



## **New forms of employment Employee sharing, Ireland**

Case study 67: Exploring the transferability  
of the employment form

*Strategic employee sharing as defined by Eurofound does not exist in Ireland. While stakeholders seem to be interested in learning more about the employment model as some benefits for employers and workers are recognised, there is some scepticism whether in practice it would attract sufficient interest. Legal clarification and awareness raising/information provision was identified as major drivers for a potential implementation of the employment form in the country.*

### **Introduction**

This report presents the findings of research examining the policy framework with respect to strategic employee sharing in Ireland. The project involved a review of the literature and face-to-face and telephone interviews with key stakeholders.

Strategic employee sharing as defined by Eurofound (2015) has not been found to exist in Ireland. This report, therefore, outlines a ‘what if’ analysis of the framework conditions that might need to be changed or put in place for this form of employment to gain traction in Ireland and what benefits might accrue to employers and workers from its introduction.

Though strategic employee sharing is not known in Ireland there are a number of examples of employment forms that are similar in nature to employer groups. The research identified two examples of farming cooperatives<sup>1</sup> which, on request from their member farmers, provide them with the services of skilled workers for a specified duration (to cover sick/holiday leave or seasonal peaks). These workers comprise both employees and self-employed contractors; the latter pay their own social security contributions even though the cooperative collects their income tax payments. The number of workers providing this form of labour input is estimated at less than 1,500.

In another example, two independent members of a grocery franchise cooperated to employ a HR manager that both of them needed but not on a full-time basis. The first business employed the HR manager for two days a week while the second and larger enterprise employed her for the remainder of the week. The arrangement between the two employers was an informal one and did not result in a separate legal entity being incorporated to employ the HR manager. The two companies collaborated to the extent that they agreed between them that they each would employ the HR manager on a part-time basis and also determined the

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<sup>1</sup> Farm Relief Services and Farm Solutions Limited.

number of days per week she would work with each. This collaboration was assisted by the fact that the owners of both companies were members of the same franchise in that they met regularly and had similar personnel management requirements that were largely influenced by the franchisor's HR policies.

Though employers combining to create a new legal entity to employ workers that they need but not on a full-time basis is uncommon in Ireland, there are numerous examples of where employers in the same sector or geographic location have with government funding formed collaborative networks to develop training programmes to address common skill deficits. A number of stakeholders believe that these networks or '*Skillnets*' have the potential to be a forum in which member enterprises can explore other HR issues such as employee sharing given that a level of trust has built up between network members and that they have a communications structure in which to consider these new forms of employment. However, other commentators while recognising the value of collaborative skills development initiatives undertaken by Skillnets also point to difficulties in persuading member enterprises to release employees for more in-depth training programmes.

In general, while Irish enterprises are open to labour market innovation, new ways of recruiting and selecting employees often take time to gain traction. In the case of strategic employee sharing, the lack of awareness among the enterprise base of this labour market concept and the feed-back from organisations providing supports and other services to the enterprise sector indicating reluctance among companies to engage in substantive collaborative HR activities suggests that its take-up in Ireland will initially be low.

### **Favourable and hindering public framework conditions**

The research has found a lack of awareness among stakeholders in Ireland of the concept of strategic employee sharing and this is compounded by the lack of knowledge of relevant examples of this form of employee sharing. Interviewees also lacked awareness of the existence of strategic employee sharing in other jurisdictions. However, it is understood that a number of organisations in the social enterprise sector are interested in exploring the concept of strategic employee sharing and in receiving further information on this employment form.

The general impression is that stakeholders in Ireland are open to learning more information on strategic employee sharing but at the same time there is a certain amount of scepticism as to whether the business sector would be receptive to using this employment form.

There was a perception among some stakeholders that employers would have to take a lead role in initiating strategic employee sharing — it was not perceived as an issue that public authorities would be proactive in promoting to the business sector in the absence of a proven demand from employers. In addition, some stakeholders pointed to the fact that employment policy-makers are preoccupied with more pressing issues such as zero hour contracts, and consequently their capacity to examine new employment forms that are unknown in Ireland was limited.

Some interviewees were aware of entities within the agricultural sector that could be considered as having characteristics similar to that of employer groups but they differed from strategic employee sharing arrangements in a number of key respects. The most significant of these differences is that the workers in these entities, cooperatives established by farmers, include both employees and self-employed contractors.

