

# TRADE UNIONS PROTECTING **SELF-EMPLOYED WORKERS**

WHY SELF-EMPLOYED WORKERS NEED BETTER RIGHTS?  
WHAT UNIONS ARE DOING?  
WHICH PRIORITIES FOR THE FUTURE?



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A project of the European trade union confederation (ETUC)  
to defend the rights of self-employed workers across Europe.

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# FOREWORD

Organising and protecting atypical workers better – especially self-employed workers – is an ETUC commitment made at its 2015 Congress in Paris.

Over the last four years, the ETUC has pursued a number of different paths to fulfil its commitment. We have lobbied the EU institutions to achieve the strongest possible European Pillar of Social Rights, to guarantee fundamental rights for self-employed and other atypical workers. Access to social protection and fighting against the precarious working conditions which are often associated with these types of employment were key priorities for us and they are now reflected in the principles of the Pillar which was adopted by the EU in November 2017. We follow the implementation of the pillar and press for new initiatives to deliver the rights in practice in the future. We have also provided training to national organisers on reaching out to the self-employed and are currently looking at the legal obstacles which prevent them from benefiting from fundamental rights, such is the right to bargain collectively.

This research shows that union membership for the self-employed is widely accepted among ETUC affiliated organisations. Contrary to those who claim that trade unions are rigid organisations rooted in the industrial fabric of the last (or even 19<sup>th</sup>) century, this is a(nother) sign that unions are adapting to the dynamics of the labour market and do seek to better defend the rights of workers.

Bargaining collectively is the best way for workers to get better conditions. One clear message of the research is that our affiliates face far more difficulties in collectively bargaining for atypical workers than in organising them. Employer hostility is one reason why it is proving difficult to extend collective bargaining more widely to atypical workers. Another is the impact of competition law, in national interpretation of the Treaty on the Functioning of the European Union. Self-employed workers who join forces to improve their working conditions should never be considered a cartel plotting to distort or eliminate competition. Competition law cannot override a fundamental right and the ETUC will continue fighting to ensure it does not.

We hope that this research will encourage and help trade unions in better organising and represent atypical workers. This must be an integral part of our work on the future of work and the future of unions.

**Luca Visentini**

ETUC General Secretary

**Thiébaut Weber**

ETUC Confederal Secretary



# EXECUTIVE SUMMARY

## FIGURES ON SELF-EMPLOYMENT

Figures from Eurostat for 2016 show that there were 30.5 million self-employed people in the EU in 2016, out of a total of 214.7 million people working. Among the 30.5 million self-employed, 8.7 million had employees themselves, while 21.8 million were so-called “own-account” self-employed workers, without employees.

### A concentration in few occupations

Most own-account self-employed workers work in five occupations: professional; technicians and associate professionals; service and sales workers; agricultural, fishing and forestry workers; and craft workers.

Almost 60% of all own-account self-employed workers are found in four industries: agriculture, forestry and fishing; the wholesale and retail trade; construction; and professional technical and scientific activities.

Just over a third of own-account self-employed workers are women, a lower percentage than among employees. Young people are also less likely to be self-employed.

Self-employment in the EU 28, including both employers and the own-account self-employed, fell very slightly between 2011 and 2016, but this is all accounted for by a fall in the number of employers. The number of own-account self-employed workers increased modestly.

### Different ways to define self-employment

Two separate Eurofound studies in 2017 offer other ways of analysing self-employment. One (*Aspects of non-standard employment in Europe*) found that “dependent own-account freelancers and subcontractors”, who were in a similar position to employees, made up 18% of the total (including employers). Another (*Exploring self-employment in the European Union*) found that “concealed self-employed”, the group most similar to employees, made up 8% of all self-employed (again including employers), while “vulnerable self-employed” accounted for another 17%. The variations between these two studies in part reflect the fact that they look at different aspects of self-employment, but they also indicate the fluidity of the definitions.

There have been major changes in the composition of the own-account self-employed over the last five years, with falls in the numbers working in agriculture and retail, and rises elsewhere, particularly in professional, scientific and technical activities.

On average, own-account self-employed workers make up 10.1% of all those in employment in the EU 28, but there are big differences between countries. In Greece, at the top, 22.3% of all workers are own-account self-employed; in Denmark, at the bottom, it is 4.6%.

There are also differences in how own-account self-employment has changed in the last five years. Excluding agriculture, the number of own-account self-employed workers increased by 5.2% across the EU 28. But, while it grew strongly in some countries, including the Baltic states and the UK, it fell in others, including Croatia, Greece and Germany.

It seems likely that some of the growth in the number of the self-employed may be a result of an increase in “bogus self-employment”, where self-employed status is chosen to reduce taxes and social security contributions, as well as workers’ rights.

## A SURVEY COVERING 23 STATES ACROSS EUROPE

Much of the information in this report is taken from a questionnaire initially sent out by the ETUC in May 2017. There were 50 replies from 23 states, 21 in the EU plus Norway and Serbia. The seven EU states from which no replies were received were Croatia, Cyprus, Greece, Luxembourg, Malta, Portugal and Romania.

The responses are almost evenly divided between replies from confederations and individual unions.

## UNION MEMBERSHIP FOR THE SELF-EMPLOYED MOSTLY ACCEPTED

In most countries there are no legal barriers to unions recruiting the self-employed, and where these legal barriers exist, there are often union attempts to remove them;

Union rules and union attitudes may make it more difficult/impossible for the self-employed to join unions in some cases – this is particularly the case for self-employed workers who themselves have employees;

Digitalisation and new forms of work are leading some unions to reconsider their position on organising the self-employed.

## FOUR TYPES OF UNIONS RECRUITING SELF-EMPLOYED WORKERS

Most states have at least some unions which have substantial numbers of self-employed workers among their membership, and where this is not the case, this is generally because the law prevents self-employed workers from joining unions (see previous section).

However, there are differences in the type of unions which recruit and organise self-employed workers, both within countries and between countries.

**Specialist unions:** the most frequently found type of union with substantial numbers of self-employed workers in membership are the specialist unions or specialist sections within larger unions, operating in industries where self-employment has long been a common way of working. There are examples of these unions in most European states. They represent journalists, actors, musicians and other performers, technicians linked to performances, translators and interpreters, as well as architects and some medical professions. The proportion of self-employed workers among the membership can be as high as 20%, and, in some countries, the unions organising these groups are not affiliated to the main union confederations.

**Precarious workers’ unions:** a second type of union with substantial numbers of self-employed members are unions which aim to recruit precarious workers more generally, with self-employed workers being recruited along with agency workers, temporary workers and others on non-standard contracts. This form of union is found most often in Italy, where all three main confederations have adopted this model, but it is also present in Slovenia, and one UK union (not in the TUC) is, in practice, similar.

**Unions for self-employed only:** the third type are the unions which only attempt to recruit the self-employed. UGT in Spain, FNV in the Netherlands and, to a more limited extent, CISL in Italy all have affiliates that fall into this category, although there is an important difference between them, as the FNV’s affiliate only recruits self-employed workers who do not have employees themselves.

**Mainstream unions:** finally, there are unions which do not have a long tradition of recruiting the self-employed but have more recently been seeking to do so in response to changes in the labour market. There are unions in this position across Europe, including some of the largest like IG Metall in Germany, Unionen in Sweden and Unite and the GMB in the UK, as well as unions in the CFDT and CGT confederations in France and in the CCOO confederation in Spain. While some adopted this approach some time ago, others have moved in this direction much more recently.

## DIFFERENT APPROACHES TO COLLECTIVE BARGAINING FOR SELF-EMPLOYED WORKERS

Unions have found it much more difficult to undertake collective bargaining for their self-employed members than to recruit and organise them. There appear to be 11 states (Austria, Belgium, Denmark, France, Germany, Italy, Netherlands, Serbia, Spain, Sweden and the UK) where collective bargaining or some other form of union involvement is used, or has been used recently, to set self-employed workers' terms and conditions. In a 12<sup>th</sup> state, Ireland, the right to negotiate was restored in 2017.

The legal position in each of these 12 countries varies, as does the extent to which collective bargaining takes place, but there are some common themes.

### Collective bargaining: linked to occupation or economic dependence

There are two main approaches to collective bargaining for the self-employed. It can be limited to specified occupations/sectors, like journalists or actors, or it can be limited to those who are defined as being "economically dependent", although the two approaches are not mutually exclusive. In Austria and Serbia, collective bargaining is limited to specific occupations/sectors. In Belgium, Denmark, Germany, Italy, the Netherlands, Spain, Sweden and the UK, it is limited to those who are economically dependent. In France and Ireland both approaches are used. However, in every country the legal position is different.

In practice, in most countries it is freelance journalists, performers and those working in the area of culture and entertainment who are most likely to have their terms and conditions set by collective agreements. The principal countries where collective bargaining extends more widely are France, Italy, the Netherlands and Spain.

The picture on the extent to which self-employed workers are covered by collective bargaining is mixed. In some countries it appears to be declining, in others growing or at least stable.

Competition law, based ultimately on the EU treaty, has had a damaging impact on collective bargaining, with competition authorities intervening to prevent unions signing agreements.

## UNIONS SUPPORT AND PROVIDE SERVICES TO SELF-EMPLOYED MEMBERS

Unions provide a range of services for their self-employed members, which vary both according to the country and the type of members. The services reported most frequently are:

- guidance on fees to charge, including, in some cases, surveys of rates actually paid. It is particularly common for journalists' unions to provide guidance of this sort, but unions representing architects, technicians and musicians also do so;
- advice on the wording of contracts, including model contracts and the offer to review contracts for members;

- legal advice, both general and specifically tailored to the concerns of the individual. Mostly this is only provided for members but in Austria, with the support of the Chamber for Labour, it is offered to the key self-employed groups, whether they are union members or not;
- reimbursement of legal costs, incurred as a result of self-employment, up to a set limit;
- help with debt collection, including taking on complete responsibility for this as an additional service;
- advice on taxation;
- education and courses, including training on entrepreneurship;
- information about industry developments;
- cheaper rates for products and services, including some of specific relevance to self-employed members;
- opportunities to share experiences with other self-employed workers, including, in one case, an online site to allow the self-employed to rate existing labour platforms; and
- professional services which are specific to the occupations involved, like directories of actors.

## SYSTEMS OF SOCIAL PROTECTION FOR SELF-EMPLOYED WORKERS ARE OFTEN INADEQUATE

The self-employed often do not have the same access to systems of social protection as employees. A major study on national systems of social protection for the European Commission<sup>1</sup> divided statutory social protection into benefits funded by general taxation and those funded through social insurance contributions and found that the self-employed normally have access to taxation funded social benefits, but have less access to benefits relying on insurance contributions.

The study mapped the access that the self-employed have to 11 different types of benefit and found that healthcare is the most accessible benefit for the self-employed, and unemployment benefit the least. Benefits linked to accidents at work, sickness and maternity/paternity were also among those where the extent of self-employed access was lower.

The study found that, even where the self-employed have access to benefits, the level of support provided may be inadequate for the self-employed because they do not meet the eligibility conditions or the contributions they have made have been too low.

The study identified four distinct clusters of countries offering varying levels of access, with some countries allowing the self-employed themselves to extend the benefits available to them by choosing to opt-in to existing schemes: “full to high access”, “high to medium access”, “no to low access” and “patchwork of medium to low access”. The responses to the ETUC survey provide examples of countries in each of the four clusters identified in the Commission study, adding further details.

The ETUC survey also shows that unions find that there are areas outside social protection where there are important differences between the conditions of employees and the self-employed. These include the right to be paid at least at the level of the minimum wage, access to training, holiday and Christmas bonuses, access to company pension schemes and paid travel costs. The CFDT sees the equality of treatment between employees and the self-employed in the new “personal activity account” (CPA), which covers training, arduous work and civic engagement, as an important gain.

<sup>1</sup> SPASOVA, S., BOUGET, D., GHAILANI, D and VANHERCKE, B. *Access to social protection for people working on non-standard contracts and as self-employed in Europe: A study of national policies 2017* (Luxembourg, European Commission, 2017).

Recent years have seen increasing convergence in the degree of access that employees and the self-employed have to social protection benefits, and the ETUC survey provides some examples of this. In addition the European Commission has recently proposed a Council recommendation on access to social protection for workers and the self-employed, which is likely to accelerate this process.

Just over half the unions responding report union action on social protection for the self-employed and this normally takes the form of lobbying or raising the issue in existing structures. However, some unions have run public campaigns. The general aim is to bring the protections for the self-employed into line with those for employees, often by ensuring that their contributions are also equalised. However, unions have also raised some specific demands, such as, allowing a number of small sources of income to be combined to reach the threshold for social security contributions (EAL Estonia).

## **FORCED SELF-EMPLOYMENT IS A MAJOR CONCERN**

More than 80% (41 out of 50) of union bodies responding to the survey consider that some workers are being compelled into self-employment.

This development affects a very wide range of countries and industries, including construction, transport and services like cleaning and security.

More than half of the unions reporting this problem have campaigned against it, although the rate of success has not been particularly high.

A similar number (22 out of 41) have taken legal action against bogus self-employment and here success rates have been higher.

## **KEY POINTS ON FUTURE PRIORITIES**

The respondents to the survey identified a number of priorities for the future for EU institutions, national governments, the ETUC and national unions. These often reflected the demands that have already been made by the ETUC itself and other European level union bodies, in a series of resolutions and reports.

For EU institutions, the key priorities identified were:

- to establish international rules providing a common legal framework for self-employed workers;
- to change competition law so that it was no longer a barrier to collective bargaining for the self-employed; and
- to take action to improve the situation of the self-employed.

For national governments, the key priorities were:

- to ensure a level playing field between employees and the self-employed particularly with regard to social protection;
- to tackle bogus self-employment;
- to promote collective bargaining for the self-employed; and
- to change competition law.

For the ETUC, the main priorities identified by the respondents were linked to the changes that they wanted from EU institutions, in particular a common legal framework for the self-employed and changes in EU competition law. However, there were also calls for the ETUC to share good practice and promote contacts between unions facing similar problems.

For national unions, the key priorities in the view of the respondents were:

- to organise the self-employed; and
- to extend collective bargaining to them.

There was clearly a feeling among some respondents that unions had not done enough for the self-employed in the past.



# **THE FIGURES** ON SELF-EMPLOYMENT

## ACROSS THE EU 28

The most extensive statistics on self-employment in Europe come from the EU's statistical agency Eurostat. It defines the self-employed as follows: "Self-employed persons are the ones who work in their own business, farm or professional practice. A self-employed person is considered to be working if she/he meets one of the following criteria: works for the purpose of earning profit, spends time on the operation of a business or is in the process of setting up his/her business."<sup>2</sup>

### The current breakdown

Using this definition there were 30.5 million self-employed in the 28 EU member states in 2016. More than a quarter of the self-employed (8.7 million) had employees themselves, but the remaining 21.8 million did not, and it is these "own-account" workers who are of greatest interest to the ETUC and the unions that make it up. (These and subsequent figures from Eurostat relate to workers aged 20 to 64.) Around one in ten (10.1%) of all those working in the EU in 2016 were own-account self-employed workers, with the overwhelming majority of the rest, 182.1 million, working as employees (see Table 1).

<b>Table 1: All in employment in EU 28 (2016)</b>		
<b>Type of employment</b>	<b>Number (000)</b>	<b>Percent</b>
<b>Employees</b>	182,123.5	84.8%
<b>Employers</b>	8,732.3	4.1%
<b>Own-account</b>	21,791.2	10.1%
<b>Family workers and others</b>	2,066.0	1.0%
<b>Total</b>	<b>214,713.0</b>	<b>100.0%</b>

Source: Eurostat (figures for those aged 20 to 64)

These 21.8 million own-account self-employed are concentrated in five main occupation groups. These are professionals, like architects, doctors and lawyers (4.8 million), technicians and associate professionals (2.7 million), service and sales workers (3.5 million), agricultural, forestry workers (3.8 million) and craft workers (3.7 million). Chart 1 shows the number of own-account self-employed in the EU 28, broken down by occupation, and the first column of Table 2 shows the percentages.

However, a comparison of the first and second columns of Table 2 makes it clear that there are differences between this picture and that for all those in employment.

<sup>2</sup> LFS series - detailed quarterly survey results (from 1998 onwards) (lfsq) Reference Metadata in Euro SDMX Metadata Structure (ESMS) [http://ec.europa.eu/eurostat/cache/metadata/en/lfsq\\_esms.htm](http://ec.europa.eu/eurostat/cache/metadata/en/lfsq_esms.htm) (accessed 31.08.2017)



**Chart 1: Own-account self-employed in EU 28 by occupation (2016)**

Source: Eurostat (figures for those aged 20 to 64)

Comparing the own-account self-employed with all those in employment, there are five times as many agricultural workers among the self-employed, and craft workers are also over-represented. However, there are many fewer self-employed clerical support workers and considerably fewer working as plant and machine operators or assemblers, or in elementary occupations, such as labouring (see Table 2).

**Table 2: Occupational breakdown of own-account self-employed in EU 28 (2016)**

Occupation	Own-account self-employed	All in employment
<b>Managers</b>	4.6%	6.0%
<b>Professionals</b>	21.9%	19.5%
<b>Technicians and associate professionals</b>	12.4%	16.2%
<b>Clerical support workers</b>	1.7%	9.7%
<b>Service and sales workers</b>	16.2%	16.6%
<b>Skilled agricultural, forestry and fishery workers</b>	17.4%	3.3%
<b>Craft and related trades workers</b>	17.1%	11.6%
<b>Plant and machine operators and assemblers</b>	4.5%	7.5%
<b>Elementary occupations</b>	4.0%	8.9%
<b>Armed forces occupations</b>	0.0%	0.6%
<b>No response</b>	0.2%	0.2%
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>

Source: Eurostat (figures for those aged 20 to 64)

In terms of industry, the largest number of the own-account self-employed is found in four industries, which together account for almost 60% of the total (see Table 3). These are: agriculture, forestry and fishing – 17.6%; the wholesale and retail trade (including vehicle repair) – 13.7%; construction 13.0%; and professional technical and scientific activities (12.7%).

<b>Table 3: Industrial breakdown of own-account self-employed in EU 28 (2016)</b>		
<b>Industry</b>	<b>Number (000)</b>	<b>Percent</b>
<b>Agriculture, forestry and fishing</b>	3,843.8	17.6%
<b>Mining and quarrying</b>	14.3	0.1%
<b>Manufacturing</b>	1,148.3	5.3%
<b>Electricity, gas, steam and air conditioning supply</b>	30.7	0.1%
<b>Water supply; sewerage, waste management and remediation activities</b>	32.8	0.2%
<b>Construction</b>	2,826.3	13.0%
<b>Wholesale and retail trade; repair of motor vehicles and motorcycles</b>	2,984.0	13.7%
<b>Transportation and storage</b>	862.4	4.0%
<b>Accommodation and food service activities</b>	675.7	3.1%
<b>Information and communication</b>	788.9	3.6%
<b>Financial and insurance activities</b>	425.7	2.0%
<b>Real estate activities</b>	262.7	1.2%
<b>Professional, scientific and technical activities</b>	2,767.9	12.7%
<b>Administrative and support service activities</b>	826.0	3.8%
<b>Public administration and defence; compulsory social security</b>	55.3	0.3%
<b>Education</b>	720.6	3.3%
<b>Human health and social work activities</b>	1,322.0	6.1%
<b>Arts, entertainment and recreation</b>	776.9	3.6%
<b>Other service activities</b>	1,192.0	5.5%
<b>Activities of households as employers; undifferentiated goods- and services-producing activities of households for own use</b>	133.1	0.6%
<b>No response</b>	99.2	0.5%
<b>Total</b>	<b>21,791.2</b>	<b>100.0%</b>

Source: Eurostat (figures for those aged 20 to 64)

### The gender dimension of own-account workers

Looking at gender, women are less likely to be own-account self-employed workers than men. In the EU 28, only just over a third (34.6%) of own-account self-employed workers are women. This is a much lower figure than for all in employment, where close to a half (46.1%) are women. (Among employees, almost half (48.2%) are women, but among employers the female percentage drops to just over a quarter at 27.1%.)

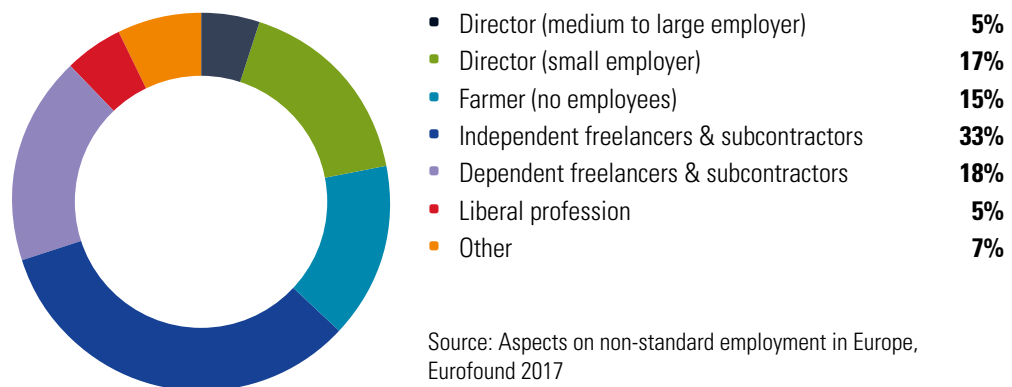
One key reason for this difference is that women are almost completely absent from construction, a major area of own-account self-employment. Of the 2.8 million own-account self-employed workers in construction, only 72,800 are women. There are also other differences between the sexes. Many fewer women than men are own-account self-employed workers in agriculture, manufacturing and transportation. But, in education health and other service activities, the situation is reversed with women outnumbering men among the own account self-employed.

Young people are also much less likely to be self-employed than their older counterparts. Of the 4.1 million people in employment aged 15 to 19 in the EU 28, only 87,800 (2.1%) are own-account self-employed, compared to 10.1% of those aged 20 to 64. The extent of self-employment among the 14.3 million in employment aged 20 to 24 is higher, but with just 4.2% of this age group classified as own-account self-employed, it is still less than half the overall average.

One possible reason for this is that some self-employed occupations, in which significant numbers work, depend on a high level of skill and experience, which younger workers have not yet acquired. For example, more than a fifth (21.9%) of all those working as own-account self-employed aged 20 to 64 work in professional occupations, but among those aged 15 to 19 it is only 12.8% and among those aged 20 to 24 just 15.0%. In contrast, elementary occupations, which include delivering goods, as well as a whole range of other tasks, account for 19.0% of all the own-account self-employed aged 15 to 19 and 9.9% of those aged 20 to 24. The comparable figure for those aged 20 to 64 is just 4.0%. It is also the case that young people generally have less time and less opportunity to accumulate the capital necessary for some types of self-employment.

Another way of seeing the self-employed in the EU 28 is provided by an analysis produced by Eurofound in 2017 (Aspects on non-standard employment in Europe). Drawing on material collected through the European Working Conditions Survey in 2015, it looks at all the self-employed, including employers, and splits them between seven categories, including directors of both large and small companies, farmers (without employees) and those working in the liberal professions (see Chart 2).

**Chart 2: Categories of self-employed (including employers)**



However, the most interesting aspect of this analysis is that it is able to distinguish between dependent and independent freelancers and subcontractors, although the categories of freelancers and subcontractors are not themselves defined.<sup>3</sup> Dependent freelancers and subcontractors make up 18% of the total and independent freelancers and subcontractors 33%. As the Eurofound report points out, it is the dependent freelancers and subcontractors who are “in a possible grey zone where, while they are formally self-employed, their degree of dependency indicates an employment status similar to that of a dependent employee”.<sup>4</sup>

A separate Eurofound study, also published in 2017 and looking at just self-employment, includes another analysis of European Working Conditions Survey data. This study (*Exploring self-employment in the European Union*) splits the self-employed (including the employers) into five clusters: employers, small traders and farmers, stable own account workers, concealed self-employed (often working as cleaners or drivers, but also as musicians or security guards) and vulnerable self-employed (often working in agriculture). The breakdown between these groups is set out in Table 4.

<sup>3</sup> The categories are taken from the PARENT-THIRION, A., BILETTA, I., CABRITA, J., VARGAS, O., VERMEYLEN, G., WILCZYNISKA, A., WILKENS, M. *Sixth European Working Conditions Survey – Overview report (2017 update)*, (Publications Office of the European Union, Luxembourg, 2017), which asked individuals who said they were self-employed a series of other questions, including whether they were “working as a sub-contractor” or “doing freelance work”. Respondents were able to give multiple answers, so there are no precise definitions of freelancer or subcontractor.

<sup>4</sup> STORRIE, D. *Aspects of non-standard employment in Europe*. (Eurofound, European Commission, Luxembourg, 2017)

<b>Table 4: Types of self-employment(includes employers)</b>	
<b>Type of self-employment</b>	<b>Proportion of total (%)</b>
<b>Employers</b>	23%
<b>Small traders and farmers</b>	25%
<b>Stable-own account workers</b>	26%
<b>Concealed self-employed</b>	8%
<b>Vulnerable self-employed</b>	17%
<b>Total</b>	<b>100%</b>

Source: Exploring self-employment in the European Union, Eurofound, 2017

The employers and stable own-account workers have generally the most positive characteristics; the concealed and vulnerable self-employed are generally in more precarious situations, with lower income and less job security. The small traders and farmers are in the middle, with both favourable and unfavourable working conditions.

