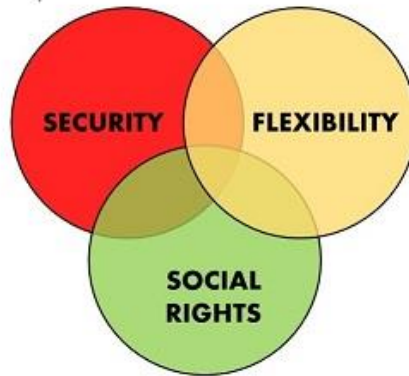


**ATYPICAL WORKERS:  
LOOKING FOR THE RIGHT BALANCE**



**Developing Services for Atypical Workers & Ensuring Access to Social Rights in  
the Live Performance and Audio-visual Sectors**

***Draft Workshop Paper***

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Kindly hosted by FNV-KIEM

The objective of this paper is to inform the exchanges that are to take place during the workshop. It is structured in three parts. The first part introduces service oriented approaches and actions put into place by trade unions to better address the needs of atypical workers within their membership. The second part provides an introduction to the EU legal framework protecting atypical workers within the EU. The third part addresses issues and challenges for trade unions moving forward followed by a set of questions for debate.

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Across the EU, the employment landscape of the media and culture industry has shifted significantly in recent years and the profile of the workforce has evolved in new directions. An increasing emphasis on flexibility and a move towards more intermittent, short-term, project-based ways of working across all sectors has resulted in a greater diversity of employment statuses. A growing percentage of the work force can be described as independent /self-employed/ freelance/ casual workers – a whole range of terms that denote an increasingly common employment reality<sup>1</sup> : a reality we have chosen to denote within the framework of this project under the heading of “atypical work”. Atypical work covers any type of work arrangements associated with formal employment relationships (part-time work, temp agency work, fixed-term work, etc.) and outside such relationships (e.g. informal work, commercial contract holders such as those in contracted/subcontracted work, or economically dependent self-employment), including where relationships are either disguised or unclear.

In other words, the term “atypical” is used to distinguish work which differs from the “standard model” of full-time, permanent and direct employment, recognizing that the latter is no longer “standard” in many countries and in some cases includes those in need of more appropriate protection. This is certainly true of the media and cultural sector, where the nature of the work lends itself particularly to this kind of employment regime. Thus, for actors, musicians, technicians, journalists, writers and others, this is the increasingly the reality they must work with.

The situation of atypical workers has been an area of growing attention at the level of trade unions in the media and culture industries. Debates increasingly taking place relate to the development of customized services which could better respond to the current needs of atypical workers within and beyond the boundaries of social dialogue and collective bargaining mechanisms.

An important body of research has been produced on the situation faced by atypical workers in European labour markets. The situation varies depending on the national context but a range of factors have been identified which may contribute to determining the levels of precariousness and vulnerability which apply also to certain categories of atypical workers in media and culture industry.

- Little or no job security or legal/conventional/contractual protection, i.e. where the worker is at the mercy of his/her employer (e.g. as to dismissal, employment continuation, ...);
- Insecure, low or inadequate income which does not reflect the work that is being performed, according to the living standards where the work is performed;
- Absence of the workers' choice regarding basic working conditions (working place, job description, working time, ...);
- Absence of proper social protection in case of unemployment, incapacity (e.g. sickness, accidents) and old age;
- health and safety level standards applied are low;
- Limited access to training opportunities
- Limited trade union representation or collective bargaining coverage (depending of the national context)<sup>2</sup>

Based on this analysis, we can identify a certain number of key needs of atypical workers, where provision of services may be able to fill a gap, simplify everyday working or ensure better access to rights. Some of the most pressing daily concerns for atypical workers include:

- Finding work and on-time payment for services
- Dealing with administrative responsibilities
- Accessing training and developing skills

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<sup>1</sup> Cf Joint Statement of the European Federations representing cultural and creative Collective Representation of Freelance Workers in the Media/Entertainment/Creative Sector – “Trying to Shed Some Light on a Grey Area”-2010

<sup>2</sup> Cf, Ebisui, Minawa, Non-standard workers: good practices of social dialogue and collective bargaining / Minawa Ebisui ; International Labour Office, Industrial and Employment Relations Department. - Geneva: ILO, 2012 and Press release “Decent Work for all Workers !- STOP precarious work and workers exploitation !-2014

Wider concerns tend to focus on access to health and social protection, with atypical workers often facing challenges as regards:

- Access to healthcare
- Pension and retirement planning
- Access to unemployment benefit
- Holiday pay, maternity leave etc.

Unions may be able to offer practical services across many of these needs, though clearer a wider advocacy role is needed in relation to access to social protection in particular.