There is no specific policy or legislative framework aimed at supporting the development of strategic employee sharing involving employer groups in Ireland. Nor are there any special

tax incentives or financial supports to assist the formation of employer groups. The Irish legislative framework does not contain any employment form specifically for strategic employee sharing.

Policy-makers report that they have not been approached by relevant stakeholders, for example employers or representative bodies, to introduce frameworks conducive to strategic employee sharing or of the need to remove impediments faced by businesses in using this employment arrangement.

In some cases, stakeholders had difficulty differentiating the concept of strategic employee sharing with the services provided by employment/temporary work placement companies.

This difficulty arises because under legislation enacted in 1971, the Employment Agency Act, 1971, any legal entity that places a worker in a different workspace is classified as an employment agency or temporary work agency. Employment or temporary work agencies are required by law to be licensed by the Department [Ministry] of Jobs, Enterprise and Innovation and must pay an annual registration fee. For historical reasons, the directors of the business seeking registration as an employment or temporary work agency must obtain clearance from *An Garda Síochána*, the Irish police force.

Thus from a legal perspective, businesses wishing to initiate a strategic employee sharing arrangement in Ireland must first register as an employment agency; failure to do so is technically a criminal offence. However, the process of registering as an employment agency is not onerous, nor are the annual fees considered excessive. The Department of Jobs, Enterprise and Innovation is planning an e-payment facility whereby agencies can pay the annual fee online. The two farming cooperatives mentioned earlier are not, for historical reasons, classified as employment or temporary work agencies and therefore do not have to register with the ministry.

Though registering as an employment/temporary work agency is not overly burdensome, there is a perception among some stakeholders that unless managed properly the cost of using workers provided by these agencies can add significantly to a company's wage bill and this belief may have a negative influence on businesses considering the formation of an employers group.

Another issue is that the 1971 law does not differentiate between, on the one hand, employment agencies and, on the other, businesses collaborating to create a new, not-for-profit legal entity to employ workers that then places them in the founder business members. Though registration as an employment agency is not difficult, some stakeholders have indicated that the 1971 law should be updated to reflect the fact that an employer group which has been set up by two or more businesses as a separate, not-for-profit legal entity to employ workers who would work in their workplaces should be precluded from having to register as an employment agency. However, given the lack of awareness or demand for of this employment form in Ireland, changing the 1971 Act is unlikely to be a priority for the Government<sup>2</sup>.

In summary, though stakeholders perceive that strategic employee sharing can lead to benefits for both employers and employees, the legislative framework in Ireland requires that businesses who want to establish an employer group take an additional step to register their legal entity as an employment agency.

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<sup>2</sup> One informant noted that this is reinforced by the fact that the Employment Agency Regulation Bill 2009 which had reached the *Dáil* [Parliament] Committee Stage when the government changed in 2011 was not restored to the Order Paper. This Bill sought to regulate out of state agencies operating in Ireland.

Businesses considering the strategic employee sharing route may balk at the notion that any new legal format they utilise to employ workers would require them to register as an employment agency. This could possibly raise fears among the collaborating businesses that they are entering a new business sector with unknown rules and regulations.

Legal experts point out that in addition to having to register as an employment or temporary work agency a group of enterprises wishing to establish a legal entity to employ workers on behalf of the network is effectively constrained to using a choice of two legal forms: a limited liability company or a cooperative. The latter is not widely used outside the farming sector and stakeholders have expressed doubts over whether businesses would be comfortable utilising this legal structure which has a different registration process compared to a limited company with which most employers would be familiar. Although enterprises, particularly professional services providers, make use of another legal form, partnerships, this is not considered an option for employer groups as each of the founding enterprises would be jointly and severally liable for the new entity.

