

Towards new protection for self-employed workers in Europe

Adopted at the Executive Meeting on 14-15 December 2016

The challenges

Self-employment is one of the main challenges in the debate on the future of work. It appears to be more and more complex to distinguish the bogus self-employed from those who are possibly not pure entrepreneurs, but certainly real workers. Trade unions should then insist that “genuine” self-employed workers are covered by social rights, such as the right to adequate remuneration, fair terms and working conditions, education and training, unemployment protection, social protection, and pension rights.

With this resolution, the ETUC does not aim to “create” a new labour category different to that of employer or worker. Our aim is more to acknowledge that certain self-employed are workers, and to cope with their difficulties in terms of rights, wages, and social protection. Bogus self-employment, as described by the ILO recommendation 198, refers to a disguised employment relationship. The ETUC insists on the need to fight this kind of misuse.

In addition to sectors where bogus self-employment and genuine self-employment are a longstanding situation, digitalisation acts as a new driver for the rise of self-employment both in new and traditional sectors.

The self-employed are often not in touch with unions (or not able/allowed by law to join one), not entitled to proper social protection, and even not covered by collective agreements nor able to engage in collective negotiations. One of the main challenges for the trade union movement in Europe is to better cover and protect these workers who are at the (possibly growing) margin of the labour market. We must investigate how to ensure that these self-employed workers have the right to negotiate and be covered by collective agreements, considering the existing collective bargaining structures. They should be guaranteed better protection.

The ETUC Congress in Paris decided to tackle this issue as one of the priorities for the mandate, both in terms of policy and organising. This must be a full part of our work on the future of work, the future of unions. This resolution presents options and a roadmap for the European trade union movement to better link with self-employed workers to tackle the barriers that prevent the unions from organising and fully protecting them.

It involves a change of paradigm in the trade union movement and a need to highlight and promote innovative union strategies to better cope with the challenges of self-employed labour. The ETUC will also work with its affiliates on building a proposal for a relevant framework to protect them and guarantee them the right to organise and stronger levels of protection and social rights, in line with the principle of equal treatment.

The European Commission and the European Parliament are planning to act on this topic. A European trade union response is necessary. This strategy must lead to an ETUC campaign on better organising and protecting self-employed workers, and setting a protecting regulatory framework.

Self-employment comes under “atypical work” (Eurofound) or non-standard forms of employment (ILO). The ETUC strategy focuses on the categories of atypical workers that could be defined as “own account workers”, whether they have a specific status (classical self-employment/ freelance forms) or in other situations and not in all the categories of atypical workers.

Self-employed workers lack adequate social protection throughout the EU, with notable disparities from one country to another. Full social protection rights such as health assistance, sick leave, unemployment or parental/maternity leave are usually the sole responsibility of the self-employed workers themselves. They often do not have the power to bargain individually or collectively for adequate remuneration, and cannot enjoy traditional pension, social and trade union rights.

The ETUC opposes the idea that self-employment schemes as such can be a kind of panacea against unemployment in Europe. Trade unions are concerned by the mix of labour and tax incentives put forward by Governments to boost self-employment.

The European trade union movement is not starting from scratch on how to tackle self-employment. The experience of unions in sectors such as construction, media, arts, journalism, music performance, professional firms (such as those of lawyers, consultancies, architecture studies, and health professionals), etc. provides a strong basis to address the challenges of self-employment in the future of work. In addition, many ETUC affiliates deploy different strategies and services for self-employed workers at national level. These experiences must be shared.

Objectives

This ETUC strategy aims to boost the capacity of the unions to organise, defend, protect and empower self-employed workers in Europe. In full compliance with the principle of equal treatment, workers must be protected regardless of their status, and the role of unions is to close the gap between them and workers in “traditional” employment relationships. The ETUC will tackle the obstacles that prevent unions from covering these workers, highlight good practices and trade union strategies in that respect, and work on a European framework that could frame atypical work and set fair and decent conditions for workers. This strategy should also create links with existing initiatives already dealing with self-employed workers (self-employed groups, cooperatives, co-working places, etc.).

As a prominent means to cover workers, collective bargaining will be at the core of ETUC work. Innovative approaches at national or sectoral level will be highlighted, with special reference to the experience of the European Trade Union Federations (largely in their Sectorial Social Dialogue Committees). A European trade union approach will be defined by looking at some recent results of the trade union movement and by identifying best practices and important (even if ambiguous) case law such as the case “FNV-Kiem vs the Dutch Government”¹. Legal obstacles that prevent self-employed workers from either joining a trade union or from enjoying the right to collective bargaining will be therefore identified. The ETUC will tackle the issue of EU competition law (articles 101 to 109 of the TFEU), which has been incorrectly interpreted by some Member States’ Competition Authorities as restricting the right to organise and collectively bargain, contrary to the EU Charter of Fundamental Rights and Core ILO Conventions.