The study finds that the concealed self-employed are the group whose work situation “most strongly resembles the work situation of employees”, while the vulnerable self-employed are “most strongly characterised by high economic dependence and precariousness”.<sup>5</sup>

There is clearly a difference between the two Eurofound studies in how the self-employed are categorised. One (*Aspects of non-standard employment in Europe*) identifies 18% of all the self-employed (the dependent freelancers and subcontractors) as being like employees, while the other (*Exploring self-employment in the European Union*) puts 8% (the concealed self-employed) in the employee-like category.

In part this reflects the different purposes of the categorisation in the two studies. The *Exploring self-employment* study includes greater differentiation on the basis of the financial security and job quality of different groups of self-employed, and many of the 17% it identifies as being “vulnerable self-employed” have characteristics similar to those of employees. However, the two studies make it clear that the definitions are not fixed and reinforce the fact that the description “self-employed” or even “own-account self-employed” covers a wide range of different individual circumstances.

## Changes in the last five years: decrease in agriculture, increase in services

Self-employment in the EU 28, including both employers and the own-account self-employed, fell very slightly – by 0.1% – between 2011 and 2016, at a time when overall employment went up by 3.3%. This slight drop reflects a clear fall in the number of self-employed with employees (employers), which fell by 3.0% over five years and a 1.1% increase in the number of self-employed without employees (own-account) over the same period.

Concentrating on the own-account self-employed, it is clear that this modest 1.1% growth figure, equivalent to 243,400 individuals, results from a combination of substantial falls in some areas and growth in others, as Chart 3 shows. Agriculture, forestry and fishing was the biggest loser, with 639,200 (14.3%) fewer self-employed people working in it in 2016 than five years earlier, but there was also a drop of 176,400 in the number of own-account self-employed in wholesale and retail, equivalent to a 5.6% fall.

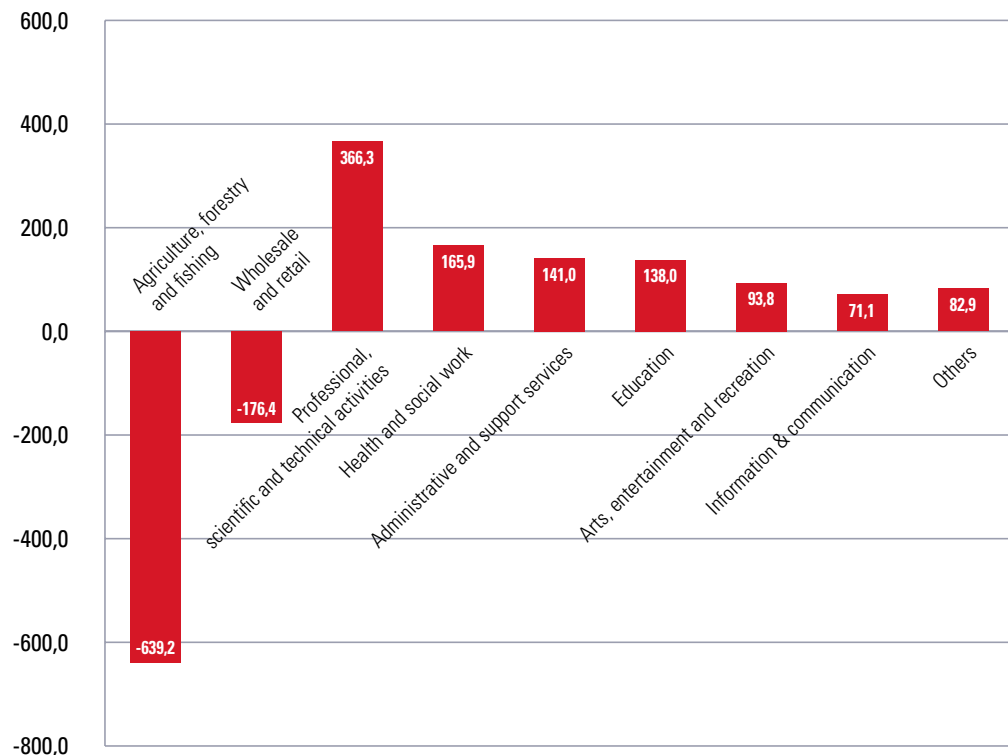
There are, however, six industries where own-account self-employment increased sharply between 2011 and 2016 both in absolute and relative terms. These are: professional, scientific and technical activities, where there has been an increase of 366,300 (15.3%); health and social work – up 165,900 (14.3%); administrative and support services – a 141,000 (20.6%) increase; education – 138,000 (23.7%), arts and recreation – 93,800 (13.7%); and information and communication – a 71,100 (9.9%) increase.

5 VERMEYLEN, G., WILKENS, M., BILETTA, I., ANDREA, F. *Exploring self-employment in the European Union* (Eurofound, European Commission, Luxembourg, 2017)

In construction, a major area of own-account self-employment, there was a small growth of 24,600 (0.9%) between 2006 and 2011.

Where there has been growth, it is not clear how far it is the result of so-called “bogus” or “false” self-employment, where workers change their status (or are forced to change their status) from employees to self-employed “to reduce tax liabilities, or employers’ responsibilities”.<sup>6</sup> However, available evidence from many union bodies suggests that many workers have been forced to change their contractual status (see pages 00s to 00), and there is more detailed evidence from some individual countries (see National variations below).

**Chart 3: Changes in the number of own-account self-employed by industry in EU 28 (2011 to 2016)**

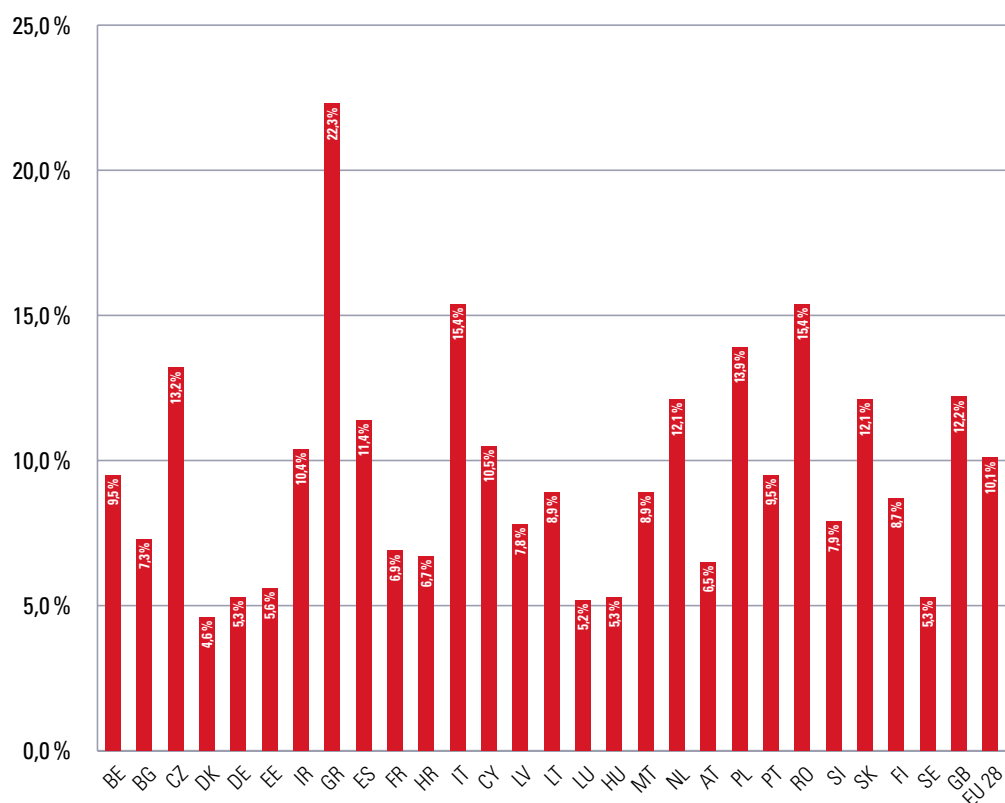


Source: Eurostat (figures for those aged 20 to 64)

## NATIONAL VARIATIONS

All the figures so far have been totals for the EU 28. Chart 4 sets out the proportion of own-account self-employed workers in each of the EU member states. The average across the EU as a whole is 10.1%, but there are considerable differences between member states. In Greece, the percentage of own account self-employed, at 22.3%, is more than twice the EU average, and in Italy and Romania (both on 15.4%) it is one and a half times. In contrast, five countries, Denmark (4.6%), Luxemburg 5.2% and Germany, Hungary, and Sweden (all on 5.3%), have levels of own-account self-employment which are around half the EU average.

<sup>6</sup> The description of “false” self-employment is set out in OECD “The partial renaissance of self-employment”, *Employment Outlook 2000* (Paris, 2000)

**Chart 4: Own-account self-employed as percentage of all in employment (2016)**

Source: Eurostat (figures for those aged 20 to 64)

### Three main reasons to national differences

There are several factors that explain these differences, mainly

- **the industrial breakdown**
- **the situation in particular industries, and**
- **the impact of national policies.**

In some countries, it is the industrial breakdown of employment that is crucial. Countries with higher levels of overall employment in industries where own-account self-employment is widespread are likely to have above average levels of self-employment. Greece, Romania and Poland all have levels of employment in agriculture which are substantially about the EU average of 4.0%. In Poland 10.4%, in Greece 11.7% and in Romania 20.2% of the total workforce is in agriculture. As a high proportion of workers in agriculture are self-employed, it is not surprising that these are all countries with above-average levels of own-account self-employment.

However, this is not the whole story. In other countries, it is the level of own-account self-employment in particular industries that explains the difference. In Italy, for example, where traditional grocery stores still make up the largest segment of the food retail sector,<sup>7</sup> a quarter of those working in wholesale and retail are own-account self-employed, compared with just 10.1% in the EU as a whole.<sup>8</sup>

<sup>7</sup> *Italian Food Retail and Distribution Sector Report* (USDA Foreign Agricultural Service, Rome, 31. December 2015), [http://photos.state.gov/libraries/italy/217417/pdf/Italian\\_Food\\_Retail\\_and\\_distribution\\_Sector.pdf](http://photos.state.gov/libraries/italy/217417/pdf/Italian_Food_Retail_and_distribution_Sector.pdf) accessed: 02.01.2018.

<sup>8</sup> The large number of sole traders in Italy may not be the whole story. The European Commission's 2016 Fact Sheet on small business in Italy explains a fall in employment in the retail sector by the fact that, "temporary employment contracts have been replaced by a voucher payment system, which does not require any contract at all". in 2016 SBA Fact Sheet Italy, European Commission, March 2017. This form of the voucher system was abolished in March 2017 and replaced by a more limited scheme in July 2017.

Finally there is the impact of government policy. The Netherlands and the UK are two countries where self-employment has been deliberately encouraged in recent years, and both now have levels of own-account self-employment above the EU average, although part of this growth may represent bogus self-employment (see below).

The 2017 Eurofound report on self-employment (*Exploring self-employment in the European Union*) provides some figures on how the five clusters it identifies are present in different countries. It finds that “employers” are underrepresented in Eastern and Southern Europe but overrepresented in Denmark. “Small farmers and traders” are “most common in France, Greece, Ireland, Slovenia and Spain”. The group classed as “stable-own account workers” are most strongly represented in the Netherlands, and found least frequently in the Baltic states, Croatia, Greece, Poland and Romania, while Romania has the highest proportion of “vulnerable self-employed”, although the proportions are also high in other countries in Eastern Europe and the Baltic states. There are few “vulnerable self-employed” in Belgium, Ireland, the Netherlands, the Nordic countries and the UK. The “concealed self-employed”, the group whose position is closest to that of employees, is found most frequently in the UK, but also in the Baltic states, Germany, Poland and Slovakia. This group is underrepresented in the Nordic countries and the Netherlands.<sup>9</sup>

### Recent national variations

It is not just the level of and type of self-employment that varies between EU member states. There are also differences in how it has changed over the last five years. Overall, across the EU, the number of own-account self-employed workers increased by 1.1% by over the period 2011-2016, although that figure was dragged down by the sharp fall in agriculture. If agriculture is taken out of the picture, own-account self-employment increased by 5.2%.

This overall increase is made of 19 countries where self-employment increased and nine where it fell (see Chart 5 and Table 5). Some of the largest increases, such as in Lithuania, Latvia and Estonia, were in countries where own-account self-employment outside agriculture was previously low. However, there are examples where there has been substantial growth on top of relatively high levels of own-account self-employment, such as in the UK – up 20.1%, the Netherlands – growth of 16.5%, and France – up 13.9%.

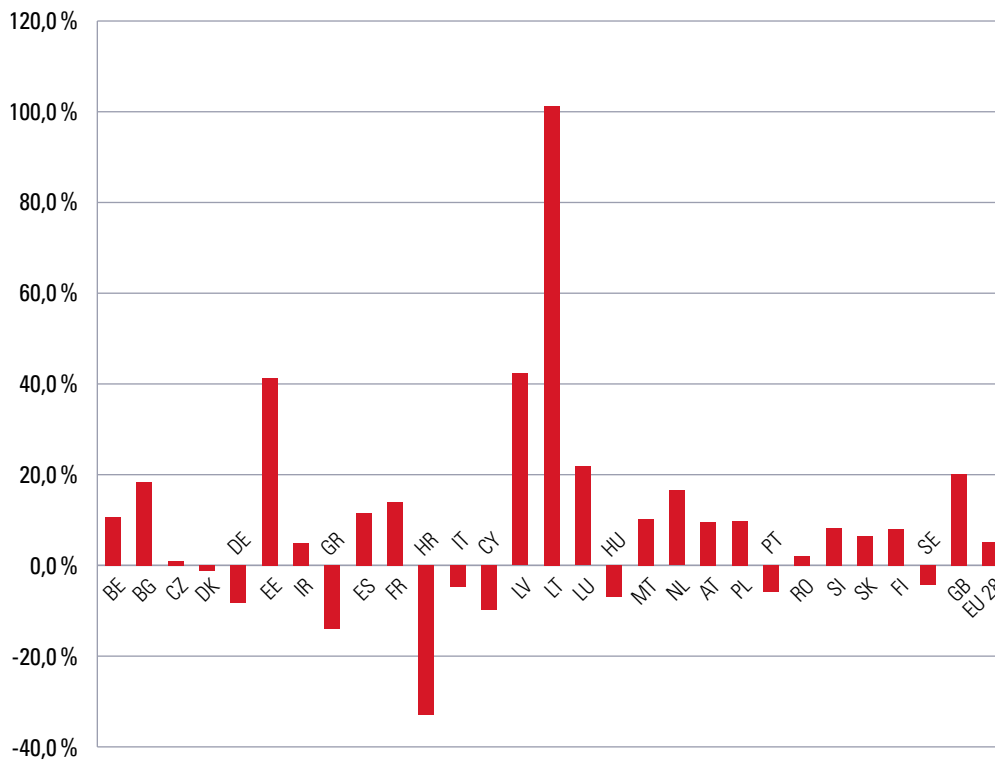
At the same time, own-account self-employment, excluding agriculture, fell in a number of countries, including Germany – down 8.2%, Portugal – down 5.9%, and Sweden – down 4.4%. It crashed in Croatia – down 33.0% – and Greece – down 14.1%.

The role of bogus self-employment in these national changes is difficult to estimate, in part because, by its very nature, it is hidden. However, a Eurofound study looking at the situation in the Czech Republic, Spain and the UK, found that, “bogus self-employment is a widespread and recognised problem in all three countries, with persistent difficulties in precisely identifying it”. It also suggested that it was a growing problem, as “an expansion to ‘new’ sectors is equally reported in all three countries”.<sup>10</sup>

9 VERMEYLEN, G, WILKENS, M., BILETTA, I., ANDREA, F. *Exploring self-employment in the European Union* (Eurofound, European Commission, Luxembourg, 2017)

10 SANZ DE MIGUEL, P, LUDICONE, F., BILETTA, I. *Fraudulent contracting of work: Bogus self-employment (Czech Republic, Spain and UK)* (Eurofound, Dublin 2017)

**Chart 5: Changes in own-account self-employment, excluding agriculture (2011 to 2016)**



Source: Eurostat (figures for those aged 20 to 64)

**Table 5: Changes in own-account self-employment, excluding agriculture (2011 to 2016)**

Country	% change	Country	% change
Belgium	10.6%	Lithuania	101.3%
Bulgaria	18.4%	Luxembourg	21.8%
Czech Republic	0.6%	Hungary	-6.9%
Denmark	-1.3%	Malta	10.2%
Germany	-8.2%	Netherlands	16.5%
Estonia	41.3%	Austria	9.6%
Ireland	4.9%	Poland	9.8%
Greece	-14.1%	Portugal	-5.9%
Spain	11.6%	Romania	2.0%
France	13.9%	Slovenia	8.3%
Croatia	-33.0%	Slovakia	6.4%
Italy	-4.8%	Finland	8.0%
Cyprus	-9.8%	Sweden	-4.4%
Latvia	42.3%	United Kingdom	20.1%
		<b>EU 28</b>	<b>5.2%</b>

Source: Eurostat (figures for those aged 20 to 64)



## KEY POINTS ON THE FIGURES ON SELF-EMPLOYMENT

Figures from Eurostat for 2016 show that there were 30.5 million self-employed people in the EU in 2016, out of a total of 214.7 million people working. Among the 30.5 million self-employed, 8.7 million had employees themselves, while 21.8 million were so-called “own-account” self-employed workers, without employees.

Most own-account self-employed workers work in five occupations: professionals; technicians and associate professionals; service and sales workers; agricultural, fishing and forestry workers; and craft workers.

Almost 60% of all own-account self-employed workers are found in four industries: agriculture, forestry and fishing; the wholesale and retail trade; construction; and professional technical and scientific activities.

Just over a third of own-account self-employed workers are women, a lower percentage than among employees. Young people are also less likely to be self-employed.

Self-employment in the EU 28, including both employers and the own-account self-employed, fell very slightly between 2011 and 2016, but this is all accounted for by a fall in the number of employers. The number of own-account self-employed workers increased modestly.

Two separate Eurofound studies in 2017 offer other ways of analysing self-employment. One (*Aspects of non-standard employment in Europe*) found that “dependent own-account freelancers and subcontractors”, who were in a similar position to employees, made up 18% of the total (including employers). Another (*Exploring self-employment in the European Union*) found that “concealed self-employed”, the group most similar to employees, made up 8% of all self-employed (again including employers), while “vulnerable self-employed” accounted for another 17%. The variations between these two studies in part reflect the fact that they look at different aspects of self-employment, but they also indicate the fluidity of the definitions.

There have been major changes in the composition of the own-account self-employed over the last five years, with falls in the numbers working in agriculture and retail, and rises elsewhere, particularly in professional, scientific and technical activities.

On average own-account self-employed workers make up 10.1% of all those in employment in the EU 28, but there are big differences between countries. In Greece, at the top, 22.3% of all workers are own-account self-employed; in Denmark, at the bottom, it is 4.6%.

There are also differences in how own-account self-employment has changed in the last five years. Excluding agriculture, the number of own-account self-employed workers increased by 5.2% across the EU 28. But, while it grew strongly in some countries, including the Baltic states and the UK, it fell in others, including Croatia, Greece and Germany.

# THE SURVEY

Much of the information in this report is taken from a questionnaire circulated by the ETUC. There were responses from 23 states, 21 in the EU and two, Norway and Serbia, outside. The seven EU states from which there was no response were: Croatia, Cyprus, Greece, Luxembourg, Malta, Portugal and Romania. A list of the respondents grouped by country is set out below.

<b>Table 6: List of respondents (Countries, confederations and individual unions)</b>	
<b>Austria</b>	<b>Ireland</b>
ÖGB	SIPTU
<b>Belgium</b>	<b>Italy</b>
CGSLB	CGIL
CSC	CISL vIVAce
CNE	FABI
FGTB	UIL-TEMP
<b>Bulgaria</b>	<b>Latvia</b>
CITUB/KNSB	LBAS
<b>Czech Republic</b>	<b>Lithuania</b>
CMKOS	Solidarumas
OS KOVO	Solidarumas – Translators and Interpreters
<b>Denmark</b>	<b>Netherlands</b>
HK	CNV
IDA	FNV - Zelfstandigen
LO	<b>Norway</b>
<b>Estonia</b>	NITO
EAKL	<b>Poland</b>
EAL	NSZZ Solidarnosc
<b>Finland</b>	<b>Serbia</b>
AKAVA	CATUS/SSSS
AKT	Nezavisnost
Team	<b>Slovakia</b>
Suomen Journalistiliitto (Union of Journalists)	KOZ SR
<b>France</b>	<b>Slovenia</b>
CFDT	Sindikát prekarcev ZSSS
CGT	<b>Spain</b>
CGT SFA	CCOO
<b>Germany</b>	UGT-FICA
DGB	<b>Sweden</b>
DJV	Pappers
IG	Saco
Ver.di	TCO
<b>Hungary</b>	<b>UK</b>
LIGA	TUC
SZEF	Equity
	NUJ

The survey was initially sent out in May 2017 and the last responses were received at the end of October. The 50 replies are more or less evenly split between confederations (26 replies) and individual unions (24 replies) and include a number of unions outside the main confederations.

The ETUC and the Labour Research Department, which carried out the research, are very grateful to all the unions and their staff who completed the questionnaire, and in some cases provided additional material.

## **KEY POINTS ON THE SURVEY**

50 responses were received to a questionnaire initially sent out by the ETUC in May 2017.

The replies come from 23 states, 21 in the EU plus Norway and Serbia. The seven EU states from which no replies were received were Croatia, Cyprus, Greece, Luxembourg, Malta, Portugal and Romania.

The responses are almost evenly divided between replies from confederations and individual unions.



# **RECRUITING AND ORGANISING** SELF-EMPLOYED WORKERS

## IN SOME COUNTRIES UNIONS CANNOT RECRUIT SELF-EMPLOYED WORKERS

In line with the convention of the International Labour Organization (ILO) on Freedom of Association and Protection of the Right to Organise (Convention 87), in most European states trade unions have a right to recruit and organise self-employed workers.<sup>11</sup>

However, there are at least six European states (Bulgaria, Hungary, Poland, Romania, Serbia and Turkey), where national legislation prevents most self-employed workers being members of trade unions, or at least provides no clear right for them to become members.

In Poland, the most populous state in this category, Article 2 of the 1991 Trade Union Act limited union members to employees, as defined in the Labour Code, as well as to members of agricultural cooperatives, agency workers, homeworkers, pensioners, the unemployed, civil servants and some non-combatant military personnel. Self-employed workers and those employed on civil contracts (service contracts) were not permitted to join unions. Following court action and international protests by the unions, this situation has now changed (see below), but self-employed workers still have no clear right to be union members.

Bulgaria is another country where there are legal barriers to self-employed workers joining unions, as the Bulgarian trade union confederation CITUB (KNSB in Bulgarian) reports. It identifies the Commerce Act, which has detailed provision on the legal position of sole-proprietors, as being the main problem in recruiting this group of workers.

In Hungary, the Labour Code provides in Article 4 that “employees are entitled” to form, join and leave trade union organisations. However, although the Labour Code does not itself define employees, they are generally regarded as being individuals employed under a labour contract, with the result that self-employed workers have no clear right to form or join unions.

In Romania too, legislative barriers block unions’ ability to recruit the self-employed. The 2011 Social Dialogue Act, which sets out key elements of country’s employment law, states in Article 3 that “individuals with an individual employment contract, civil servants public officials and civil servants with special status under the law, members of cooperatives and employed agricultural workers” have a right to form and join unions. However, there is no similar explicit right for self-employed workers to be union members.

Legislation in Serbia, which is not in the EU but is a candidate to join, also places limits on union membership. In the Labour Code, a trade union is defined as “an organisation of employees” (Article 6), but an employee in the Labour Code is a “natural person in labour relation with the employer” (Article 5). Self-employed workers are not covered by this definition and so have no right to union membership. The one exception appears to be freelance artists, as the Labour Code permits collective bargaining between employers and representative unions on their terms and conditions.

The situation is similar in Turkey, another candidate country, where the public authorities require that any worker who wishes to join a union must be an employee, and existing union members have their membership cancelled if they are dismissed or their status is changed to that of a freelance.<sup>12</sup>

11 For example, the French Constitution enshrines the fundamental right for any worker to protect his or her rights and interests through union action and the right to associate. In addition, a legislation adopted in 2016 (LOI n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels) created new articles in the Labour Code which explicitly give “independent workers” employed through on-line platforms new collective rights, notably the right to strike and to organise.

12 This has particularly affected the TSG journalists’ union in Turkey; see, BRÉDAT, H., HOLDERNESS, M. *Rights and Jobs in Journalism: Building Stronger Unions in Europe* (European Federation of Journalists, Brussels, 2016)

## HOW UNIONS ACT TO COUNTER THESE RESTRICTIONS

In a number of countries, these limits on union membership have been actively opposed by unions, who have argued that large parts of the workforce are excluded from union participation. This has been particularly obvious in Poland, where employers have recruited large numbers of workers under civil law contracts (*umowy cywilnoprawne*), who were not then covered by the Labour Code and could not join unions. Recent figures from the Polish statistical office GUS, show that there were 1.2 million people workers under civil law contracts in 2015 (1,017,567 people with so-called mandate contracts – *umowy zlecenia* – and 187,590 with contracts of specified work – *umowy o dzieło*).<sup>13</sup>

Polish unions responded in two ways. One union body, NSZZ Solidarnosc, took the issue to the International Labour Organization (ILO), arguing that the 1991 Trade Union Act was in breach of Article 2 of ILO Convention 87, which requires that “workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation”.