In addition to the extra step required by the 1971 Employment Agency Act, two issues that have come to prominence at the national level have raised concerns among stakeholders and may have adverse implications for the formation of strategic employee sharing arrangement. The first issue relates to Ireland's social insurance system in which both employers and employees contribute towards the cost. Employers can make significant savings on social insurance payments if they can persuade workers to leave their employment and carry out the same work as self-employed contractors. There is evidence to suggest that this trend is prevalent in certain sectors, construction being one. This development is of concern to the Government as it results in a loss of social insurance revenue and the Departments of Finance and Social Protection launched a public consultation process in January 2016 to address this development. Employee representatives have expressed their fears that businesses are pressurising workers to opt for the self-employment route or what they term 'bogus' self-employment. They are concerned for the welfare of these workers as the social security entitlements of self-employed people are lower compared to employees. The implications for strategic employee sharing are that it may be more financially beneficial for employers not to consider the establishment of a new legal entity to employ workers but rather to procure the services of workers on a sub-contract basis and thus avoid having to pay the employer's social insurance contribution.

The second issue stems from the closure of a large department store in Dublin in 2015 where the owners had previously restructured the business by transferring the employees of the business into one company and the assets of the business, and in particular the building, into another company. A consequence of this restructuring was that when the operating company which employed the 460 workers became insolvent and went into liquidation, the employees were dismissed without notice. Additionally, the owners claimed there was no money in the operating company to pay the employees — many of whom had long years of service — their statutory redundancy entitlements or monies that were owed to them arising from their employment, such as payment in lieu of notice and compensation in respect of accrued holidays. The Government had to step in to provide the redundancy payments to the workers which resulted in a public outcry; the lack of notice given to the dismissed workers was also a source of public disquiet. As a consequence, there is a concern among some stakeholders that employers could use the establishment a separate legal entity to operate a strategic employee sharing type arrangement purely as a mechanism to avoid having to pay employees their statutory redundancy payments if the business had to close because the assets of the business

which could have been used to pay statutory redundancy or other monies due to the employees belonged to separate legal entity.

The net effect of this latter issue is that while stakeholders can perceive many advantages associated with strategic employee sharing, there is a concern that unscrupulous businesses could use this form of employee sharing to avoid paying social insurance contributions or statutory redundancy payments. Stakeholders said they were interested in learning how employer groups in other jurisdictions arranged themselves (policies, procedures, rules) to deal with situations where a member had to withdraw due to financial difficulties and how the rights of the workers employed by the group were safeguarded.

Another query related to which organisation(s) would be responsible if there was a short-fall in assets in the employer group to fund statutory redundancy payments to the employees losing their jobs, given that such entities generally operate on a not-for-profit basis and also are perceived to have little in the way of assets.

Stakeholders pointed out that existing Irish workplace/employment legislation, particularly that relating to workers placed by employment/temporary work agencies such as the Protection of Employees (Temporary Agency Work) Act 2012, provide legal protection for employees of employer groups in terms of pay and conditions, particularly vis-à-vis employees of companies that established an employer group.

A legal expert queried whether an employer group might potentially face a difficulty in placing an employee in a business where a collective agreement existed between management and worker representatives specifying that certain work tasks were restricted to members of a particular trade union. The difficulty would arise if the employer group employee assigned to carry out those tasks was not a member of that particular trade union.

Another query related to which organisation would be responsible where an employee of an employer group suffered or caused an accident in the workplace where he or she had been placed. A related issue was whether the employee would be covered by the employer and public liability insurance policy of the employer group or the business in which they worked.

The large number of small and micro-sized enterprises in Ireland was adjudged by some stakeholders to be an impediment to the introduction of strategic employee sharing arrangements. The small size of businesses and in the majority of cases the absence of an HR manager were seen as contributing to short-term horizon mentality among managers and were not conducive to a strategic approach to employment issues. A minority of stakeholders believed, however, that employer groups could offer benefits to SMEs in securing access to skilled workers for whom they did not have a capacity individually to employ on a full-time basis.

Stakeholders were not aware of any supports, financial or otherwise, from public sources to assist businesses to establish, or to research the feasibility of establishing, an employer group. There was also a lack of awareness of any public or private sector organisation that might provide information or advice to employers considering the formation of strategic employee sharing arrangements. Stakeholders highlighted the need for advice and support on strategic employee sharing to be provided to interested employers, particularly to address concerns about how to deal with the situation where a member has to withdraw from an employers group.

There is a concern among some stakeholders that any financial support from public sources for the establishment of employer groups might be contrary to State Aid rules as it might lead to a distortion of competition if some enterprises were able to avail of employment subsidies.

However, the provision of public financial support to evaluate the feasibility of strategic employee sharing arrangements by collaborating businesses may be considered possible if this contributed to the achievement of national objectives such as increasing international sales.

