connection
   g. supporting broad programs to simplify laws and regulations
   h. simplifying official management for businesses
   i. designing measures to create a business-friendly culture in government
   j. simplifying tax/social security management
   k. sharing information on what tax revenues are used for
   l. rationalizing business registration and licensing regimes, and separate the one from the other
   m. reducing registration fees and statutory requirements, while control is being maintained.