The union confederation OPZZ, on the other hand, took the issue to Poland’s constitutional court. It argued that the trade union legislation was contrary to Poland’s 1997 constitution. This states that “freedom of association shall be guaranteed to everyone” (Article 58) and that this freedom “may only be subject to such statutory limitations as are permissible in accordance with international agreements to which the Republic of Poland is a party” (Article 59).

Both bodies found in favour of the unions. In 2012, the ILO called on the Polish government “to take the necessary measures in order to ensure that all workers, without distinction whatsoever, including self-employed workers and those employed under civil law contracts, enjoy the right to establish and join organizations of their own choosing”.<sup>14</sup> And in June 2015, the constitutional court ruled that the existing legislation was unconstitutional, as the reference to the definition of “employee” in Section 2 of the Labour Code did not guarantee that all workers could join trade unions.

The Polish government had already promised in 2014 to introduce changes after the ILO ruling, and the judgment of the constitutional court, which struck down part of the Trade Union Act, made action more urgent. However, although the issue has been discussed in Poland’s Social Dialogue Council, which brings together representatives of the government, unions and employers, no new legislation has as yet been agreed. The government’s most recent formulation, which was presented in June 2017, is still seen as unsatisfactory by the unions, as it would exclude from union membership not just those employing other people (something the unions accept) but also anyone who “bears the economic risk associated” with their work. This would mean, as one union commentator has noted, that unions could not even organise self-employed taxi drivers.

As a result, at present, although the existing legislation excluding self-employed workers from membership has been ruled unlawful, no alternative legislation has been adopted, and the union rights of the self-employed remain in limbo.

Serbian unions have also sought to remove the legal restrictions on recruiting self-employed workers, as both Serbian union confederations, CATUS (SSSS in Serbian) and Nezavisnost, report. CATUS states that it has been pushing for changes in this area since 2006, when the ILO adopted the Employment Relationship Recommendation (R198), which proposes, among other things, that countries should combat attempts to disguise employment relationships as some other form of contract. An attempt was made to change the law in 2014, and, as Nezavisnost also notes, it is hoped that the situation will change in 2018, when a new revision of the Labour Code is planned.

In Bulgaria too, CITUB reports that the current legislation is being challenged by the unions, although it does not provide details.

<sup>13</sup> *Employment in national economy 2015*, Table 15 (Główny Urząd Statystyczny – Central Statistical Office, Warsaw, 2016)

<sup>14</sup> ILO, 363rd Report of the Committee on Freedom of Association, Geneva March 2012

## OTHER RESTRICTIONS ON ORGANISING SELF-EMPLOYED WORKERS

Other countries have more limited restrictions on trade union rights for self-employed workers. In Austria, the Labour Constitution Act (Arbeitsverfassungsgesetz) states in paragraph 4 that collective agreements can only be signed by bodies whose decision-making is independent of the other side. This means that workers who employ other workers cannot be involved in union decision making. This conflict of interest, between workers and employers, is described by the ÖGB Austrian union confederation as a basic principle of Austrian employment law.

However, in many countries the barriers to self-employed workers joining unions are not legal restrictions on their right to do so. Rather, it is the rules and, in some cases, the attitudes of the unions themselves, as the replies to the questionnaire indicate.

The response from the Swedish union confederation Saco, which organises graduate level employees, highlights the problems which some unions see in organising the self-employed. Talking of its 23 affiliates, whose members range from doctors and architects to lawyers managers and accountants, it states:

“There is nothing that prevents a person from joining a union. However, many unions have a policy, either not to organise the self-employed or not to give or offer support/advice regarding the member’s capacity as an employer to avoid a conflict of interest between members who are employers and employees.”

The potential for a conflict of interest between members who are employees and those who are employers is clearly something which strongly influences some union approaches. The FGTB, the Belgian socialist union confederation in Belgium, states that, “in Belgium, there is a binary choice between employers and employees. There is nothing to stop self-employed workers joining unions, but this is scarcely of interest in practice.” In Spain, the CCOO union confederation makes a clear distinction between self-employed with employees, who are not allowed to join the union, and those who do not have employees, who are allowed to join.

The Czech union confederation CMKOS points to the practical realities of organising the self-employed. It notes that, while “there are no legal obstacles for a self-employed person to become a member of trade union . . . in the context of Czech labour law . . . the self-employed constitute only a tiny fraction of trade union members”. In neighbouring Slovakia, the KOZ SR union confederation indicates that there are several associations that represent the self-employed, but that these are largely organisations for entrepreneurs and “are not part of the trade union confederation”.

However, it is clear that new developments, in particular the expansion of forms of work linked to the internet, are changing union attitudes towards the self-employed. The CGSLB, the Belgian liberal union confederation, states that, while in Belgium self-employed workers tend to be represented by their own associations and federations, “digitalisation and new forms of work are pushing the union organisations to think about the best ways to take control of this phenomenon and thus to consider the fact of affiliating the self-employed in the future”.

In Germany’s largest union, IG Metall, which organises workers in metal-working, textiles wood-working and a range of other industries, this change has already taken place. At its four-year congress in October 2015, the IG Metall revised its rules to allow the self-employed, although only those without employees, to become members of the union for the first time (paragraph 3 of IG Metall rules). Michael Ebenau, a member of the rules revision commission, made it clear that new forms of work made the revision necessary. “Free-lancing and crowd-working take place in what is largely a legal vacuum,” he said. “It’s about preventing the misuse of these new forms of work. To do that there’s a need for IG Metall membership”.



## **KEY POINTS ON UNION MEMBERSHIP FOR THE SELF-EMPLOYED**

In most countries there are no legal barriers to unions recruiting the self-employed, and where these legal barriers exist, there are often union attempts to remove them;

Union rules and union attitudes may make it more difficult/impossible for the self-employed to join unions in some cases – this is particularly the case for self-employed workers who themselves have employees;

Digitalisation and new forms of work are leading some unions to reconsider their position on organising the self-employed.



# UNIONS ORGANISING SELF-EMPLOYED WORKERS

## THE OVERALL PICTURE

As the previous section shows, in most countries in Europe, unions have a right to recruit self-employed workers, and in most of these states, union make use of these rights to organise and represent them.

The responses from the survey and other sources of information show that there are only seven states which do not have unions representing substantial numbers of self-employed workers. These are Bulgaria, Czech Republic, Hungary, Latvia, Poland, Romania and Slovakia. This largely overlaps with the list of countries where self-employed members are not legally permitted to be union members. However, there are some exceptions.

There are three countries, the Czech Republic, Latvia and Slovakia, where the confederations report that, despite the self-employed having a right to join, in practice this does not happen, in part because of practical difficulties, in part because unions do not see themselves representing the self-employed (see previous section).

There are also two countries, where, despite union membership being illegal for most self-employed workers, they either are members despite this – the case for freelance journalists in Turkey,<sup>15</sup> or are in an occupation where union membership is permitted as an exception – the case for freelance artists in Serbia.

### Four different types of unions

1. Overall, it is possible to identify four different types of unions which either have substantial number of self-employed workers as members, or would like to recruit them. These are:
2. unions, often specialist unions, operating in areas with a tradition of trade union membership, but also where self-employment has traditionally been a common way of working;
3. unions aiming to recruit workers in conditions of precarious employment, including workers who are self-employed;
4. unions aiming to recruit the self-employed as such; and
5. unions aiming to recruit self-employed alongside their existing membership in response to the way working practices are changing.

## UNIONS OPERATING IN AREAS WITH A TRADITION OF BOTH SELF-EMPLOYMENT AND UNION MEMBERSHIP: UNIONS FOR JOURNALISTS, ACTORS, MUSICIANS, ARTISTS, TECHNICIANS AND OTHERS

There have long been differences in the levels of unionisation in the industries and occupations identified on pages 00 to 00 as having large numbers of self-employed. While there are some industries, such as the retail trade, with generally low levels of unionisation, there are others where self-employment and high levels of unionisation are found together. These are industries where, as the Danish union confederation LO points out, “working as self-employed has always been common ... The union covers the industry as such, and it is therefore natural for self-employed workers to be members of the union.”

LO was talking specifically about the Danish Artists’ Union (Artist Forbund, Dansk). However, the response from the Norwegian union NITO gave a slightly wider range of jobs in this position. It listed “architects, interpreters, musicians and journalists” as being the occupations where unions were most likely to have self-employed members, and, with the addition of actors and other performers, this is broadly typical of the situation across Europe.

15 BRÉDAT, H., HOLDERNESS, M. *Rights and Jobs in Journalism: Building Stronger Unions in Europe* (European Federation of Journalists, Brussels 2016)

Most countries have journalists' unions which have a significant number of freelance (self-employed) workers among their membership. In some countries journalists, both freelancers and employees, are in sections of larger unions which organise a wider range of occupations. This is the case for GPA-djp in Austria, where the journalists', printing and paper union merged with the larger GPA, the union for non-manual employees in the private sector in 2006. The situation is similar for Ver.di, the large German union for service workers across the economy, which was created out of a merger of five unions in 2001, one of which was IG Medien, itself a merger of printing and cultural unions. In Spain, some journalists are members of the federation of the CCOO confederation covering workers providing services to the citizen – FSC CCOO.

More frequently journalists are in separate unions. In some countries, these unions are part of larger confederations, as is the case of Estonia, where EAL is part of the EAKL confederation, the Netherlands, where the NVJ is affiliated to the FNV Confederation, Sweden, where the journalists' union, Journalistförbundet, is part of the non-manual TCO confederation, and the UK and Ireland, where journalists are organised in the National Union of Journalists (NUJ) which is affiliated to the Irish union confederation, the ICTU, in Ireland and the British confederation, the TUC, in Britain.

In France, there are three main journalist unions, which are all affiliated to larger union bodies. These are: the Syndicat National des Journalistes – SNJ, which is part of the Solidaires union grouping; the Union Syndicale des Journalistes-CFDT, which is part of the CFDT confederation's Culture, Consulting and Communication union – FC3; and Syndicat National des Journalistes – CGT, part of the CGT confederation. However, it is important to note that their members are not self-employed in the same way as in other countries, as all professional journalists in France are considered to be employees (see page 00).

However, in many countries journalists are in unions which are not part of national confederations. This is the case, for example, in Denmark, Finland and Italy. Italy has an unusual arrangement, where the main national confederations have accepted that the independent FNSI has the right to represent journalists, but, in return, the national confederations have representatives in a consultative capacity on the FNSI's national council.<sup>16</sup> In Germany, journalists are represented both by the services union Ver.di and by the independent journalists' union, DJV.

In the case of actors, musicians and other performers, there is a similar variety of structures. For example, in Italy, the union SLC-CGIL, which organises actors and other performers, also has a much wider membership in communications, while in Ireland, both Irish Equity (the performers' union) and the Musicians' Union of Ireland are sections within Ireland's largest union, the general union SIPTU. However, in the UK, Equity and the Musicians' Union are separate unions, although they are both affiliated to the TUC. The TUC also has two other unions in the area of culture with substantial numbers of self-employed members. These are the Writers' Guild and the Artists' Union of England. In Serbia, the union of artists and performers (Samostalni sindikat estradnih umetnika i izvo a a Srbije) is also a separate union, but part of the CATUS/SSSS union confederation, while in Sweden, the separate Teaterförbundet, the Union for Performing Arts and Film, is part of the TCO confederation. And in Denmark, the performers' union, Dansk Skuespillerforbund, is part of the FTF non-manual confederation.

In the Netherlands, the situation has changed since the break-up of FNV-Kiem, part of the FNV confederation, in 2016. A new arts union, the Kunstbond has emerged, but, although it is now a separate union, organising painters, photographers, and sculptors, as well as actors, dancers musicians and singers, it is still affiliated to the FNV.

In France, there are a number of unions representing artists and performers, although under French legislation, performers, like journalists are considered to be employees rather than self-employed (see page 00). Leaving performers on one side, there is a national union of authors and composers (SNAC) and the national union of visual artists (SNAP). They are both affiliated to the Federation CGT du Spectacle, part of the CGT union confederation, but SNAC is not affiliated to the CGT.

As well as journalists, performers and artists, there are other groups where self-employment has been a traditional way of working, and where unions are active. Some of these are technicians linked to artistic

<sup>16</sup> FNSI « Che cos'è la FNSI », <http://www.fnsi.it/che-cose-la-fnsi> (Accessed 10.11.17)

performances, both live and recorded. The TUC-affiliated broadcasting and media union, BECTU, which is now part of a bigger union Prospect, organises self-employed workers in this area in the UK, as do HK, part of the LO union confederation, in Denmark, and TEME, part of the SAK confederation, in Finland. TEME is a grouping of seven specialist unions, covering among other occupations, TV and film designers, lighting and sound engineers, cinema projectionists and theatre directors.

Other occupations where unions organise the self-employed include translators and interpreters, such as those organised by the Solidarumas Translators' union in Lithuania and by HK in Denmark, and architects, some of whom are in the Danish professional engineers union IDA, and others in the Finnish TEK, the union for Academic Engineers and Architects, an affiliate of the AKAVA confederation. There are some medical professions where some of those who are self-employed are union members. There are specialist unions for both speech therapists and rehabilitation professionals within AKAVA in Finland. And self-employed physiotherapists and chiropodists are organised in the Chartered Society of Physiotherapists and the Society of Chiropodists and Podiatrists, two TUC affiliates, in the UK.

AKAVA's approach to organising these specialist occupations is interesting, as within its structure it has a group of what it calls "special branches" for those working in expert and managerial positions in the fields of culture, administration, communications and wellbeing. Not all of these members are self-employed, but with the 23 different member organisations within the special branches including those working as professional translators, sign language interpreters and art and culture professionals, some of them are.

There are no consistent figures on the number of self-employed who are members of these unions, but the figures that are available suggest that they are not insignificant. Ver.di in Germany, for example, estimates that it has 30,000 self-employed members. This is a substantial number, although it is a small fraction of its total membership of just over two million, which, as well as those working in the media and entertainment, includes workers in the public services, banking, retail, postal services, transport and waste disposal. Other unions have smaller numbers, but higher proportions. Among the journalists' unions, the DJ in Denmark reports that 21% of its membership are freelance journalists,<sup>17</sup> the Finnish journalists' union, Suomen Journalistiliitto, with around 15,000 members, has a separate freelance section, the SFJ, which has 1,350 members (9% of the total),<sup>18</sup> while the Sweden journalists' union (Journalistförbundet) has around 12,700 working members, of whom 1,800 (14%) are freelancers.<sup>19</sup>

In the UK, the London Freelance Branch of the journalists' union the NUJ has more than 4,000 members, 13% of the union's total membership, while the performers' union Equity reports that "the majority of our members are self-employed for taxation purposes". Equity has 42,000 members.

## **UNIONS AIMING TO RECRUIT WORKERS IN CONDITIONS OF PRECARIOUS EMPLOYMENT, INCLUDING WORKERS WHO ARE SELF-EMPLOYED: UNIONS FOR PRECARIOUS WORKERS**

Another approach which some unions have adopted in recruiting and organising self-employed workers is the establishment of separate unions which aim to recruit and organise workers across the whole economy based on their precarious contractual position. Self-employed workers are included in this, along with temporary workers, agency workers and workers on zero-hours contracts. This approach is most evident in Italy where all three main union confederations have national unions structured in this way.

17 BRÉDAT, H., HOLDERNESS, M. *Rights and Jobs in Journalism: Building Stronger Unions in Europe* (European Federation of Journalists, Brussels 2016)

18 Union of Journalists in Finland - Suomen freelance-journalistit. "Briefly in English" <http://www.freet.fi/briefly-in-english/> and Union of Journalists in Finland - Suomen freelance-journalistit, "About the Union of Journalists in Finland" <http://journalistiliitto.fi/en/about/about-ujf/> (Accessed 09.11.2017)

19 Swedish union of journalists - Journalistförbundet "Organisation" <https://www.sjf.se/om-oss/organisation> (Accessed 09.11.2017)

CGIL, the largest of the confederations, set up its union for these workers, the NIdiL, initially aimed at agency and atypical workers. It now describes itself as the union for atypical workers. It has 94,000 members (2016 figures).<sup>20</sup>

FeLSA-Cisl, the union for this group of workers within CISL, the second largest confederation, has a slightly different history and structure. Now known as FeLSA (Federazione Lavoratori Somministrati Autonomi ed Atipici – Federation of Agency, Autonomous and Atypical Workers) it was created in 2009 through the merger of Alai, a union for agency and atypical workers, and Clacs, a body which represented self-employed workers in retail and services. It groups its members into three sections, agency workers, atypical workers and the self-employed. The section for atypical workers includes those employed under so-called continuous and coordinated contracts, a type of status half-way between direct employment and self-employment. The section for self-employed is made up of a number of separate unions (see below). In 2016 FeLSA-Cisl had 42,000 members.<sup>21</sup> There is also a CISL association, vIVAce, for freelance workers (see below).

UIL, the smallest union confederation, has UILTemp, which describes itself as the union for workers who are “temporary, autonomous, atypical and registered for VAT”. (Freelance workers normally have to be registered for VAT.) It has 69,000 members (2016 figures).<sup>22</sup>

Italy is not the only country where unions have been set up specifically to recruit and organise workers, including the self-employed, whose employment position is precarious. In neighbouring Slovenia, the union Sindikat prekarcev (Union of the Precarious), part of the main union confederation, ZSSS, states that its aim is to represent “non-classical workers”.<sup>23</sup> In contrast to its Italian counterparts, it is very new, only founded in 2016 and emerging out of a broader social movement (Gibanje za dostojno delo in socialno družbo – Movement for Decent work and Welfare Society). Its resources are very limited. As its response to the questionnaire stated:

“Trade union of the precarious is still small trade union, without any financial support, so our work is based on the voluntary work of members and activists. In addition, precarious workers have such bad salaries (lower than minimum wage) that it is hard for them to pay a membership fee. So we are focused on helping them individually, and slowly enlarging the number of members, so that we could participate in negotiations and be active part of social dialogue, which is so far reserved for... trade unions with tradition and a lot of members.”

In some ways the Sindikat prekarcev is similar to the Independent Workers Union of Great Britain (IWGB), which states that it is a “small, independent trade union, whose members are predominantly low paid migrant workers in London”, and which has been active in a number of campaigns to win rights for self-employed workers. However, in contrast to the Slovenia union, the IWGB is not part of the main national union confederation, the TUC. It emerged in 2012 following a dispute with the largest TUC union, Unite, and a further split from another small non-TUC union, the IWW.<sup>24</sup> The IWGB is not specifically aimed at precarious or self-employed workers, but, in practice, it only recruits among workers in this category: couriers, private hire drivers, security guards and receptionists, foster carers and cleaners and other outsourced workers.

20 CGIL “I tesserati” <http://www.cgil.it/i-tesserati-2014/> (Accessed in 2017)

21 CISL “Sindacato Cisl, buona tenuta dell’organizzazione in molti settori produttivi importanti del paese” <https://www.cisl.it/in-evidenza/5169-sindacato-cisl-buona-tenuta-dell-organizzazione-in-molti-settori-produttivi-importanti-del-paese.html> (Accessed 08.11.2017)

22 UIL “UIL: il tesseramento (per Categorie e Settori) negli anni 2012 – 2016” [http://www.uil.it/tesseramento\\_cat.asp](http://www.uil.it/tesseramento_cat.asp) (Accessed 08.11.2017)

23 Sindikat Prekarcev “Kdo smo?” <http://www.sindikato-prekarcev.si/kdo-smo/> (Accessed 13.11.2017)

24 Independent Workers Union of Great Britain “How we began?” <https://iwgb.org.uk/how-we-began/> (Accessed 13.11.2017)

## UNIONS AIMING TO RECRUIT THE SELF-EMPLOYED AS SUCH: UNIONS JUST FOR THE SELF-EMPLOYED

The UGT in Spain, the FNV in the Netherlands and, to a more limited extent, CISL in Italy are the most notable examples of union confederations setting up structures specifically aimed at recruiting the self-employed as such, rather than seeing them as part of a wider group of precarious workers.

The main UGT body for the self-employed is UPTA (Unión de Profesionales y Trabajadores Autónomos – Union of Professionals and Self-employed Workers). It was established up in October 2000 and has around 340,000 members. It has a confederal structures with both regional and sectoral associations belonging to it, and its 2015 annual report shows that half (50%) of its members are in services, with the rest made up of agriculture (26%), construction (16%) and industry (8%). Within services, the main sectors are retail and wholesale, hotels, catering and restaurants, and transport and logistics.<sup>25</sup> UPTA does not just represent own-account self-employed (those without employees). Its membership extends to those running small businesses and entrepreneurs with employees.

There is also a separate UGT structure for small farmers and livestock breeders (Unión de Pequeños Agricultores y Ganaderos – UPA). It was first set up in 1982 to represent self-employed workers in the countryside and it currently has more than 80,000 members. It is integrated into the structure for self-employed workers within the UGT.<sup>26</sup>

In the Netherlands, FNV Zelfstandigen (FNV Self-employed), sometimes known as FNV ZZP, is part of the FNV union confederation, the largest in the country, and it has been in existence since 1999. It has around 10,000 members, and in February 2017, having previously been a separate but affiliated union, it followed a number of other previously separate affiliates of the FNV, including the largest, in legally merging into the central body.<sup>27</sup> However, it continues to be a separate sector among the 14 sectors which make up FNV. The FNV also has affiliated unions, including, as already noted, those for journalists (NVJ) and performers and artists (Kunstenbond). Unlike the UGT's bodies for the self-employed, FNV ZZP only accepts workers without employees into membership.

In Italy, there are nine unions affiliated to CISL-FeLSA that represent specific groups of self-employed, including street traders, tobacconists and newsagents, therapists and dental technicians. However, while they have some independence they are still within FeLSA, which covers a wide spectrum of precarious workers. In addition, in 2016, CISL set up vIVAce, which is purely directed at freelancers and independent professionals, but is an association rather than a union.<sup>28</sup> vIVAce, which describes itself as “a community of independent workers and new professionals” represents freelancers who primarily offer intellectual services, largely through the web and in networks, and who are also involved in co-working.<sup>29</sup> The fact that freelancers working on a regular basis are required to be registered for VAT (IVA in Italian), explains the unusual spelling of the organisation – vIVAce. Help with taxation and other accounting issues is one of the services that vIVAce offers.

It is important to note that as well as these union-based structures representing the self-employed, there are other associations for self-employed people.<sup>30</sup> In Spain, for example, there are four main organisations for the self-employed, one of which is the UGT-affiliated UPTA. The others are the Federación Nacional de Asociaciones de Trabajadores Autónomos (ATA), the Unión de Asociaciones de Trabajadores Autónomos y Emprendedores (UATAE) and the Confederación Intersectorial de Autónomos del Estado Español (CIAE).<sup>31</sup>

25 UPTA Memoria Anual 2015. 2016.

26 Unión de pequeños agricultores y ganaderos “Quiénes somos!” <https://www.upa.es/upa/que-es-upa/quienes-somos/> (Accessed in 2017)

27 “Fusie FNV Zelfstandigen en FNV definitief”. *Zipconomy*. January 2017. <https://www.zipconomy.nl/2017/01/fusie-fnv-zelfstandigen-en-fnv-definitief/> (Accessed in 2017)

28 CISL: “Enti e associazioni” <https://www.cisl.it/la-cisl/enti-associazioni-e-centri-di-attivita.html> (Accessed 08.11.2017)

29 Vivace. “Chi siamo” <http://www.vivaceonline.it/chisiamo/> (Accessed 08.11.2017)

30 See section on representation of self-employed workers in Exploring self-employment in VERMEYLEN, G, WILKENS, M., BILETTA, I., ANDREA, F. *Exploring self-employment in the European Union*

31 “¿Cuáles son las principales organizaciones de autónomos en España?” *El Autónomo Digital*, January 2018 <http://www.elautonomodigital.es/principales-organizaciones-de-autonomos/> (Accessed 30.01.2018)

UATAE has an association agreement with the other main Spanish union confederation, CCOO, and has worked with it in joint campaigns. In the Netherlands, ZZP Nederland states it is the largest organisation for the self-employed, with 41,000 members,<sup>32</sup> and there are a number of others.

## **UNIONS AIMING TO RECRUIT THE SELF-EMPLOYED ALONGSIDE THEIR EXISTING MEMBERSHIP: UNIONS WITH A WIDER MEMBERSHIP**

It is more difficult to identify unions that do not have a long tradition of recruiting the self-employed but more recently have been attempting to do so to reflect the changes in the labour market. The main indications of a move in this direction are union campaigns around self-employed and freelance work, targeted recruitment efforts and new services for this group of workers. Some unions, like IG Metall in Germany, have adopted this approach relatively recently. Others, like Unionen in Sweden, have been recruiting the self-employed for much longer.

IG Metall, Germany's largest union, is clearly making an effort to recruit freelancers and crowd workers. It changed its rules in 2015 to allow them to join and, together with the Austrian union confederation (ÖGB), the Austrian Chamber of Labour (AK) and the Swedish union Unionen, it has launched a new website service for crowd workers, Fair Crowd Work – see page 00. Ver.di too is trying to recruit self-employed workers beyond the traditional areas of journalists and cultural workers. It has a separate section on its website for the self-employed and an advice network, and it argues that it has been successful "by offering a special self-employed orientated service, a special department for the self-employed members, specialised union staff, and through the participation of volunteers in the Ver.di committees."