It is vital to build strategies to organise these workers, based on best practices from ETUC affiliates as well as from unions of self-employed workers or collaborative economy² groups. In this regard, the recent mobilisations of Uber drivers in the USA or from couriers in London could serve as an example for collective action. The ETUC invites its affiliates to open channels to better protect self-employed workers through their trade union actions, as well as to integrate these categories of workers in their structures.

The ETUC intends to work on a European framework to protect workers under self-employment relationships. It should be complementary to national competence and tackle issues where European initiatives have real added value (for example competition law). Special attention will be paid to social security, health assistance, and other important rights such as training rights, parental leave, etc. Such rights should be adapted to self-employed workers’ needs, that could

¹ <http://curia.europa.eu/juris/liste.jsf?num=C-413/13>

² Collaborative economy, like “digital economy” and “sharing economy”, refers to the use of internet-based tools that enable transactions between people providing and using a service.

be different to those of employees. A one-size-fits-all approach should be avoided. This framework will be further discussed in 2017 and onwards in the task force dedicated to this strategy and in different ETUC permanent committees (see roadmap below).

With full respect for national social partner's autonomy, this EU framework could aim at ensuring that minimum remuneration standards are set for self-employed workers and employees by national social partners through collective agreements if not by law.

For online platforms, rules on information and reporting duties and on access to digital data for public labour inspectorates or trade unions could help legislators and unions to better cope with working time and health and safety issues for self-employed. Where appropriate, such rules can be set through collective agreements.

Social rights for self-employed workers should be set out in the European pillar of social rights, as already demanded by the ETUC³.

The ETUC wants the social responsibility of digital platforms to be established. This matter will be further discussed in 2017 and onwards in the task force dedicated to this strategy and in different ETUC permanent committees (see roadmap below). This work on the social responsibility of digital platforms and their coverage by collective agreements should be tested at a first stage with voluntary affiliates. Together with European federations and national confederations, the ETUC will investigate the possibilities of innovative sectoral alliances to push "classical" companies and digital platforms to negotiate with unions and set up proper collective bargaining schemes.

Together with the ETUI, the ETUC will develop a European trade union platform to boost coordination between the trade union movement and academics in organising and protecting self-employed workers and to better tackle the challenge of regulating online platforms.

The ETUC will encourage synergies between trade unions and existing groups of self-employed (associations, etc.) or new forms of workplaces (co-working spaces). The ETUC will foster complementarity between social economy initiatives (digital platforms cooperative, cooperatives offering an employee statute to independent workers, etc.) and trade unions activities (collective bargaining, wage setting, social protection, etc.)

Roadmap

Whereas this resolution already outlines the basis for the ETUC approach on self-employed workers, the following roadmap is proposed to work on how the trade union movement will tackle the issue of representing, organising and defending self-employed workers, as well as of providing them with a comprehensive set of rights and protections based on the principle of equal treatment.

2016

The ETUC has been granted a project from December 2016 to December 2018 which will deliver two different pieces of research. One on identifying best practices in organising atypical workers and another one on mapping legislative barriers for better regulation and protection of these workers. Collective bargaining coverage and potential legal and trade union strategies will be also included in these studies.

First semester 2017

- This strategy requires transversal work within the ETUC and with its affiliated organisations. A task force will be set up with ETUC staff and affiliates, in close coordination with the ETUC Secretariat and the different permanent committees.

³ ETUC Position on the European Pillar of Social Rights - Working for a Better Deal for All Workers – 6 September 2016

- From the first semester of 2017, relevant ETUC permanent committees, in particular the Collective Bargaining, Labour Law, and Social Protection committees, will be consulted on the definition of the European framework for self-employed workers and the funding of the social protection for these workers.
- The ETUC and the ETUI will also develop their platform to coordinate and bring together unions and academics undertaking the different initiatives in Europe.
- In order to contribute to the identification of best practices and with the aim of guaranteeing a regional balance, at least three seminars will be organized, provisionally one in a Nordic country, one in central Europe, and one in southern Europe. Participants from ETUC affiliates from eastern and southern European countries will be encouraged and supported to participate in these meetings.
- A state of play of the work on this roadmap will be presented to the ETUC Mid-Term Conference

Second semester 2017

- The ETUC Labour Law Committee will be invited to work on the feasibility and the content of a possible categorisation and/or definition of self-employed.
- The Executive Committee will be asked to adopt a possible position on a European Framework for self-employed workers. This framework should address the right of the self-employed to benefit from collective bargaining, social protection, social rights, and labour conditions, among other issues. Social standards should primarily be established by means of sharing best practices and with full respect for national social partners' autonomy.

2018

- A campaign will be presented to highlight the need for protection and social rights for self-employed workers. This campaign will support affiliates in organising self-employed workers, and highlight the need for collective/framework agreements to set rules for self-employed workers.
- The final conference of the ETUC project and possible additional recommendations to be adopted by the Executive Committee.