## 1. Trade Unions services in support of atypical workers

Over the last decade, trade unions have reflected on how to manage changes in labour market's employment relationships. They have started to adapt their ways of working in order to be able to represent more effectively freelance and other atypical workers members. This was the theme of a 2011 publication of the International Federation of Journalists which observed that *"Unions are indicating that they want to change their structures, procedures and services in order to improve their work for freelance journalists"*.

A research by Eurofound has identified several examples of these strategies and approaches developed by unions to better respond to the individual interests of certain categories of workers and which involve two dimensions:

- Organizing initiatives at the individual level may seek to involve workers through the creation or activation of networks of workers and sometimes of associations, which mobilize around collective goals and thereby recognize the existence of collective interests and identities.
- Alternatively, trade unions may emphasize the usefulness of union membership through the provision of services which are reserved to members, in contrast to the public nature of collectively bargaining, which tends to benefit all workers pertaining to the bargaining unit concerned.

The levers of membership are therefore different in each case: individual participation and involvement in network-based approaches or/ and individual benefits in interest-based strategies.<sup>3</sup> It is worth considering whether a joined up strategy could make use of elements of both.

The models of individual benefits linked to membership are certainly not new. They have been central to the organizational strategy of major US trade unions in the media and culture sector, notably, the Directors Guild of America and the Writers Guild of America whose concept of membership combine collective representation with a strong emphasis on individual benefits are actively participating in the health care provision and retirement pension schemes for their members, provisions which have been negotiated through collective agreements in the sector.

New models of trade union organizing have gained ground based on incentives and a range of benefits associated with membership and designed to respond to the specific needs of atypical workers and freelance or self-employed workers.

In the EU, there are several unions delivering or working to deliver both collective bargaining and one-to-one support on the range of employment issues in commercial and public service, broadcasting, programme production, film, theatre and the arts, digital media and live events to atypical workers.

Atypical workers who are union members may for instance have access to the union's legal service for problems arising at work and away from work. Legal service in that case may cover employment matters including breach of contract, discrimination, unfair dismissal, equal pay, working time.

There are also examples of customized insurance services specifically geared to meeting members' needs. Insurance packages are particularly addressed to atypical workers and may cover such areas as public liability but

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<sup>3</sup> "Trade union strategies to recruit new groups of workers" –Eurofound, 2010, pages 20,21

also other types of risks such as sickness, business interruption, personal accidents etc...As such, these are a very practical form of support to atypical workers that may channelled through a union.

Training provision is another major area of attention for unions providing support to their atypical workers. Unions may offer for instance a range of advisory and training services covering the professional sphere. Such training programmes may be carefully designed to target atypical workers at various stages of their careers and the specific needs that they have.

Looking cross-sectorally, a number of trade unions in the media and ICT communication industry<sup>4</sup> have introduced innovative coaching services for members in order to help their members better manage their career development. The British telecom managers' union Connect, for example, launched its Opus<sup>2</sup> Careers Advice counselling service. Opus makes use of qualified and experienced counsellors, and programmes offered, relate to career assessment and management. Each programme takes about four to six weeks to work through, and is based on a set of five 40 minute counselling sessions which take place either by phone or face-to-face.

Additional advantages offered by Unions alongside the activities as described may cover free public transportation, advance financing for legal disputes, special "trainee press cards", membership fee that covers special insurance services including travel insurance (also abroad), reduced price offers via their own service subsidiaries (special discounts for car hire, mobile phone and internet rates, insurance), holiday homes and other leisure facilities.

## 2. Fundamental social rights of "Atypical" workers

### 2.1 The legal framework

As highlighted in the introduction, atypical workers face many challenges in accessing social protection and enjoying labour rights. ILO has recognized that ; "*Non-standard forms of employment exhibit a higher incidence of decent work deficits*" Those are particularly associated with one or more of the following dimensions of work : (1) access to employment and labour market transitions;(2) wages differentials; (3) access to social security; (4) conditions of work; (5) training and career development; (6) occupational safety and health; and (7) freedom of association and collective bargaining. <sup>5</sup>

If trade unions are to push for change in this area, it is worth recalling the overarching legal and policy framework and what rights it recognizes for atypical workers and the legal weight of those rights.

EU Law relies on two major instruments in relation to atypical workers. The first is the Community Charter of the Fundamental Social Rights of Workers of 1989, herein the community charter), and the second is the EU Charter of Fundamental Rights of 2000. The Community Charter of Fundamental Social Rights for Workers (herein the community charter), adopted in 1989, has established the major principles on which the European labour law model is based. It applies to the following areas:

- free movement of workers;
- employment and remuneration;
- improvement of working conditions;
- social protection;
- freedom of association and collective bargaining;
- vocational training;
- equal treatment for men and women;
- information, consultation and participation of workers;
- health protection and safety at the workplace;
- protection of children, adolescents, elderly persons, and disabled persons.