In France, the CFDT has campaigned for the rights of drivers working for the web-based taxi service Uber, and other drivers with their own vehicles. A separate union section for drivers working for Uber and other similar companies, CFDT VTC LOTI, was set up within the CFDT's transport federation (Fédération Générale des Transports et de l'Environnement) in January 2017.<sup>33</sup> The CGT has also attempted to win members among those working for Uber and the food delivery company Deliveroo. The Finnish union confederation AKAVA has lobbied for new collective bargaining rights for the self-employed, with several unions forming a new body, ENTRE, for the confederation's entrepreneurs and self-employed professionals, in order to improve their position.

In the Netherlands, the union CNV Vakmensen (CNV Professionals), part of the Christian CNV confederation, also aims to recruit self-employed workers, with targeted web pages offering advice and training. As the CNV says, it has been successful in winning new members by "providing special support for the self-employed."

In Sweden, the non-manual confederation TCO explains why unions are now taking the concerns of self-employed workers more seriously.

"This is due to a shift in the industry; many of those who are now self-employed used to be employed and have kept their membership. The unions dealing with large numbers of self-employed have responded to this shift and are providing services that are sought after and relevant for the self-employed."

One of them is Sweden's largest union, the private sector non-manual Unionen. As already noted, Unionen is one of the unions behind the Fair Crowd Work website, but it also emphasises what it can offer its self-employed members. It has a section Unionen Egenföretagare (Unionen Self-employed) on its website, where it offers a range of services. As it explains, membership is open to individuals "regardless of the type of company you operate, as long as you only employ family members, have no more than four major owners and primarily perform white collar services". Unionen's involvement with the self-employed has

32 ZZP Nederland "Over ZZP Nederland". <https://www.zzp-nederland.nl/over-zzp-nederland> (Accessed 03.01.2018)

33 CFDT "VTC : La CFDT au plus près des chauffeurs" CFDT [https://ile-de-france.cfdt.fr/portail/ile-de-france/sante-qualite-de-vie-au-travail/vtc-la-cfdt-au-plus-pres-des-chauffeurs-srv2\\_417092](https://ile-de-france.cfdt.fr/portail/ile-de-france/sante-qualite-de-vie-au-travail/vtc-la-cfdt-au-plus-pres-des-chauffeurs-srv2_417092) (Accessed 03.01.2018)



a longer history than most unions. SiF, the Swedish technical and clerical workers' union which merged with another union, HTF, to form Unionen in 2008, started recruiting the self-employed in 1998, two years after its congress took a decision to open membership to this group of workers.<sup>34</sup>

In the UK some general unions have also increasingly seen the need to attract self-employed workers as members, although the two largest private sector unions, Unite and the GMB, have primarily concentrated on campaigns and court cases to get the self-employed classified as "workers" rather than independent contractors (see page 00). Community, a smaller union, launched a partnership with a social enterprise, Indycube in 2017, which as well as providing low cost desk space to self-employed workers, also offers business advice and services to start ups and freelancers.<sup>35</sup>

However, the unions referred to above are not the only ones seeking to recruit self-employed workers. For many the approach is similar to that outlined by the CCOO confederation in Spain: "Within the Confederation there are departments specifically dealing with the concerns of autonomous workers, but in general they affiliate in line with the areas where they are employed."

## KEY POINTS ON UNIONS RECRUITING SELF-EMPLOYED WORKERS

Most states have at least some unions which have substantial numbers of self-employed workers among their membership, and where this is not the case, this is generally because the law prevents self-employed workers from joining unions (see previous section).

However, there are differences in the type of unions which recruit and organise self-employed workers, both within countries and between countries.

The most frequently found type of union with substantial numbers of self-employed workers in membership are the specialist unions or specialist sections within larger unions, operating in industries where self-employment has long been a common way of working. There are examples of these unions in most European states. They represent journalists, actors, musicians and other performers, technicians linked to performances, translators and interpreters, as well as architects and some medical professions. The proportion of self-employed workers among the membership can be as high as 20%, and, in some countries, the unions organising these groups are not affiliated to the main union confederations.

A second type of union with substantial numbers of self-employed members are unions which aim to recruit precarious workers more generally, with self-employed workers being recruited along with agency workers, temporary workers and others on non-standard contracts. This form of union is found most often in Italy, where all three main confederations have adopted this model, but it is also present in Slovenia, and one UK union (not in the TUC) is, in practice, similar.

The third type are the unions which only attempt to recruit the self-employed. UGT in Spain, FNV in the Netherlands and, to a more limited extent, CISL in Italy all have affiliates that fall into this category, although there is an important difference between them, as the FNV's affiliate only recruits self-employed workers who do not have employees themselves.

Finally, there are unions which do not have a long tradition of recruiting the self-employed but have more recently been seeking to do so in response to changes in the labour market. There are unions in this position across Europe, including some of the largest like IG Metall in Germany, Unionen in Sweden and Unite and the GMB in the UK, as well as unions in the CFDT and CGT confederations in France and in the CCOO confederation in Spain. While some adopted this approach some time ago, others have moved in this direction much more recently.

34 EDLING, M. "Trade unions open their doors to the self-employed" Eurofound, 1999 <https://www.eurofound.europa.eu/observatories/eurwork/articles/industrial-relations/trade-unions-open-their-doors-to-the-self-employed> (Accessed 03.01.2018)

35 Community "Community and Indycube pledge to give power to the self-employed". <https://community-tu.org/community-indycube-pledge-give-power-self-employed/> (Accessed 03.01.2018)



# **COLLECTIVE BARGAINING** FOR SELF-EMPLOYED WORKERS

## THE 12 STATES CONCERNED

The previous sections show that in most European countries self-employed workers can join unions and that many unions now have self-employed members. However, unions face much greater difficulties, both legal and practical, in carrying out what is one of their key functions – negotiating collective agreements for this group of workers. In fact there appear to be only 12 states where unions can negotiate (or have recently negotiated) collective agreements or similar types of settlements for self-employed workers, or at least some groups of self-employed workers. These are Austria, Belgium, Denmark, France, Germany, Italy, Netherlands, Serbia, Spain, Sweden and the UK, plus Ireland, where the right to negotiate was restored in 2017. However, in all 12 countries there are clear limits on unions' ability to negotiate.<sup>36</sup>

This section, looking at the key issue of collective bargaining, is in two parts. The first part sets out the national picture in terms of the legal framework and practical reality in each of the 12 states. The second part draws together common elements across all 12 states.

## THE NATIONAL PICTURE

### Austria

In principle, Austrian legislation, in this case the Labour Constitution Act (Arbeitsverfassungsgesetz), sees no role for collective bargaining in setting term and conditions for self-employed workers or those employed under contracts for service (Werkverträge). There are, however, two exceptions, covering permanent freelance journalists working for media companies and home workers, where the law allows agreements to be negotiated and signed.

#### Overall agreements since 1920

The bargaining rules for permanent freelance journalists are set out in the Journalists' Law of 1920 (Journalistengesetz), as amended in 1999. This defines a permanent freelance journalist as someone who does not have an employment contract but works in a journalistic capacity for a media company (although not Austrian Broadcasting) "permanently and not just as an additional occupation". The work must be primarily done personally and the individual must not have control over a company structure (§16).

If these conditions are fulfilled, the amount to be paid for the work delivered and the conditions for its delivery can be settled through a so-called overall agreement (Gesamtvertrag) which can only be signed by only bodies recognised as having the ability to enter into collective agreements (in other words, unions for the workers). This sets a minimum floor for pay and conditions, as the terms of the overall agreement cannot be revoked or limited through individual agreements. Special agreements, provided they are not forbidden in the overall agreement, are only valid if they are more favourable to the journalist concerned, or cover issues not covered in the overall agreement (§17).

The overall agreement also has legal effect on permanent freelance journalists who are not members of the body signing the agreement (§19).

The GPA-djp union representing journalists has been able to use the legislation to agree a range of terms and conditions. The 2014 agreement for freelance journalists working in Austria's daily and weekly newspapers, which is still current, sets rates for text, photographs and videos, as well as for acquiring

<sup>36</sup> As well as these 12 states where some form of bargaining on behalf of self-employed workers is possible, there was recently an interesting development in Estonia, where, in 2014 the government proposed changes to the current Collective Agreements Act, which defines a collective agreement as a voluntary agreement between employees or an association or a federation of employees and an employer or an association or a federation of employers. The main union confederation, EAKL, also proposed changes. One of the issues being discussed at this time was that collective agreements could be expanded to include economically dependent employees. In the end, EAKL considered that the overall balance of the proposed new legislation was unfavourable to unions and decided to oppose it. The new coalition government, elected in 2015, has not implemented the previous proposals and so far there have been no changes to the existing legislation.

equipment. It also deals with travel costs, compensation payments when planned commissions cannot be fulfilled, payment terms and copyright. There is also a clause regulating the terms for ending a period of cooperation, ranging from one month's notice after a year of working for an organisation to six months after 20 years or more.

The collective bargaining rules for homeworkers are set out in the Homework Law 1960, as amended (Heimarbeitsgesetz). Homeworkers are defined as working in their own home, or some other place that they choose, on the production, processing or packaging of goods, but who are not sufficiently integrated into the business to have an employment contract. As with freelance journalists, the pay and conditions of workers in this position can be set by an overall homework agreement (Heimarbeitsgesamtvertrag), which can only be signed by a body with the ability to sign collective agreements. As with freelance journalists, an agreement signed in this way determines the pay and conditions of those covered, which cannot be revoked or worsened through individual agreements (§§43 to 50).

Using this legislation, agreements have been reached covering workers in leather and textile and woodworkers (button-makers), as well as workers packing pharmaceuticals. However, the numbers of self-employed workers covered by these agreements is likely to have fallen over time.

## Belgium

The Belgian legislation governing collective bargaining (Loi du 5 décembre 1968 sur les conventions collectives de travail et les commissions paritaires) does not directly provide for bargaining to set the terms and conditions of the self-employed. Indeed the self-employed liberal professions are counted among the employer interests which much be represented (Article 3). However, it also states that "persons, who, other than under a contract of employment, provide work services under the authority of another person" should be on an equal footing to workers (Article 2). This potentially opens the way for agreements for some self-employed.

### An agreement for freelance journalists

In the past there was an agreement on pay in for self-employed journalists in the French-speaking press in Belgium. (This was signed in 1987 between the Belgian newspaper editors' and the journalists' union AGJPB, and it set minimum amounts to be paid to freelance journalists for both text and photographs.) However, it did not have the same binding legal status as a normal collective agreement (known as a CCT in French and a CAO in Flemish) and it was often ignored by employers. It has subsequently lapsed and, despite efforts, the AGJPB and the newspaper editors have not been able to reach a new agreement, in part because of the increasing concentration in the sector. The three representative Belgian union confederations (CSC/ACV, FGTB/ABVV and CGSLB/ACLVB) have been unwilling to be involved in these discussions or to sign the agreement in the past, as they consider that the terms transform gross pay into one-off payments for use of copyright material and fail to provide adequately for social security contributions for freelance journalists.

## Denmark

Collective bargaining in Denmark operates largely within a framework set by the unions and employers themselves rather than by legislation, and there have been agreements covering freelance workers for many years. However, since 1997 the ability of unions to negotiate agreements for self-employed workers has been reduced, as the employers have argued that arrangements to protect the self-employed were unlawful as they were contrary to Danish legislation intended to ensure free competition.<sup>37</sup>

37 The judgments made by the Danish competition authorities and Danish courts appear not to have specifically referred to European competition law (see page 00), but Danish authorities, like others in the EU are bound by the judgements of the European Court of Justice (see page 00). In addition, as an OECD report in 2015 noted: "Over the past 15 years Denmark has moved in a steady, incremental fashion to bring its competition law and policies in line with the European Union Treaty and international best practices." in *OECD. Competition Law and Policy in Denmark A Peer Review*, Paris, 2015

## A court case based on journalists' rate lists

In 1997 employers objected to the recommended rate lists for freelance journalists produced by the unions, and the Danish competition authority (Konkurrence- og Forbrugerstyrelsen – KFST) initially ruled that they were illegal and should be withdrawn. However, the journalists' union (DJ) appealed against this decision, and in 2002 it was revised, allowing freelancers who worked in a similar way to employees, in other words producing similar material under similar working conditions, to be exempted from competition law. This produced two classes of freelancers in Denmark – the freelancer considered to be independent (selvstændig freelancer), who cannot be covered by collective agreements, and a freelance wage-earner (freelance lønmodtager) who can.

Initially a large number of freelancers were accepted as being in this second category and were therefore covered by collective agreements. However, in February 2010 a major Danish media company Aller Media, which previously had faced a strike by its freelance staff, won a ruling in the Danish Labour Court, which found that the vast majority of the freelancers working for Aller Media were independent freelancers rather than freelance wage-earners. As a result, the union was still able to sign an agreement with the company, but the number covered by it fell sharply – of 700 freelancers working for Aller Media, only 80 were classed as freelance wage-earners. This had a damaging impact on the union's collective strength and resulted a deterioration in the terms and conditions of all journalists.<sup>38</sup>

Currently the journalists' union DJ has at least 24 collective agreements covering freelance wage-earners. As well as Aller Media, the employers covered include the Danish Broadcasting Company (DR), Berlingske Media, Politiken and Ekstra Bladet. Some agreements, such as that for the Danish Broadcasting Company (signed in 2014), are detailed and extensive; others are brief statements of intent. There are also similar agreements covering freelancers with unions covering other creative areas such as the film and TV workers' union (FAF) and the scenographers' union (SDS). Some of Denmark's largest unions, such as the service union HK, which among other things organises translators and workers in graphic design and IT, and the metalworking union Dansk Metal, have also signed agreements covering their freelance members. HK and Dansk Metal are in the LO union confederation; FAF and SDS are members of the FTF confederation.

## France

French legislation on collective bargaining does not provide for collective agreements to be signed for the self-employed.<sup>39</sup> However, there are collective agreements for groups of workers who in many other countries would be considered as self-employed, but, under the French system, are regarded as employees. There are primarily three groups: freelance journalists, those working in the creative arts (actors, musicians and other performing artists) and those working autonomously, but who are not completely independent (under the "portage salarial" system – see below)<sup>40</sup>.

## Freelance journalists and creative arts workers are employees

Under the French Labour Code, professional journalists, irrespective of the way that they are paid, are considered to be employees (Code du Travail Article L7112-1). The general labour law was specifically amended in 1974 with a specific legislation ("Loi Cressard") to this end.<sup>41</sup> This means that professional freelance journalists, known in French as "pigistes", have the same rights as other employees, but they are paid by the line or word, rather than in some other way.

38 For more details of the Danish case see CHARHON, P., MURPHY, D. *The Future of Work in the Media, Arts & Entertainment Sector: Meeting the Challenge of Atypical Working* (Euro FIA, EFJ, FIM and UNI MEI, Brussels, 2016) and PEARSE, S. *Equal Rights for Journalists: an analysis of the Thessaloniki conference* (EFJ, Brussels, 2012)

39 This is generally the case, although a recent report by BARTHELEMY, J. *La protection sociale attachée à l'activité* (IPSE, 2016) points out that the national agreement for insurance agents provides for its provisions on social protection (industrial illness and accidents at work) to be extended to self-employed insurance agents. See <http://www.euroipse.org/wp-content/uploads/2016/06/Intervention-IPSE-JACQUES-BARTHELEMY.pdf> (Accessed 05.10.17)

40 Another group in this position are travelling salespersons ("voyageur représentant placier") who also have a collective agreement.

41 Loi Cressard du 4 juillet 1974 : [https://fr.wikipedia.org/wiki/Loi\\_Cressard](https://fr.wikipedia.org/wiki/Loi_Cressard)

A “professional journalist” is, in the words of the Labour Code, someone whose “principal activity, regularly and on a paid basis, is to exercise their profession in one or more press companies” and who draw their main income from this work (Code du Travail Article L7112-3). Professional journalists have a press card, and to obtain this, it is necessary to have worked for three consecutive months as a freelance, earning at least 650 a month. Their payment from this work must amount to at least 50% of their total income. Individuals working in other editorial roles, such as photographers and editor-translators, are also considered to be professional journalists, if they meet the other tests, but those working in advertising, or who only work as journalists occasionally, are excluded. Figures from the body responsible for the provision of press cards (CCIJP) indicate that in 2017 7,144 out of France’s 35,047 professional journalists (those with press cards) were freelance.<sup>42</sup>

Professional journalists are covered by the national collective agreement for journalists (CCNTJ)<sup>43</sup>, which has been extended by the government to cover all employers in the sector, not just the employers who are directly party to the agreement.<sup>44</sup> There are also specific national agreements for freelance professional journalists. One, signed in November 2008, deals with issues such as pay supplements for long service, sickness payments, the election of employee representatives, 13th month payments and paid holidays. An agreement on training, signed in 2009, was rendered obsolete as a result of overall changes to the French training system in 2016, and has been replaced by a new agreement signed in 2016. In addition, a number of company agreements have been signed covering freelance journalists.

Although freelance journalists have a right to be treated as employees, the unions report that employers are increasingly putting pressure on them to become one-person businesses (auto-entrepreneurs), leading to the loss of many of their rights.<sup>45</sup> The legal entity of auto-entrepreneur was introduced in 2009, with further changes being made in 2017. The intention from the start was to make it easier for individuals to set up as business, and they are relieved of a number of tax and administrative requirements, provided their turnover does not exceed set limits (currently 82,800 a year for those selling goods and 33,200 for those providing services – like journalists).

Actors, musicians, dancers, singers, circus performers, variety artists and others are all considered to be performing artists (artistes du spectacle) under French Labour Code, and all contracts with these artists are considered to be employment contracts, unless the conditions of the contract suggest that the artist concerned is operating as a commercial entity – through being registered with the Chamber of Commerce (Code du Travail Article L7121-3). In other words, as with freelance journalists, performing artists are considered to be employees, although some of the conditions that apply to journalists (such as obtaining the bulk of their income from journalism) do not apply to performing artists. Performing artists are considered to be employees irrespective of the amount paid, or the length of time for which their services are used. The law also makes it clear that their status is that of an employee, even if they have liberty of expression, own all or part of the material they use in the performance, or themselves employ one or more people to help in the performance (Code du Travail Article L7121-4).

There are three separate national collective agreements which cover all performing artists and technicians. These are for venues and performances subsidised by the state at national, regional and local level (convention collective nationale des entreprises artistiques et culturelles), for the private sector (convention collective nationale des entreprises du secteur privé du spectacle vivant) and for leisure parks (convention collective des parcs de loisir). In addition, there are company-level agreements for some theatres, leisure parks and other venues.<sup>46</sup>

The national agreements, which have been extended by the state to cover all employers, are detailed documents covering both pay and conditions, including holidays, sickness, welfare provisions, training, health and safety and employee representation. There are detailed pay scales covering a wide range of occupations. The company-level agreements typically improve on the national-level deals.

42 Commission de la carte d’identité des journalistes professionnels « 35,047 cartes attribuées en 2017 » (Accessed 17.04.18), [http://www.ccijp.net/communication\\_reseau/statistiques2017/](http://www.ccijp.net/communication_reseau/statistiques2017/)

43 Convention collective nationale des journalistes du 1er novembre 1976, refondue le 27 octobre 1987

44 République Française Arrêté du 2 février 1988

45 Syndicat national de journalistes « Un journaliste n’est pas un autoentrepreneur », SNJ Pôle pigistes, March 201

46 Syndicat Français des Artistes-interprètes « Spectacle vivant », <https://sfa-cgt.fr/print/46> (Accessed 04.10.17)

As with journalists, employers are increasingly putting pressure on their workers to become one-person businesses (auto-entrepreneurs). Theoretically, performing artists are protected against this because of the legal presumption that they are employees. However, not all artists are aware of this, and may change their employment status, leading to a loss of their rights. Technicians are particularly vulnerable to this pressure, as the law does not make the automatic presumption that they are employees.

### Autonomous workers may also have employee status

The third group of workers, who in other countries might be classed as self-employed, do not work in a specific occupation (unlike the journalists or performing artists). Their access to employee status comes from the fact that, although their work is autonomous, they are employed by so-called “umbrella companies” under the “portage salarial” system. This operates as follows: an individual provides a service to a client (for example providing training or writing a report). However, the invoice for this work is not sent by the individual but by an umbrella company, with which the individual has a contract of employment. The individual is then paid, but receives the money as a salary rather than payment for services. Supporters of the system argue that it allows individuals to combine autonomy in their work with the advantages of employee status (which include the appropriate social protection insurance payments being made), and that it is an alternative to being completely independent or setting up as a limited company.

Although originally started in 1988 as a way to help unemployed executives maintain an income while they looked for something else, portage salarial is now used by a wide range of other groups of workers. One estimate suggests that there are 63,150 individuals working in this way and that this could rise to 588,000 by 2025.<sup>47</sup>

Since April 2015 portage salarial has had a clear legal framework<sup>48</sup> and in December 2016 the French government took steps to encourage the negotiation of a collective agreement. Negotiations started immediately, resulting in an agreement in March 2017, which was signed by PEPS, the main association representing companies providing portage salarial, and all five nationally representative union confederations.<sup>49</sup> However, the agreement states that both sides consider that only more senior employees will be covered by the portage salarial system (Article 1).

Among other elements, the agreement includes a minimum rate of around 2,000 a month for someone working fulltime, which is lower for those with fewer than three years’ experience, plus a 5% addition for preparatory work, and a right to annual leave. Salary is only paid and leave only accrues in respect of the period when the individual is working. However, an additional 10% of salary is paid into an account from which the individual can draw on during periods when they have no work, at the rate of a day a month. The agreement was extended by the government to all companies providing portage salarial (not just members of PEPS) on 30 April 2017.

At the same time as signing the agreement, the employers’ association and all five nationally representative union confederations agreed that they would have further discussions to settle other elements, such as health and safety, training, additional welfare provisions, equality and travelling costs. This work is still ongoing.

In looking at all the French examples it is important to emphasise that, although in each case the individuals share the characteristics of workers classed as self-employed in other countries – specifically, some autonomy in their work and short periods of activity for a variety of organisations – they are all classed as employees under French law. As a result they can all be covered by collective agreements.

47 Fédération des entreprises de portage salarial « Chiffres clés du secteur du portage salarial » <http://www.syndicatportage-salarial.fr/FEPS/chiffres-cles-portage-salarial> (Accessed 29.09.17)

48 This was provided by a government regulation (Ordonnance n° 2015-380) later ratified by the Labour Law (Loi n° 2016-1088)

49 Convention collective : IDCC : 3219. – Branche des salariés en portage salarial (22 mars 2017) [http://www.journal-officiel.gouv.fr/publications/bocc/pdf/2017/0014/boc\\_20170014\\_0000\\_0020.pdf](http://www.journal-officiel.gouv.fr/publications/bocc/pdf/2017/0014/boc_20170014_0000_0020.pdf) (Accessed 29.09.17)

## Germany

The legal framework for collective bargaining in Germany is set out in the Collective Agreement Act (Tarifvertragsgesetz TVG). There is provision for collective agreements to also cover self-employed workers under § 12a of this law, which extends its provisions to “employee-like persons” (arbeitnehmerähnliche Personen). The legislation applies to individuals with a contract for service (Dienstvertrag) or a contract for work (Werkvertrag), and in order to be classed as “employee-like persons”, under the terms of the legislation, they must meet a number of conditions:

- they must be economically dependent and, like an employee, they must be in need of social protection (in effect this means that they must depend on their earned income for their existence);
- they must carry out their duties personally largely without the cooperation of others (they cannot have employees); and
- they must
  - either “predominantly work” for a single person/company; or
  - receive on average more than half of their income from a single person/company (normally using the average of the previous six months as the basis for the calculation).

For individuals whose work is in the field of the arts or literature, or who work as journalists, the requirement to receive half their income from a single source is cut to a third of their income. This also applies to those supplying technical support in these areas.

As well as this general right for collective agreements to cover some self-employed workers, there is also a specific right for collective negotiations over reproduction fees under the law on copyright agreements (Urhebervertragsrecht). Originally passed in 2002 and revised in 2017, it states in §32 that authors have a right to appropriate payment (angemessene Vergütung) and in §36 that an appropriate level of payment can be negotiated by associations representing the authors on the one side and the users of the material on the other.

### Agreements mainly in the media sector

However, although the legal conditions for collective bargaining for some self-employed workers are clear, in practice, employer resistance has meant that there are very few collective agreements making use of these rights. Currently agreements covering economically dependent freelancers only exist in public sector broadcasting companies and in some daily newspapers.

In broadcasting, all public sector broadcasters, though none in the private sector, have agreements covering freelance staff, which set minimum rates, and establish arrangements for payments during sickness and holiday payments.<sup>50</sup> Many agreements also cover issues like compensation when engagements are not renewed or hours are reduced, and some, like Südwestrundfunk, also set a range of rates, not just minimum rates. (This is important for those earning above the minimum. For example, at Westdeutscher Rundfunk the 2.0% increase from November 2017 only applies to minimum rates. Those who are already paid more than the newly increased minimum rate are not guaranteed a pay rise, although, like all freelancers at the station, they will get a 600 one-off payment, agreed at the same time.)

