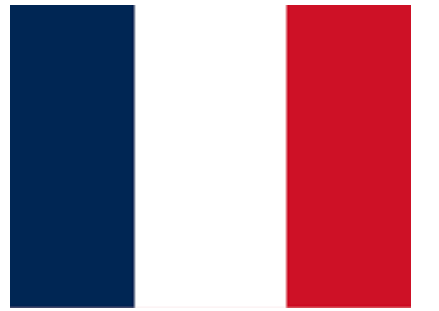




**Independent service providers.  
France - Germany**



## Germany - France: Introduction



The status of service providers poses legal risks for businesses. In particular, they face high financial reimbursement contributions and additional charges in cases of false self-employment. The following article examines some of the key aspects of false self-employment from a French and German perspective.



## I. How is the legal subordination test applied differently in France and Germany?

Similar to French law, determining whether someone is a dependent employee depends on an overall assessment of all the evidence that comes into consideration in the individual case. In Germany, the question of status plays an important role in tax, labour and social security law. In essence, all three branches of law examine whether the person performs work subject to instructions. The Federal Social Court, for example, also considers whether the person is integrated into an external company organisation (established case law of the BSG, 16.8.2017 - B 12 KR 14/16 R). The question of delimitation is ultimately based on an analysis of the actual contractual relationship. This is more decisive than the label the parties chose.



## I. How is the legal subordination test applied differently in France and Germany?

The legal subordination test centers on whether the contractor performs work under the authority of the principal, who has the power to give orders, monitor execution, and impose sanctions (Cass. soc., 13 novembre 1996). Courts adopt a factual approach, using the faisceau d'indices (bundle of indicators) method to assess the relationship in practice — not just on paper.

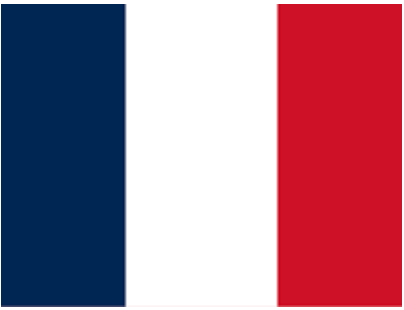
Even if the contract is labelled as “independent,” judges will requalify it as an employment contract if these elements point to a relationship of legal subordination.



## II. What are the underlying risks in your respective jurisdictions if an employee files a reclassification claim?

In Germany, too, the subsequent determination of a dependent employment relationship means serious consequences for the company under labour law, social security law and possibly also criminal law.

As soon as false self-employment is established, the supposedly self-employed person benefits from all employee protection rights. For example, he or she can take legal action to enforce the existence of a permanent employment relationship with the client. This is due to the fact that the written form requirement for fixed-term employment contracts is usually not met in case of (temporary) freelance assignments. In addition, the false self-employed person can claim salary adjustments, e.g. to the minimum wage, or bonus payments to which other employees are entitled. From a social security law perspective, the consequences are also very drastic: Companies are liable for the employee and employer's social security contributions, with retroactive effect for up to 30 years in the event of intent. They are therefore liable for high repayment claims, some of which may be subject to late payment penalties. In addition, evading social security contributions is a criminal offence in Germany and can therefore result in criminal investigation proceedings.



## II. What are the underlying risks in your respective jurisdictions if an employee files a reclassification claim?

When a worker files a reclassification claim before the Labor Court, the company faces serious financial and legal exposure. If the court concludes that the individual was, in fact, an employee the company may be required to pay a range of employment-related entitlements retroactively. This typically includes unpaid overtime, paid leave, missed bonuses, or salary adjustments linked to minimum wage compliance. The worker may also claim compensation for dismissal without cause, including notice and severance.

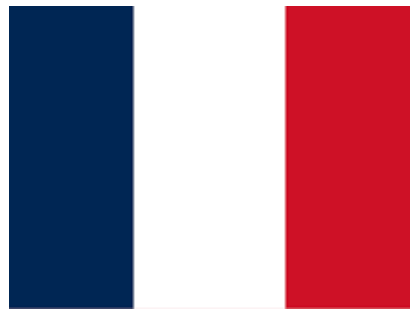
Beyond the labor court, the case can trigger an audit by URSSAF, which may reassess social contributions for the previous three years—or five in case of suspected fraud—along with penalties and late interest. Where misclassification is deemed intentional, criminal charges for concealed work (*travail dissimulé*) may also arise, exposing legal representatives to fines or even prison terms.





