UNI Europa response to the second phase Social Partner consultation on a possible revision of the Written Statement Directive in the framework of the European Pillar of Social Rights

UNI Europa is the European sectoral trade union federation for private services workers – the backbone of economic and social life in Europe. We represent 7 million workers in 272 national trade unions in 50 European countries.

We cover workers from the following sectors: Commerce, Banking Insurance and Central Banks, Gaming, Graphical and Packaging, Hair and Beauty, Information and Communication Technology Services, Media, Entertainment and Arts, Postal Services and Logistics, Private Care and Social Insurance, Industrial Cleaning and Private Security, Professional Sport and Leisure, Professionals/Managers and Temporary Agency Workers.

UNI Europa welcomes the European Commission initiative to update the 1991 EU Written Statement Directive and make it more fit for purpose for the current and constantly evolving world of work.

We support the ETUC response to both the first and second phase social partner consultations and submit our specific UNI Europa one now as a complement to the ETUC’s, with further detail on the impact of the Written Statement Directive on our sectors and services workers in particular.

Our key UNI Europa demands are:

- for the Directive to be fully and properly enforced,
- for its scope to cover all categories of workers,
- for all workers to be given the rights and protections to which they are entitled,
- whilst also ensuring that collectively bargained rights, the EU social acquis, the autonomy of social partners and higher national standards take precedence over the provisions laid out in the Directive.

In a first instance, the European Commission asks for our views on the possible avenues for EU action that it set out in its second phase consultation document.

1. A scope of application encompassing all workers in the EU

The scope of the Written Statement Directive should be widened to cover all categories of workers (whilst leaving the definition of ‘worker’ to national competence), and
especially those in precarious jobs, jobs which have been affected by digitalisation, and/or jobs created in the new world of work. The Directive must allow for the presumption of an employment relationship and its scope must also be open to further evolutions in the labour market and the new forms of work that will continue to be created.

UNI Europa welcomes in particular the Commission’s proposals to include platform workers and temporary agency workers, as well as domestic, on-demand, intermittent and voucher-based workers, in the scope of the Directive. A new provision should be included to ensure that – in terms of the application of the Directive – online platforms are recognised as employers in order to ensure that the Directive’s provisions are properly and accurately enforced (though without impacting on the definition of ‘employer’ more generally, which should be remain a national competence).

The Directive’s scope must also be extended to cover genuinely self-employed workers.

Exclusion provisions (whereby some workers on very short-term employment contracts would be excluded from the scope) should be prohibited. EU policies should fight any sort of abuse or exploitation of workers, and workers in very short employment relationships in particular are often those the most in need of protection. The aim of this revision must be to ensure the full social and employment protection of every European worker.

For example, 30% of Lidl supermarket workers represented by UNI Europa Commerce in the Netherlands are hired under weekly contracts of 2-12 hours, meaning many of them currently have no access to the rights and protections offered in the Written Statement Directive even though they cannot be considered to be in very short-term or casual employment.

On-call workers could also be negatively impacted by exclusion provisions, as could workers with very few contracted hours but who are expected, if not obliged, by their employer to work more. The EU should take this into account in the Written Statement Directive, which must ensure that all workers are offered the rights and protections they need and deserve, as well as continue to fight against this sort of worker exploitation and under-declared work more generally.

2. A right to information on the applicable working conditions

The list of rights and obligations of which each worker should be informed in writing should be extended to offer the greatest amount of forewarning and protection. Furthermore, this written information should be provided to the public authority as well as to the worker, in order to help fight undeclared work and bogus self-employment.

More clarity is needed on working hours and what constitutes a ‘normal’ working day or week. This must imperatively include details on the length of breaks, daily and weekly rest, minimum and maximum working time, the quantity of work to be expected in a day/week, and on schedules (including any changes made to these, which must be done with enough prior notice).

Under no circumstances should the Commission’s proposed “principle that there is no guaranteed paid hours” be adopted – this would only help to legitimise abusive and exploitative zero-hour contracts, which should instead be banned under EU law as a matter of urgency. UNI Europa Commerce, for example, has seen a rapid increase in zero-hour contracts in the sector, locking many workers into poverty with no possibility to take on another job or re-train.

Information on payments must refer more specifically to salary for the normal working time as well as, separately, information on overtime pay, bonuses and other entitlements such as sick pay.
Further information should also be supplied to workers on collective agreements that provide similar rights, on who their worker representatives are, on their right to equal pay, right to training (which must be offered during working hours), on sexual and other harassment protocols and, where relevant, on the duration of temporary agency assignments, pay scales and the name of the user undertaking the assignment, and specific information on the rights and legislation applicable to posted workers and other workers working abroad.

Many workers in the services industry, and particularly those in the contracted industrial cleaning, private security and care sectors represented by UNI Europa, are often subject to a regular change of employer. In order to ensure sustained terms, conditions and employment rights for employees transferred to a new contractor, UNI Europa believes that worker rights around transfer of undertakings should also be included in any written statement.

The list of information to be provided in a written statement should in no way be used to create ‘model contracts’. These would risk interfering in collective agreements.

The two-month notification deadline must be removed as this just increases the potential for undeclared work and worker exploitation. Written information must be supplied to workers at the start of their employment at the latest. UNI Europa emphasises that ensuring decent jobs and protecting workers from abuse and exploitation must imperatively come before any perceived additional burdens to employers.

3. **New minimum rights aimed at reducing precariousness in employment**

3.1 **Right to predictability of work**

The right to predictability of work is ever more important in view of the changing world of work and the emergence of new forms of employment, and is crucial in terms of respecting workers’ work/life balance and their duties and responsibilities outside of the workplace.