In newspapers a similar agreement covering freelance journalists working as “employee-like persons” in daily newspapers in the former West Germany (with the exception of Hessen) was signed in 1981. As well as setting a range of rates (Honorare) for both text contributions and photographs, the agreement also includes arrangements for compensation when engagements are not renewed. However, although the rates have been regularly re-negotiated, the two signatory unions, German journalists’ union (DJV) and the journalists’ section in the service union ver.di (dju in ver.di), believe that its terms are frequently ignored by employers. Freelance journalists who insist on being paid at the agreed rates run the risk of no longer being used by the newspaper concerned.

<sup>50</sup> The companies with collective agreements covering freelancers are: Bayerischer Rundfunk, Südwestrundfunk, Hessischer Rundfunk, Saarländischer Rundfunk, Radio Bremen, Rundfunk Berlin Brandenburg, Mitteldeutscher Rundfunk, Deutsche Welle, Deutschland Radio, Norddeutscher Rundfunk, Westdeutscher Rundfunk and Zweites Deutsches Fernsehen.



Alongside these agreements for “employee-like persons”, in 2010 the same two unions (DJV and dju in ver.di) reached an agreement with the German newspaper publishers’ association (BDZV) on rates for freelancers more generally. This was not a collective agreement (Tarifvertrag) but a common set of payment rules (Gemeinsame Vergütungsregeln) governing the use of copyright material, based on §36 of the German law on copyright agreements (Urhebervertragsrecht). This allows bodies representing authors to agree terms with the users of the material.

The rules covered all professional journalists, not just those be classed as “employee-like persons”, and they provided scales for payments for text contributions and, from 2013, for photographs, with amounts varying both according to the paper’s circulation and the type of text provided (more for comment and interviews, less for news and reports). However, on 28 February 2017, the employers unilaterally announced the premature termination of the agreement, arguing that the 2017 revision of copyright law made it obsolete. This argument was rejected by the unions, who said that terminating the agreement was simply an attempt to worsen the conditions of freelancers, and that in any case the agreement could not simply be terminated without a replacement. The dispute on the future of these rules continues.

The unions would like to negotiate agreements in other parts of the media, such as in magazine publishing, where talks started in 2003, or private broadcasting or in news agencies, but so far this has not been possible. However, a breakthrough is possible in the education sector in Berlin, where the regional government, made up of the Social Democratic Party, the Left Party (Die Linke) and the Greens, has promised to improve the conditions of self-employed individuals working, for example, as music teachers, teachers of adults or teachers supporting the integration of non-German born children.

## Ireland

Although it has been impossible since 2004 to reach collective agreements covering self-employed workers in Ireland, new legislation passed in June 2017 (Competition (Amendment) Act 2017) has changed the situation and unions have indicated that they will now start negotiations.

The background to this new legislation is an investigation in 2003 by the Irish Competition Authority into an agreement on minimum terms and conditions between the actors’ union Irish Actors’ Equity (part of Ireland’s largest union SIPTU) and the advertising employers. The Competition Authority’s decision, published on 31 August 2004, was that the actors were “undertakings”. As a result, collective bargaining on their behalf was price-fixing, and in breach of Section 4 (1) of the Irish Competition Act of 2002.<sup>51</sup> To avoid being the subject of further proceedings, SIPTU agreed not to implement the agreement with the advertising employers.<sup>52</sup> However, as Karan O’Loughlin, Irish Equity Organiser, pointed out in 2017, the further consequence of the ruling was, “preventing any such collective bargaining from reoccurring for this category of worker, for freelance musicians who were members of the Musicians Union of Ireland (SIPTU) and freelance photographers/journalists who were members of the National Union of Journalists (NUJ)”.<sup>53</sup>

These unions, together with the Irish union confederation, the ICTU, continued to call for this ruling to be overturned, but the process towards a change in the law was long and laborious and required consistent lobbying. A government commitment in 2006 to allow collective bargaining for these groups of workers was not honoured, and, for a period, the [new] government argued that the restrictions placed on it by the bailout after the financial crisis meant that it could not act. In 2015, the ICTU asked the Competition Authority to review the case in the light of a judgment by the Court of Justice of the European Union on substitute musicians (see page 00), but this request was rejected. However, in January 2016 Ivana Bacik, a member of the upper house of the Irish parliament (the Seanad), was able to get the support of the Seanad for draft

51 Decision of the Irish Competition Authority No. E/04/002, 31 August 2004 [https://www.ccpic.ie/business/wp-content/uploads/sites/3/2017/04/E\\_04\\_002-Actors-Fees-Enforcement-Decision.pdf](https://www.ccpic.ie/business/wp-content/uploads/sites/3/2017/04/E_04_002-Actors-Fees-Enforcement-Decision.pdf) (Accessed 04.01.2018)

52 For more details of the Irish competition case see: CHARHON, P., MURPHY, D. *The Future of Work in the Media, Arts & Entertainment Sector: Meeting the Challenge of Atypical Working* (Euro FIA, EFJ, FIM and UNI MEI, Brussels, 2016)

53 International Federation of Actors “Irish Equity wins legislation to recommence collective bargaining for freelance performers in Ireland!” <http://fia-actors.com/fia-worldwide/fia-la/fia-la-news-details/article/irish-equity-wins-legislation-to-recommence-collective-bargaining-for-freelance-performers-in-ireland/> (Accessed 04.01.2018)

legislation (the Competition (Amendment) Bill 2016) to limit the impact of competition law and restore collective bargaining rights to these groups of workers. At more or less the same time the ICTU presented separate complaints to the ILO and the European Committee on Social Rights (part of the Council of Europe) on the Irish government's failure to meet its international obligations in the area of collective bargaining.<sup>54</sup>

The unions' persistent lobbying finally bore fruit after the general election in 2016, which resulted in a minority government. Following a number of agreed changes, the Competition (Amendment) Bill 2016 was passed in June 2017, coming into effect in September 2017.<sup>55</sup>

### New provisions under the Competition (Amendment) Act of 2017

The Competition (Amendment) Act 2017 states that collective bargaining covering "a relevant category of self-employed worker" will no longer be prohibited on grounds that they restrict competition (New section 15E added to the 2002 Competition Act). It therefore becomes possible to negotiate and sign agreements on their terms and conditions. The types of self-employed worker for whom negotiations are now possible fall into two groups:

- an individual engaged in one of three specific occupations set out in a schedule to the legislation; and
- an individual who is either a "false self-employed worker" or a "fully dependent self-employed worker".

The three occupations listed in the schedule are

- voice-over actors;
- session musicians; and
- freelance journalists.

Negotiations covering their terms and conditions are immediately freed from the restrictions imposed by competition legislation.

The position of false and fully dependent self-employed workers is more complicated. Here exemption from competition law restrictions is only possible following a request from a trade union that a specific group of workers should be exempted on these grounds. In making the request, the union must present evidence that the workers concerned fall into one of the two categories (see below) and that exempting them from competition law will not have a damaging impact on the market in which they work. The government makes the final decision, after consulting with concerned bodies, and may reject the request if it considers that the case has not been made. It may also reverse an earlier decision to exempt a particular group of workers from competition law if circumstances change.

A false self-employed worker is defined as one who:

- although employed under a different contract does the same work as an employee;
- has a relationship of subordination to the other person;
- is required to follow instructions in relation to the time, place and content of the work done;
- does not share in the commercial risk;
- has no independence in relation to the "time, schedule, place and manner of the tasks assigned; and
- forms an integral part of the undertaking over the period of the contract.

54 The complaint to the ILO is related to the Right to Organise and Collective Bargaining Convention, 1949 (No. 98 Article 4); the complaint to the European Committee on Social Rights is related to Article 6 (Right to bargain collectively) of the European Social Charter (Revised).

55 Electronic Irish Statute Book "Competition (amendment) act 2017" <http://www.irishstatutebook.ie/eli/2017/act/12/enacted/en/print.html> (Accessed 11.10.2017)

This is the definition of false self-employment used in the European Court of Justice case on Dutch musicians (see section on the Netherlands below).

A fully dependent self-employed worker is defined as one who:

- performs services for another person; and
- gets his or her main income for such services from not more than two persons.

This definition is in line with the International Labour Organisation (ILO) approach to dependent self-employment.

No new collective agreements have been signed as yet but, speaking in May 2017, both SIPTU's Services Division Organiser, Ethel Buckley, and NUJ acting general secretary, Seamus Dooley, said that they would use the new legislation to organise and negotiate for groups of workers excluded from bargaining by the Competition Authority's rulings. However, as Karan O'Loughlin from SIPTU pointed out to an ETUC workshop on self-employment in Amsterdam in February 2018, the fact that the union has been prevented from bargaining for voice-over actors for 12 years has resulted in it appearing less significant to workers and employers in the industry.

Despite this, SIPTU also suggested in May 2017 that the unions would go beyond the groups immediately covered: voice-over actors, session musicians and freelance journalists. "Other freelance workers will now use the legislation to secure representation rights," Buckley said.

## Italy

Italy does not generally have collective agreements covering fully self-employed workers.<sup>56</sup> However, for many years, those working on so-called contracts of continuous and coordinated collaboration (*contratti di collaborazione coordinata e continuativa*), a type of status half-way between direct employment and self-employment, have been covered by collective agreements. These "co co co" workers have an ongoing contractual relationship with the "employer" in return for payment but have some freedom in terms of how and when the work is carried out.

### Agreements for "co co co workers"

Until recently the use of co co co workers grew rapidly, and was increasingly seen, along with the use workers taken on under so-called project contracts ("co co pro" workers), as a mechanism for avoiding and disguising standard employment relationships, with a damaging impact on the workers affected. In 2014, new employment legislation, known as the Jobs Act, therefore proposed major changes in this area which were implemented by a legislative decree in 2015 (D. Lgs n. 81/2015). Under this decree, project contracts ceased to be lawful and, from 1 January 2016, new restrictions were imposed on the use of continuous and coordinated contracts. Since that date continuous and coordinated contracts have only been lawful if they:

- are governed by a collective agreement aimed at meeting the needs of a specific sector; or
- are provided in a registered intellectual profession, such as accountancy or the law; or
- are for work carried out by members of corporate bodies, such as directors; or
- relate to work for sporting associations.

<sup>56</sup> One exception is reported by the independent bank union FABI. It states that self-employed financial advisers at the Italian banking group *Gruppo Intesa Sanpaolo* who work for the bank both as employees and as self-employed, are covered by a collective agreement during the period of their self-employment.

Italian unions have signed contracts covering co co co workers for many years. The first national agreement covering these workers in outsourced call-centres, an area using a substantial number of workers of this type, was signed in March 2004. However, the changes resulting from the 2015 decree, which made a collective agreement for a specific sector a necessary pre-condition for the use of co co co workers in many circumstances, increased the pressure for agreements to be signed.

A series of agreements were reached at the end of 2015 covering co co co workers in call centres, credit recovery institutions, research bodies, private universities, private schools, organisations providing occupational training and non-governmental organisations. It is estimated that these agreements cover around 100,000 individuals. Some recent examples of agreements, including some of the key issues covered, are as follows:

- Associazione Italiana Outbound (AIO) – call centres and credit recovery (July 2016): covers minimum hourly rates (linked to the national agreement for distribution and services), maternity benefits (an 180 day extension to the contract and a payment of 100 a month for up to five months), paternity leave, marriage leave, health and safety, information rights, training and trade union rights;
- ASSIRM – market research (June 2017): covers minimum hourly rates, maternity benefits, sickness arrangements, rights to interrupt the contract, union rights, rules on video surveillance and establishes a joint body to monitor its application;
- Anpal Servizi – employment services and active labour market policies (July 2017): covers selection procedures and vacancies and commits the company to convert “the largest number of workers possible” into permanent employees;
- Ente Culturale Italiano/British Institutes (ECI) – foreign language teachers (June 2016): covers pay (based on the national agreement for private schools, sickness arrangements, maternity benefits, paternity leave, union rights and a joint body to monitor the application of the agreement);
- Tagesmutter Domus – babysitters (September 2015): covers quality certificates and training courses.

In addition, there are agreements with Italian non-governmental organisations operating outside Italy which cover pay, insurance against risks, leave arrangements, return travel rules, maternity benefits and training courses.

## Netherlands

The Dutch Law on Collective Labour Agreements (Wet op de collectieve arbeidsovereenkomst), which dates back to 1927, appears to offer considerable scope for negotiating agreements covering the self-employed. Article 1 of the law states not only that a collective labour agreement means an agreement entered into by employers and associations of workers (in other words – unions) but also that such an agreement “may also relate to contracts for the performance of specific work and contracts for professional services”( Article 1.2). As unions in the Netherlands are able to recruit and organise self-employed workers, it would appear that they could negotiate collective agreements for them.

The Netherlands, like other EU states has legislation (Law on Competition – Mededingingswet) implementing Article 101 of the Treaty on the Functioning of the European Union, which is intended to prohibit undertakings from agreeing together to distort or eliminate competition. But the Dutch Law on Competition includes a specific provision (Article 16(a)) stating that these prohibitions do not apply to “a collective labour agreement within the terms of Article 1(1) of the Law on Collective Labour Agreements”.

Despite this, the competition bodies in the Netherlands, originally the Netherlands Competition Authority (Nederlandse Mededingingsautoriteit – NMa), now the Authority for Consumers and Markets (Autoriteit Consument & Markt – ACM) have consistently taken the view that, in most cases, agreements covering self-employed workers are not exempted from the provisions of competition legislation and are therefore unlawful.

## Court cases on self-employed musicians

This was the position the NMa presented in December 2007 when it stated that a collective agreement between the unions and employers on the payment made to self-employed musicians, substituting for permanent orchestra members, was not exempt for competition law. As a consequence the agreement collapsed, and, with no prospect of a new one being negotiated, the Dutch culture and media union, FNV KIEM, took the issue to court. The case was initially heard in the Netherlands, in the district court and then in the appeal court, before being passed to the Court of Justice of the European Union (CJEU) for a decision.<sup>57</sup>

In its judgement, the Court of Justice found that, if the musicians substituting for permanent orchestra members were treated in the same way as employees, and were in fact “false self-employed”, it would be lawful to sign a collective agreement covering them. However, it also concluded that their actual status – whether or not they were false self-employed – was an issue for the national court to decide (Judgement of 4. 12. 2014 – Case c-413/13 FNV Kunst Informatie en Media).

This issue was examined by the appeal court in the Netherlands, which found in that the substitute musicians were false self-employed, taking into account the fact that the substitutes:

- were doing the same work as employed members of the orchestra;
- were working alongside employees;
- had to comply with precise rules on rehearsals and concerts; and
- could not appoint other musicians as replacements.

The court therefore concluded in September 2015 that competition law did not prohibit a collective agreement covering replacement musicians, including one setting minimum rates. (Hof Den Haag. (2015). ECLI:NL:GHDHA:2015:2305 FNV KIEM/Staat der Nederlanden)

## General exceptions to competition law only for false self-employed

Despite losing this case, the view of the Dutch competition authority, now the Authority for Consumers and Markets (ACM), continues to argue, as it stated in a document published on its website at the start of 2017, that “collective agreements on rates for the solo self-employed are generally forbidden”.<sup>58</sup> The ACM believes that solo self-employed (zpp’ers in Dutch) are “business owners who decide for themselves at what price they accept assignments”. It went on to state that, “minimum pay rates reduce competition between small business owners. That is why parties involved in the process of collective bargaining are not allowed to set collective minimum pay rates.”<sup>59</sup> The only exception to this rule is where solo self-employed are in fact false self-employed, with less control over their work than genuine self-employed individuals.

The ACM’s position is set out in detail in guidance published on 24 February 2017.<sup>60</sup> This outlines the overall legal position, as the ACM sees it, and concludes those potentially signing collective agreements are responsible for judging whether or not they would breach competition rules, and as such would be unlawful. Specifically, it suggests four approaches that the parties should adopt in deciding whether a collective agreement would be lawful:

- they should distinguish between the particular work situation of the solo self-employed to see whether in fact they are false self-employed, in which case a collective agreement would be lawful;

57 For more details of the KIEM case see CHARHON, P., MURPHY, D. *The Future of Work in the Media, Arts & Entertainment Sector: Meeting the Challenge of Atypical Working* (Euro FIA, EFJ, FIM and UNI MEI, Brussels, 2016)6

58 Autoriteit Consument en Markt “CAO-afspraken over tarieven voor zpp’ers zijn meestal verboden” <https://www.acm.nl/nl/onderwerpen/concurrentie-en-marktwerking/zppers/cao-afspraken-over-tarieven-voor-zppers-zijn-meestal-verboden> (Accessed 11.10.17)

59 Autoriteit Consument en Markt “No minimum pay rates in collective bargaining agreements for independent contractors”, 24 February 2017 <https://www.acm.nl/en/publications/publication/16985/No-minimum-pay-rates-in-collective-bargaining-agreements-for-independent-contractors> (Accessed 11.10.17)

60 Autoriteit Consument en Markt “Leidraad: Tariefafspraken voor zpp’ers in cao’s”, 24 February 2017

- they should collect concrete information about the work situation of the solo self-employed, possibly through labour market surveys or an analysis of contractual arrangements in the sector, with the aim of establishing how far the position of the solo-self-employed is comparable with that of employees;
- they should be clear and transparent, setting out, possibly through job descriptions, which solo self-employed are considered to be false self-employed and therefore covered by the agreement and which are not; and
- they should consider other issues that indicate that individuals are false self-employed, such as whether individuals are switched from being employees to solo self-employed but continue to do the same work. If the tax authority considers that an individual does not have an employment relationship, it is unlikely that the competition authority will consider that that individual as false self-employed.

## Recent developments for solo self-employed

This guidance from the ACM has come at the same time as other changes in the legal treatment of solo self-employed. In May 2016 the government altered the system for establishing whether an organisation was engaging an employee or an independent contractor, and therefore who was responsible for paying employment-related contributions. Under the previous system, solo self-employed were able to provide those engaging them with a declaration (known as a VAR) identifying them as independent and therefore making it clear that the responsibility for taxes and other contributions did not lie with the body engaging them. The VAR declaration was provided by the tax authorities, but it was based on information provided by solo self-employed individuals, and so was open to abuse. Even if it became clear that the relationship had been in fact one of bogus self-employment, the client was still not liable for taxes or other contributions making it difficult to enforce labour legislation.

Under the new system, introduced in the Deregulation of the Assessment of Employment Relationships Act (Wet DBA) in 2016, this VAR declaration was to be replaced by model contracts, which can be for whole sectors, approved by the tax authorities. This system potentially made it easier to enforce labour law, because clients could be made liable for taxes and other contributions if the self-employment proved to be bogus. However, the possibility of liability made the change unpopular, and, faced with opposition, the government initially agreed that it would continue to be possible to use the previous system, including the VAR declaration, at least until 2018.

In February 2018, the new government, formed in 2017, announced that the period before the new legislation would be enforced would be extended until 2020. However, at the same time, it announced that from 1 July 2018 it would take tougher enforcement action against “malicious parties” deliberately evading taxes and social security contributions through bogus self-employment.<sup>61</sup>

Although these model contracts, which were planned to replace the VAR declarations, are in no sense collective agreements, unions have been involved in discussions on them and the main section of the FNV union confederation responsible for solo self-employed has produced its own model agreement.

The unions have generally been in favour of negotiating collective agreements covering the solo self-employed. For example, in its bargaining demands in 2015 the FNV described collective agreements as “one of the supportive tools to give the solo self-employed greater security in their work”.<sup>62</sup> However, given the generally hostile attitude of the Dutch competition authorities towards collective agreements covering solo self-employed workers, it has proved difficult to sign them.

61 Rijksoverheid „Opschorting handhaving Wet DBA verlengd tot 1 januari 2020 Rijksoverheid 09-02-2018” <https://www.rijksoverheid.nl/actueel/nieuws/2018/02/09/opschorting-handhaving-wet-dba-verlengd-tot-1-januari-2020> (Accessed 20.02.18)

62 FNV „Brede cao biedt zekerheid voor alle werkenden”, 14 September 2015 [https://www.fnv.nl/over-fnv/nieuws/nieuwsarchief/2015/september/1108336-brede\\_cao\\_biedt\\_zekerheid\\_voor\\_alle\\_werkenden/](https://www.fnv.nl/over-fnv/nieuws/nieuwsarchief/2015/september/1108336-brede_cao_biedt_zekerheid_voor_alle_werkenden/) (Accessed 12.10.17)

Some agreements have, nevertheless been reached. As well as the agreement for replacement musicians, they include a long-standing agreement for painters (Schilders), which required that solo self-employed painters should pay into the industry pension fund, an agreement for bus transport (Busvervoer 2013) which required that the provisions of the agreement, including those relating to pay should also apply to self-employed bus drivers used by bus operators, and an agreement for staff in architectural offices (CAO Architectenbureaus 2015-17), which included minimum pay scales for solo self-employed.<sup>63</sup>

However, these agreements have been criticised as anti-competitive. In contrast to normal practice, the government did not make the provisions covering the self-employed in the architectural offices' agreement generally applicable – in other words covering the whole industry. The bus agreement was made generally applicable, but only for those in a similar position to employees, and only after a case had been taken to the Tilburg district court, while the painters agreement remains generally applicable after a dispute in 2013.

The competition authority (ACM) went even further with reference to the 2015-17 agreement covering architectural offices. It included the agreement in its 2017 guidance (see above), and concluded that it was “unlikely” that the agreement fell within the provisions of competition legislation allowing for exceptions for collective agreements. One reason for this was that the agreement covered all types of solo self-employed workers in architectural offices and did not distinguish between the tasks that they were performing.

The consequence was that the next agreement, covering architectural offices for the period from 2017 to 2019, did not include provisions relating to solo self-employed workers. The unions and employers signing the agreement made clear that they had excluded the self-employed after receiving advice from the competition authority. They stated: “The ACM believes that minimum rates for independent contractors could be in conflict with competition law. This part of the previous CAO will hereby lapse.”<sup>64</sup>

## Serbia

The Serbia Labour Code provides for three forms of collective agreement (Article 241). These are:

- general collective agreements, which cover industries at national level;
- agreements with individual employers; and
- a number of different types of “special collective agreements”.

Collective agreements “relating to persons engaged in the activity in the spheres of fine arts and culture (freelance artists)” are one of a number of these special collective agreements and they should be concluded “between a representative association of employers and a representative trade union” (Article 246).

This right to sign agreements covering freelance artists has been used in practice and the Autonomous Trade Union of Artists and Performers of Serbia (Samostalni sindikat estradnih umetnika i izvo a a Srbije) has two collective agreements. One covers musicians and performers in the hospitality industry. The other covers artists and performers in state institutions at national regional and local level. In both cases the current agreement was signed in 2015. The agreement for musicians and performers in the hospitality industry was extended by government decision in July 2017, and its terms now apply to all employers in Serbia, not just the members of the employers' association that signed the agreement.

The agreements signed for freelance artists cover the normal range of issues determined by collective agreements, including pay, working time and the rights of trade union representatives.

63 WIRTZ, M. NOTEN H. Zzp-ers en de cao (werkpaper) AWWN, 2016 [http://www.arbeidsconferentie.nl/uploads/submission/document\\_1/108/Wirtz\\_\\_\\_Noten\\_-\\_zzp\\_en\\_de\\_cao.pdf](http://www.arbeidsconferentie.nl/uploads/submission/document_1/108/Wirtz___Noten_-_zzp_en_de_cao.pdf) (Accessed 12.10.17)

64 Onderhandelaarsakkoord BNA, FNV, CNV en De Unie over de cao voor architectenbureaus 2017-2019 <http://files.flexnieuws.nl/wp-uploads/2017/05/Onderhandelaarsakkoord-CAO-Architecten-2017-2019-18-05-17.pdf> (Accessed 12.10.17)

## Spain

Self-employed workers in Spain are not covered by collective agreements for employees, as provided for under Title III of the Workers' Statute (*Ley del Estatuto de los Trabajadores*). However, legislation introduced in 2007 covering autonomous work introduces a form of agreement (known as an AIP in Spanish) that can be used to regulate the terms and conditions of some self-employed workers. This legislation, the Statute for Autonomous Work (*Ley 20/2007, del Estatuto del trabajo autónomo*) was adopted following pressure from organisations representing the self-employed, of which there are a number in Spain (see page 00). The new law was, as the preamble to the legislation describes it, "the first example of systematic and unitary regulation of autonomous work in the European Union", and as well as providing for a system of agreements for some self-employed, it also covered a range of other topics, including setting up a council of autonomous work (*Consejo de Trabajo Autónomo*).

### A special law for economically dependent workers

A key element of the legislation is that it identifies a particular group of self-employed workers as being "economically dependent". In order to be in this category (*trabajador autónomo económicamente dependiente* – TRADE in Spanish), the worker must do most of his or her business with a single client. More specifically at least 75% of the individual's income from employment and other economic and professional activity must come from a single person or entity (Article 11). In addition to be considered economically dependent, he or she must not have any employees or subcontract part of the work with others. (This prohibition does not apply during periods of leave for maternity or for other similar reasons). There are also other conditions indicating that the individual must be genuinely self-employed, rather than being an employee, such as having enough material and resources to undertake the work excluding those provided by the client, and assuming the risks of the activity.

