

# up ta

## The self-employed estate

20/2007 law, of 11th of july

# up ta



*This document is a translation of the Spanish-language document ‘Estatuto del trabajo autónomo’.*

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## **INTRODUCTION**

### **An adequate legal and social protection framework**

On 28 June of 2007, the Congress of Deputies unanimously ratified the text of the Projected Act on the Status of Autonomous Work, submitted earlier by the Senate. With this process, an electoral promise by the Socialist Party was fulfilled, as well as promises of other political forces in the parliamentary sphere, and also, in consequence, the vindication of a collective which now exceeds three million one hundred thousand persons and which has an obvious presence in our national economy.

Three years ago the Spanish Union of Professionals and Autonomous Workers (UPTA) presented for public opinion a first draft of what was intended to become a Statute with the scope of an Law. From that first text a good part of the actual contents have been derived, and it has been a working guide during these recent years.

The Government, through the Ministry of Labour and Social Affairs, taking on the pledge of the Government Program introduced by the President, and being familiar with the basic proposal by UPTA, decided to commence dialogue in this direction with the principal organizations of autonomous workers which existed at the time.

The method chosen in common by the Government and by the associations UPTA, ATA and CEAT to begin work, was the creation of a Commission of Experts for the purpose of studying the need and opportunity for the proposed Statute for own-account workers.

The Commission was established, and presided over by the Head of the Department of Labour and Social Security Law of the Complutense University of Madrid, Professor Fernando Valdes Dal-Ré and by other prestigious professors such as Jesus Cruz Villalon, Salvador del Rey Guanter, Juan Antonio Maroto Acin and Carmen Saez Lara.

In October of 2005, the Commission presented its conclusions which were detailed in the report on the Statute for the Promotion and Protection of the Autonomous Worker, in which was articulated not only a broad statistical and economic study of what autonomous work represents in Spain, but also neatly expressed the reasons which could and should drive the Government to produce an Act with these characteristics, and also offered ideas on its possible contents. The reading of this report remains, without doubt, of great interest as many aspects are reflected which did not only serve in the design of the final text, but also proclaim and analyze to a large extent the contents of future norms which may be developments of, or complementary to, that now approved.

Consequent on the Commission's report, direct negotiations between the Government with the representative associations and also, with greater implementation, consultations with the Social Agencies, UGT, CCOO and CEOE, with the CCAA through the Inter-sectorial Employment Commission took place, and from this process the draft bill of the Act was presented on the 21 September 2006 which became the basis of the agreement signed with the two principal autonomous workers' organizations UPTA and ATA, on the 26 September 2006.

After mandatory reports by the General Council of the Judiciary and by the Economic and Social Council the draft bill was finally approved by the Council of Ministers during early 2007, commencing the parliamentary process which resulted in its final approval in June of this year.

Three years of difficult negotiations and intensive working sessions have produced an answer more than twenty-six years after the Statute for Workers was promulgated, without this basic Act for our labour order including the rights and regulations for self-employed workers.

Effectively, the authors of that document, differing from the approach which was adopted in other European nations, opted to reserve our principal labour norm for the exclusive sphere of those who work as employees or for a third party, perhaps hoping that in future some substantial regulation concerning autonomous workers would be produced.

For this reason, all applicable regulations originating during those years, based fundamentally on the Decree regulating the appointment to the Special Social Security Scheme for Autonomous Workers, have been partial, diverse and at times contradictory, even disjointed and erratic.

With the new Act, substantiality, a conceptual and adequate legal framework has been formed, and from this time the definition of autonomous worker will cease to be strictly economic or sociological and move to having a normative scope.

With this, the identification of a wide social collective will be recovered.

The solution supported, a result of the first proposals of the organizations, the hard work carried out by those responsible in the Ministry of Labour, and especially the result of continual negotiation, permits an original and intelligent solution, which is the first experience with this format in Europe, and without doubt it will be followed very carefully throughout Europe.

It would have been possible to follow other solutions in use in various member countries of the European Union; incorporate the legislation into basic labour legislation, apply in a general manner the contents of other legal norms such as those which regulate agency contracts, or the partial legislation of certain collectives according to their speciality, solutions supported by the Nordic countries, by Germany and by Italy respectively.

But all these have encountered difficulties and experience has demonstrated that they have not offered sufficiently effective solutions to dealing with such a complex and heterogeneous reality.

There are many aspects which may stand out in the new Act, but perhaps we can underline three of a general nature which define its contents well.

In the first place, the clarity of the text concerning the civil or mercantile nature of the legal relationship established between the autonomous worker and the persons or entities with which contracts are entered into.

With this any assertion concerning the supposed "labourisation" of the collective is excluded, as well as alleged ruptures in the labour market, which, because of lack of understanding, some try to bring to the attention of the public.

On the other hand the text does not only establish a catalogue of individual and collective rights and obligations, but also, particularly for economically dependent autonomous workers, the weakest link in the contractual process, it also articulates effective instruments for the exercising of these rights.

In particular, the systems for conciliation and arbitration which are foreseen, the professional interest agreements which permit the exercising of collective action amongst autonomous workers, and especially the recourse to Labour Courts for the resolution of litigation between parties under certain conditions – all of this favours and offers guarantees in the effective exercise of these recognized rights.

Finally, we must indicate that this new Statute is not limited to simple legal regulation and a professional system, however important this may be, but also that the same leads, through the legislators' decisions, to a true policy of fomentation and promotion of autonomous labour.

The State is not neutral in this work of fomentation, considering the access to autonomous labour as a system for the creation of stable employment. Furthermore, the text shows advances in the necessary social protection of the collective, especially in the future pledge to establish a system of cover to situations of involuntary cessation of activity, approaching in this way the general regimen of all workers.

In this sphere, the new institutional and representational model does not have less importance. The articulation of a specific system of associative representation has culminated in the creation of the State Council for Autonomous Labour, a consultative and collaborative organ of the Public Administration, and it appears that this will provide in the future the protagonism and presence which autonomous labour needs in Spain.

Without doubt much will be written in the coming years about each of the parts and chapters of this Statute, and now CINCA Editions has placed it directly within the reach of interested parties, given that by simply reading it important consequences can be deduced, not only for the autonomous workers themselves, but also for all enterprises which work with them, in public functions and for those who wish to study it from any doctrinal perspective.

Finally, the unanimous nature of the approval of the final document on the part of parliamentary groups stands out, during a political phase in which this type of unanimity is not usual.

Without doubt, we are dealing with an exercise in responsibility on the part of the whole parliamentary sphere which, faced with the natural discrepancies which have manifested themselves in the course of the debate, have interpreted the fact that the collective of autonomous labour wanted, above all else, recognition of their historic action and a regulatory Act which at least represents a point of departure for their future actions.

The Law of Statute for Autonomous Work brings together a group of beneficial measures for entrepreneurs and independent workers who currently carry out their activities, but is also an endorsement and a guarantee for those many enterprising persons who will begin their activities in the coming years under better conditions than those who did this previously.

SEBASTIAN REYNA

*Secretary General  
of Professionals*

*of the Union  
and Autonomous Workers  
(UPTA)*

## **ACT 20/2007, OF 11 JULY, STATUS OF AUTONOMOUS WORK**

(BOE of 12 July 2007)

### **Preamble**

Autonomous labour has traditionally been seen in the framework of legal relations belonging to private law, for which reason the normative references to the same can be found dispersed throughout all the legal legislation.

In this sense the Constitution, without making express reference to workers on their own account, gathers together, in some of its precepts, rights applicable to autonomous workers. Thus, article 38 of the Constitution recognises the liberty of the enterprise within the framework of a market economy; article 35, in section 1, recognises, for all Spaniards, the obligation to work and the right to work, with free choice of profession or trade, to promotion through work and sufficient remuneration to satisfy their needs and those of their family, without discrimination on grounds of sex under any circumstances; article 40, in section 2, establishes that the public authorities shall foment a policy which guarantees work-related training and readjustment, watch over safety and hygiene in the workplace, and guarantee the necessary rest through the limitation of working hours, periodic paid holidays and the promotion of adequate centres; finally, article 41 charges the public authorities with the maintenance of a public Social Security system for all citizens which guarantees assistance and social benefits sufficient for situations of necessity.

These constitutional references do not have any reason to confine themselves to third-party account work, since the Constitution determines thus when the term "Spaniards" is used in article 35 or that of "citizens" in article 41, or when it charges the public authorities with the execution of certain policies, article 40, without stating that its recipients must be exclusively employed workers.

In the social sphere we may emphasize, in Social Security matters, norms such as the General Social Security Act, article 25.1 of the Constitutional Law 1/2004, of 28 December, concerning Integral Protection Measures against Gender Violence referring to employed workers who are victims of gender violence, Decree 2530/1970, of 20 August, which regulates the Special Scheme for Self-employed or Autonomous Workers, and other provisions. In matters of the prevention of working risks the Law on the Prevention of Working Risks and to Royal Decree 1627/1997, of 24 October, through which are established the minimum provisions for safety and health in construction work, as well as other provisions for implementation, is appropriate.