### III. What operational practices most often lead to misclassification in France and Germany?

Freelancers are often assigned to vacant positions on an interim basis due to staff shortages and replace employees who are temporarily absent. As a result, those freelancers are very closely integrated into the operational processes. These tasks, e.g. of an HR manager, often require a great deal of coordination with other employees and reporting obligations, which means that the freelancer is not free to decide on the way in which tasks are carried out. Another typical mistake is the provision of company software and work equipment to freelancers. This reduces the entrepreneurial risk of freelancers, as they do not have to purchase their own work equipment and pay maintenance costs. In some cases, however, courts accept the provision of IT access for security reasons. However, this must be thoroughly reviewed on a case-by-case basis, as the provision of access can often result in integration into existing structures.



### III. What operational practices most often lead to misclassification in France and Germany?

Misclassification often results not from contract wording, but from how the relationship is managed in practice. The most common operational missteps include treating the contractor like an internal employee—by giving them a company email address, assigning them a fixed desk, or including them in team meetings. Problems also arise when contractors are expected to follow internal procedures, report regularly to a manager, or work fixed hours. These practices, even if informal or well-intentioned, suggest a relationship of legal subordination. To anticipate these risks, companies should limit symbolic integration, ensure contractors use their own tools and contact details, and avoid controlling how the work is performed.

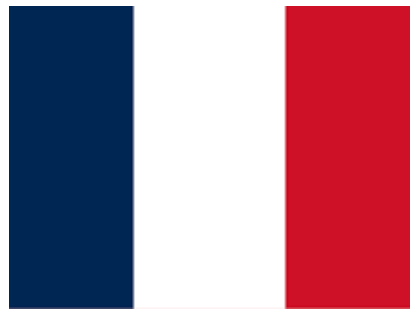




#### IV. How should companies approach exclusivity?

Working exclusively for one client is a significant criterion for dependent employment. This is because if a freelance service provider offers their services exclusively for one client, this indicates economic dependency from the perspective of the inspection authorities and social courts. The freelancer then bears no significant entrepreneurial risk: they cannot offer their working hours elsewhere on the market and therefore cannot increase their chances of earning and making a profit.

Care should therefore be taken to ensure that the assignment of a freelancer does not reach the scope of full-time employment in terms of time. Working for other competitors and clients should also be permitted.



## IV. How should companies approach exclusivity?

Exclusivity is a red flag when it comes to independent contractor relationships. If a contractor works solely for one company, courts may view this as a sign of economic dependency, which undermines their status as an independent professional. While exclusivity can be justified in certain sectors—such as real estate or financial services—it must be limited in scope and duration and clearly explained in the contract. Companies should also encourage contractors, in writing, to maintain or develop other clients, even in unrelated areas. This not only reinforces their autonomy but also helps demonstrate that the contractor operates as a truly independent business.



## V. Are there any key documents that companies keep to remain compliant?

There are no legal regulations in Germany regarding the retention of documents for contractual relationships with freelancers. Nevertheless, companies should obtain proof of entrepreneurial activity. This can be, for example, proof of professional liability and accident insurance or proof of a past status procedure with the German Pension Insurance. Proof of private pension and health insurance could also be helpful.



## V. Are there any key documents that companies keep to remain compliant?

Yes - companies have a legal duty of vigilance when working with independent contractors. To remain compliant, they must request and retain certain documents—both at the time of contract formation and every six months during the collaboration.

These typically include a copy of the contractor's Kbis extract or registration certificate, a valid URSSAF certificate of compliance, and proof of professional liability insurance, where applicable. Maintaining this documentation not only helps prevent liability in cases of undeclared work but also serves as practical evidence that the contractor is operating as an independent business.



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Read more [here](#).