These economically dependent self-employed (TRADE) workers can reach their own contracts with their clients, which should be registered with the appropriate authorities (although not published). However, the legislation also permits the negotiation of so-called "agreements of professional interest" (*acuerdos de interés profesional - AIP*) (Article 3.2 and Article 13) which are agreed between companies using economically dependent self-employed workers and unions or associations representing them. These agreements can establish "the conditions for the method, time and place for undertaking the said activity" as well as other general conditions relating to the contract. They must, however, "observe the limits and conditions established in the legislation in the defence of competition".

However, these agreements of professional interest (AIP) only cover economically dependent self-employed workers who are members of the union or associations which have signed the agreement and who have expressly given their consent to be covered by them (Article 13). Unlike collective agreements, which must be registered with the authorities and published, there is no requirement for agreements of professional interest to be made public.

In practice the impact of these AIP agreements seems to have been limited.

One of the problems is that very few self-employed workers have registered themselves as being economically dependent under the terms of the legislation. Recent figures for the end of December 2017 show that only 9,991 individuals were registered with the authorities as being economically dependent self-employed.<sup>65</sup> This is a tiny fraction of Spain's almost two million (1,998,700) own-account self-employed workers, according to the figures from the Economically Active Population Survey for the last quarter of 2017.<sup>66</sup> But it is also much lower than the union estimates of the number self-employed workers who have one or slightly more than one client, and therefore meet the legislation's definition of being economically dependent. These range between 240,000 to 275,000.<sup>67</sup>

65 Ministerio de Empleo y Seguridad Social. "Trabajadores Autónomos, Personas Físicas, en alta en la Seguridad Social", 31 December 2017, [http://www.empleo.gob.es/es/sec\\_trabajo/autonomos/economia-soc/autonomos/estadistica/2017/4trim/Publicacion\\_diciembre\\_\\_2017.pdf](http://www.empleo.gob.es/es/sec_trabajo/autonomos/economia-soc/autonomos/estadistica/2017/4trim/Publicacion_diciembre__2017.pdf) (Accessed 30.01.2018)

66 "Ocupados por sexo y situación profesional. Valores absolutos y porcentajes respecto del total de cada sexo Table 3.22", *Encuesta de población activa* (Instituto Nacional de Estadística, 2017).

67 UPTA "Sólo 4% de los trabajadores autónomos dependientes están registrados y pueden ejercer sus derechos" <http://www.upta-andalucia.org/noticia-detalle.php?id=1194> (Accessed 01.11.17) and material submitted by CCOO to the Employment Committee of the Congreso de los Diputados.



A second problem is that few agreements covering TRADE workers seemed to have been signed. An early study in 2011, which looked at five AIP agreements, four in road transport and one for basketball referees, found that they covered a wide range of issues, but pointed to the difficulty in establishing how many had been signed.<sup>68</sup> More recently UPTA, the organisation representing the self-employed, which is part of the UGT union confederation, estimated that only 3,000 self-employed workers were covered by an agreement of professional interest, and that almost half of them were in the area of direct marketing<sup>69</sup>. UPTA signed an agreement of professional interest (AIP) with the direct marketing company APPCO, covering around 1,000 economically dependent self-employed workers, on 27 January 2017.

However, it was precisely this area of direct marketing which was targeted by the Spanish labour inspectorate later in 2017, which argued that many of those working in the sector were not economically dependent self-employed workers (TRADE), but employees. As a result of the fines they faced, 20 of the companies in the sector ceased trading in September 2017, and Eduardo Abad, general secretary of UPTA, said that he feared that the labour inspectors “want to dynamite the concept of the economically dependent self-employed worker”.<sup>70</sup>

CCOO, the other main union confederation in Spain, has also expressed doubts on the benefits of the current regulatory structure. It points to cases where, even before an agreement of professional interest has expired, another association representing the self-employed is willing to sign a new agreement with worse conditions for the same group of self-employed workers. They are then pressurised into joining this organisation and signing its agreement. (This is essential as these AIP agreements only cover members of the association that has signed them and only if these members have given their consent to be covered.) In these circumstances, the end result is a worsening of the conditions of the self-employed affected, as the new agreement is less favourable than the one signed initially.

## Sweden

The Swedish legislation that regulates collective bargaining, the Employment (Co- Determination in the Workplace) Act 1976 (Medbestämmandelagen – MBL 1976), states that, “an employees’ organisation [a union] shall have the right to negotiate with an employer on any matter relating to the relationship between the employer and any member of the organisation who is, or has been, employed by that employer” (Section 10). But employees are not narrowly defined. The legislation states that, “the term ‘employee’ as used in this Act shall also include any person who performs work for another and is not thereby employed by that other person but who occupies a position of essentially the same nature as that of an employee” (Section 1).

### Collective agreements limited to few areas

Despite the fact that the law potentially allows the negotiation of agreements covering some self-employed workers, there are relatively few agreements of this sort and they only cover traditional freelance areas, essentially those working in the media or the arts. The topics that they cover are also limited, with pay normally not included.

There are two agreements covering freelance journalists.<sup>71</sup> The most important of these is the agreement signed between the Media Industry Employer Association within the overall service sector employers’ association, *Almega*, and the Swedish journalists’ union, *Journalistförbundet*. This agreement, which came into force in September 2015, replaces earlier agreements covering daily newspapers, magazines and freelance journalists in the public services, and it extends the scope of the agreement by bringing in broadcast commercial media for the first time. The agreement, which is ongoing, with a three-month notice period, covers issues such

68 CASTRO ARGÜELLES, M.A. “Los acuerdos de interés profesional: un balance de la negociación llevada a cabo al amparo del Estatutodel trabajo autónomo” *Anales de Derecho*, Número 29, 2011

69 “Sólo cuatro de cada cien trabajadores autónomos dependientes están registrados y pueden ejercer sus derechos”, *El Autónomo Digital*, 11 April 2017, <http://www.elautonomodigital.es/solo-4-autonomos-dependientes-registrados/> (Accessed 30.01.2018)

70 BAYONA, E. “Pretenden dinamitar la figura del autónomo dependiente”, *Publico*, 24.09.17 <http://www.publico.es/economia/autonomos-pretenden-dinamitar-figura-autonomo-dependiente.html> (Accessed 01.11.17)

71 Journalist Förbundet - Swedish Union of Journalists “Freelance agreements” <https://www.sjf.se/ion-och-villkor/aktuell-kollektivavtal-och-frilansavtal/frilansavtal> (Accessed 01.11.17)

as compensation for cancelled assignments, late delivery, expenses, payment terms for invoices, copyright and compensation for ending assignments after long service. It does not cover the amount to be paid for the material, but the employers association has agreed to inform its member companies of the union's freelance fees calculator. The second agreement which is also signed by other unions, such as the Photographers Federation, is with Swedish Television (Sveriges Television) the Swedish Educational Radio in Sweden (Sveriges Utbildningsradio), a television broadcaster. In contrast to the Media Industries Agreement, which does not cover pay, this agreement sets hourly and daily rates for freelancers. First signed in February 2010, to cover the period until the end of 2011, it has been extended on an annual basis since that date.

Swedish Union for Performing Arts and Film (Teaterförbundet för scen och film) also has collective agreements covering self-employed workers. It negotiates on behalf of a wide range of workers across the entertainment, creative and cultural industries, including authors, directors, technical and administrative staff, as well as performers, like actors and singers and dancers. In most collective agreements, the only terms which relate to self-employed workers are those covering copyright.<sup>72</sup> However, unusually the 2016-17 agreement with the audiobook company Storyside sets pay rates for self-employed actors reading the texts.<sup>73</sup>

TCO, the union confederation to which both the journalists' union and the Swedish Union for Performing Arts and Film belong, reports that there have been no legal problems in negotiating these agreements.

## UK

In the UK, collective bargaining, which in most cases is conducted on a voluntary basis,<sup>74</sup> can be undertaken on behalf of "workers" rather than just employees. Individuals must have a contract of employment to be defined as employees, but individuals with a contract for services can be classed as workers if the reality of their situation indicates that this is the case. To judge whether an individual is a worker, the courts look at four key issues:

- the mutuality of obligation (essentially doing work in return for payment);
- having to do the work personally (not being able to use a replacement);
- the extent of control (over when and how the work is done); and
- the consistency of the overall arrangements with the employment status being claimed.

As collective agreements cover workers not just employees, they can be negotiated for some individuals who are classed as self-employed for tax purposes.

## Most collective agreements concern the media, arts and entertainment sectors

In practice relatively few collective agreements covering self-employed workers have been negotiated and most have been in the traditional areas of the media, arts and entertainment.

One important example is the memorandum of understanding signed by the broadcasting and media union BECTU and the national broadcasting company, the BBC, in April 2010. BECTU, which primarily organises technical and administrative staff, already had a negotiated agreement on freelance rates for BBC staff in Scotland, something which continues, but the memorandum of understanding had a wider range. It provides that the BBC will negotiate on the pay, hours and holidays of freelance staff in areas where BECTU is able to demonstrate that it has at least 35% membership. As an immediate result of this memorandum, a recognition agreement covering freelancers working in Vision Drama was signed with BECTU. Agreements for other areas have followed.

72 Teaterförbundet för scen och film - Swedish Union for Performing Arts and Film "With collective agreements" <http://teaterforbundet.se/rattighetsbolaget-tromb/om-upphovsratten/ekonomiska-rattigheter/med-avtal/> (Accessed 02.11.17)

73 Teaterförbundet för scen och film - Swedish Union for Performing Arts and Film "Collective agreement Storyside" <http://teaterforbundet.se/wp-content/uploads/2016/09/Kollektivavtal-Storyside-2016-2017.pdf> (Accessed 02.11.17)

74 The exception is where unwilling employers are compelled to negotiate with unions, under legislation on trade union recognition, introduced in 1999. This specifically refers to "collective bargaining on behalf of a group or groups of workers" rather than employees (Trade Union and Labour Relations (Consolidation) Act 1992 Part VI Schedule 1A).

BECTU has also recently signed an agreement covering freelance arrangements for technicians working on major films – those with a budget of over £30 million. The agreement, with the Producers Alliance for Cinema and Television (PACT), comes into effect in April 2018, and regulates a variety of benefits and conditions including payment for night work, overtime and sixth and seventh consecutive working days.<sup>75</sup>

The situation for performers, like actors and musicians, is different. Until April 2014, “entertainers”, defined in the social security regulations<sup>76</sup> as “a person employed as an actor, singer or musician or in any similar performing capacity”, were classed as self-employed for tax purposes but as “employed earners” for social security contributions, known as National Insurance Contributions in the UK. However, as a result of a change in the regulations, which came into effect in April 2014, entertainers are now classed as self-employed for both tax and social security purposes.

Despite this change, the unions and the organisations that hire them continue to treat them as workers in terms of their employment rights, and, as a result, there are a number of collective agreements setting their terms and conditions. The union Equity, which organises a wide range of performers, including actors, dancers, singers and variety artists, has agreements with all major entertainment industry employers, including both individual organisations and employers’ associations. There are agreements in theatre, broadcasting and film, including with the BBC, PACT (one covering film and another covering television), the Society of London Theatre – SOLT (major commercial theatres) and the UK Theatre Association (subsidised theatres).

The agreements cover pay and other terms and conditions including rest breaks, working hours, overtime, parental rights, additional payments and other entitlements, such as pension contributions. For example, the agreement covering major commercial theatres (SOLT) runs to 100 pages and contains detailed provisions ranging from pay scales and holiday arrangements to the right of Equity to have a noticeboard backstage.

The Musicians’ Union, which organises musicians, has specific agreements for freelance (self-employed) orchestral players. More than 60 orchestras are covered by the agreements and they set out rates for concert performances, depending on the type of player, as well as rates for non-concert work. The agreements also regulate a range of other issues, such as overtime, travel costs, payment for overnight stays and payments for transporting large instruments.

The situation for freelance journalists is less positive. Most media companies refuse to discuss freelance terms with the UK journalists’ union, the NUJ. However, the NUJ has confirmed that it still has an agreement with the Guardian Media Group on minimum rates for material supplied by freelancers as well as agreements with a couple of magazines.

There do not appear to be other UK examples of collective bargaining covering self-employed workers. An attempt by the Independent Workers Union of Great Britain (IWGB), a small union not affiliated to the TUC, to get the food delivery company Deliveroo to recognise it for collective bargaining failed in November 2017.<sup>77</sup> The Central Arbitration Committee (CAC), which decides on union recognition disputes, concluded that Deliveroo’s riders were not workers because, following a recent change to their contracts, they were able to provide a substitute to do the work, if they wished.

Unlike in Ireland, UK competition law does not appear to have played a role in limiting the ability of UK unions to negotiate collective agreements. However, UK unions are aware of the issue. The journalists’ union, the NUJ, operates in both the UK and Ireland, and the performers’ union Equity refers to competition law in material it has produced explaining why it has decided not to produce standard contracts for sole traders. It states that it has not produced these contracts “because unilaterally setting prices between businesses could be viewed as price fixing under competition legislation”.<sup>78</sup>

75 GRATER, Tom “Unions Bectu, Pact strike crew agreement for big-budget movies by Tom Grater”, Screen Daily, 14 November 2017 <https://www.screendaily.com/news/unions-bectu-pact-strike-crew-agreement-for-big-budget-movies/5124216.article> (Accessed 14.11.2017)

76 Social Security (Categorisation of Earners) Regulations 1978

77 Central Arbitration Committee. Case Number: TUR1/985(2016), 14 November 2017 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/659481/Acceptance\\_Decision.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/659481/Acceptance_Decision.pdf) (Accessed 20.11.2017)

78 Equity. “Equity Members and Partnerships” <https://www.equity.org.uk/documents/equity-members-and-partnerships/11low-pay-no-pay-partnerships-explainer.pdf> (Accessed 15.11.2017)

## COMMON THEMES

### The legal framework: specified occupations or economic dependence

Looking first at the legislative framework, it is possible to identify two varying approaches to collective bargaining for the self-employed taken by the 12 countries examined above. These are:

- permitting collective bargaining for some specified occupations/sectors; and
- dividing the self-employed into two groups based on their economic dependence, with only those who are economically dependent permitted to bargain.

These approaches are not mutually exclusive and in Germany legislation on bargaining for the self-employed involves a combination of these elements. In addition, two countries, France and Ireland have adopted different approaches to different types of self-employed workers.

The four countries where collective bargaining for the self-employed is permitted for **specified occupations/sectors** are:

- Austria where bargaining is permitted for freelance journalists and homeworkers;
- France where freelance journalists and performing artists (who elsewhere would be classed as self-employed) are considered to be employees and can therefore have collective agreements; (Those covered by the portage salarial arrangements can be seen as economically dependent – see below.)
- Ireland, where the 2017 legislation specifically allows bargaining on the terms and conditions of voice-over actors, session musicians and freelance journalists; and
- Serbia, where collective agreements for freelance artists in art and culture are permitted.

The Austrian and French rules also contain elements relating to economic dependence. In Austria, to be classed as a freelance journalist an individual must do this permanently and not just as a side-line, while in France, a freelance journalist must get at least 50% of their income from this source.

There are 10 countries where **economic dependence** is the crucial determinant in the decision as to whether collective bargaining is permitted, although the idea of “economic dependence” is not always stated explicitly. These are:

- Belgium, where there is potentially an opening for bargaining for the self-employed, as the law states that “persons, who, other than under a contract of employment, provide work services under the authority of another person” should have similar rights to employees;
- Denmark, where collective bargaining operates within a framework agreed by the unions and employers, but the competition authority and the courts have intervened to ensure that collective bargaining only applies to a strictly defined group of economically dependent freelancers (freelance wage-earners);
- France, where individuals who would normally be classed as self-employed are treated as employees because they work for so-called “umbrella companies” under the “portage salarial” system (This is in addition to the freelance journalists and performers referred to above.);
- Germany, where collective bargaining is possible for “employee-like persons”, who must depend on their earnings to survive, may not have any employees themselves and must either “predominantly work” for a single entity or get more than half their income from a single entity – one third for freelance journalists and those working in the arts and literature (The fact that for journalists and some other occupations the proportion of income from a single source is lower than for other employees indicates that the occupation-specific approach also plays a role in the German system.);

- Ireland, where, as well as the freelance journalists, session musicians and voice-over actors, collective bargaining is to be possible for “fully-dependent” self-employed workers, as well as the “false self-employed”, provided that the government has agreed that the individuals fall into one of these two categories. Fully dependent workers must get their main income from no more than two persons;
- Italy, where collective agreements have only been signed for a very limited category of self-employed workers, on what are known as continuous and coordinated contracts, where there is an ongoing relationship with the employer but the individual has some freedom on how the work is done;
- the Netherlands, where legislation potentially allows collective bargaining for self-employed workers but the competition authority has intervened to impose a very strict interpretation of which self-employed should be covered, in effect saying that only the false self-employed have a right to bargain collectively;
- Spain, where agreements are only possible for “economically-dependent” self-employed workers who must receive at least 75% of their earnings from a single client and may not have any employees themselves. In addition, the agreements signed are not collective agreements but so-called “agreements of professional interest”, which have limited contents and must be personally endorsed by individual workers to take effect;
- Sweden, where legislation allows agreements to be signed for self-employed workers, provided that the individual “occupies a position of essentially the same nature as that of an employee”; and
- the UK, where collective bargaining is conducted on behalf of “workers” not just employees and, depending on their circumstances, individuals can be classed as “workers” in employment law, even if they are self-employed in terms of their status for tax and social security contributions (National Insurance Contributions in the UK).

### The situation in practice

Only a minority of countries have legislation providing collective bargaining rights to workers in specified occupations, typically freelance journalists and performers and artists. But, in most of the countries examined, it is in these occupations where collective bargaining for the self-employed is taking place. Almost everywhere it is unions representing journalists, actors, musicians, artists and others in cultural life who have signed collective agreements for their members and also resisted attempts by national competition authorities to restrict their right to do so (see below). The main exceptions are in:

- France, covering those working for umbrella companies (although this is in addition to freelance journalists and performers);
- Italy, where those employed under continuous and coordinated contracts cover a wide range of industries, including call centres and research bodies;
- the Netherlands, where there have been agreements signed for self-employed workers outside the area of culture; and
- Spain, where direct marketing has been the key area covered by “agreements of professional interest”.

Looking at how the extent of collective bargaining has changed, the picture is mixed. In some countries, the situation is not encouraging, with fewer self-employed workers being covered by agreements. This is certainly the case in Denmark and Germany, and it also seems to be the situation in the Netherlands. In Spain, where “agreements of professional interest” have not been widely taken up, many of the employers for one of the most important agreements in direct marketing have recently ceased trading as a result of action by the labour inspectors.

In France, there is pressure on journalists and performers to give up their protected status and become one-person businesses (auto-entrepreneurs), although the new agreement for high-level staff working for umbrella companies is a pointer in the opposite direction.

There are more clearly encouraging developments in Italy, where legal changes have made it essential to sign collective agreements for many of those employed under continuous and coordinated contracts, and in the UK, at least for performers and technicians, although not for freelance journalists. In Ireland, it is too soon after the very positive change in the law to know what the consequences will be.

## The negative impact of competition law on collective bargaining rights

Employer hostility is one reason why it has proved difficult to extend collective bargaining more widely to the self-employed. However, another is certainly the impact of competition law, through national implementation of Article 101 of the Treaty on the Functioning of the European Union, which is intended to prohibit undertakings from agreeing together to distort or eliminate competition.

The current interpretation of competition law has had a directly damaging impact on the extent of collective bargaining in:

- Denmark, where rulings in 2002 and 2010, first by the competition authority and then by the labour court, have sharply reduced the number of freelance journalists whose terms and conditions are set by collective bargaining;
- Ireland, where the competition authority ruled in 2004 that an agreement covering actors was unlawful. This was only reversed by new legislation in 2017;
- the Netherlands, where a ruling by the competition authority in 2007 led first to a case in European Court and then in the national court, which on a narrow point overturned the competition authority's decision, but where, despite this, the competition authority has continued to issue very restrictive guidance on collective bargaining for self-employed workers, most recently in February 2017; and
- Spain, where the legislation allowing a limited form of bargaining for some self-employed workers draws particular attention to the "limits and conditions" set out in competition legislation.

In addition, as the next section shows, competition law has had an impact on the production of recommended rates for journalists in Denmark, Germany and Sweden (see page 00).

## KEY POINTS ON COLLECTIVE BARGAINING FOR SELF-EMPLOYED WORKERS

Unions have found it much more difficult to undertake collective bargaining for their self-employed members than to recruit and organise them. There appear to be 11 states (Austria, Belgium, Denmark, France, Germany, Italy, Netherlands, Serbia, Spain, Sweden and the UK) where collective bargaining or some other form of union involvement is used, or has been used recently, to set self-employed workers' terms and conditions. In a 12th state, Ireland, the right to negotiate was restored in 2017.

The legal position in each of these 12 countries varies, as does the extent to which collective bargaining takes place, but there are some common themes.

There are two main approaches to collective bargaining for the self-employed. It can be limited to specified occupations/sectors, like journalists or actors, or it can be limited to those who are defined as being "economically dependent", although the two approaches are not mutually exclusive. In Austria and Serbia, collective bargaining is limited to specific occupations/sectors. In Belgium, Denmark, Germany, Italy, the Netherlands, Spain, Sweden and the UK, it is limited to those who are economically dependent. In France and Ireland both approaches are used. However, in every country the legal position is different.

In practice, in most countries it is freelance journalists, performers and those working in the area of culture and entertainment who are most likely to have their terms and conditions set by collective agreements. The principal countries where collective bargaining extends more widely are France, Italy, the Netherlands and Spain.

The picture on the extent to which self-employed workers are covered by collective bargaining is mixed. In some countries it appears to be declining, in other growing or at least stable.

Competition law, based ultimately on the EU treaty, has had a damaging impact on collective bargaining, with competition authorities intervening to prevent unions signing agreements.

A man wearing glasses and a red shirt is sitting at a desk, covering his face with his hands in a gesture of stress or frustration. On the desk in front of him is a laptop, a blue mug, and a pen holder. The background is a blurred office setting. The entire image has a red color overlay.

# **UNION SUPPORT AND SERVICES** FOR SELF-EMPLOYED MEMBERS



## PAY AND CONTRACTS

As the previous section indicates, in most countries unions are not able to engage in collective bargaining on behalf of their self-employed members. However, they do offer a range of other services, which frequently vary, depending on the membership concerned. Most of the responses indicate that some form of support is provided. The CSC confederation in Belgium, which currently does not offer this sort of support to self-employed members, plans to do so in the near future.

On pay, even if they are unable to negotiate agreed rates, many unions, particularly those representing journalists, provide **guidance on the fees** that members should charge for their services. Unions that do this include:

- AGJPB the journalists' union in Belgium;
- the journalists' union DJ, the union HK, which organises a range of technical specialists, including graphical designers, and IDA the union for professional engineers, in Denmark;
- the journalists' union DJV and the services union Ver.di, which also has a journalists section, in Germany;
- the Finnish journalists' union, Suomen Journalistiliitto, which also publishes them in English;
- the general union SIPTU in Ireland;
- unions in both the Saco and TCO confederations in Sweden; and
- both the musicians' union, MU, and the journalists' union, NUJ, in the UK.

The London Freelance Branch of the NUJ, which produces the guidance for journalists in the UK, explains its aims as follows: "This guide is to help freelances - self-employed journalists - negotiate the best rates and conditions possible for the various kinds of work that NUJ members undertake."

In the case of the NUJ and the two journalists' unions in Germany, these recommended rates are supplemented by surveys of amounts actually paid.

However, publishing even recommended rates has been challenged as being anti-competitive in both Denmark and Sweden, and Ver.di in Germany reports that its survey is offered free, partially because of concerns over EU competition legislation.

Providing self-employed members with **help on what to include in contracts** and how to draw them up is another service which unions offer frequently. The LO union confederation in Denmark reports: "A few of our affiliated unions have sample contracts for self-employed workers or they offer to check self-employed workers' contracts." The professional engineers' union, also in Denmark, offers to review contracts for its self-employed members, as does the big Danish services union HK. In Estonia, the journalists' union EAL provides advice on contracts, and the French Federation of Communication, Culture and Consulting (FC3 CFDT), part of the CFDT confederation, has set up a web-based platform providing freelance workers with tools for creating invoices and estimates. One of the Dutch unions for the self-employed, FNV – Zelfstandigen, provides model contracts that members can use, and, in Sweden, TCO reports that, "some of the TCO member unions ... have established guidelines for what to demand in terms of wages and other material conditions when accepting a temporary job as a self-employed contractor". The situation is similar for unions affiliated to the Saco confederation.

The advice provided by the UK Musicians' Union (MU) is an example of way a union can provide practical advice on the detailed points that self-employed workers should consider when selling their services. In this example it is musicians working in the original gig economy:

MU Advice on fees and payments

“Things to consider when securing a paid gig:

- Get it in writing: Having written confirmation of the terms of the gig ensures both sides know what is expected eg, what time to arrive and how much you’re going to get paid etc. Without written evidence of the contracted terms, if a problem arises, recovering your fee is made far more difficult. The MU Regional teams assist members in fee recovery.
- Contracts: We advise you to use our standard contracts Hiring a band or Hiring a solo musician. Make it clear to the venue or booker that there is no agreed booking until the contract is signed by both parties.
- If you can’t get the booker to sign an MU contract, we recommend you get a letter/e-mail from them confirming the booking and including details of the date, time and place. Using our Specimen Letter is a simple way of getting the important details of a booking confirmed in writing.”