The issue was raised whether public labour market monitoring organisations play a role in identifying and assisting interested parties to consider new employment forms as a means of addressing regional or sectoral employment needs. This is currently not part of their remit but sources have pointed out that the Government announced in January 2016 the establishment of a new network for employers and the education and training system to work together to build regional skills. A total of nine forums are being established and while the main focus will be on the supply of skills to support job creation and the growth and development of each region, they will also have a focus on manpower issues. A Regional Skills Forum Manager will be appointed to each forum who will have a role in bringing together the education and enterprise players within the region to drive the skills agenda and to ensure that the education system is more responsive to the needs of the enterprise sector. The Skills and Labour Market Research Unit (SLMRU) of SOLAS, the Further Education and Training Authority, which publishes research and reports that facilitates development and review of policy and practice in the further and higher education sectors as well as other related sectors will have a role in providing skills and labour market information to the nine forums. It is speculated that these new forums could potentially have a role in identifying the need for new forms of employment such as strategic employee sharing within their respective regions.

### **Favourable and hindering characteristics of the employer group management**

As stakeholders in Ireland had no knowledge of the workings of strategic employee sharing arrangements, their input on the factors favouring or hampering the management of employer groups was consequently limited.

Stakeholders took the view that the lack of skills and expertise in Ireland with respect to the management of employer groups might be a barrier. They pointed out that while there were many HR managers with experience of recruitment and selection, none would have experience in the management of an employer group.

### **Favourable and hindering company/job characteristics**

Though unfamiliar with the concept and practice of strategic employee sharing, stakeholders could see potential advantages for both employers and employees. The benefits for companies were that it allowed them to have access to key skills on a more secure footing, especially if their need for these skills did not warrant them employing a worker with these skills on a full-time basis. The establishment of an employer group might facilitate enterprises in business sectors with complementary contra-seasonal peaks to secure access to the skills and expertise of workers who otherwise might be difficult to hire due to demand from other employers or because they might move elsewhere in search of more regular employment.

One of the issues raised by stakeholders is the lack of information within the Irish business sector on how the legal strategic employee sharing entities would operate. Since there are no examples of employer groups in Ireland, there are challenges to firstly disseminate information on the concept of strategic employee sharing to employers and, secondly, to inform them of the rules that should underpin the establishment and operation of employer groups. One stakeholder, for example, queried how an employer group which placed an

employee among different businesses would ensure that their respective intellectual property (patents, designs, working processes, etc.) would be protected. There was also a query about what might transpire when one of the founding members of the employer group decided that they wanted to leave the group or to reduce the number of days/hours the employee of the employer group worked in the business. Stakeholders also raised issues as to who was legally responsible for supervising the employee in the workplace or for disciplining the employee for breaches of discipline.

Stakeholders lacked sufficient knowledge or understanding of employer groups to discuss issues such as how they would charge their member for the provision of workers or how having to register as an employment/temporary work agency might impact on their cost structure.

This lack of knowledge among Irish employers and employees on the detailed workings of an employers group is considered an impediment — but not an insurmountable one — to the development of strategic employee sharing in Ireland. It was recognised that employer groups operate in other EU Member States and thus the expertise in this employment form can therefore be readily accessed, particularly by businesses wishing to pursue strategic employee sharing opportunities.

Stakeholders acknowledge that another potential barrier to the establishment of employer groups in Ireland is that there is no organisation with a mandate to promote the concept to employers and employees. Some have pointed to the potential role that Skillnets might play in this area but its remit is currently limited to addressing skill deficits. Other stakeholders mentioned the proposed formation of regional skills forums as being a potential vehicle for identifying where new forms of employment such as strategic employee sharing can be used to address labour market issues.

Stakeholders were sceptical given the small size of most Irish enterprises whether they would be willing to fund the establishment of a new entity which would involve not only employing workers that the founder members needed but also a manager to run the new entity. They alluded to the need for the new employer group to quickly achieve economies of scale by employing a number of workers to off-set the cost of employing a manager. The stakeholders recognised that one of the founding members could take on the role of employing the new worker in the interim period before the management company was formed but expressed concerns whether this arrangement would in practice be in the long term interest of that founding member or of the group as a whole.