The European Union, for its part, has dealt with autonomous work in normative instruments such as Council Directive 86/613/CEE, of 11 December 1986, relating to the application of the principle of equal treatment for men and women who carry out autonomous activities, including agricultural activities, as well as concerning protection during maternity, which gives a definition of autonomous worker in article 2.a), or in the Council Recommendation of 16 February 2003 relating to the improvement of health protection and safety at work of autonomous workers.

The comparative laws of the countries in our environs do not make use of examples concerning the regulation of autonomous work as such. In the countries of the European Union the same happens as in Spain: references to the role of the autonomous worker can be found dispersed throughout the legislation, especially legislation on social security and the prevention of risks. In this sense, the importance of this present Act stands out, because it is the first example of systematic and unified regulation of autonomous labour in the European Union, which without doubt constitutes a milestone in our Legal System.

This is an Act which regulates autonomous labour, without interfering in other areas of our productive fabric, such as the agricultural sector, which has its own regulation and its own channels of representation.

The competences and attributes of Professional Institutions will also not be affected by the approval of this Act.

## II

From a social and economic viewpoint it cannot be said that the current role of the autonomous worker is the same as that of some decades ago. Throughout the last century work was, by definition, dependent and as an employee, distant from the fruits and the risks of any enterprising activity. From this perspective, self-employment or autonomous work had a nature limited, in many cases, to low income activities, with a reduced dimension, which did not require great financial investments, such as for example, agriculture, handicrafts or small businesses. Presently, the situation is different, as autonomous work is proliferating in countries with a high standard of living, in activities with a high added value, as a consequence of new organizational developments and the diffusion of information technology and telecommunications, and has become a free choice for many persons who value self-determination and their capacity not to depend on others.

This circumstance has given place to what in recent years has become continually more important and numerous in legal trade and social actuality, together with the role which we could call the classic autonomous worker, owner of a commercial establishment, farmer, and diverse professionals, other roles just as heterogeneous such as entrepreneurs, persons who are found in the initial phase and opening of an economic or professional activity, economically dependent autonomous workers, worker-associates of cooperatives or administrators of mercantile associations who have effective control of the latter.

Currently, as of 30 June 2006, the number of autonomous workers affiliated to the Social Security has grown to 3 315 707, distributed in the Special Scheme for Self-employed or Autonomous Workers, in the Special Agrarian Scheme and in the Special Scheme for Maritime Workers. Of these, 2 213 636 are natural persons who carry out professional activities in diverse economic sectors.

Starting with the latter group, it is very significant that 1 755 703 autonomous workers do not have employees and that of the remaining group of 457 933 little more than 330 000 have one or two employees. That is to say, 94% of autonomous workers who carry out an economic or professional activity without the legal framework of an enterprise do not have employees or only have one.

We are speaking of a large group that carries out professional work risking their own economic resources and contributing their personal work, the majority of whom do this without the help of an employee. This is a group that definitely requires a level of social protection similar to those workers who work for third parties.

During recent years several initiatives intended to improve the situation of the autonomous worker have been put in place. Amongst these, the Economic Activities Tax has been emphasized for all natural persons, as well as those introduced by Law 36/2003, of 11 November, concerning Economic Reform Measures which covers temporary incapacity from the fourth day of absence, the possibility of having cover for work-related accidents and work-related illnesses and a reduction for those who join the Special Scheme for Self-employed or Autonomous Workers for the first time, being less than thirty years of age, or women over forty-five years of age. In Act 2/2004, of 27 December, concerning General State Budgets for 2005, measures are incorporated for the fomentation of autonomous employment for young persons up to thirty years of age and women up to thirty-five, a reduction in contributions to Social Security as well as access to measures for the fomentation of stable employment of those family members contracted by autonomous workers. In the same way, the capitalization

system for benefits for unemployment is being improved through the method of a single payment for the unemployed who start their activity as autonomous workers.

The Government, sensitive to this evolution of autonomous work, has already promised in the investiture of its President to approve, during this Legislature, a Statute for Autonomous Workers. As a consequence of this the Ministry of Labour and Social Affairs agreed to constitute a Commission of Experts who will be charged with a double task: on one hand, to effect an analysis and evaluation of the economic situation concerning autonomous work in Spain, and on the other, analyze the Legal System and the social protection for autonomous workers, preparing at that time a proposal for a Statute for Autonomous Workers. The work of the Commission culminated with the delivery of an extensive and documented report, accompanied by a proposal for the Statute, in October 2005.

Simultaneously, the Sixty-ninth Additional Provision for Act 30/2005, of 29 December, concerning General State Budgets for 2006, incorporated a mandate to the Government to present to the Council of Deputies, within a period of one year, a Bill for a Law of Statute for Autonomous Workers in which autonomous work would be defined and the rights and obligations of autonomous workers, their level of social protection, labour relations and the policy for fomenting autonomous employment, as well as the role of the worker, set out.

By means of Resolution number 15 of the debate on the State of the Nation of 2006, the Congress of Deputies urged the Government to present the Bill for a Law of Statute for Autonomous Workers in the course of this year, to advance in the comparison, in the terms considered in Recommendation number 4 of the Toledo Agreement, on the level of social protection of autonomous workers with that of employed workers.

Finally, with the approval of Constitutional Law 3/227, of 22 March, for effective equality for women and men, on the initiative of the Government, a first step was taken in complying with said Resolution, by introducing numerous measures to improve the situation of autonomous workers, especially in that relating to rights derived from situations of maternity and paternity, all in the context of advancing a policy of conciliation of family life with work, as demanded by the autonomous workers.

### III

The present Act is the result of the completion of the previously mentioned mandates. In its preparation union and business organizations have been consulted, as well as autonomous workers' associations.

The Act consists of 29 articles, contained in five sections, plus nineteen additional provisions, three transitory provisions, one repeal provision and six final provisions.

Part I delimits the subjective sphere of the application of the Act, establishing a generic definition of the autonomous worker and adding the specific groups included and excluded.

Part II regulates the professional System of the autonomous worker in three Chapters. Chapter I establishes the sources of said professional System, clarifying the civil or mercantile nature of legal relationships established between the autonomous worker and the person or entity to which he or she is contracted. Section 2 of article 3 introduces the agreements of professional interest to those autonomous workers who are economically dependent, an important innovation created by this Act.

Chapter II refers to the common professional System for all autonomous workers and established a catalogue of rights and obligations, as well as the norms in matters of the prevention of occupational hazards, the protection of minors and economic guarantees.

Chapter III recognises and regulates the role of the economically dependent autonomous worker. Its regulations convert the necessity of providing legal cover to a social reality: the

existence of a group of autonomous workers who, notwithstanding their functional autonomy, carry out their activity with a strong and almost exclusive economic dependence on the businessman or client who contracts them. The Act considers the case in which this businessman is the principal client and provides at least 75 percent of the worker's income. According to the data provided by the National Statistics Institute, in 2004 the number of businessmen with no employees, who work for only one company or client, grew to 285 600. The figure is important, but the significant aspect is that this group has increased by 33 percent since 2001.

In view of the reality previously described, the introduction of the role of the economically dependent autonomous worker has established the need to prevent the possible undue utilization of said role, given that we are moving across a frontier not always well defined, between the classic autonomous role, the economically dependent autonomous worker and the employed worker.

The intention of the legislator is to eliminate these grey borderline areas within the three categories. For this reason article 11, when defining the economically dependent autonomous worker is very restrictive, delimiting the cases in which the activity is carried out outside the sphere of the organization and the direction of the client who contracts the worker, in conformance with objective criteria.

The remainder of Chapter III establishes a regulation which offers guarantees to the economically dependent autonomous worker, by reason of this situation of economic dependence, without prejudice to the principle of autonomous will operating as a general norm in the relations between the worker and the client. In this sense, the recognition of the agreements of professional interest in article 13 alluded to in the Chapter dedicated to sources, does not imply the transfer of group negotiation to this sphere, but simply recognizes the possibility of the existence of an agreement which transcends the mere individual contract, but with personal limited effect, as it only involves the signatories to the agreement.

The recourse to Labour Courts provided for in article 17 is justified because the legal form of the economically dependent autonomous worker was designed taking into account the criteria, which, in a reiterated form, the jurisprudence of said Courts had established. The jurisprudence has defined a series of criteria to distinguish between self-employed workers and employed workers. The economic dependence which the Act recognises in the case of the economically dependent autonomous worker should not be misunderstood: it deals with an autonomous worker and this economic dependence must in no way imply organizational dependence nor a third-party situation.

Litigious questions concerning the civil or mercantile contract drawn up between the economically dependent autonomous worker and the client will be closely bound to the nature of the form of the contract, in such a way that the intentions tied to the contract will always be judged in connection with whether the autonomous worker is actually economically dependent or not, depending on whether he or she meets the requirements established in the Act. And this situation, central to all litigation, will be familiar to the Legal System.

#### IV

Part III regulates the collective rights of all autonomous workers, defining the representivity of their associations in conformance with the objective criteria established in article 21 and creating the Council for Autonomous Labour as a consultative organ of the Government in socio-economic and professional matters referred to in article 22.