The union’s advice goes on to suggest different ways that the musician might be paid, such as a guaranteed fee or percentage of the takings as well pointing to potential pitfalls, like “hidden deductions, such as payments for the hire of PA [public address], lights, promotion or other unnamed expenses”.

## OTHER SUPPORT

As well as this form of practical advice, almost all of the unions responding state that they offer **legal advice** to the self-employed members. In some cases, they point out that this is similar to the service offered to all union members. The CNV union confederation in the Netherlands, for example, states: “Every member of CNV can get legal support... this also applies to self-employed workers”, while the CCOO confederation in Spain states that “autonomous workers receive the same service as other affiliates”, including legal advice. The Italian banking union FABI, which is not part of any of the Italian confederations, says it provides self-employed members with “the same support granted in favour of employees by adapting our support and offers to their needs”.

However, it seems that in other cases the legal advice that unions offer is more tailored to the needs of the self-employed. It is not possible to list them all, but the Danish union IDA, for example, describes its support for self-employed members as being “legal advice on the relevant areas, review of contracts, guidance on fees, guidance on setting up as self-employed etc”. Ver.di in Germany states that it provides a “special counselling service with access to individual advice (and if necessary legal protection)”. In Italy, the union confederation, CGIL, reports that self-employed workers are assisted by specific helpdesks to check compliance with their contractual arrangements and legislation. Members of vVAce, an Italian association for the self-employed in the CISL confederation, are able to access legal support as part of a range of services dedicated to the world of self-employment. And UIL-TEMP has assistance/advice structures in local offices across Italy to help self-employed workers. In Sweden, Unionen provides its self-employed members with up to 10 hours of legal advice per year.

These services are provided to members, but in Austria, it is not just members who have access to free legal advice. There is a union advice service called Flexpower-Advice ÖGB (Flexpower-Beratung ÖGB), which is offered by the union confederation, the ÖGB, together with the individual unions and the Chamber of Labour in Vienna (AK Wien) to all those on a contract of work (Werkvertrag) or on a free service contract (freier Dienstvertrag) – the main self-employed groups. They are each entitled to an initial personal advice session on social, contractual and tax questions.

In some cases unions indicate that they are prepared to pay **legal costs** in cases related to self-employment. The French union confederation, the CFDT, reports that, as an experiment, the union is paying the legal fees of its self-employed members in the case of litigation linked to their self-employment. In Austria, the legal protection provided by the GPA-djp union will pay self-employed workers’ legal costs up to a maximum of 3,000 for litigation in commercial and civil courts, as well as in administrative pro-

cedures and in disputes linked to copyright and patent law. To qualify the individuals must be members of the GPA-djp and the cases must be related to their work as self-employed.

The largest German union, IG Metall, is also willing to cover legal costs in a range of areas. It will cover legal costs when members have to go to court to get the money they are owed. In addition, claims for damages are covered up to a limit of €30,000, while the overall upper limit for court costs is 100,000 per case. In areas of intellectual property rights, trademark rights and patent rights, IG Metall will pay for a single consultation with a specialist lawyer. This is in addition to the legal support in other areas, including in areas of social protection, to which all IG Metall members are entitled.<sup>79</sup>

Specific union help to ensure that self-employed members get the money for the work they have done is something which a number of unions offer. SIPTU in Ireland refers to this in its response, while the Dutch union for the self-employed FNV-Zelfstandigen has a service which takes over **debt collection**. Its website states “We advise members, mediate between you and your client and collect your invoices with excellent results. If there is no other way, we will help you to court, with no extra costs for you as a member.” In Denmark, the HK union offers a similar service stating “HK can help you recover your money through our free collection service. Often the threat of a lawyer is enough.”

Other unions provide similar support. The TCO confederation in Sweden reports that several of its unions have established billing or invoice services. *Sindicat prekarcev*, a union for workers in precarious employment in Slovenia, which is part of the ZSSS confederation, supports its self-employed members when they chase payment for the work they have done. And the Italian union confederation CISL provides support on issues related to accounts, which self-employed members can access throughout Italy.

In Finland the journalists’ union, Suomen Journalistiliitto (SJ), has gone further. It has set up a cooperative, *Mediakunta*, which SJ members, and only SJ members, can join. Intended for journalists and media professionals, it states on its website: “We know the media field and can provide members with both UJF [union] and co-worker support”. *Mediakunta* has similarities to companies operating the “portage salarial” system in France, as it employs its members for journalism and media work projects. It then invoices the clients for the work done and makes the appropriate deductions (taxation and social security contributions) from its members’ pay. It handles the invoicing and paperwork for them. It is non-profit-making organisation, and all members’ contributions are used directly to benefit the membership.<sup>80</sup>

There are also some unions which provide **taxation services/advice**. Union bodies which state that they do this are the ÖGB in Austria, CGIL, CISL and UIL in Italy, and the CCOO and UPTA in Spain. CCOO and UPTA also provide advice on business plans and company development.

Another way in which many unions help their self-employed members is through **education and courses**. The Finnish Suomen Journalistiliitto, offers scholarships for some freelance members to train; and SIPTU in Ireland provides training. More specifically, the CNV confederation in the Netherlands provides self-employed members with training on entrepreneurship, while *Sindicat prekarcev* in Slovenia, states that it runs educational projects for members who are self-employed. Some Saco unions in Sweden offer courses and some TCO unions, also in Sweden, help with professional development. Unionen, for example, offers self-employed members free access to certified business coaches, who provide coaching in areas such as business development, marketing and sales. Training is also available through CCOO and UPTA in Spain, while Equity in the UK offers training on business and other skills.

In several cases union provide members with **information about the industry** they work in. For example Ver.di in Germany has a news portal, while both AKAVA in Finland and the CNV in the Netherlands report that members get information on developments in their industries, and the websites of others show that this is part of the service provided.

79 Fair Crowd Work „Leistungen der IG Metall für Solo-Selbständige“ <http://faircrowd.work/de/unions-for-crowdworkers/leistungen-der-ig-metall-fur-solo-selbstandige/> (Accessed 02.01.2018)

80 *Mediakunta* “About us” <https://mediakunta.fi/about-us/?lang=en> (Accessed 02.01.2018)

As well as their own services, many unions can also offer their members **cheaper rates for products and services** they buy from other organisations. The AKAVA union confederation in Finland reports that many of its affiliated unions can offer discounted rates for external products and services. The DJV in Germany, CISL vIVace in Italy, CNV and FNV-Zelfstandigen in the Netherlands, Sindicat prekarcev in Slovenia, CCOO and UPTA in Spain and Equity and the NUJ all draw attention to the cheaper products and services members can obtain through them, and similar offers are available from other unions.

In some cases these discounts relate to products and services of value to the general public, but in others they are specifically relevant to the work that self-employed members do. For example, Equity points to the public liability insurance it can offer to members, as this is crucial for entertainment workers, while the DJV highlights the reduced rates it has negotiated for its members on car hire.

In addition, a number of unions emphasise that their self-employed members benefit from having a forum in which they **discuss their experiences** of being self-employed with other members in a similar position. In some cases this can be face to face, as with the London Freelance branch of the NUJ in the UK, but there are also opportunities to exchange experiences online. TCO in Sweden reports that this has been done for journalists and the freelance section of the vIVace website in Italy, does not just permit freelance members to assess the quality of their employment relationship online, but also to share the results with others.<sup>81</sup> And in Austria, the GPA-djp non-manual union has launched a dedicated web site, [www.watchlist-prekaer.at](http://www.watchlist-prekaer.at) which allows individuals to assess whether their self-employment is in fact false and report this to the union.

However, the group of unions that have gone furthest in providing an **online platform** for members to express their view on their employers are those behind the website Fair Crowd Work. These are IG Metall (Germany), ÖGB plus the Chamber of Labour (Austria) and Unionen (Sweden). As the website itself states, it “collects information about crowd work, app-based work, and other «platform-based work» from the perspective of workers and unions. Uniquely, the site offers ratings of working conditions on different online labour platforms based on surveys with workers.” In November 2017 there were reviews of 12 online platforms from Amazon Mechanical Turk to Upwork.<sup>82</sup>

Finally unions offer self-employed members **specific professional services** related to the areas in which they operate. In Germany, the DJV has created a service for the freelance journalists to sell their photography online ([www.djv-bildportal.de](http://www.djv-bildportal.de)), and there is an address database where members can show their profile and some examples of their work. Equity in the UK publishes a voluntary directory of members on its website, aimed as it states, “at helping employers find the talent they need”.<sup>83</sup> UPTA, as a union aimed purely at the self-employed, has services covering management, banking, financing, communication and marketing and training, as well as a mediation services to resolve personal and commercial conflicts.

81 Vivace “Angolo del freelance” <http://www.vivaceonline.it/angolodelfreelance/> (Accessed 20.11.2017)

82 Fair Crowd Work <http://faircrowd.work/> (Accessed 20.11.2017)

83 Equity “Directory of Members” <https://www.equity.org.uk/directory-of-members/> (Accessed 20.11.17)

## KEY POINTS ON UNION SUPPORT AND SERVICES FOR SELF-EMPLOYED MEMBERS

Unions provide a range of services for their self-employed members, which vary both according to the country and the type of members. The services reported most frequently are:

- guidance on fees to charge, including, in some cases, surveys of rates actually paid. It is particularly common for journalists' unions to provide guidance of this sort, but unions representing architects, technicians and musicians also do so;
- advice on the wording of contracts, including model contracts and the offer to review contracts for members;
- legal advice, both general and specifically tailored to the concerns of the individual. Mostly this is only provided for members but in Austria, with the support of the Chamber for Labour, it is offered to the key self-employed groups, whether they are union members or not;
- reimbursement of legal costs, incurred as a result of self-employment, up to a set limit;
- help with debt collection, including taking on complete responsibility for this as an additional service;
- advice on taxation;
- education and courses, including training on entrepreneurship;
- information about industry developments;
- cheaper rates for products and services, including some of specific relevance to self-employed members;
- opportunities to share experiences with other self-employed workers, including in one case an online site to allow to rate existing labour platforms; and
- professional services which are specific to the occupations involved, like directories of actors.



# SELF-EMPLOYED WORKERS **AND SOCIAL PROTECTION**

## THE EXTENT OF ACCESS: FOUR GROUPS OF COUNTRIES AT EUROPEAN LEVEL

In most European countries, self-employed workers have a different level of access to national systems of social protection, such as sickness benefit, old-age pensions and unemployment benefit, to that of employees (particularly full-time permanent employees).

It is not the purpose of this report to look at these differences in detail, particularly as a major study on national systems of social protection has recently been produced for the European Commission.<sup>84</sup> Instead the report outlines the main features of the systems identified by that study and, based on the ETUC survey, sets out how the unions have responded. The analysis throughout looks at the 28 EU member states, plus the two non-EU states, Norway and Serbia, where there were union responses to the ETUC survey.<sup>85</sup>

The European Commission study divides statutory social protection benefits into two broad types, based on how they are financed:

- those paid for through general taxation, typically some forms of healthcare, family allowances and some means tested types of income support; and
- those based on social insurance contributions (generally made by both employers and employees), such as unemployment benefit, sickness benefits and accidents at work and occupational injury benefits.

It finds that the self-employed normally have access to social protection funded through general taxation, but that this is not necessarily the case for insurance-based benefits, where self-employed workers sometimes do not have access or must choose to opt in.

The extent of self-employed workers' access to social-protection benefits is set out in Table 7 (drawn from the study), which looks at 11 separate types of benefit. It distinguishes between those where self-employed have:

- full access to the benefits (Full);
- partial access (Part), because of either differences in eligibility conditions or the fact that there are different types of benefit, with the self-employed only able to access one type;
- voluntary access (Vol), where access is only possible if the self-employed opt in voluntarily; and
- no access (None).

84 SPASOVA, S., BOUGET, D., GHAILANI, D. VANHERCKE, B. *Access to social protection for people working on non-standard contracts and as self-employed in Europe: A study of national policies 2017* (Luxembourg, European Commission, 2017).

85 The European Commission study looked at all these countries plus five others – Iceland, Liechtenstein, the Former Yugoslav Republic of Macedonia, Turkey and Switzerland.

**Table 7: Statutory access to social protection benefits for the self-employed**

Country	Healthcare	Sickness benefit	Maternity/paternity	Old-age pension	Survivors' pension	Unemployment benefit	Social assistance	Long term care	Invalidity	Accidents at work	Family benefits
Austria	Full	Full	Full	Full	Full	Vol	Full	Full	Full	Full	Full
Belgium	Full	Full	Full	Full	Full	None	Full	Full	Full	None	Full
Bulgaria	Full	Vol	Full	Full	Full	None	Full	Full	Full	None	Full
Croatia	Full	Full	Full	Full	Full	Full	Full	Full	Part	Full	Full
Cyprus	Full	Full	Full	Full	Full	None	Full	Full	Full	None	Full
Czech Republic	Full	Vol	Vol	Full	Full	Full	Full	Full	Full	Full	Full
Denmark	Full	Full	Full	Full	N/A	Part	Full	Full	Full	Vol	Full
Estonia	Full	Full	Part	Full	Full	Part	Full	Full	Full	Part	Full
Finland	Full	Full	Full	Full	Full	Part	Full	Full	Full	Full	Full
France	Full	Part	Part	Full	Full	None	Full	Full	Full	None	Full
Germany	Full	Part	Part	Part	Part	None	Full	Full	Part	Vol	Full
Greece	Full	None	Part	Full	Full	Part	Full	Full	Full	Part	Full
Hungary	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full
Ireland	Part	Part	Full	Full	Full	Part	Full	Full	None	None	Full
Italy	Full	None	Full	Full	Full	None	Full	Part	Full	Full	Part
Latvia	Full	Full	Full	Full	Full	None	Full	Full	Full	None	Full
Lithuania	Full	Full	Full	Full	Full	None	Full	Full	Full	None	Full
Luxembourg	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full
Malta	Full	Full	Full	Full	Full	None	Full	Full	Full	Full	Full
Netherlands	Full	Vol	Part	Full	Full	None	Full	Full	Vol	Vol	Full
Poland	Full	Vol	Vol	Full	Full	Part	Full	Full	Full	Full	Full
Portugal	Full	Part	Full	Full	Full	Full	Full	Part	Full	Vol	Part
Romania	Full	Vol	Part	Part	Part	Vol	Full	Full	Part	Vol	Full
Slovakia	Full	Full	Full	Full	Full	Full	Full	Full	Full	None	Full
Slovenia	Full	Part	Full	Full	Full	Full	Full	Full	Full	Full	Full
Spain	Full	Full	Full	Part	Full	Vol	Full	Full	Full	Vol	Full
Sweden	Full	Full	Full	Full	Full	Part	Full	Full	Full	Full	Full
United Kingdom	Full	Part	Part	Part	Part	Part	Part	Full	Part	None	Full
Norway	Full	Part	Full	Full	Full	None	Full	Full	Full	None	Full
Serbia	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full

Source: Access to social protection for people working on non-standard contracts and as self-employed in Europe: A study of national policies 2017, Annex 2 by

Table 7 makes clear the differences between the types of benefit in the extent to which self-employed workers have access to them. Healthcare is the most accessible benefit – all countries provide it for the self-employed. Unemployment benefit is the least – the self-employed have full access to this in only 12 of the 30 countries listed in Table 7. Other benefits where there is often only limited access for the self-employed include accidents at work and occupational injuries benefits, sickness benefits and maternity/paternity benefits.



The study identifies significant variations between states in terms of access for the self-employed to insurance-based benefits and it groups them into four clusters:

- Cluster 1: full to high access (Croatia, Hungary, Luxembourg, Serbia, and Slovenia), where the self-employed are required to be insured for all benefits and thus have access to them all;
- Cluster 2: high to medium access (Austria, the Czech Republic, Denmark, Finland, Poland, Romania, Spain and Sweden), where access for the self-employed to some insurance-based benefits is based on voluntary contributions;
- Cluster 3: low to no access (Belgium, Cyprus, France, Greece, Italy, Latvia, Lithuania, Malta, Norway and Slovakia) where the self-employed are unable to make voluntary contributions to most insurance-based benefits; and
- Cluster 4: a patchwork of medium to low access (Bulgaria, Estonia, Germany, Ireland, the Netherlands, Portugal and the UK) where the self-employed can opt into some insurance based schemes but not others.

In addition the study also makes the point that, even where self-employed formally have full access to benefits, the amounts they receive may be inadequate. One reason for this may be that the eligibility conditions are harder to meet for self-employed workers, but often a more serious problem is that the contributions that self-employed workers make are inadequate. It is often possible to make contributions at a minimum level, which does not reflect actual earnings, and large numbers of the self-employed make use of this possibility. The report identifies this as a particular problem in Bulgaria, the Czech Republic, Estonia, Greece, Hungary, Portugal, Poland, Romania, Spain and Slovenia.

### Examples from the ETUC survey confirm the differences between employees and self-employed

The responses to the ETUC survey broadly reflect the issues and cluster categorisations in the European Commission study, although often they provided additional detail.

Cluster 1: Serbia is one of the countries in the “full to high access” group of the Commission study, meaning that the self-employed are required to be insured for all insurance-based benefits. In the survey it was the only country where the respondents said that the self-employed and employees had the same access to social protection benefits. In all other states clear differences were identified.

Cluster 2: Austria is one of the countries which the study classes as having “high to medium access” to insurance based benefits. A key area of difference relates to unemployment benefits, as the Austrian union confederation, the ÖGB reports. The regulations are complex and vary depending on an individual’s situation before and after January 2009, when the rules were changed. However, although, as the ÖGB points out, “the self-employed are not automatically insured themselves against unemployment”, since 2009 it has been possible for the self-employed to be covered by unemployment insurance on a voluntary basis.

In addition, since 2013, the self-employed in Austria also have access to sick pay, provided that their work is necessary to allow their business to continue and they do not have 25 or more employees. However, even when these conditions are met, sick pay provision is less generous than for employees. The self-employed only receive sick pay on the 43rd day of the inability to work, only get it for a maximum of 20 weeks for one and the same illness, and are only paid 29.46 per day regardless of previous income. Employees are typically entitled to insurance based sick-pay from the fourth day of their illness; they can receive it for up to a year in some cases and from day 43 it is normally paid at 60% of previous earnings.

The Czech Republic is another country that the Commission study puts in Cluster 2 (“high to medium access”), meaning that access to some benefits depends on the self-employed voluntarily choosing to opt-in. CMKOS, the national confederation, said that there were “small differences” between the access of employees and the self-employed. One of these is in the area of sickness insurance, which covers both payments during periods of illness and financial support during pregnancy and maternity. “Participation in this insurance is mandatory for employees” but “for self-employed persons there is only voluntary participation”. The self-employed also receive fewer benefits.

Cluster 3: France, Latvia and Slovakia are three examples of the countries where, according to the classification of the Commission study, the self-employed have “no to low access” to insurance-based benefits. (This means not just that the self-employed are not automatically covered for many benefits, but also that they are not allowed to make voluntary contributions to extend their coverage.) The responses to the ETUC survey, from these three countries set out how this works in practice.

In France, the CFDT union confederation reports that social contributions in respect of the self-employed are less than those for employees. As a result, the benefits the self-employed receive in the areas of maternity leave and pay, sick leave and pay and pensions are lower than the benefits employees receive. In addition, self-employed workers have no obligation to insure themselves against industrial injury and occupational disease and they receive no unemployment benefits. The response from the CGT actors’ union, the CGT SFA, is similar. It confirms that the “self-employed have rights relating to sickness and pension but not to unemployment benefit or accidents at work”.

In Latvia the only union confederation, the LBAS, states that, the “self-employed are not insured against unemployment or accidents and occupational injuries”.

Although Slovakia is also in Cluster 3, the “no to low access” group, according to the study, Table 7 indicates that its situation seems better than some of the other countries in this group. This is confirmed by the response of KOZ SR, the only union confederation in Slovakia. It reports that “Protections and rights are the same, but social and health insurance is more expensive for self-employed workers, due to their status as ‘employer or businessman’. For example they pay health insurance as 14% of income, while an employee pays 4% of income, with the employer paying another 10%. Social insurance is similar, self-employed workers pay the whole costs, while employees pay part, with the rest paid by employer. Unemployment insurance is voluntary for self-employed workers. This means that if they pay it they have unemployment benefits, but if they don’t pay they don’t get them.”

Cluster 4: Germany and the Netherlands are two examples of the countries described in the Commission survey as providing a “patchwork of medium to low access” to insurance based benefits for the self-employed. In both countries the responses to the ETUC survey indicate the complexity of the systems, but they also show that the voluntary nature of some aspects of the schemes and the level of contributions may result in inadequate protection.

The response from the German union confederation, the DGB, explains not just that self-employed workers have fewer protections than employees, but also that there are important differences between different groups of self-employed workers. It provides two examples: pensions in old age and health insurance, the basis for healthcare provision in Germany.

In the area of pensions, “some professions are automatically included in obligatory pension schemes but all those not insured on this basis have a choice between voluntary and ‘obligatory’ membership”. Voluntary membership means that they can enter, leave and re-enter the system at any time, but they have limited protection, especially if they experience periods of unemployment. Obligatory membership means that once they have entered the system they cannot leave, but they have full protection. In practice the overwhelming majority of the self-employed in this position in Germany choose voluntary membership: the ratio is a few thousand (obligatory) to more than 100,000 (voluntary).

Health insurance, either private or statutory, is obligatory for everyone in Germany, although compliance with this is not reviewed – and, once an individual has taken out insurance, this cannot be cancelled, even if the contributions are not paid. However, in such cases protection is at an absolute minimum. The result is that an increasing number of low-paid self-employed are not making contributions to their health insurance and, as a result, have very low levels of protection.

In the Netherlands, the union for self-employed in the FNV confederation, FNV – Zelfstandigen, explains that, self-employed workers “do have maternity leave and pay. They do not have sick leave and pay, unemployment benefits or pension. However, self-employed have tax benefits, which should make it easier to take out insurance for sickness or set aside money for a pension.”

The other main Dutch union confederation, the CNV, adds that, while “self-employed workers have no access to sick leave and pay and unemployment benefits like employees, there is a social safety net based on the social minimum that self-employed workers can apply for. This generally gives a much lower income than unemployment benefits.”

## BENEFITS OUTSIDE THE SOCIAL PROTECTION SYSTEM

One other point that emerges strongly from the responses to the ETUC survey is that unions identify differences between the self-employed and employees in their access to other benefits and rights. These are benefits and rights outside the social protection system but which are nevertheless very important. They include the rights to be paid at least at the level of the minimum wage, access to training, holiday and Christmas bonuses, access to company pension schemes and paid travel costs. Eliminating these differences is seen by many unions as an important aim.

Indeed, the CFTD in France sees the introduction of the new “personal activity account” (Compte Personnel d’Activité – CPA), which covers the self-employed but does not relate to social security protection, as one of the key gains that the unions have achieved for the self-employed. This personal activity account (CPA) brings together the rights set out in three separate accounts:

- the personal training account (CPF), which gives guaranteed rights to training;
- the arduous work account (CPP), which can potentially lead to earlier retirement for those whose work is particularly difficult involving, for example, hard physical exertion or unpleasant working conditions; and
- the civic engagement account (CEC), which records activity such as volunteering and can also lead to additional training rights.

From the point of view of the self-employed, the crucial aspect is that the CPA guarantees equal rights for all those economically active, irrespective of their employment status. It was introduced for private sector employees, civil servants and the unemployed in January 2017 and for the self-employed in January 2018.

## CHANGES IN SOCIAL PROTECTION SYSTEMS FOR THE SELF-EMPLOYED

The 2017 study for the European Commission suggests that recent years have seen a trend towards “coordination and harmonisation, between the social protection of the self-employed and the general social security schemes”.<sup>86</sup> It identifies changes in both thresholds and conditions (for contributions and benefits) as well as broader changes to the systems as a whole.

The union responses to the ETUC survey do not entirely reflect this, although the period asked about in the survey was relatively short, the previous five years. Only nine of the responses say that the differences between the social protection systems for the self-employed and employees have got smaller over this period. (Six say that they have got larger; 21 that they have stayed the same and 14 did not reply to this question.) However, the responses from some countries spell out how things are changing.

In Belgium, for example, the CSC union confederation reports that as a result of government action in the last decade (particularly the neo-liberal policies of the current government) “differences are becoming smaller”. This is particularly because benefits are increasingly paid as fixed amounts rather than being linked to previous earnings.

In Spain, the CCOO union confederation says that social protection for the self-employed has become more similar over time, with the economically dependent self-employed (those doing 75% of their business with a single customer) being obliged to have insurance cover for temporary incapacity, accidents at work and occupational diseases. (The status of the economically dependent self-employed was only established by legislation in 2007.)

<sup>86</sup> SPASOVA, S., BOUGET, D., GHAILANI, D. VANHERCKE, B. *Access to social protection for people working on non-standard contracts and as self-employed in Europe: A study of national policies 2017* (Luxembourg, European Commission, 2017).

In France, the CFDT points to improvement in protection against accidents at work for self-employed workers, and in the autumn of 2017, the French government started consultations on changes in unemployment insurance, which could potentially extend cover to the self-employed.