Though Irish enterprises are anecdotally considered to be reluctant to share commercial matters with competitors, the reality on the ground in terms of companies coming together to form training networks to address common skill needs is well established. The Skillnets Programme involves the provision of Government funding through a private company, Skillnets, to enable groups of businesses in the same sector or region or belonging to the same trade/representative body to form training networks which then organise training programmes to address skills deficits that are common to the network members. Each training network has a manager who is responsible for delivering the skills training programme. While the focus of these networks, colloquially known as Skillnets, are on skills development, some stakeholders believe that they could also have a potential role in assisting companies to consider other HR issues such as manpower planning. Stakeholders also point out that companies that are members of a Skillnet network are likely to meet regularly and to get to know each other's HR needs. The participation by members in network meetings is seen as contributing to the

conditions necessary for businesses to develop trust in each other to potentially explore solutions to other HR matters such as employment shortages.

In some sectors such as ICT where there are shortages of skilled labour, the concept of strategic employee sharing is seen as a non-runner due to the intensive competition among companies to attract employees even though they are willing to collaborate on skills development initiatives.

Business co-operation is well developed in some industry sectors such as agriculture where the tradition of '*Meitheal*'<sup>3</sup> has strong roots. The Irish Co-operative Organisation Society (ICOS) is the leading representative organisation for co-operatives in Ireland, the vast majority of which are in the agriculture sector. The ICOS member co-operatives (and associated companies) have over 150,000 individual members, 12,000 employees in Ireland and a combined turnover of €12 billion.

This tradition of cooperation within the farming sector has led to labour forms that have some similarity with the French *Groupements d'employeurs*. However, as pointed out earlier, the Irish co-operatives that provide labour resources to their members, unlike their French counterparts, employ a mixture of employees and self-employed contractors. In many cases, the latter are farmers themselves who make their services available via the cooperatives to earn additional income.

### **Favourable and hindering worker/labour market characteristics**

Stakeholders representing trade unions and labour market policy and regulatory bodies were quick to see the potential benefits of strategic employee sharing even though they were unaware of actual examples of this employment form in Ireland. They recognised that it could be beneficial for workers who were in part-time employment to avail of the opportunity to gain full-time employment through an employer group and thus greater financial security.

Given the negative publicity associated with the closure of the department store in Dublin referred to above and the lack of awareness of examples of strategic employee sharing in Ireland, interviewees suggested that any group of enterprises considering the establishment of an employer group would need to engage in extensive consultation with their employees and their representative organisations to assuage any concerns they may have regarding the establishment of a new legal entity to employ new workers.

### **Potential benefits and risks of strategic employee sharing for the involved workers and the labour market**

The main benefit for employees of employer groups is that they are more likely to have greater stability of employment and thus more financial security if previously they had been only being able to obtain occasional part-time work with different employers.

While an employee of an employer group has only one employer, he or she may work in a number of different workplaces and thus can benefit from the opportunities to learn new skills, to be exposed to new ways of working and work with a variety of colleagues.

However, a worker may prefer to be self-employed as they pay lower rates of social insurance and this may also suit the companies that want to contract that worker as they do not have to

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<sup>3</sup> Meitheal is the Irish word for a work team, gang, or party and denotes the co-operative labour system in Ireland where groups of neighbours help each other in turn with farming work, such as harvesting crops. Neighbours who give their work to others are helped in turn with their own heavy seasonal tasks to the heart of the concept is community unity through co-operative work and mutually reciprocal support. Meitheal is the Irish expression of the ancient and universal appliance of cooperation to social need.



pay employers' social insurance contributions — which would be the case if he or she was an employee. Such a preference on the part of a worker might lessen the need for employers to consider the establishment of an employer group since they can continue to avail of that worker's skills on a sub-contract basis. The potential disadvantage for the worker being self-employed, however, is that he or she is not entitled to unemployment supports and the range of available social insurance benefits for a self-employed person is lower to that for an employee.

As mentioned previously, the employee of the employer group could belong to a different trade union to the employees of the enterprise he or she is placed in and this could lead to tensions, particularly if the tasks they are asked to carry out are normally carried out by a member of another trade union.

Trade union stakeholders had concerns that strategic employee sharing arrangements could be abused by employers to the detriment of workers' rights. They feared that similar to the high profile closure of the department store in 2015 referred to above unscrupulous employers might make use of employer group structures — a separate legal entity — to avoid paying employees their statutory redundancy payments where the company had to downsize its workforce.