Part IV establishes the general principles in social protection matters, gathering together the general norms on affiliation, contributions and protective action of the Social Security for autonomous workers. The possibility of establishing reductions or allowances in the basic dues or in the contributions to Social Security for certain groups of autonomous workers, dependent on their personal circumstances or the professional characteristics of the activity

carried out, should be emphasized. Protection for contingencies such as accidents at work and work-related illnesses are extended to economically dependent autonomous workers and the possibility of early retirement is taken into account for those autonomous workers who perform an activity in a toxic environment, or a dangerous or arduous activity, under the same conditions as provided for in the General Scheme. It deals with measures which, together with those provided for in the additional provisions, tend to favour the convergence of the Special Scheme for Self-employed or Autonomous Workers with the General Scheme.

Finally, Chapter V is dedicated to the fomentation and promotion of autonomous work, establishing measures intended to promote an entrepreneurial culture, to reduce the costs of starting up the activity, to impel work-related education and training and to favour autonomous work by means of an adequate fiscal policy. It deals with, then, the general lines along which active policies for the fomentation of self-employment should be formulated, lines which will materialize and be developed as a function of socio-economic reality.

## V

The first additional provision refers to the reform of the Revised Text of the Labour Procedures Act. The modifications are those strictly necessary as a consequence of the inclusion of the controversies deriving from the contracts of economically dependent autonomous workers in the ambit of the Legal System. In line with this, the obligatory nature of previous conciliation is established, not only before the corresponding administrative service but also before the organ which it has eventually been possible to create by means of work-related interest agreements.

The second additional provision assumes recognition of the objective that certain groups or activities enjoy peculiarities in matters of dues, as a complement of the measures for fomentation of self-employment. A concrete mandate is created to establish reductions in the dues of the following groups of autonomous workers: those who carry out an activity for their own account together with another activity as an employee, in such a way that the sum of both dues exceeds the maximum base, the offspring of autonomous workers younger than 30 years of age who start work in the family activity and those autonomous workers who work as street vendors or who are engaged in house-to-house selling.

The third additional provision gathers together the obligations that, in the future, all autonomous workers who have not done so will have to opt for temporary incapacity cover, a measure which favours the convergence with the General Scheme, as well as the need to complete a study on the professions or activities with greater risk, in which the groups of autonomous workers affected must cover work-related contingencies.

The fourth additional provision regulates the benefits for cessation of activity. It covers the promise of the Government that, only if the principles of contribution, solidarity and financial sustainability are guaranteed, and if it responds to the needs and preferences of the autonomous workers, proposes to the Parliament the regulation of a specific system of protection for cessation of activity for the same, according to their personal characteristics or the nature of the activity concerned.

The fifth additional provision specifies that that which is set out in section 2 of article 23, in articles 24 to 26 and in paragraph c), section 2 of article 27, as well as in the second and third additional provisions of the present Act shall not apply to self-employed or autonomous workers who, in the terms established in the fifteenth additional disposition of Act 30/1995, on the supervision and arrangement of private insurance companies, have opted or will opt in the future to assign to the Social Provision Mutual which is constituted in the Professional Institute to which they belong and which acts as an alternative to the Special Scheme of the Social Security for Self-employed or Autonomous Workers.

The sixth additional provision establishes the need for the adaptation of the norm to the autonomous competences relating to representation and special registry of professional associations of autonomous workers in the related territorial sphere.

The seventh additional provision establishes the possibility of updating the basis of dues differentiation, reduction, or allowance, provided for specific groups of autonomous workers according to their special characteristics, by means of the General State Budget Act.

The eighth additional provision indicates that the Government will establish the presence of autonomous workers on the Economic and Social Council, taking into account the evolution of the Autonomous Labour Council in the representation of the same, and the compulsory report of the aforementioned Economic and Social Council.

The ninth additional provision determines that a study shall be presented by the Government within one year concerning the evolution of the measure of a single payment for unemployment to begin own-account activities, and the possible increasing of the existing percentages of capitalization, depending on the results of such a study.

The tenth additional provision refers to the inclusion of family members of the autonomous worker in the Social Security, making it clear that autonomous workers may contract, as third-party workers, their offspring of less than thirty years of age, even though these live together with the autonomous worker, with cover for unemployment of the offspring being excluded.

The eleventh additional provision suggests adopting, for autonomous workers in the transport sector, the reference of article 1.3 g) of the Revised Text for the Workers Statute be included in the subjective ambit of this Act, blending the requirements which in this case should be fulfilled for the autonomous workers of this sector to be considered as economically dependent autonomous workers.

The twelfth additional provision establishes the participation of autonomous workers in training programs and programs on the prevention of occupational hazards, with the objective of reducing high risk and avoiding the occurrence of occupational illnesses in the respective sectors, through the associations which represent autonomous workers and the most representative union organizations.

The thirteenth additional provision introduces increments in the reduction of, and allowances for, contributions to Social Security as well as the respective periods applicable to new workers included in the Special Scheme of Social Security for Self-employed or Autonomous Workers who are less than 30 years of age and 35 years in the case of women autonomous workers, giving a new interpretation to the thirty-fifth additional provision of the General Social Security Act, revised text approved by Royal Legislative Decree 1/1994, of 20 June.

The fourteenth additional provision indicates a period of one year for the Government to prepare a study concerning the sectors of activity that have a special incidence amongst autonomous workers.

The fifteenth additional provision establishes a period of one year for the Government to present a study on the updating of the norm which regulates the Special Scheme for Autonomous Workers essentially established in Decree 2530/1970, of 20 August.

The sixteenth additional provision determines the period of one year for the Government to realize, in collaboration with the most representative entities of autonomous workers, a campaign for the dissemination of information concerning the norm and the characteristics of the Special Scheme for Autonomous Workers.

The seventeenth additional provision suggests the regulatory determination of cases in which agents of insurance companies would be subject to contracts as economically dependent autonomous workers, without affecting in any way their mercantile relationship.

The eighteenth and nineteenth additional provisions refer respectively to specific cases of persons with incapacities and to commercial agents.

Of the transitory provisions, it is fitting to emphasize that the first transitory provision establishes a period of six months for the adaptation of statutes and the recognition of the legal personality of associations. The second transitory provision sets the periods for the adaptation of current contracts of economically dependent autonomous workers, most specifically the adaptation period of said contracts in the third transitory provision for the transport sector and for insurance agents.

The first final provision establishes the title of competence, which enables the State to pass this Act. Specifically, the Act dictates the protection of that set out in article 149.1.5.<sup>a</sup>, legislation concerning the Administration of Justice, 6<sup>a</sup>, mercantile and procedural legislation, 7<sup>a</sup>, labour legislation, 8<sup>a</sup>, civil legislation, and 17<sup>a</sup>, basic legislation and the economic regimen of the Social Security.

The second final provision incorporates the general principle of the Toledo Agreement to achieve equality in contributions, rights and obligations of autonomous workers with employed workers included in the General Scheme.

The third final provision enables the Government to pass regulatory provisions for execution and implementation necessary for the application of the Act.

The fourth final provision establishes that the Government must inform the General Courts annually of the execution of provisions contained in this present Act, incorporating in said report the opinion of the Consultative Organs.

The fifth final provision establishes a period of one year for the regulatory implementation of the Act in matters relating to work contracts for economically dependent autonomous workers.

The sixth final provision establishes a “vactio legis” (legal vacuum) of three months, a period considered to be adequate for the Act to come into force.

## PART I

### Sphere of subjective application

#### Article 1. Cases included

1. The present Act shall be applicable to natural persons who carry out in an habitual, personal and direct manner, for their own account, and outside the sphere of direction and organization of other persons, an economic or professional activity for financial gain, providing or not providing, occupation for employed workers.

This Act shall also be applicable to work carried out in an habitual manner, by members of the family of those persons defined in the previous paragraph who are not employed workers, in conformance with that established in article 1.3 e) of the revised text of the Act on the Workers' Statute, approved by Royal Legislative Decree 1/1995, of 24 March.

2. The following are declared to be expressly included in the sphere of application of this Act, but only if the requirements referred to in the previous section are fulfilled:

Industrial associates of collective regulatory societies<sup>1</sup> and incorporated partnerships.

b) The community members of communities possessing assets and the associates of irregular civil societies<sup>2</sup>, unless their activities are limited to the mere administration of the common assets pooled together.

c) Those who exercise functions of direction and management which accompany the performance of the duties of councilor or administrator, or provide other services for a capitalist mercantile company, for profit and in a personal, direct and habitual manner, when they have effective direct or indirect control of that, in the terms provided for in the twenty-seventh additional provision of the revised text of General Social Security Act approved by Royal Legislative Decree 1/1994, of 20 June.

d) The economically dependent autonomous workers referred to in Chapter III of Part II of this Act.

e) Any other person who fulfills the requirements established in article 1.1 of the present Act.

3) The inclusions referred to in the previous section are understood to be without prejudice to the application of their respective specific norms.

4) The present Act shall be applied to foreign autonomous workers who fulfill the requirements provided for in Constitutional Law 4/2000, of 11 January, concerning rights and liberties of foreigners in Spain and their social integration.

