

Collective bargaining and the self-employed

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Unions with significant numbers of self-employed

- Most countries have such unions
 - Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Lithuania, Netherlands, Norway, Serbia, Slovenia, Spain, Sweden, Turkey, UK
- 7 countries seem not to have them
 - Bulgaria, Czech Republic, Hungary, Latvia, Poland, Romania, Slovakia
 - Slovakia: “Yes, there are unions for the self-employed, but these are unions for business people and not part of the trade union confederation”



Four types of unions for self-employed

- Unions for traditionally (and now increasingly) self-employed occupations
 - Artists, actors, musicians, journalists, media professionals, translators, interpreters, tour guides (NUJ UK has a freelance branch with 4,000 members)
- Unions set up specifically to recruit new more precarious workers
 - UIL-TEMP, NIDL CGIL, FELSA CISL (Italy), Sindikat Prekarcev (Slovenia), Independent Workers' Union of Great Britain (UK) – not TUC
- Including specifically for self-employed
 - UPTA – UGT (Spain), FNV ZZZP (Netherlands), vIVAce (Italy) – association, wBREw - Poland
- Large unions looking to recruit self-employed (may already have self-employed areas)
 - GpA (Austria), IG Metall, Ver.di with 30,000 freelance members (Germany), UNIONEN (Sweden), GMB (UK)



Why bother with collective bargaining?

- Way of improving the pay and living standards of the self-employed
- Way of protecting employees against cheap/unfair competition from the self-employed
- Gives the self-employed a reason to join unions
 - There are many other bodies who want to represent the self-employed but who are not involved in collective bargaining



But collective bargaining can be seen as a breach of competition rules

- Denmark - Rulings in 2002 and 2010 have reduced the number of freelance journalists covered by collective agreements
- Germany - No recommended rates because anti-competitive
- Ireland - Competition authority ruling in 2004 reversed in 2017
- Netherlands - Competition authority ruling in 2007 led to CJEU case in 2014 but still taking very restrictive approach
- Sweden - No recommended rates

Four main ways of giving the self-employed bargaining rights

- Based on occupations
 - Actors, musicians, performers, journalists, delivery workers
- Based on clear rules on “economic dependence”
 - Set amount of income from a single source
- Based on evolving legal cases on dependence and authority
- Self-employed agree to become employees



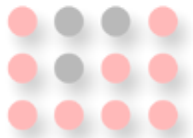
Collective bargaining based on occupations

- Austria:
 - freelance journalists: covered by overall agreement
- France:
 - freelance journalists (but must get 50% of income from journalism): covered by journalists agreement
 - Performing artists “artistes du spectacle” (automatically seen as employees): covered by several collective agreements
- Ireland:
 - voice-over actors, session musicians, freelance journalists have right to negotiate following 2017 legislation: not clear if agreements have been signed
- Italy
 - “riders” delivery workers, using a bicycle or motorised vehicle getting orders through a digital platform following legislation November 2019
- Spain
 - delivery workers “La ley de repartidores” August 2021



Collective bargaining based on economic dependence: clear rules

- Germany:
 - “employee-like persons” but must get at least 50% of income from single source (33% for journalists, arts and media)
- Ireland:
 - 2017 legislation provides for possibility to extend bargaining to “fully-dependent” self-employed, but government will take decision as to who that is
- Italy:
 - workers on continuous and coordinated contracts – must now be covered by collective agreements
- Spain:
 - “economically dependent” (TRADE) workers must get 75% of income from single client and agreements are NOT collective agreements but “agreements of professional interest



Collective bargaining based on economic dependence: evolved over time

- Denmark:
 - long-time experience of negotiating agreements for self-employed in some sectors – but limited by competition authority
- Netherlands:
 - agreements “may also relate to contracts for the performance of specific work” – but limited by competition authority
- Sweden:
 - “employee” includes “any person who performs work for another ... who occupies a position of essentially the same nature as that of an employee”
- UK:
 - courts have defined “workers” (who are not employees) on basis of four obligations and they can be covered by collective agreements



Using arguments on economic dependence and authority over workers in court

- Across Europe
 - 22 unions in ETUC survey said they had used courts to contest bogus self-employment
- Recent example in Netherlands
 - Court judgement legal relationship between the drivers and Uber had “all the characteristics of an employment contract” and that, therefore, Uber drivers should be considered to be employees (September 2021)



Turn self-employed into employees: self-employed agree to work as employees

- Employed by someone else
 - France:
 - umbrella companies “portage salarial” where senior executives carry out tasks as freelances but are employed by a company offering portage salarial: companies covered by a binding collective agreement
 - Denmark:
 - Hilfr.dk (cleaning company) which is offering to turn its cleaners (who get work via the web) into employees covered by a collective agreement
- Employ yourself
 - Finland:
 - Mediakunta (for members of journalists’ union) employs its members for media services and invoices clients



Opposition from employers

- France
 - employers try to shift performing artists to autoentrepreneur status
- Germany
 - existing agreements ignored
- Ireland
 - no new agreements after change in law
- Spain
 - employers undercut TRADE deals



But positive developments

- New legislation on delivery workers in Italy (2019) and Spain (2021)
- Series of court cases in UK, Netherlands, Belgium
- New approach from EU
 - “launching a process to ensure that those who need to can participate in collective bargaining without the fear of breaking EU competition rules” June 2020
 - Improving working conditions of platform workers – proposal expected soon



Sources

- Based on two ETUC Reports in 2018 and 2019

Trade unions protecting self-employed workers

By Lionel Fulton

New trade union strategies for new forms of employment

By Nicola Countouris and Valerio De Stefano,

