Self-employment and atypical working: UNI Europa position and next steps

1 Introduction

At its 23-24 May 2017 meeting, the UNI Europa Executive Committee held in-depth discussions on possible avenues for action to support workers who are self-employed and/or in an atypical work relationship and to address the challenges of the future world of work and non-standard forms of work in the services sector. This is in follow up to the strategic objective agreed at the March 2016 Rome Conference.

With the option of three possible paths to choose from (EU level action, or national level action to organise those in an atypical work relationship or to fight bogus self-employment) the executive agreed that UNI Europa should focus its efforts on EU level lobbying and advocacy to defend the social and employment rights of workers in self- or atypical employment.

In light of this decision, the management committee is now invited to endorse proposed EU-level actions which UNI Europa could take: opposing the EU services e-card, responding to relevant EU consultations, fighting undeclared work, influencing the new European Labour Authority and calling for proper implementation and enforcement of EU labour law.

We hope that by these efforts we will not only be able to achieve better rights and protections for workers who are self-employed and/or in an atypical work relationship but also through this, help to put an end to social dumping and the undermining of workers’ rights and conditions more generally across Europe.

2 Background

The world of work in the services sector is undergoing massive changes. Digitalisation and new emerging business models profoundly modify the workplace and impact deeply on traditional employment and work relationships. As a result, and in particular in the services sector, new forms of employment and working arrangements have spread rapidly.

These differ from ‘traditional’ and regular employment (i.e.: dependent and subordinate) and can take different forms: atypical working time arrangements (part-time, on-call, zero-hours, etc.), short-term/fixed-term contracts (fixed-term, project or task-based work), and atypical work relationships (contracted or sub-contracted work, self-employment, agency work, etc.). As regards self-employment, an additional distinction can be made between bogus self-employment (subordinate employment relationship disguised as autonomous work), dependent self-employment (worker is officially self-employed yet the conditions of work are similar to those of employees) and genuine independent self-employment (own-account worker without employees).

There are also new forms of employment/working relationships that fall into a grey area, mid-way between dependent and bogus self-employment. While dependent self-employment does not always have a specific place in labour law, some EU Member States (e.g.: Germany, Austria, Italy, the Netherlands, Portugal) have introduced a hybrid legal category to address this. Finally, it is also worth noting that the term ‘atypical’ refers only to
the deviation from the ‘traditional’ employment norm rather than to the prevalence of such contracts, which are increasingly wide-spread.

As recognised by the ILO, many workers in atypical work relationships are deprived of their fundamental rights, including access to social protection, freedom of association and the right to collective bargaining. In addition, the emergence of these new forms of work often goes hand in hand with an increased precariousness for workers. In Europe, the EU institutions have acknowledged these changes in the labour market and have started to propose policy solutions, which potentially can have an important impact on national social protection schemes and labour law.

3 Proposed UNI Europa EU-level actions

3.1 Opposing the introduction of a European services e-card

UNI Europa has for over a year been actively opposing the EU Commission proposals for a European services e-card, which we argue will not make the Single Market fairer but will rather in reality lead to serious employment rights abuses and an increase in social dumping and bogus self-employment.

We continue to reject the e-card in its existing form and call for an improvement of the existing structures/procedures.

In the meantime, aware that there is not likely to be a European Parliament majority in favour of rejecting the proposals completely, UNI Europa is also working with affiliates to suggest potential amendments to supportive MEPs to try to make the text as strong as possible in terms of protecting workers’ rights and stopping the spread of bogus self-employment and precarious work.

More details on our position are available in the stand-alone document on the e-card – agenda item 10 of this 23 November 2017 UNI Europa Management Committee.

3.2 Responding to EU social partner consultations

UNI Europa will prepare responses to the second phase social partner consultations, released by the EU Commission in the framework of the European Pillar of Social Rights, on both a possible revision of the Written Statement Directive and a possible action addressing the challenges of access to social protection for people in all forms of employment.

We would ensure that our responses to both consultations highlight the need to guarantee the same fundamental rights and protections to all workers regardless of their work relationship.

3.3 Proposing a Memorandum of Understanding on Undeclared Work

UNI Europa will, in coordination with the ETUC, propose that the European Platform Tackling Undeclared Work sign a Memorandum of Understanding on Undeclared Work, committing the Platform’s members (trade unions, employers, labour inspectors, EU institutions and national governments) to jointly tackle undeclared work and establish effective cooperation structures, in particular at the sectoral level.

3.4 Influencing the creation and work of the European Labour Authority

UNI Europa will work with the ETUC and the European trade union movement to influence the creation and future work of the European Labour Authority (ELA), proposed by EU

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Commission President Jean-Claude Juncker in his September 2017 State of the European Union Address (more information on the proposal is available here).

UNI Europa cautiously welcomes this initiative, but only if trade unions are given a central role not only in developing the ELA but also in its work and procedures once it is up and running, to ensure it can be a real force for good. Under no circumstances can the ELA be used to attack and undermine labour rights and collective agreements, as the European Banking Authority has done in the finance sector.

UNI Europa will in particular call for the ELA to fight bogus self-employment and precarious work and to offer better protections for genuinely self-employed workers and those with non-traditional forms of employment.

We will also call for the European Platform Tackling Undeclared Work to play an active role in influencing the ELA and to ensure labour inspectors are fully involved in its work and structures.

3.5 Calling for the proper implementation and enforcement of EU labour law

UNI Europa will continue to demand that all workers are protected by EU labour law and have the same access to social security, training and lifelong learning, collective bargaining and freedom of association, regardless of the nature of their employment status, and especially for those workers most affected by new business models and digital change.

A particular emphasis needs to be given to crowd and online platform workers. These underlying business models blur traditional employment status and must not be used to exclude workers from full social protection and labour law rights.

UNI Europa will call on the EU to make the fight against bogus self-employment a priority and to ensure labour law and health and safety standards are fully implemented across all Member States.

We will also push the EU institutions and national EU governments to improve data collection on precarious and atypical forms of employment, so as to better measure trends over time, the extent and evolution of atypical and self-employment, and their effects on the social protection of workers.