#### Article 2. Cases excluded.

Those provisions of services which do not comply with the requirements of article 1.1, and especially those listed below, shall be deemed to be expressly excluded from the sphere of application of this Act:

a) Working relationships for employees referred to in article 1.1 of the revised text of the Act on the Status of Autonomous Work, approved by Royal Legislative Decree 1/1995, of 24 March.

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<sup>1</sup> Translator's note: This term is a literal translation of the Spanish wording, as no official translation could be found.

<sup>2</sup> As per footnote 1.

b) Activities limited to the mere performance of the duties of councilor or member of the organs of administration in companies which revise their legal form of association, in conformance with that established in article 1.3 c) of the revised text of the Act on the Status of Autonomous Work, approved by Royal Legislative Decree 1/1995, of 24 March.

c) Working relationships of a special nature which are referred to in article 2 of the revised text of the Act on the Status of Autonomous Work, approved by Royal Legislative Decree 1/1995, of 24 March and complementary provisions.

## **PART II**

### **Professional regimen of autonomous workers**

#### **CHAPTER I**

##### **Sources of the professional regimen**

###### **Article 3. Sources of the professional regimen**

1. The professional regimen of the autonomous worker is ruled by:

a) The provisions provided for in the present Act, in which no opposition is made to specific legislation applicable to the activity concerned, as well as the remainder of the legal norms and complimentary regulations which are applicable.

b) The common norm relating to civil, mercantile or administrative contracting which regulates the corresponding legal relationship of the autonomous worker.

c) Agreements established individually by way of contract between autonomous workers and the client for the implementation of their professional activities. The clauses established in an individual contract that are contrary to the necessary legal provisions of the law are deemed to be null and void.

d) Local and professional use and customs.

2) Professional interest agreements shall be, in the same way, a source of the professional regimen of economically dependent autonomous workers.

Every clause of the individual contract of an economically dependent autonomous worker affiliated to a union or associated with an organization of autonomous workers, shall be nullified when they contravene that provided for in a professional interest agreement signed by said union or association which is applicable to said worker by way of his consent.

3) By reason of that provided for in the first final provision of the revised text of the Act on the Status of Autonomous Work, approved by Royal Legislative Decree 1/1995, of 24 March, own-account work carried out shall not be subjected to labour legislation, except for those aspects which are set out expressly by a legal rule.

#### **CHAPTER II**

##### **Common professional regimen of the autonomous worker**

#### **Article 4. Professional rights**

1. Autonomous workers have the right to exercise the fundamental public rights and liberties recognised by the Spanish Constitution and in the international treaties and agreements ratified by Spain in this matter.
2. The autonomous worker has the following basic individual rights, with the content and range set out for each of these by the related specific regulation:
  - a) The right to work and the free election of profession or trade.
  - b) Freedom of economic initiative and the right to free competition.
  - c) The right to intellectual property in respect of his or her protected works or services.
3. In the exercising of his or her professional activity, autonomous workers have the following individual rights:
  - a) To equality before the law, and not to suffer discrimination, direct or indirect, by reason of birth, racial or ethnic origin, sex, marital status, religion, convictions, incapacity, age, sexual orientation, the use of any of the official languages within Spain or any other personal or social condition or circumstance.
  - b) Not to suffer discrimination by reason of incapacity, in conformance with that established in Act 51/2003, of 2 December, concerning equality of opportunity, freedom from discrimination, and universal access for incapacitated persons.
  - c) With respect to his or her privacy and considerations of dignity, as well as adequate protection against sexual harassment and harassment because of sex or for any other personal or social circumstance or condition.
  - d) To professional training and adaptation.
  - e) To physical integrity and to adequate protection in matters of safety and health in the workplace.
  - f) To the punctual receipt of the agreed economic compensation for the professional exercise of his or her activity.
  - g) To the conciliation of his or her professional activity with personal and family life, with the right to suspend his or her activity in situations of maternity, paternity, danger during pregnancy, danger during nursing and adoption or fostering, both before adoption and permanent or acute, in conformance with the Civil Code or the civil laws of the Autonomous Communities which regulate this, but only if its duration is not less than one year, even if these are provisional, in the terms provided for in Social Security legislation.
  - h) To sufficient assistance and social provision in case of need, in conformance with Social Security legislation, including the right to protection in situations of maternity, paternity, danger during pregnancy, danger during nursing and adoption or fostering, both before adoption and permanent or acute, in conformance with the Civil Code or the civil laws of the Autonomous Communities which regulate this, but only if its duration is not less than one year, even if these are provisional.
  - i) To the individual exercise of the shares/actions derived from his or her professional activity.
  - j) To the effective legal protection of his or her professional rights, as well as access to extra-legal measures for the solution of conflicts.

k) To any others derived from contracts to which they are party.

#### **Article 5. Basic professional obligations**

The following are basic professional obligations of autonomous workers:

- a) To fulfill obligations derived from contracts to which they are party, in the tenor of the same, and with consequences that, by their nature, conform to good faith, to use, and to the law.
- b) To fulfill obligations in matters of safety and health in the workplace that are imposed on them by the law or by the contracts to which they are party, as well as following the rules of a group nature derived from the place at which they provide their services.
- c) To affiliate themselves, communicate their attendance and non-attendance and contribute to the Social Security system under the terms provided for in the corresponding legislation.
- d) To fulfill fiscal and tax obligations established by law.
- e) To fulfill any other obligations resulting from the applicable legislation.
- f) To comply with the ethical norms applicable to the profession.

#### **Article 6. Right to non-discrimination and guarantee of fundamental public rights and liberties of the autonomous worker.**

- 1. Public authorities must guarantee the effectiveness of the fundamental rights and liberties of the autonomous worker.
- 2. Public authorities and those who contract the professional activity of autonomous workers are subject to the prohibition of discrimination, both direct and indirect, against the said workers, for the reasons indicated in article 4.3.a) of the present Act. The prohibition of discrimination shall affect both free economic initiative and contracting, as well as working conditions.
- 3. Any autonomous worker, the associations which represent autonomous workers, or the unions which consider their fundamental rights to be violated or that discriminatory treatment has occurred may claim the protection of the law before the jurisdiction competent in that matter by means of a summary and preferential procedure. If the legal organ considers that the right concerned has been violated, it shall declare the radical nullity and the immediate cessation of the conduct and, when it is appropriate, the return of the situation to the moment before it occurred, as well as reparation for the consequences of the act.
- 4. Contractual clauses that violate the right to non-discrimination or any fundamental right shall be nullified and shall be deemed to be void. The magistrate who declares the invalidity of said clauses shall include this in the contract with regard to that set out in article 1258 of the Civil Code and, as far as may be necessary, shall determine the corresponding damages.
- 5. In relation to the right to equality and non-discrimination by reason of sex, reference should be made to that set out in the Constitution 3/2007, of 22 March, for the effective equality of women and men.

#### **Article 7. Form and duration of the contract**

- 1. Contracts that autonomous workers conclude for the execution of their professional activity may be drawn up in writing or may be oral. Each of the parties may demand from the other, at any time, the formalization of the contract in writing.

2. The contract may be drawn up for the execution of work or series of works, or for the provision of one or more services and shall be for the duration agreed on by the parties.

#### **Article 8. Prevention of occupational hazards.**

1. The competent Public Administrations shall assume an active role in relation to the prevention of occupational hazards for autonomous workers, by means of activities directed towards the promotion of prevention, technical assessment, vigilance and control of the compliance by autonomous workers with the regulations on the prevention of occupational hazards.

2. The competent Public Administrations shall further specific training in prevention adapted to the peculiarities of autonomous workers.

3. When, in the same workplace, autonomous workers and workers from another company or other companies are present, such as when autonomous workers carry out their professional activities in premises or workplaces of the companies to which they provided services, the obligations of cooperation, information and instruction set out in sections 1 and 2 of article 24 of Act 31/1995, of 8 November, for the Prevention of Occupational Hazards.

4. Businesses that contract autonomous workers for the realization of work or services related to the activity of the business, and which are implemented in their own workplaces, must supervise their compliance with the regulation for the prevention of occupational hazards for these workers.

5. When autonomous workers have to work with machines, equipment, products, materials or implements provided by the company for whom they carry out their professional activity, but do not carry out this activity in a workplace of such company, this shall assume the obligations set out in the last paragraph of article 41.1 of Act 31/1995, of 8 November, for the Prevention of Occupational Hazards.

6. In cases where companies do not comply with the obligations provided for in sections 3 to 5 of the present article, they shall assume the compensation obligations for the damages and prejudices occasioned, when and if there is a direct causal relationship between such lack of compliance and the prejudices and damages caused

The responsibility for the payment established in the previous paragraph, which falls directly to the infracting businessman, shall be incurred whether or not the autonomous worker was protected by a provision for professional contingencies.

7. The autonomous worker shall have the right to interrupt his or her activity and leave the workplace when he or she considers that said activity entails a serious and imminent danger to his or her life or health.

8. The provisions contained in the present article apply without prejudice to the legal obligations established for autonomous workers in charge of employees in their role of businessman.

#### **Article 9. Protection of minors.**

1. Persons less than sixteen years of age may not carry out autonomous work or professional activities, not even for their families.