### **Potential benefits and risks of strategic employee sharing for the involved companies and the economy**

While not being aware of any examples of strategic employee sharing in Ireland, stakeholders theorised that in some situations the establishment of an employer group could obviate the necessity for the founder enterprises to invest in employee recruitment, selection, supervision and payroll administration. This advantage would be particularly beneficial to micro-enterprises or sole traders in that they could concentrate on growing their businesses rather than having to deal with the bureaucracy associated with employing a worker.

Another advantage mentioned by stakeholders was that employees of employer groups through having worked in different work places were likely to be more adaptable and flexible and possess a greater skill sets than regular employees.

Stakeholders held the view that the manager of the employer group might play an important role in disseminating good HR practices to the founding enterprises and this would be particularly beneficial if they did not employ any HR staff.

The need for the employer group to gain economies of scale so as to alleviate the cost of employing a manager was mentioned by a number of stakeholders. There was a perception that the founding enterprises, particularly micro-enterprises, might find the initial set-up costs of the employer group would be prohibitive to such an extent that they could potentially cancel out any long-term gains.

### **Commentary**

Awareness among stakeholders of strategic employee sharing in Ireland is very limited and there are no known examples of Irish employer groups that are found in other EU Member States such as France and Germany.

There are a number of examples within the farming sector of cooperatives which provide workers to their members to cover sick leave or holidays or to help with seasonal peaks. These cooperatives are similar to the French *Groupements d'employeurs* but there are important differences, the most of important of which is that their workforces comprise both

employees and self-employed contractors. It is understood that some of the latter are themselves farmers who provide their services through the cooperative to its members as a means of supplementing their income. The contractor is not guaranteed any work and his or her services are dependent on the demand from the members of the cooperative.

The research indicates that the legislative and regulatory framework in Ireland is not currently conducive to the formation of strategic employee sharing. Businesses seeking to establish an employer group in addition to establishing a separate legal entity must register with the Department of Jobs, Enterprise and Innovation as an employment agency. A law which was enacted in 1971 specifies that any enterprise that places a worker in a workplace of another business must register as an employment or temporary work agency. It has been suggested that this law might be amended to exempt a group of enterprises planning to establish a not-for-profit employer group from the requirement to register as an employment or temporary work agency.

While stakeholders can perceive the advantages of employer groups for both businesses and employees, recent controversies over forced self-employment have raised concerns how some unscrupulous employers might use strategic employee sharing in such a way as to disadvantage their employees.

## Information sources

### Websites

Farm Relief Services (a farming co-operative which provides skilled people to meet the labour needs of its members):

<http://www.frsnetwork.ie>

<http://www.frsnetwork.ie/frs-farm-services/>

Farm Solutions (another farmer co-operative providing skilled people to its member organisations):

<http://www.farmsolutions.ie>

Skillnets:

<http://www.skillnets.com>

Skills and Labour Market Research Unit, SOLAS

<http://www1.solas.ie/Pages/ResearchAndPublications.aspx>

### Bibliography

Department of Education and Skills (2016), Press release: *Creation of a new Network for Employers and the Education and Training System to work together to build Regional Skills*, Dublin, Ireland. Available from: <http://www.education.ie/en/Press-Events/Press-Releases/2016-Press-Releases/PR2016-01-21.html>

Department of Finance and the Department of Social Protection (2016), *Consultation Paper, January 2016: Use of Intermediary-type Structures and Self-employment Arrangements*, Dublin: Department of Finance, Dublin, Ireland.

Government of Ireland (1971), *Employment Agency Act, 1971*, Dublin: Stationery Office.

Government of Ireland (2012), *Protection of Employees (Temporary Agency Work) Act 2012*, Dublin: Stationery Office.

Irish Congress of Trade Unions (2015), *False Economy: The Growth of 'Bogus Self-Employment' in the Construction Industry*, Dublin, Ireland. Available from: [http://www.ictu.ie/download/pdf/false\\_economy\\_the\\_growth\\_of\\_bogus\\_self\\_employment\\_in\\_construction.pdf](http://www.ictu.ie/download/pdf/false_economy_the_growth_of_bogus_self_employment_in_construction.pdf) (accessed February 19, 2016).

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