National moves towards greater similarity between the social protection available to the self-employed and that available to employees are likely to accelerate following the announcement on 13 March 2018 of a European Commission proposal for a Council Recommendation on access to social protection for workers and the self-employed.<sup>87</sup>

The explanatory memorandum accompanying the Commission proposal pointed out that, “self-employed status is being used more widely, in some cases even when de facto a subordinate employment relationship exists”, and that, as a result of the growth of self-employment and other jobs not governed by standard contracts “larger parts of the workforce are left without sufficient access to social protection”. This, the memorandum explained does not just “increase risks to the welfare of affected individuals and their families”, it may lead to individuals being unwilling to move to other jobs and “ultimately may result in lower productivity growth”. In addition, gaps in access to social protection mean that, “in the long run ... the social and economic sustainability of national social protection systems ... is at stake” as individuals “take recourse to tax-funded safety nets of last resort in case of social risk while the number of people contributing to social protection will be proportionately smaller”.<sup>88</sup>

The Commission’s response is to propose a Council Recommendation. This, if endorsed, will not be binding on member states but it will encourage them to ensure for all workers and the self-employed:

1. “formal coverage of social protection;
2. effective coverage, adequacy and transferability of social protection;
3. transparency of social protection entitlements.”

The benefits to be covered by this recommendation are unemployment benefits; sickness and health care benefits; maternity and equivalent paternity benefits; invalidity benefits; old-age benefits; and benefits in respect of accidents at work and occupational diseases.

The ETUC regrets that the proposal of the European Commission does not tackle the need for upward convergence of social protection for workers and that inclusiveness and adequacy of the systems are not properly addressed in the Commission’s proposal.

Also, the ETUC believes that the lack of mandatory coverage on unemployment protection will be detrimental for the financial sustainability of the system as well as for its transparency. It will also not prevent the abuse of precarious employment relations aimed at avoiding employers’ contributions.

## UNIONS TAKE ACTION

The survey also asked whether unions had taken action on social protections for self-employed workers, and more than half of the respondents said that this was the case. In total 26 organisations from 17 countries said that they had either done this or were aware of other unions doing this. In most cases the action has taken the form of lobbying either directly to government or in other consultative bodies where unions have influence.

In the Netherlands, for example, the CNV reports that it “puts pressure on the Dutch policy makers to push for equal access to social protection for self-employed workers”, while the other main confederation, the FNV, explains that that the issue is “a subject in our lobbying and in the Social and Economic

87 European Commission “Commission adopts proposals for a European Labour Authority and for access to social protection”, Strasbourg, 13 March 2018 [http://europa.eu/rapid/press-release\\_IP-18-1624\\_en.htm](http://europa.eu/rapid/press-release_IP-18-1624_en.htm) (accessed 19.08.2018)

88 Proposal for a Council Recommendation on access to social protection for workers and the self-employed, COM(2018) 132 final, Strasbourg, 13.3.2018

Council” (SER in Dutch). From Poland, the national union body NSZZ Solidarnosc reports that a proposed reduction in the social security contributions of a self-employed worker earning less than two and a half times the minimum wage was discussed in the tripartite Social Dialogue Council and revised following union objections. Ireland’s largest union, SIPTU, talks about “political lobbying”, while in Latvia, LBAS reports that, “trade unions have participated in different working groups at national level regarding the development and adoption of laws and regulations” relating to social protection for the self-employed.

In France, both the CFDT and the CGT say that they are now in negotiations with the employers about possible new rules extending unemployment benefits to self-employed workers.

In some countries, unions report running campaigns on social protection for the self-employed. In Italy, UIL-TEMP, the UIL affiliate covering precarious workers, says it has organised “campaigns and action to increase rights”. In Germany, the DJV journalists’ union refers to “writing letters to MPs and PR campaigns on social protection”, while from Britain the TUC union confederation says that three of its affiliates, the Musicians Union, the NUJ (journalists) and Equity (actors and other performers) “have all run campaigns on these issues”. However, getting changes can be difficult as the response from the Slovenia union representing precarious workers, Sindikat prekarcev, makes clear. It states: “We have tried to comment on the situation in public and we have also organised some actions about changing legislation, but without success.”

Unions have taken up a wide variety of specific issues on social protection for the self-employed, and are often clearly aware of the specific problems the self-employed face as the reply for the Swedish TCO confederation indicates. It reports:

“Unions have argued for improvements of the social protection of self-employed when it comes to sickness insurance. Sickness benefits are based on loss of income that would have been earned during a period of six months. Loss of income that would have been earned during a period shorter than six months is usually not included when the sickness benefits are calculated. Since many self-employed have assignments that are shorter than six months, this is particularly troublesome for them.”

Other specific issues that unions have tackled are set out in the list below:

- ÖGB (Austria – confederation): improvement in the social protection for freelancers (freie Dienstnehmer) who are treated as self-employed for tax purposes but as employees for social protection;
- EAL (Estonia – journalists’ union): allowing individuals to combine their (low) earnings from several different sources into a single amount in order to reach the threshold to make social security contributions;
- AKAVA (Finland – confederation): reforming unemployment benefit by developing a system of combined insurance;
- CFDT (France – confederation): creating the new personal activity account (CPA) (see page 00);
- DGB (Germany – confederation): including all self-employed workers in the statutory pension and health insurance schemes;
- CGIL (Italy – confederation): introduction of more flexible maternity arrangements for the self-employed and longer sick pay provision;
- Solidarumas – translators and interpreters (Lithuania – union): changing the basis of the calculation for years of service for old-age pension benefits;
- CNV (Netherlands – confederation): better access to pensions and disability benefit schemes;
- NSZZ Solidarnosc (Poland – national union body): increasing social security contributions for self-employed workers; and
- Equity (UK – actors’ and performers’ union): fairer treatment in relation to unemployment benefit, national insurance (social insurance) payments and taxation.

More generally it is clear that, in the area of social protection, unions are calling for equal treatment between employees and the self-employed both in terms of the contributions they make and the benefits they receive. Both the two main confederations in Belgium, for example, have a similar position. The CSC states that its position “is that self-employed should have the same rights to social security as employees, provided they contribute the same way”, while the FGVB says that “in our view, a self-employed worker is a worker and on that basis benefits from the same social rights and advantages as other workers”.

Moving in this direction is not just seen as being positive for self-employed workers but also helping employees, employed on more standard terms. The Danish confederation LO makes this very clear in its response. It says: “On 6 June 2017, the leadership of LO-Denmark approved joint aims for efforts to improve conditions for atypical employees to ensure a decent living and retirement. This is both in order to benefit the individual atypical employee, but also to protect the level of pay and working conditions for regular employees. There is no conflict between the two goals - quite the opposite. A joint aim and a major task now lie before us.”

## KEY POINTS ON SELF-EMPLOYED WORKERS AND SOCIAL PROTECTION

The self-employed often do not have the same access to systems of social protection as employees. A major study on national systems of social protection for the European Commission<sup>89</sup> divided statutory social protection into benefits funded by general taxation and those funded through social insurance contributions and found that the self-employed normally have access to taxation funded social benefits, but have less access to benefits relying on insurance contributions.

The study mapped the access that the self-employed have to 11 different types of benefit (see Table 7) and found that healthcare is the most accessible benefit for the self-employed, and unemployment benefit the least. Benefits linked to accidents at work, sickness and maternity/paternity were also among those where the extent of self-employed access was lower.

The study identified four distinct clusters of countries offering varying levels of access, with some countries allowing the self-employed themselves to extend the benefits available to them by choosing to opt-in to existing schemes.

The study also found that, even where the self-employed have access to benefits, the level of support provided may be inadequate for the self-employed because they do not meet the eligibility conditions or the contributions they have made have been too low.

The responses to the ETUC survey provide examples of countries in each of the four clusters identified in the Commission study, adding further details.

### Cluster 1

Serbia is an example of a country with “full to high access”, where the self-employed are required to be insured for all benefits and so have access to them all.

### Cluster 2

Austria and the Czech Republic are both examples of “high to medium access” countries, where access for the self-employed to some insurance-based benefits is based on voluntary contributions.

89 SPASOVA, S., BOUGET, D., GHAILANI, D. VANHERCKE, B. *Access to social protection for people working on non-standard contracts and as self-employed in Europe: A study of national policies 2017* (Luxembourg, European Commission, 2017).

### Cluster 3

France), Latvia and Slovakia are examples of the countries where, according to the classification of the Commission study, the self-employed have “no to low access” to insurance-based benefits. (This means not just that the self-employed are not automatically covered for many benefits, but also that they are not allowed to make voluntary contributions to extend their coverage.)

### Cluster 4

Germany and the Netherlands are examples of the countries described in the Commission survey as providing a “patchwork of medium to low access” to insurance based benefits for the self-employed. In both countries, the responses show the voluntary nature of some aspects of the schemes and also that the low level of contributions may result in inadequate protection.

The ETUC survey also shows that unions find that there are areas outside social protection where there are important differences between the conditions of employees and the self-employed. These include the right to be paid at least at the level of the minimum wage, access to training, holiday and Christmas bonuses, access to company pension schemes and paid travel costs. In France, unions see the equality of treatment between employees and the self-employed in the new “personal activity account” (CPA), which covers training, arduous work and civic engagement, as an important gain.

Recent years have seen increasing convergence in the degree of access that employees and the self-employed have to social protection benefits, and the ETUC survey provides some examples of this. In addition the European Commission has recently proposed a Council recommendation on access to social protection for workers and the self-employed, which is likely to accelerate this process.

Just over half the unions responding report union action on social protection for the self-employed and this normally takes the form of lobbying or raising the issue in existing structures. However, some unions have run public campaigns. The general aim is to bring the protections for the self-employed into line with those for employees, often by ensuring that their contributions are also equalised. However, unions have also raised some specific demands, such as, allowing a number of small sources of income to be combined to reach the threshold for social security contributions.



# FORCED INTO SELF-EMPLOYMENT



## A MAJOR ISSUE

The issue of workers being compelled into self-employed status is clearly one that many unions are concerned about. In total 41 out of the 50 union bodies replying said that on occasions some employers forced workers to be self-employed, despite the fact that in many ways they were treated like employees. The only countries where no respondents identified this as happening were Bulgaria and Serbia.

The range of industries and occupations in which this is occurring is very wide as these responses indicate:

- CNE (Belgium) Building, computing, health, delivering. Happening increasingly widely;
- CFDT (France) Many sectors can be concerned, including teaching (private schools providing professional training), consulting activities (in many different business sectors), the building industry, and services to households;
- SZEF (Hungary) Security guards, taxi drivers, musicians, lawyers, doctors, architects, artists, language teachers, interpreters, translators, bookkeepers, primary producers, hairdressers, beauticians;
- CNV (Netherlands) Construction, transportation, package delivery, home care;
- NSZZ Solidarnosc (Poland) So-called civil law contracts are very popular in the cleaning and security sectors;
- TCO (Sweden) Transport and construction, but it also exists in eldercare, aviation (pilots) and journalism. Rapid increase in the creation of sole proprietor businesses over the last 5-10 years or so, which seem to support the notion of employers “forcing” workers to self-employment. In 2013 the number of sole proprietor businesses was 828,000, which was then 200,000 more than in 2003. ; and
- TUC (UK) Services, construction, entertainment, logistics.

## UNION RESPONSES MAINLY THROUGH THE COURTS

Just over half of those reporting this problem (23 out of 41) said that there had been union campaigns against forced self-employment. Most had had involved public and political campaigning and lobbying, like CGIL in Italy which had submitted a draft law to allow lawyers to be considered employees. However, there are also other types of campaign. For example, the CSC in Belgium reported that its affiliated unions had taken action at company level to limit the ratio of self-employed to employees and had attempted to use industry level collective bargaining to define which functions could be self-employed and which not. Among those union bodies which had campaigned on the issue only six felt they had been successful.

The results seem to have been better for unions which had used the courts. In total 22 unions reported that there had been legal cases to change the status of workers forced into self-employment, and clearly for some this is routine. The FGTB in Belgium, for example, reported that “union legal services are regularly confronted with cases of bogus self-employment”, while Ver.di in Germany said there were “too many to give details.” The UK is one of the countries where legal challenges to self-employment have become much more frequent recently. The TUC reports that in the recent past there have been over 40 cases, with the case of the web-based taxi service Uber one of the most prominent. The unions, who argue that Uber drivers are workers, not self-employed contractors, as the company claims, have won both in the lower court (the Employment Tribunal in October 2016) and in the Employment Appeal Tribunal (in November 2017). However, Uber has stated that it will appeal to the Court of Appeal and if necessary, to the UK’s highest court, the Supreme Court.

Overall, cases challenging employment status have produced positive results. Of the 22 unions taking cases 12 report either success (nine) or mixed-success (three), while four say that it is “too soon to say”.

## **KEY POINTS ON FORCED SELF-EMPLOYMENT**

More than 80% (41 out of 50) of union bodies responding to the survey consider that some workers are being compelled into self-employment.

This development affects a very wide range of countries and industries, including construction, transport and services like cleaning and security.

More than half of the unions reporting this problem have campaigned against it, although the rate of success has not been particularly high.

A similar number (22 out of 41) have taken legal action against bogus self-employment and here success rates have been higher.

# FUTURE PRIORITIES



As well as enquiring about the position of self-employed and current union action, the ETUC survey also asked unions and union confederations to identify what they saw as the biggest priorities in tackling the issues raised by an increase in the number of self-employed workers. They were asked to respond both at European and national level, and in relation to governmental/institutional and union action.

Although the answers vary greatly in detail, in each area it is possible to identify some key themes.

The responses also reflect many of the issues that the ETUC itself and the European trade union federations have raised in resolutions and reports over many years, as the examples set out in this section indicate.

## FOR EU INSTITUTIONS

The responses on the question of the key priorities for European institutions fell into three main categories:

- establishing international rules providing a common legal framework for self-employed workers;
- changing competition law so that it is no longer a barrier to collective bargaining for the self-employed; and
- generally taking action to improve the situation of the self-employed.

The need for some EU regulation of self-employed workers was the most commonly presented call for action at EU level, although the precise details varied. For two Nordic unions, IDA in Denmark and NITO in Norway, the key priority was “to set up international rules for platform workers”, while the Estonian confederation EAKL said that “economically dependent workers should be treated as workers in all members states”.

Both the largest organisation responding, the DGB union confederation in Germany, and the smallest, the Translators’ and interpreters’ union in Solidarumas in Lithuania, had more or less the same demand. The DGB referred to “the need of a legal framework for every European country with strict regulations on whether a person may be regarded as employed or self-employed while making clear that employed work has to be the standard”, while the translators’ and interpreters’ union in Lithuania said that the EU should “establish legal framework for the recognition of self-employed status”.

The call from the Danish union confederation LO for a common EU approach is particularly interesting given the general preference in Denmark for national solutions. It said:

“The written statement directive should be extended so that it also covers the new and atypical forms of employment. This requires a definition of the concept of worker. Normally, LO-Denmark would prefer that the concept of worker is defined at the national level. However, in this case, there is a good reason for making an exception. It is extremely important that atypical employees get the same working conditions as other employees.”

This view aligns with the ETUC’s approach set out in a resolution adopted at its Executive Committee meeting in December 2016. This called for “a European framework to protect workers under self-employment relationships”, which “should be complementary to national competence”.<sup>90</sup>

Action to change competition law, or as the Danish HK union said, “more precisely ... the implementation/ interpretation of competition law”, was seen as a priority at EU level by almost as many union organisations, and the phrasing here was less varied. The German union Ver.di talked about “amending the anti-trust law for the self-employed”, while the Italian union confederation CGIL said the law needed to distinguish between “a self-employed worker and a company”. The CNV confederation in the Netherlands encapsulated the view of many, when it said that it was necessary to “get an exception in European competition law to enable negotiating minimum wage rates for self-employed workers”.

90 ETUC “Towards new protection for self-employed workers in Europe”, Brussels, 18 January 2017

Again this is something which unions at European level have long called for. As well as the ETUC resolution referred to above, which specifically stated that, “the ETUC will tackle the issue of competition law”, other union bodies at European level, representing workers directly affected, have seen the application of EU competition law as a major obstacle, restricting their ability to protect and improve the terms and conditions of their self-employed members. A major report produced by a group of media, arts and entertainment unions in September 2016 described EU competition law as a “spanner in the works” and called for “the conflict between labour rights and competition law to be resolved to enable freelance workers to enjoy the right to freedom of association and collective representation”.<sup>91</sup>

The final point, pressing for an improvement in the position of the self-employed, was less frequently mentioned as an EU priority. The UK actors’ and performers’ union Equity called on the EU to “ensure that national Governments are not capitalising on the rise in self-employment to reduce pay, employment rights, social security and other entitlements for workers”, while vVAce, the CISL organisation for self-employed workers, called for European guidelines “which recognise universal rights for citizen, including autonomous workers”. Sindikat prekarcev, the union for the self-employed in Slovenia, was more forthright in its language. It called for “a change in the agenda of flexibilisation and stop sharing bullshit about the sharing and collaborative economy. We need to have a workers’ agenda for the future, based on workers’ rights and strong trade unions.”

This view is shared by European and international union bodies. For example, in their joint manifesto on the status of the artist in 2009, the International Federation of Actors (FIA) and the International Federation of Musicians (FIM) demanded that, “a core of minimum employment rights should be guaranteed for performing artists, regardless of their employment status”.<sup>92</sup>

## FOR NATIONAL GOVERNMENTS

Union views on the priorities for national governments ranged across a larger number of issues, with key themes including:

- ensuring equal treatment between employees and the self-employed particularly with regard to social protection to ensure a level playing field;
- tackling bogus self-employment;
- action to promote collective bargaining for the self-employed; and
- changing competition law.

For many unions, the issue of equal treatment is important because it helps ensure a level playing field. In the Netherlands, the CNV said a priority for its government should be to “get rid of fiscal schemes which function as a subsidy for companies to hire self-employed and which stimulate (bogus) self-employment. Make sure employers have to pay the applicable social premiums in the case of bogus self-employment, and create an equal labour market by giving self-employed workers the same access to affordable pension and disability schemes for as employees”. The FNV-Zelfstandigen simply said “level playing field”, while the FNV confederation highlighted the role of government policy in encouraging self-employment. In a separate statement, it said: “The most powerful driving force behind self-employment in the Netherlands is the large difference in labour costs due to the fact that the self-employed enjoy high tax reductions and are not part of social security (pensions, disability).”

91 CHARHON, P., MURPHY, D. *The Future of Work in the Media, Arts & Entertainment Sector: Meeting the Challenge of Atypical Working* (Euro FIA, EFJ, FIM and UNI MEI, Brussels, 2016)

92 FIA-FIM “Manifesto on the Status of the Artist”, 19 January 2009

Both the DGB and LBAS, the Latvian union confederation, were concerned about current rules which mean that the self-employed pay lower social contributions, potentially making social protection systems financially unsustainable, while the CFTD said that the rules need to be the same “in order to avoid social dumping”.

In the survey, the DGB saw these lower contributions as particularly problematic where self-employed workers “are in fact employees” and said that this fraud need to be addressed. Bogus self-employment was also raised by the CSC in Belgium, which called for “clear, specific and practical criteria to distinguish between a situation of employment and self-employment, [so that] it is impossible for the employer (and the worker) to make up a self-employed relationship when it is in fact an employment situation”. NSZZ Solidarnosc in Poland said “at national level there is a need to fight bogus self-employment and civil contracts especially through taxes and social security instruments”.

Equal treatment for self-employed workers in respect of social protection, both in terms of contributions and benefits has also been an important ETUC demand. In its response to the proposal for European Pillar of Social Rights, the ETUC stated in September 2016 that “social protection must cover people in and out of work, regardless of the employment contract and, in particular, be extended to the self-employed.”<sup>93</sup>

Access to collective bargaining for the self-employed was another demand made by several unions in the survey, with the CSC, CGIL, EAKL and Solidarumas (Translators’ and Interpreters’ union) all referring to this directly, while competition law was mentioned by HK, AKAVA and SIPTU.

It has also been a key demand made by union bodies at European level. As well as the ETUC statement on self-employed workers referred to above, the European Federation of Journalists, in a study looking at journalists rights across Europe stated that “every freelance should have the right to organise in a trade union or in a professional association and enjoy the right to collective bargaining”.<sup>94</sup>

Other potential priorities for national governments identified in the survey were: ensuring representation for the self-employed (CFTD), legislation to make it easier to organise the self-employed (IDA and NITO), and strengthening labour inspection (KOZ SR – Slovakia).

## FOR THE ETUC

Many of the issues which the respondents identified as being priorities for the ETUC were directly linked to the priorities that they identified for EU institutions, for example lobbying for a common legal framework for the self-employed or calling for a change in competition law.

LO in Denmark said exactly this in its response: “The ETUC should work to support the two priorities mentioned for the European institutions”, while other confederations referred to the issues directly. NSZZ Solidarnosc said that the “ETUC should concentrate on the issue of collective agreements in the light of antimonopoly law”, although it accepted that this was currently “not a problem from Polish perspective”. For vIVAce CISL the key priority for the ETUC was to “produce a definition of who is an autonomous worker and to intervene in the definition of guidelines for citizens’ rights”.

However, there were some responses which asked the ETUC to do other things, for example:

- to “share good practices and encourage all unions in Europe to represent and advocate for self-employed workers” (CGIL);
- to give unions “contacts with organisations from other countries, who are also fighting against similar problems” (Sindicat prekarcev); and
- to negotiate “an agreement with the employers’ associations” (EAKL).

93 ETUC Priorities for the current phase of the European Commission Consultation on the European Pillar of Social Rights, adopted at the ETUC Extraordinary Executive Committee Meeting on 6 September 2016

94 BRÉDAT, H., HOLDERNESS, M. Rights and Jobs in Journalism: Building Stronger Unions in Europe (European Federation of Journalists, Brussels, 2016)

## FOR NATIONAL UNIONS

In identifying the key priorities for national unions, in other words for themselves or their affiliates, most responses concentrated on two main areas:

- organising the self-employed; and
- extending collective bargaining to them.

The need to recruit and organise the self-employed was specifically acknowledged by the CSC, IDA, EAKL, the CFDT, the DGB, NITO and Equity, although LO in Denmark said that it was “up to the individual unions whether they want to organise self-employed workers, freelancers and platform workers”. FABI, the Italian banking union, the Solidarumas Translators’ and interpreters’ union and CATUS/SSSS referred to campaigning and acting on behalf of self-employed workers, and vIVAce called on other unions to support it and FeLSA, the CISL union for precarious workers. Sindikat prekarcev also called for the support of other unions “because without support we – as a union for the precarious – will not survive”. Ver. di, the German services said the national unions should have a “higher regard for the self-employed”

CSC and NSZZ Solidarnosc both indicated why organising self-employed workers was important. CSC said that it expected that the number of self-employed would increase, even if bogus self-employment was eliminated, while NSZZ Solidarnosc said that unions needed to “understand that there is such a phenomenon as technological change and less and less work is performed with traditional subordination”.

At European level, a 2013 report for Eurocadres, which brings together unions representing professionals and managers, also argued that unions needed to do more in this area. It suggested that national unions should consider “developing structures that reflect and take into account the heterogeneity of self-employed workers’ needs, their specific circumstances (as compared with employees) and their preferences on how they wish to be organised”.<sup>95</sup>

Extending collective bargaining to the self-employed was the other major priority for national unions identified by the union organisations responding to the survey, with the CSC, LO Denmark, EAKL, the CFDT, CGIL and Equity all making explicit reference to it. HK referred to changing competition law, the main obstacle to collective bargaining, while CCOO said it was important to “strengthen unions’ negotiating capacity”. The responses indicated some variations in emphasis. While CGIL said unions should “include self-employed workers in collective bargaining and, in particular, in national collective agreements”, the CFDT referred to the “development of social dialogue and negotiations at company level”. However, the view that the self-employed should be covered by collective bargaining was common to all the unions responding in this way.

Other issues identified as priorities for national unions included:

- educating members (EAL and CATUS/SSSS);
- taking up social security concerns (AKAVA and Equity);
- fighting bogus self-employment (DGB and the Spanish union UGT –FICA); and
- extending workplace protections to the self-employed (NUJ)

<sup>95</sup> ZAHl, K. POLACEK, R. Research study on the situation of self-employed women with professional and managerial tasks in Europe and their organisation and representation, (EUROCADRES. Brussels, 2013)

## KEY POINTS ON FUTURE PRIORITIES

The respondents to the survey identified a number of priorities for the future for EU institutions, national governments, the ETUC and national unions. These often reflected the demands that have already been made by the ETUC itself and other European level union bodies, in a series of resolutions and reports.

For EU institutions, the key priorities identified were:

- to establish international rules providing a common legal framework for self-employed workers;
- to change competition law so that it was no longer a barrier to collective bargaining for the self-employed; and
- to take action to improve the situation of the self-employed.

For national governments, the key priorities were:

- to ensure a level playing field between employees and the self-employed particularly with regard to social protection;
- to tackle bogus self-employment;
- to promote collective bargaining for the self-employed; and
- to change competition law.

For the ETUC, the main priorities identified by the respondents were linked to the changes that they wanted from EU institutions, in particular a common legal framework for the self-employed and changes in EU competition law. However, there were also calls for the ETUC to share good practice and promote contacts between unions facing similar problems.

For national unions, the key priorities in the view of the respondents were:

- to organise the self-employed; and
- extend collective bargaining to them.

There was clearly a feeling among some respondents that unions had not done enough for the self-employed in the past.



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# NOTES

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