2. Notwithstanding that provided for in the previous section, in the case of the provision of services in public spectacles, reference should be made to that established in article 6.4 of the Revised Text of Act on the Status of Autonomous Work, approved by Royal Legislative Decree 1/1995, of 24 March, which shall be applied.

## **Article 10. Economic Guarantees.**

1. Autonomous workers have the right to the receipt of economic compensation for the execution of a contract in the time and manner agreed and in conformance with that set out in Act 3/2004, of 29 December, which established measures to combat delay in paying in commercial operations.
2. When an autonomous worker carries out his or her professional activity for a contractor or sub-contractor, he or she shall have an action against the principal businessman, up to the amount of the debt which is owed to him or her at the time of the claim, except when dealing with construction, repairs or services contracted in family homes.
3. In matters of the guarantee of the collection of debts for the personal work of an autonomous worker, reference should be made to that set out in the civil and mercantile regulations concerning privileges and preferences, in the same way as Act 22/2003, of 9 July, concerning Tendering, with economically dependent autonomous workers being subject in all cases to the situation of general privilege described in article 91.3 of said Act.
4. The autonomous worker shall meet his or her obligations with all of his or her present and future assets, without prejudice to the unimpoundability of assets established in articles 605, 606 and 607 of Act 1/2000, of 7 January, on Civil Judgment.
5. For the purposes of satisfaction and collection of debts of a taxation nature and any type of debt which is the subject of collection in the ambit of the Social Security System, if an immovable asset is seized, if the autonomous worker states reliably that this is a living place which constitutes his or her habitual residence, the execution of the seizure will be conditional in the first place, on the fact that there are no other known assets of the debtor sufficiently susceptible to immediate conversion to cash in the executive procedure, and in the second place, that between the notification of the first formalities of seizure and the material realization of the auction, tender or any other administrative measure of disposal there is a minimum period of one year. This period shall in no case be interrupted or suspended, in the case of broadening of the original seizure or in cases of the extension of the registrational entries.

## **CHAPTER III**

### **Professional regimen of the economically dependent autonomous worker**

## **Article 11. Concept and subjective ambit.**

1. Economically dependent autonomous workers referred to in article 1.2.d) of the present Act are those who carry out their economic or professional activities for financial gain and in an habitual, personal, direct manner and predominantly for one natural or legal person, called the client, on whom he or she depends economically, receiving from that client at least 75 % of his or her income for the performance of work and economic or professional activities.
2. For the performance of economic or professional activities as an economically dependent autonomous worker, the following conditions must be simultaneously satisfied:
  - a) The worker must not have in his or her charge, third-party account workers, nor contract or subcontract part or all of the activity to third-parties, both in respect of the contracted activity with the client on whom he or she depends economically, and the activities which he or she may contract with other clients.
  - b) The worker must not execute his or her activity in a manner that is not different to those workers who provide services under any type of labour contract for the account of the client.

- c) To possess productive and material infrastructure necessary for the carrying out of the activity independent of those of his or her client, when in said activity these are economically relevant.
  - d) To implement his or her activity with his or her own organizational criteria, without prejudice to the technical instructions which he or she may receive from the client.
  - e) To receive an economic compensation as a result of his or her activity, in accordance with that agreed with the client, assuming the risk and fortune of this.
3. Title-holders to commercial or industrial establishments or premises and to offices and shops open to the public and professionals who carry out their profession in conjunction with others in a society regimen or in any other legal form admitted in law, shall not under any circumstances be considered to be economically dependent autonomous workers.

#### **Article 12. Contract.**

1. A contract for the realization of the professional activity of an economically dependent autonomous worker drawn up between such worker and the client must always be formalized in writing, and must be registered in the relevant public office. Such registration shall not be of a public nature.

The characteristics of said contracts and of the Registry in which they must be registered, as well as the conditions under which the legal representatives of the workers have access to the information in the contracts which the company has concluded with economically dependent autonomous workers are regulated. From such information is excluded, in all cases, the national identification document number, the domicile, marital status and any other data, which, according to the Constitution 1/1982, of 5 May, may affect personal privacy.

2. Autonomous workers must ensure that their condition of economic dependence on the client who contracts them is expressly stated in the contract, as well as any variations involved in respect of this. The condition of dependency may only appear with respect to one unique client.

3. In the case of an autonomous worker who is contracted by various clients for his or her professional activity or the provision of services, when the autonomous worker experiences an unexpected circumstance, whose consequences result in the fulfillment of the conditions established in article 11, the contract signed between the parties shall be respected until the end of the same, unless they agree to modify it to bring it into line with the new conditions which are relevant to an economically dependent autonomous worker.

4. When a contract does not have a fixed duration or indicate a definite service, it shall be presumed, unless there is evidence to the contrary, that the contract was drawn up for an indefinite period.

#### **Article 13. Professional interest agreements.**

1. Agreements of professional interest provided for in section 2 of article 3 of the present Act, arranged between the associations or unions which represent economically dependent autonomous workers and the enterprise for which they carry out their activity, may establish the conditions of the manner, time and place of execution of said activity, as well as other general contracting conditions. In all cases, professional interest agreements shall observe the limits and conditions established by legislation for the protection of competence.

2. Professional interest agreements must be in writing.

3. Clauses of professional interest agreements that are contrary to legal provisions of the appropriate law shall be deemed to be null and void.
4. Professional interest agreements shall be agreed under the protection of the provisions of the Civil Code. The personal efficacy of said agreements shall be limited to the signing parties or, if appropriate, to affiliates of signing associations of autonomous workers or unions which have given their express consent to this.

#### **Article 14. Working hours for professional activity.**

1. Economically dependent autonomous workers shall have the right to an interruption of their annual activity of 18 working days, without prejudice to the fact that said regimen may be improved by means of a contract between the parties or by means of professional interest agreements.
2. The regimen of weekly rest and that corresponding to public holidays, the maximum working hours per day, and in cases where this is calculated per month or year, the weekly distribution, shall be determined by individual contract or by professional interest agreement.
3. The realization of activity for a time greater than that agreed contractually shall be voluntary in all cases, and may not exceed the maximum increase established by means of a professional interest agreement. In the absence of a professional interest agreement, the increase may not exceed 30 percent of the ordinary time of activity individually agreed.
4. An attempt shall be made to adapt the working hours to the purposes of the personal, family and professional life of the economically dependent autonomous worker.
5. A female economically dependent autonomous worker who is the victim of gender violence shall have the right to change her working hours with the object of making her safety or her right to complete social assistance effective.

#### **Article 15. Termination of contract.**

1. The contractual relationship between the parties shall be terminated by reason of any of the following circumstances:
  - a) The mutual agreement of the parties.
  - b) Reasons validly recorded in the contract, except if the same constitute a clear abuse of the law.
  - c) Death or retirement or disability incompatible with the professional activity, in conformance with the corresponding Social Security legislation.
  - d) Rejection of the economically dependent autonomous worker, in which case mediation according to the stipulated provision, or use and custom, must occur.
  - e) The will of the economically dependent autonomous worker, based on a serious failure of the other party to comply with the contract.
  - f) The will of the client, for a justified reason, in which case mediation according to the stipulated provision, or use and custom, must occur.
  - g) By decision of the economically dependent autonomous worker who believes herself to be obliged to terminate the contractual relationship as a consequence of being a victim of gender violence.

h) Any other legally established reason.

2. When the termination of a contract is a result of the will of one of the parties founded on the failure to fulfill contractual requirements on the part of the other, the party terminating the contract shall have the right to receive corresponding compensation for the damages and prejudices caused.

3. When the termination of a contract is a result of the will of the client without just cause, the economically dependent autonomous worker shall have the right to receive the compensation foreseen in the previous paragraph,

When the termination of a contract is a result of rejection of the economically dependent autonomous worker, and without prejudice to the provisions of paragraph d) of section 1 of this present article, the client may be indemnified when said rejection causes an important prejudice which paralyses or perturbs the normal implementation of the activity.

4. When the party that has the right to compensation is the economically dependent autonomous worker, the amount of the compensation shall be fixed in the individual contract or in the professional interest agreement which is applicable. In those cases where these are not regulated, for the purposes of determining the amount the following shall be taken into account, amongst other factors: the remaining time of the contract, the seriousness of the failure of fulfillment of the client, the investments and expenses advanced by the economically dependent autonomous worker linked to the execution of the contracted professional activity and the period of forewarning granted by the client concerning the date of termination of the contract.

#### **Article 16. Justified interruptions of professional activity.**

1. Properly justified causes for the interruption of the activity of the economically dependent autonomous worker are considered to be those based on:

a) Mutual agreement between the parties.

b) The need to attend to urgent, unexpected, or unforeseeable family responsibilities.

c) Serious and imminent danger to the life or health of the economically dependent autonomous worker, according to that set out in section 7 of article 8 of this Act.

d) Temporary incapacity, maternity or paternity.

e) A situation of gender violence, for which the economically dependent autonomous worker pursues her protection or her right to complete social assistance.

f) Force majeure.

2. Other reasons for justified interruption of a professional activity can be determined by means of a contract or professional interest agreement.