<sup>4</sup> Managing change How trade unions in Europe are helping the employability of professionals and managerial staff, Andrew Bibby, A report for UNI-Europa-2004 pages 11-14

<sup>5</sup> ILO –Conclusions of the meeting of experts on Non-Standard forms of Employment-Governing body 323<sup>rd</sup> Session, 12-27 March 2015

These social rights represent a foundation of minimum provisions common to all the European Union (EU) Member States. The provisions of the Community Charter were kept by the Lisbon Treaty (Article 151 of the Treaty on the Functioning of the EU) and by the EU Charter of Fundamental Rights.

While the 1989 Charter was more of a declaration and not legally binding, it was accompanied by an Action Programme which put in a train of legislative initiatives on employment designed to address the needs of certain categories of atypical workers. At EU level, EU legislation governing part-time work, fixed-term workers and temporary work has provided a range of rights to workers under these types of contracts – that is, through the regulations passed under Council Directive 97/81/EC of 15 December 1997 on part-time work and under Council Directive 99/70/EC of 28 June 1999 on fixed-term work., Council Directive on Temporary Agency Work (2008/104/EC). Further on, directive 2010/41/EU on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity sets out new provisions on combating discrimination, and concerning business creation, social protection and maternity.

These directives have reproduced framework agreements concluded by the European social partners. The directives have since been transposed into national legislation in all EU Member States. The purpose of those regulations was to guarantee the rights of the workers engaged in non-standard forms of work, laying down the principle of non-discrimination and of equal treatment between workers.<sup>6</sup>

The EU Charter of Fundamental Rights of 2000 covers a wide range of fundamental rights. Some of these are referred to also in the 1989 Charter. Relevant articles of the EU Charter of Fundamental Rights include notably:

- Art. 12: Freedom of association;
- Art 15: Freedom to choose an occupation and right to engage in work; to seek employment in any Member State, with third countries nationals authorized to work having an entitlement to equivalent working conditions;
- Art 21: Non-discrimination on any ground;
- Art 23: Equality between men and women in all areas, including employment, work and pay;
- Art 27: Rights to information and consultation for workers and their representatives
- Art 28: Right of collective bargaining and right to take collective action\*;
- Art 30: Protection against unjustified dismissal;
- Art 31: Right to fair and just working conditions, to maximum working hours, breaks and holiday.

## **2.2 The Policy Context: Atypical work, Fundamental social rights and the Flexicurity debate.**

The idea that economic efficiency and “rights” are mutually reinforcing has been central to the ethos of the EU. The Directives on part time and fixed term work are examples of this attempt to marry economic efficiency and rights. Those Directives are designed to further the principles of “flexicurity”, a major element of EU employment policy which attempts to combine “flexibility” for businesses with “security” for workers. However and effectiveness of “flexicurity” as a means to enhance worker protection has been brought into question, as it has tended to be used as a tool to further economic efficiency at the expense of worker rights. The Directives include specific rights (the right to equal treatment) which should enhance worker protection and neutralize some of the negative effects of the flexicurity agenda.

The European Parliament resolution of 6 July 2010 “Atypical contracts, secured professional paths, and new forms of social dialogue” (P7-TA (2010)0263) has recognized the challenges facing European labour markets in respect with atypical employment and called for an update of the current thinking on flexicurity in the light of the crisis, so as to help increase both productivity and the quality of jobs by guaranteeing security and the protection of employment and workers’ rights. It further stated that :“(…)labour market segmentation need to be overcome by

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<sup>6</sup> Study on Precarious work and social rights carried out for the European Commission(VT/2010/084)Working Lives Research InstituteFaculty of Social Sciences and HumanitiesLondon Metropolitan University\*, 2014 p 145

*giving all workers equal rights and investing in job creation, skills and lifelong learning; calls on the Member States, therefore, to phase out all forms of insecure employment”;*<sup>7</sup> -

In a Fundamental Social Rights Manifesto from 2013<sup>8</sup>, Transnational Trade Union Rights Experts along with 600 social and labour lawyers have urged the European Union and its institutions to respect and promote the fundamental social rights guaranteed in the legally binding EU Charter of Fundamental Rights (Article 51 para. 1 CFREU), in particular the right of collective bargaining and action to be interpreted in line with the respective ILO Conventions ratified by all EU Members States (Article 53 CFREU), protection in the event of unjustified dismissal and social security and social assistance. The signatories also stated that the fundamental social rights of workers and their representatives should not be subordinated to internal market freedoms and competition law or to austerity measures.

From that perspective, the ILO Global forum adopted points of consensus in May 2014 which have reiterated the need to a) strengthen efforts to promote fundamental principles and rights at work (FPRW) in the media and culture sector and build capacity of constituents to do likewise; (b) assist efforts to strengthen the social partners in the media and culture sector, and to promote the extension of social dialogue.

