Agenda item 8

Towards new protection for self-employed workers in Europe
(draft resolution)

- The Executive Committee is invited to adopt this resolution.
Protecting self-employed and freelance workers in Europe

Introduction: the challenges

1. Self-employed\(^1\) are not all pure entrepreneurs. Part of them are workers and should be distinguished from both the bogus self-employed — i.e. employees wrongly categorised as self-employed — and from the self-employed 'undertaking', to ensure they are covered by employment rights, the right to adequate remuneration, fair terms and working conditions, education and training, unemployment protection, social protection, and pension rights.

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

3. Self-employed are very 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 enabled 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. These self-employed workers must be better covered by social protection and collective bargaining.

4. 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 demands and a roadmap for the European trade union movement to better get in touch with self-employed workers in order to tackle the barriers that prevent the unions from organising and covering them with collective agreements.

5. It involves a change of paradigm in the trade union movement and a need to highlight and promote innovative unions’ 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 legislative framework to protect them and guarantee them the same level of protections and social rights as for employees.

6. This strategy must lead to an ETUC campaign on better organising and protecting self-employed and freelance workers, and setting a protecting legislative framework.

A focus on self-employed

7. The ETUC strategy focuses on the categories of workers that could be defined as "own account workers", whether they have a specific status (classical self-employment/freelance forms) or in other situations.

8. It is important to recall here that the strategy presented here does not contradict actions already in place to fight against bogus self-employment. The ETUC recalls that whenever a company circumvents the law and misuses the form of self-employment to avoid taking responsibility of the salary and social costs associated to a labour contract, political and legal actions should be taken in order to reclassify those bogus self-employed workers as employees.

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\(^1\) Other terms which usually refer to this category of workers are: freelance workers, independent workers, auto-entrepreneurs (in France), among others.
9. Self-employed workers lack adequate social protection throughout the EU, with notable disparities from one country to another. Health assistance and protection against sick leave and unemployment is usually under the sole responsibility of the self-employed workers themselves. They very often don’t have the power to bargain individually and collectively for adequate remuneration, and cannot enjoy traditional pension, social and trade union rights.

10. The development of self-employment calls for a stable macro-economic environment, which can also be achieved in the broader context of a sound and well-designed European investment strategy on quality jobs. The ETUC opposes the idea that self-employment schemes as such can be a kind of panacea against unemployment in Europe.

11. Digitalisation, which is often presented as a “disruptive revolution”, is a driver for atypical work and it has a huge impact on employment relationship. However, 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, etc. is 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 promoted.

Objectives

12. This ETUC strategy aims to boost the capacity of the unions to organise, defend, protect and empower self-employed workers in Europe. Workers in general must be protected regardless of their statutes, 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 and freelance workers (self-employed groups, cooperatives, co-working places, etc.).

13. 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. A European trade union approach will be defined by looking at some recent achievements 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”\(^2\). Legal obstacles that prevent atypical 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.

14. 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 economy\(^3\) 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.

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\(^3\) 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.
15. The ETUC intends to establish a European framework to protect workers under self-employment relationships and atypical forms of job. Special attention will be paid to guarantee these workers social security, health assistance, and other important rights such as training rights, parental leave, etc. Minimum remuneration standards must be set by collective agreement if not by law for self-employed, freelancers and platform workers. Setting rules of transparency and ensuring access to digital data of online platforms for labour inspectorates must help legislators and unions to better cope with working time and health and safety issues. This framework should be delivered as European legislation, directly through legislative processes or as an outcome of European Social Dialogue and the European Semester recommendations.

16. Social rights for self-employed workers should be set out in the European pillar of social rights, as already demanded by the ETUC4

17. The ETUC will set up an extended definition of companies as a possible way to establish a clear social responsibility of entrepreneurs, in particular those of digital platforms, towards workers whether they are employees or contractors, whether they are linked to the company by labour law or commercial law (i.e. conditions of use of digital platforms). This updated definition of companies could lead to the setting up of new “economic entities” that should be covered by comprehensive collective agreements covering all categories of worker.

18. The ETUC will envisage innovative sectoral alliances with European federations and national confederations to push “classical” companies and digital platforms to negotiate with unions and set up proper collective bargaining schemes.

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

20. Encourage synergies between trade unions and existing groups of self-employed (associations, etc.) or new forms of workplaces (co-working spaces). 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.)

Annex: ETUC roadmap

To implement this strategy, the ETUC proposes the following roadmap in which the trade union movement will tackle the issue of representing, organising and defending both classical and new forms of self-employment and freelance work, as well as of providing them with a comprehensive set of rights and protections.

2016

- The ETUC has submitted a project to the European Commission 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.
- This strategy requires transversal work within the ETUC and with its affiliated organisations. A steering committee will be set up with ETUC staff and affiliates in the framework of the project mentioned above. It will play the role of the task force of the strategy in close coordination with the ETUC Secretariat and the different Permanent Committees concerned (Litigation, Social Cohesion, Collective Bargaining, the ad-hoc committee on organising and the Youth Committee). During 2016 and in the first semester of 2017, these committees will be invited to contribute to the ETUC campaign on atypical work.
- The ETUC and the ETUI will also develop a platform to coordinate and bring together unions and academics undertaking the different initiatives in Europe.

2017

- In order to contribute to the identification of best practices and with the aim of guaranteeing a regional balance, at least two seminars will be organised, provisionally one in a Nordic country and another one in central Europe. Participants from ETUC affiliates from Eastern and southern European countries will be encouraged and supported to participate in these meetings.
- Relevant ETUC Permanent Committees will collaborate on the definition of the European framework for self-employed workers.

Autumn 2017

- A state of play will be presented to the ETUC Mid-Term Conference, after which the ExCo following it will be asked to adopt a possible position on a European Framework for self-employed and freelance workers. This can be achieved either through EU legislation or as the outcome of the European Social Dialogue. This framework should address the right for the self-employed to benefit from collective bargaining, social protection, social rights, and labour conditions, among other issues.
- The Mid-Term Conference would also discuss a campaign for pushing the European institutions and employers to legislate/negotiate protection for self-employed workers and ensure they are guaranteed social rights. This campaign will support affiliates in organising self-employed workers, and highlight the need for collective/framework agreements to set rules for self-employed people.