3. The reasons for interruption of activity foreseen in the previous paragraphs may not cause the termination of the contract by the will of the client foreseen in sub-section f) of section 1 of the previous article, all without prejudice to other effects which the parties may agree for said cases. If the client terminates the contract, this shall be considered to be unjustified, to the effects of that set out in sub-paragraph 3 of the previous section.

Nevertheless, when, in the cases considered in sub-paragraphs d) and f) of section 1, the interruption causes an important prejudice to the client which paralyses or perturbs the normal

implementation of the activity, the termination of the contract may be considered to be justified, with the effects of that set out in sub-paragraph f) of section 1 of the previous article.

#### **Article 17. Legal competence.**

1. The Labour Courts shall be competent to understand the intentions derived from a contract drawn up between an economically dependent autonomous worker and his or her client.
2. The Labour Courts shall also be competent to understand all the questions relating to the application and interpretation of the agreements of professional interest, without prejudice to the provisions of legislation on the protection of competence.

#### **Article 18. Non-jurisdictional solution of conflicts.**

1. A pre-requisite for proceeding with legal action in relation to the professional regimen of economically dependent autonomous workers is an attempt at conciliation or mediation by the administrative organ that assumes these functions. However, to this effect, the professional interest agreements referred to in article 13 of the present Act may set up specific organs for the resolution of conflicts.
2. Non-jurisdictional procedures for the solution of conflicts shall be based on the principles of no cost, swiftness, flexibility and effectiveness.
3. That which is agreed shall have executive force between the participating parties, without the need for ratification by a judicial organ, and may come into effect through a procedure of judgment.
4. Equally, the parties may subject their differences to voluntary arbitration. Decisions of the arbitrators, to this effect, shall be deemed to be equal to binding judgments. The arbitration procedure shall be subject to that agreed between the parties or a regimen which, if necessary, may be established through a professional interest agreement, or, in its absence, the regulation contained in Act 60/2003, of 23 December, on Arbitration, Act 16/1987, of 30 July, on the Planning for Land Transport or in any other specific or sectorial regulation , shall be understood to be applicable.

### **CHAPTER III**

#### **Collective rights of autonomous workers**

#### **Article 19. Basic collective rights.**

1. Autonomous workers are entitled to the following rights:
  - a) To be affiliated to the union or association of their choice, under the terms established in the corresponding legislation.
  - b) To be affiliated to, and to found, professional associations specifically for autonomous workers without previous authorization.
  - c) To exercise the collective defence of their professional interests.
2. Associations of autonomous workers are entitled to the collective right to:
  - a) Establish federations, confederations or unions, with previous compliance with the requirements demanded for the establishment of associations, with the express agreement of

the competent organs. In the same way, they may establish links that they consider opportune with union organizations and business associations.

- b) Conclude professional interest agreements for affiliated economically dependent autonomous workers in the terms provided for in article 13 of this Act.
- c) Exercise the collective defence and protection of the professional interests of autonomous workers.
- d) Participate in non-jurisdictional systems for the solution of collective controversies of autonomous workers when this is provided for in professional interest agreements.

3. Associations representing autonomous workers shall also be entitled to the powers established in article 21.5 of the present Act.

4. Without prejudice to the powers proper to unions in the exercise of the right to liberty of the union, these shall enjoy, furthermore, all the rights of section 2 of this article in respect of their affiliated autonomous workers.

#### **Article 20. Right of association of autonomous workers.**

1. Professional associations of autonomous workers shall be constituted and regulated by that set out in the Constitutional Law 1/2002, of 22 March, which regulates the Right to Association and its norms of implementation, with specialities provided for in the present Act.

2. These associations, in whose designation and statutes reference shall be made to their subjective speciality and objectives, shall have as their purpose the defence of the professional interests of the autonomous workers and complementary functions, and may implement whatever legal activities are directed towards such purpose. In no case may they be for profit. They shall enjoy autonomy before Public Administrations, as well as before any other public or private subjects.

3. Independent of that foreseen in article 10 of the Constitutional Law 1/2002, of 22 March, which regulates the Right of Association, the professional associations of autonomous workers must be registered and lodge their statutes with the special registry of the public office established for this purpose in the Ministry of Labour and Social Affairs, or of the appropriate Autonomous Communities, in which the association mainly carries out its activity. Such register shall be specific and differentiated from any other union, business or other organisations that may be subjects of registration by this public office.

4. These associations may be declared to be a public utility in conformance with that set out in articles 32 to 36 of the Constitutional Law 1/2002, of 22 March, which regulated the Right of Association.

5. These professional associations may only be suspended or dissolved by a binding resolution of the judicial authority based on a grave failure to comply with the law.

#### **Article 21. Determination of the representativity of associations of autonomous workers.**

1. Without prejudice to the representation which an association provides for its affiliates or to the purposes of the provisions of this article and the next, associations which shall be considered as representative professional associations for autonomous workers are those which, registered in the special registry established for that purpose, demonstrate sufficient implementation in the geographical sphere in which they operate. This implementation shall be indicated through objective criteria of those who may deduce the representativity of the association, amongst these being the grade of affiliation of autonomous workers to the

association, the number of associations with which the association has signed agreements of representation or other nature, the human and material resources, the professional interest agreements in which they have participated, the presence of permanent offices in their sphere of operation and whatever other criteria of a similar nature and an objective nature. The aforementioned criteria are implemented by means of a regulatory norm.

2. The status of representative association in the state ambit shall be declared by a Council formed of functionaries of the State General Administration and by impartial and independent prestigious experts. The composition of this Council, which in every case shall be made up of an odd number of not more than five members, as well as its functions and operational procedures, shall be determined according to the rules.

3. Resolutions passed by the Council referred to in the previous section shall be subject to direct appeal before the Administrative Appeal Courts.

4. The representative capacity recognised in this article for associations of autonomous workers may be exercised in the sphere of geographical operation of the association.

5. Representative associations of autonomous workers and the most representative union organisations, in conformance with articles 6 and 7 of the Constitutional Law 11/1985, of 2 August, on the Freedom of Unions, shall enjoy a singular legal position, which grants them the legal capacity to act in the representation of autonomous workers for:

a) The provision of institutional representation before Public Administrations or other entities or organisations of a state or Autonomous Community nature for which provision is made.

b) Consultation when Public Administrations develop public policies that have a bearing on autonomous work.

c) The management of public programs directed towards autonomous workers, in the terms provided for in law.

d) Any other function established legally or by means of regulations.

## **Article 22. Council for Autonomous Work.**

1. The Council for Autonomous Work shall be constituted under the shelter of the provisions of article 42 of the Constitutional Law 1/2002, of 22 March, which regulates the Right to Association, as a consultative organ of the Government in socio-economic and professional matters related to autonomous work.

2. Functions of the Council are:

a) To issue its opinion of a non-compulsory nature on the following:

1<sup>st</sup>. Draft bills or bills for Royal Decrees that have a bearing on autonomous work. In cases where modifications result which may affect the Statute for Autonomous Work, the report shall be of a mandatory nature.

2<sup>nd</sup>. The development of public policies of a state nature in matters of autonomous work.

3<sup>rd</sup>. Any other matters submitted to the Council by the Government of the Nation or its members.

b) To prepare, on request of the Government of the Nation or its members, or on its own initiative, studies and reports related to the ambit of its powers.

- c) To prepare regulations for its internal operation.
  - d) Any other competences that are attributed to it legally or by means of regulations.
3. The Council for Autonomous Work shall be composed of representatives of the representative professional associations of autonomous workers whose sphere of operation is inter-sectorial and statewide, by the most representative union and business organisations and by representatives of the State General Administration, of the Autonomous Communities and of the most representative association of Local Entities in the ambit of the state.
- If Councils for Autonomous Work are established in the autonomous sphere, a designated representative of each of the existing autonomous councils shall form part of the Council for Autonomous Work.
4. The Presidency of the Council shall fall to the Secretary General of Employment and, by delegation, to the Director General of the Social Economy, Autonomous Work and the European Social Fund.
5. The necessary credit for its operation shall be allocated to the budget of the Ministry of Labour and Social Affairs.
6. The composition and regimen of the Council shall be governed by a system of rules.
7. The Autonomous Communities may establish, within their territorial ambit, Consultative Councils in socio-economic and professional matters relating to autonomous work. In the same way, they may regulate the composition and the operation of the same.

## PART IV

### Social protection for the autonomous worker

#### **Article 23. The right to social security.**

1. In conformance with article 41 of the Constitution, persons who carry out a professional or economic activity for their own account or autonomously shall have the right to maintain a public regimen with the Social Security, which guarantees them sufficient social assistance and provisions in situations of need. Complementary provision shall be free.
2. The protection of self-employed or autonomous workers shall be implemented by means of a unique scheme, which shall be called the Special Social Security Scheme for Self-employed or Autonomous Workers, without prejudice to the fact that some specific groups of autonomous workers, by reason of their belonging to a certain economic sector, are incorporated into other regimens of the Social Security.

#### **Article 24. Affiliation to Social Security.**

Affiliation to the Social Security system is compulsory for autonomous or self-employed workers, and unique to their professional life, without prejudice to changing between the different regimens that form part of the Social Security, as well as other variations which may arise after affiliation.