Zero-hour contracts must be banned, practices such as cancelling shifts and sending workers home early without pay should be prevented, and a guaranteed number of weekly working hours must be given to all workers (with provisions in place for workers to amend these if they do not reflect reality). Workers should also be provided with a right to decline work shifts that are not in accordance with the written statement or are different to the established work pattern.

Provisions must also be included in the Directive to ensure workers have proper advance notice of schedules and are given a say in scheduling, and to increase workers’ opportunities to move towards full-time work.

Whilst we welcome the existing obligation for employers to provide written information on notice periods, this could be further strengthened by advocating a minimum notice period. All workers should be entitled to an adequate minimum notice period, including in cases of dismissal/early termination of contract.

3.2 **Right to request another form of employment and receive a reply in writing**

The right to request another form of employment must be available to all workers (including temporary agency workers) and under all circumstances, not just to those wishing to become employed on a permanent basis and who have accrued a certain level of seniority – as the Commission proposes.

This right must also extend to part-time workers wishing to increase their working time, especially when there is free job capacity, and to full-time workers wishing to reduce their working hours or return to their original working hours.
The Commission must go further and properly back up this right by obliging employers genuinely to consider the worker’s request and by being more specific on when an employer could refuse it. Furthermore, the worker should have the right to meet with the employer face-to-face, not just expect a reply in writing.

Several instruments should also be included to ensure the proper enforcement of this measure, which is already coming under increasing attack: the right for workers not to suffer any detriment when requesting another form of employment, the reversal of the burden of proof, the presumption of an employment relationship, and sanctions for non-compliance.

3.3 Right to a maximum duration of probation period

The Commission must be more precise in terms of which probation periods would be included in the Written Statement Directive, as these can have different meanings, obligations and rights. The Directive should apply only to probation periods for new workers, and not to those for current workers who are promoted to a new position or to current workers with significant performance issues.

Furthermore, it is crucial that a probation period guarantees the worker sufficient protection to be able to prove their ability to do the job. Probation periods should never be used as a way to allow employers to dismiss workers at will, and must be justified with reference to the nature of the job and the level of skill/experience of the worker in question.

The Directive must make clear that it can under no circumstances be used to change already agreed probation periods, or introduce them where they do not exist or are not used. For example, fixed-term contracts should not foresee a probation period.

The Directive should also include additional minimum rights to reduce precariousness in employment and help guarantee decent work:

Right to fair remuneration

The Directive must include the right to fair remuneration in line with the principle of equal pay for equal work, for all workers, including the genuinely self-employed.

Member States should ensure that all workers are afforded this right, in accordance with national law, collective agreements and practice.

Right to fair terms and conditions of employment

The Directive must include the right to fair terms and conditions under the principle of equal treatment for all workers, including the genuinely self-employed. A provision must also be included to prohibit unfair employment terms, i.e. those that have not been collectively agreed and which are unbalanced against the worker in favour of the employer.

Right to collective bargaining for self-employed workers

The Directive must include the right to collective bargaining for self-employed workers, especially as regards remuneration and working conditions. These workers must be guaranteed a written statement on terms and conditions of employment and their rights must be made available from the first moment of employment. When these rights are transposed into national law, they must never be used as a pretext to lower already existing standards.

It is also important that EU competition law is not incorrectly interpreted by categorising such collective bargaining and the resulting collective agreements as concerted practices / cartel agreements. The right to collective bargaining is a human right, guaranteed in the European Charter of Fundamental Rights, and it must be available for
all workers without distinction. European rules on competition law should not be incorrectly interpreted as an excuse to violate the right of collective bargaining for self-employed workers.

Finally, UNI Europa wants to make absolutely clear that we are talking of a minimum floor of rights and not a maximum ceiling and that these new provisions in the Directive do not constitute new EU employment law. Collectively bargained rights must always take precedence and this minimum floor must under no circumstances be used to undermine the existing EU social acquis, national collective bargaining systems, the autonomy of social partners or the subsidiarity principle, nor to lower existing national standards or lead to a downward harmonisation of rights.

The Directive must imperatively include a non-regression clause.

4. Enforcement

Enforcement of the Directive must be improved.

The presumption of an employment relationship and the reversal of the burden of proof must imperatively be part of the Directive.

Sanctions must be increased in cases of non-compliance, and workers must have access to impartial dispute resolution in cases of dismissal, unlawful termination and unfair treatment (although the Directive should not take precedence over any existing trade union-agreed procedures).

Redress and compensation levels should not be capped, must be sufficient enough not to discourage workers from taking action and must be appropriate (e.g. financial compensation should not be the only solution to unjustified dismissal – reengagement or reinstatement should also be options). Directors' liabilities and a duty for due diligence are essential.

The Directive must take account of new forms of reprisals, for example online platform workers being locked out of the system or ‘deactivated’, and must clarify that workers have the right not to suffer any detriment.

Joint and several liability should be included in the Directive, placing a duty of due diligence along the whole supply chain.

Workers must have the right to be represented by their trade union.

Furthermore, it should not always fall on workers or their trade unions to ensure their rights are being enforced and obligations being met by employers. Member States should also ensure adequate resources for their labour inspectorates to help better enforce the Directive.

As regards the European Commission’s question as to whether we would be willing to enter into a social partner negotiation on revising this Directive, we refer to the ETUC’s response, endorsed by its executive committee and supported by UNI Europa. We join the ETUC in urging the Commission to finalise the revision of the Directive before the 2019 European elections and to come up with a legislative proposal that will improve the situation for all workers across Europe.