### 3. Challenges and ways moving forward

In the wake of the effects of the deregulation of labour markets and social protection systems on employment relationships in the media and entertainment sector, the challenges faced by trade unions are of diverse nature.

**Internally**, trade unions have first to adjust their operations to respond to the needs of a diverse membership base composed of workers with different types of status (employed with standard contract and atypical workers including self-employed). In this respect organizing atypical workers necessitates membership oriented approaches which can reconcile the often heterogeneous interests and needs of diverse categories of workers in order to build a strong social movement.

From the organizational point of view the question of financial resources needed by Unions to manage the extension of their activities is also a point of concern. Finally, union’s staffs needs to be fully suited to manage the diversity of profiles and specific needs of atypical workers.

**Externally**, trade union advocacy needs to embrace the principle of a floor of basic fundamental social rights for atypical and self-employed workers. This raises the question of not only ensuring that social dialogue mechanisms can address atypical workers issues which means extending the reach of collective bargaining practices<sup>9</sup> but also a more effective implementation of Directive 97/81/EC on part-time work and Directive 1999/70/EC on fixed-term work having regard in particular to the fundamental principle of non- discrimination;

The main areas of action by trade unions to address atypical workers’ rights are linked to the regulatory context governing industrial relations and social dialogue in national contexts. Various types of union activities are to be considered and which can be conducted in parallel:

- Addressing atypical workers’ rights in collective bargaining<sup>10</sup>;
- Developing strategic litigation, taking atypical forms of employment relationship cases to court;
- Influencing the legislative process at European and national levels through social dialogue or industrial action at sectoral or inter-sectoral level;
- organizing atypical workers through the provision of targeted services

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<sup>7</sup> European Parliament resolution of 6 July 2010 on atypical contracts, secured professional paths, and new forms of social dialogue- P7-TA(2010)0263

<sup>8</sup> <http://www.etui.org/Networks/The-Transnational-Trade-Union-Rights-Experts-Network-TTUR>

<sup>9</sup> Collective bargaining is not addressed in detail in its paper as it will be the focus of a specific workshop to take place as part of this project

<sup>10</sup> Collective bargaining is not addressed in detail in its paper as it will be the focus of a specific workshop to take place as part of this project

- Conducting media campaigns to influence public opinion;
- Developing coalition building activities cross-sectorally, with other social movements and stakeholders

### 3.1 European Level Action & Campaigning

Page | 7

During the European Union's High Level Conference "A New Start for Social Dialogue" in March 2015<sup>11</sup>, the European Commission has confirmed its wish to give a new impetus to social dialogue alongside with a focus on EU policy priorities: investing in growth and quality jobs, tackling the challenges of the digitalization of economies and finding ways to better match skills and education of European workforce within a changing working environment. Those themes are also critical in the case of atypical workers and could be part of Unions future priorities and advocacy efforts.

The development of A "Road Map for fundamental social rights of Atypical workers in the Media and Culture sector" could structure the start of a middle term campaigning effort at national and European level putting emphasis on social rights and quality jobs as its main levers. Also the EU's Community Charter for social rights, the EU Charter for fundamental rights, the UNESCO's "Recommendation concerning the Status of the Artist" but also the European Social Partners "Framework of Actions on lifelong development of competencies and qualifications (2002) and the Framework of Actions on gender equality between men and women (2005) should inspire the core of those efforts.

#### QUESTIONS FOR DEBATE

##### Trade Unions services in support of atypical workers

- Do you have positive experience in the field of service provision to atypical workers (target group and main features of service provision);
- Are health and safety measures been part of the range of services provided by your union to Atypical workers ?
- What challenges were you faced with at organizational level? (human resources, financing) ?
- Is there a need to address the needs of atypical workers and in particular self-employed through separate organizational structures?
- For member states where atypical workers have been included in collective bargaining, what does this deliver in practice?

##### Fundamental social rights of "Atypical" workers

- Do Atypical workers in the sector get access to social rights in practice?
- What are your views on the basic social protection floors<sup>12</sup> from which atypical workers should be able to benefit?
- What changes are needed at national level to better address their situation?
- Has your union experience of advocacy in this area?

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<sup>11</sup> [europa.eu/rapid/press-release\\_SPEECH-15-4561\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-15-4561_en.htm)- Opening remarks by Vice-President Dombrovskis at High Level Conference "A New Start for Social Dialogue"-5 March 2015

<sup>12</sup> Social protection floors are nationally defined sets of basic social security guarantees that should ensure, as a minimum that, over the life cycle, all in need have access to essential health care and to basic income security which together secure effective access to goods and services defined as necessary at the national level.