## **Article 25. Contributions to Social Security.**

1. The payment of contributions is compulsory in the Special Social Security Scheme for Self-employed or Autonomous Workers under the terms set out in article 15 of the revised text of General Social Security Act approved by Royal Legislative Decree 1/1994, of 20 June, and other provisions for implementation.
2. The Act may establish different bases of contribution for economically dependent autonomous workers.
3. The Act may establish reductions or allowances in the basic contributions or in the Social Security amounts for certain groups of autonomous workers based on their personal characteristics or on the professional nature of the activity concerned.

## **Article 26. Protective actions.**

1. The protective action of the Special Social Security Scheme for Self-employed or Autonomous Worker, in the terms of and in conformance with the legal conditions provided for, shall comprise, in all cases:
  - a) Health care in case of maternity, common illnesses or professional illnesses and accidents, whether or not these are work-related.
  - b) Economic benefits in situations of temporary incapacity, pregnancy risks, maternity, paternity, nursing risks, permanent incapacity, retirement, death and survival and dependent child family members.
2. The social services provided shall be those legally established and in all cases shall comprise provision in matters of re-education, rehabilitation of incapacitated persons, help for pensioners and professional recuperation.
3. Economically dependent autonomous workers must compulsorily become members, within the sphere of the protective action of the Social Security, for cover for temporary incapacity and work-related accidents and professional illnesses of the Social Security.

For the purposes of this cover, work-related accidents is understood to mean all bodily injuries that the economically dependent autonomous worker suffers on occasion or as a consequence of professional activity, with work-related accidents being understood to include accidents which occur on journeys to and from the place of work, or by reason of, or as a consequence of, the same. Except for proof to the contrary, it shall be presumed that the accident is not work-related when it occurs outside the performance of the professional activity concerned.

4. The public authorities shall promote policies that provide incentives for self-employed workers to continue with a profession, work or economic activity once the normal age of retirement is reached. However, in cases of activities that are toxic, dangerous or arduous, and according to the terms established by regulations, affected autonomous workers who fulfill the conditions established for the right to a retirement pension, with exception to that related to age, may take early retirement, in the same cases and groups which are established as a right in respect of self-employed workers.

In this sense, incapacitated autonomous workers are understood to be included under the same conditions as employed workers.

5. The protective action of the public system of Social Security for autonomous workers shall have to concur on contributions, rights and benefits with that extant for third-party account workers in the General Social Security Scheme.

## PART V

### Fomentation and promotion of autonomous work.

#### **Article 27. Policy for the fomentation of autonomous work.**

1. The public authorities, in the sphere of their respective competences, shall adopt policies for the fomentation of autonomous work directed towards the establishment and development of economic and professional initiatives on an own-account basis.
2. These policies shall be provided, in particular, for measures directed towards:
  - a) The removal of obstacles that impede the initiation and development of an economic or professional activity on an own-account basis.
  - b) The facilitation and support of diverse initiatives for self-employment.
  - c) The establishment of exemptions from, reductions in, and allowances on, contributions to Social Security.
  - d) The promotion of an enterprising spirit and culture.
  - e) The encouragement of professional training and adaptation.
  - f) The provision of the necessary information and technical advice.
  - g) The facilitation of and access to processes of technical and organizational innovation, in such a way as to improve productivity in the activity or service concerned.
  - h) The creation of an environment that encourages the development of economic and professional initiatives within the framework of autonomous work.
  - i) Supporting entrepreneurs in the sphere of innovative activities linked with new fields of employment, new technologies or new economic or social activities of public interest.
3. The preparation of this policy of encouragement of autonomous work shall tend to the achievement of effectiveness of equality of opportunities between men and women and shall give special attention to groups of disadvantaged or insufficiently represented persons, amongst which persons suffering from an incapacity occupy a preferential position.

#### **Article 28. Professional training and technical advice.**

1. The fomentation of autonomous work shall be directed especially towards to integration within the educational system, and in particular, the professional training system, the promotion of autonomous work, to propitiate the professional training and readjustment of autonomous workers, facilitating their access to professional training programs, which will be oriented towards the improvement of their professional qualifications and to the development of their managerial abilities.
2. The fomentation of autonomous work shall also give attention to the need for information and technical advice for its creation, consolidation and renewal, promoting forms of communication and cooperation between autonomous workers for these purposes.

## **Article 29. Financial support for economic initiatives.**

1. The public authorities, within the ambit of their respective competences and in the framework of the commitments assumed in the European Union, shall adopt programs of financial assistance for economic initiatives of entrepreneurial persons.
2. The preparation of these programs shall give attention to the protection of groups with special difficulty in accessing the labour market, to the guarantee of the future viability of the beneficiary projects, as well as economic assistance concerning the proposed objectives.
3. The public authorities shall favour the promotion of autonomous work by means of an adequate fiscal policy.

## **Additional provisions**

**First additional provision.** Modification of the revised text of the Labour Procedures Act, approved by Royal Legislative Decree 2/1995, of 7 April.

The revised text of Labour Procedures Act, approved by Royal Legislative Decree 2/1995, of 7 April, is modified as follows:

One. Sub-paragraph p) or article 2 is modified in the following manner:

“p) in relation to the professional system, both in its individual and collective aspects, of economically dependent autonomous workers referred to in the Act on the Status of Autonomous Work.”

Two. A new sub-paragraph, q), is introduced in article 2 with the following content:

“q) in respect of any other matters which are attributed to them by norms with the status of an Act.”

Three. Section 2 of article 16 is modified, and is now revised in the following manner:

“2. Workers older than sixteen years of age and less than eighteen shall have procedural capacity in respect of the legitimate rights and interests derived from their work contracts and from the relationship with the Social Security when they legally do not need the authorization of their parents, tutors, or of the person or institution which is in charge of them, for the signing of said contracts, or they have obtained authorization to contract from their parents, tutors, or of the person or institution which is in charge of them in conformance with the labour legislation or the civil or mercantile legislation respectively. Equally, economically dependent autonomous workers over the age of sixteen shall have procedural capacity.”

Four. Section 3 was added to article 17 which is now revised to include:

“3. Autonomous workers organisations shall be legitimized in the protection of professional interest agreements signed by them.”

Five. Article 63 has been revised to read as follows:

“ Article 63. An attempt at conciliation shall be a prior requisite for the inception of the process before the corresponding administrative service, or before the organ which assumes these functions, which may be established by means of inter-professional agreements, or the group agreements referred to in article 83 of the revised text of the Act on the Status of Autonomous Work, as well as the professional interest agreements to which article 13 of the Act on the Status of Autonomous Work refers”.

**Second additional provision.** Reductions in, and allowances on, contributions.

1. The Act shall establish reductions in, and allowances on, contributions to Social Security in favour of the following groups of autonomous workers:

- a) Those who contribute because of some other activity, if the sum of the base contributions is greater than the maximum base of the General Social Security Scheme.
- b) Incapacitated persons who perform autonomous work.
- c) Autonomous workers who are dedicated to the activity of street vending or house-to-house selling.
- d) Certain groups determined legally or by means of regulations.

2. The competent Public Administrations may subscribe to agreements with the Social Security with the object of propitiating the reduction of contributions of persons who, working autonomously, dedicate themselves to handicrafts or to artistic activities.

**Third additional provision.** Cover for a temporary incapacity and professional contingencies in the Social Security Scheme for Self-employed or Autonomous Workers.

1. From the first of January of the year following the entry into force of the present Act, self-employed or autonomous workers who have not opted to accept cover benefits for temporary incapacity, must do so, compulsorily, when and if they do not have the right to such benefits, by reason of another activity performed, in some other Social Security Scheme.

In the same manner, the aforementioned date shall be that on which the compulsory nature of the contribution established in point 3 of article 26 of the present Act, enters into force.

2. The Government shall determine those professional activities carried out by autonomous workers who are exposed to a major risk of a high accident rate, in which Social Security cover for industrial accidents and professional illness shall be compulsory. In such cases, that which is set out in section 3 of article 26 shall be applicable.

3. That set out in the previous sections shall not be applicable to self-employed agrarian workers who are members of the "Special Scheme for Self-employed Agrarian Workers", for whom cover for the temporary incapacity and professional contingencies shall continue to be voluntary.

**Fourth additional provision.** Benefits for the cessation of activity.

The Government, when and if the principles of contribution, solidarity and financial sustainability are guaranteed, and if this fulfills the needs and preferences of autonomous workers, shall propose to the General Courts the regulation of a system specifically for protection in case of cessation of activity by the same, in respect of their personal characteristics or of the nature of the activity performed.

The provision of a benefit for the cessation of activity shall be carried out in such a way that, in cases in which persons close to retirement age must apply, their application guarantees, when combined with the measures of early retirement in specific circumstances considered in the General Social Security Act, that the level of protection provided shall be the same, in cases concerning the contribution bracket, contributive force and causality, to that of employed workers, without this implying additional costs at a non-contributive level.

Public Administrations may, for reasons of properly justified economic policy, co-finance schemes for the cessation of activity directed towards specific groups or economic sectors.

**Fifth additional provision.** Professionals who are members of alternative Social Insurance Mutual Societies.

That which is set out in section 2 of article 23, in articles 24 to 26 and in paragraph c) section 2 of article 27, as well as the second and third additional provisions and in the second final provision of this present Act, shall not be applicable to own-account or autonomous workers who, in the terms established in the fifteenth additional provision of Act 30/1995, concerning supervision and planning of private insurance companies, have opted, or will opt in the future to join the Social Insurance Mutual established by the Professional Institute to which they belong and which acts as an alternative to the Special Social Security Scheme for Self-employed or Autonomous Workers.

**Sixth additional provision.** Autonomous Communities.

For the purposes of that provided for in article 21.5 of this Act, Autonomous Communities shall determine the representativity of associations of autonomous workers in accordance with the criteria referred to by article 21.1 of the same and shall create, within their territorial ambit, a special register in accordance with that set out in article 20.3 of the present Act.

**Seventh additional provision.** Updating of contributions

The General State Budgets Act may establish the bases of differentiated contributions, reductions or allowances referred to in article 25 and the second additional provision of this Act.

**Eighth additional provision.** Participation of autonomous workers in the Economic and Social Council.

The Government shall establish the presence of autonomous workers in the Economic and Social Council, taking into account:

1. The development of the Economic and Social Council in the representation of autonomous workers.
2. The compulsory report of the Economic and Social Council on the composition of the same which must be completed in the least possible time.

**Ninth additional provision.** Single payment of unemployment benefit.

Within a timescale of one year the Government shall prepare a study on the development of the single payment for unemployment benefit measure for starting activities as a self-employed worker, and if the result is favourable in the creation of autonomous work, shall increase the actual percentages of capitalization of unemployment benefits for the financing of investment.

**Tenth additional provision.** Inclusion of family members of autonomous workers in the Social Security framework.

An autonomous worker may contract his or her offspring of less than thirty years of age as third-party account workers, even though they live with him or her. In this case, the ambit of the protective action provided to the family members shall exclude unemployment cover.

**Eleventh additional provision.** Autonomous workers in the transport sector.

In conformance with that set out in article 1.3 g) of the Revised Text of the Workers Statute, approved by Royal Legislative Decree 1/1994, of 24 March, persons who provide transport services under the protection of administrative authorization of which they are title-holders,

provided at the appropriate price with commercial vehicles for public services whose ownership or direct controlling power they possess, even when said services are provided on a continuous basis for the same carrier or trader, are considered to be included in the ambit regulated by the present Act.

In this case, those who are referred to in article 1.2 d) of the present Act, and who comply with that set out in article 11.1 and 11.2 a) of the same, shall be economically dependent autonomous workers.

**Twelfth additional provision.** Participation of autonomous workers in training programs, and in information programs on the prevention of risks/danger in the workplace.

With the objective of reducing high risks and of avoiding professional illnesses in their respective sectors, the most representative associations representing autonomous workers and union organisations may carry out permanent information and training programs related to the said group, promoted by the Public Administrations competent in matters of the prevention of risks/danger in the workplace and reparations as a consequence of work-related accidents and professional illnesses.

**Thirteenth additional provision.** Adaptation of the General Social Security Act.

Section 1 of the thirty-fifth additional provision of the revised text of the General Social Security Act, approved by Royal Legislative Decree 1/1994, of 20 June, introduced by article 5 of Act 36/2003, of 11 December, and modified by the forty-fourth additional provision. Three of Act 2/2004, of 27 December, concerning General State Budgets for the year 2005, has been modified in the following manner:

The phrase: "from 1 January 2005"

Now reads: "from the entry into force of the Statute for Autonomous Work".

The phrase: "25%"

Now reads: "30%"

The phrase: "during the 12 months immediately...."

Now reads: "during the 15 months immediately...."

The phrase: "in the 12 months immediately following...."

Now reads: "in the 15 months immediately following...."

**Fourteenth additional provision.** Sectorial study on autonomous work.

The Government will prepare, within a period of one year, a study concerning autonomous workers and the special incidence of, amongst others, the following aspects:

1. The effects that the specificities of each sector have on the conditions (remunerative, family conciliation, social protection, etc) of the work performed by the autonomous worker.
2. An analysis concerning sectors in conversion or subject to modernization processes which have a marked effect on the activity carried out by autonomous workers.
3. An analysis of the need to provide incentives for early retirement of autonomous workers in certain sectors.

**Fifteenth additional provision.** Adaptation of the Special System for Autonomous Workers.

Within a period of one year, the Government will present a study on the updating of the regulation which regulates the Special System for Autonomous Workers essentially established in Decree 2530/1970, of 20 August, partially repealed, for the present needs and exigencies of the autonomous workers collective. This study shall plan the measures necessary to fix the necessary convergence of the contributions and rights of autonomous workers, in relation to those established for third-party account workers included in the General Social Security System.

**Sixteenth additional provision.** Campaign for the dissemination of the Special Scheme for Autonomous Workers.

Within a period of one year, the Government will carry out, in collaboration with the most representative autonomous worker entities, a campaign for the dissemination and information about the regulation and the characteristics of the Special Scheme for Autonomous Workers.

**Seventeenth additional provision.** Contracts of economically dependent autonomous workers in the insurance agent sector.

Contracts signed by insurance agents who fulfill the conditions established in the third chapter of the present Act and the cases in which said agents are subject to the same are determined by means of regulations without affecting, under any circumstances, their mercantile relationship.

**Eighteenth additional provision.** Persons with an incapacity.

For the purposes of this Act, persons with incapacities shall have the consideration set out in section 2 of article 1 of Act 51/2003, of 2 December, of equality of opportunity, non-discrimination and universal accessibility for persons with incapacities.

**Nineteenth additional provision.** Commercial agents.

In the case of commercial agents who, acting as independent intermediaries, take it upon themselves in a continuous or stable manner and in exchange for remuneration, to promote commercial acts or operations for a third-party account, or to promote them and conclude them for the account and in name of a third party, for the purposes of being considered to be economically dependent autonomous workers, the requirement of assuming the risk and venture of such operations, considered in article 11, section 2 e) shall not be applicable.

## **Transitory provisions**

**First transitory provision.** Adaptation of statutes and recognition of the legal personality of associations.

Professional associations of autonomous workers constituted in the application of the previous legislation and which enjoy a legal personality on the entry into force of this Act shall retain their recognition for all purposes, being automatically validated.

In a period of six months from the entry into force of this present Act must proceed to adapt their statutes to that set out in the same, as well as to register in the registry provided in the public office established for that purpose.

**Second transitory provision.** Adaptation of valid contracts of economically dependent autonomous workers.

Contracts entered into prior to the entry into force of this Act between an economically dependent autonomous worker and a client, must be brought into line with the same within a period of six months from the date of entry into force of the regulatory provisions included in its implementation, unless, within that period, one of the parties opts to withdraw from the contract.

An autonomous worker who is also economically dependent, must inform the client in respect of whom he or she acquires this status, within a period of three months from the entry into force of the aforementioned regulatory provisions.

**Third transitory provision.** Adaptation of valid contracts of economically dependent autonomous workers in the transport sector and in the insurances agent sector.

Contracts entered into prior to the entry into force of this present Act between an economically dependent autonomous worker and a client referred to in the eleventh additional provision, entered into by insurance agents to whom chapter three of this present Act applies, must bring these into line with the provisions contained in the same within a period of eighteen months from the date of the entry into force of the regulatory provisions included in its implementation, unless, within that period, one of the parties opts to withdraw from the contract.

An autonomous worker who is also economically dependent in the case referred to in the eleventh additional provision, and in the case of an insurance agent, must inform the client in respect of whom he or she acquires this status, within a period of one year from the entry into force of this present Act.

### **Repeal provision**

**First repeal provision.** Repeal of regulation.

All those provisions that are contrary to this present Act are repealed.

### **Final provisions**

**First final provision.** Title of competence.

The present Act sets out the protection of the competence that falls to the State in conformance with article 149.1.5.a, 6.a, 7.a, 8.a, and 17.a, of the Constitution.

**Second final provision.** Development of rights in matters of social protection.

The measures necessary, in accordance with the principles that inspired this Act, for, in a progressive manner, attaining convergence of contributions and rights of autonomous workers in relation to those established for employees in the General Social Security System.

**Third final provision.** Empowerment of the Government.

The Government is empowered to decree whatever number of provisions may be necessary for the application and implementation of the present Act within the ambit of its powers.

**Fourth final provision.** Annual report.

1. The Government must inform Parliament annually of the execution of the provisions contained in the present Act.
2. This report shall include the opinion of the Consultative Organs.

**Fifth final provision.** Regulatory implementation of Contracts of economically dependent autonomous workers.

Within a period of one year from the entry into force of this Act, that considered in article 12, section 1, second paragraph of the Act shall be implement by means of regulations.

**Sixth final provision.** Entry into force.

The present Act shall enter into force three months from the date of its publication in the "Official State Bulletin".

For this reason,

I command all Spaniards, private individuals and authorities, to observe and to ensure this Act is observed.

Madrid, 11 July 2007.

JUAN CARLOS R.

President of the Government.

JOSÉ LUIS RODRIGUEZ ZAPATERO.

20/2007 law, of 11th of july

# The self-employed estatute



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