

European Federation of Journalists' (EFJ) Response to

First phase consultation of Social Partners under Article 154 TFEU on a possible revision of the Written Statement Directive (Directive 1/533EEC) in the framework of the European Pillar of Social Rights

Background

Why the revision of the Written Statement Directive is relevant and crucial for journalists?

The European Federation of Journalists (EFJ) is the largest organisation of journalists in Europe, representing over 320,000 journalists in 71 journalists' organisations across 43 countries. The EFJ has national journalists' unions which representing a growing number of freelances journalists who are considered "atypical" and engaging in "non-standard" form of employment. Therefore, the revision of the Directive is timely. This consultation should open the door to a wider debate and concrete policy proposals to enhance the protections provided by the EU atypical work directives with a perspective based on fundamental social rights for all workers.

In the journalism sector, more and more journalists are becoming freelances, some of their own choosing while some are forced into the precarious working conditions because of the existing legal loophole. Freelancing is not uncommon, nor new in journalism and the media industry. In fact, it is becoming "typical" rather than "atypical".

All workers deserve to be treated equally, regardless of employment status. Freelance workers frequently experience isolation, exploitation and discrimination; are forced to accept unfair terms and conditions of engagement and are deprived of the social protections afforded to workers employed on contracts of service. Hardly any young journalists leaving university is getting a standard working contract. Temporary agency work, outsourcing, exploitation of interns and the use of freelance or economically dependent work becomes the norm in the media industry and has a detrimental effect on quality work, quality information and democracy at large. EFJ affiliates push for initiatives at national level supported by the European legislative level to allow collective bargaining agreements for all workers including freelances.

A milestone development occurred in Ireland when on 31 May 2017, the Irish Parliament definitively adopted the Competition (Amendment) Bill 2016, which **aims to introduce exemptions from competition law for certain self-employed workers**. Since a competition ruling was handed down thirteen years ago, agreements negotiated with artists unions on minimum tariffs have been

considered as breaches of competition law. Journalists, voice-over actors, musicians, etc. will be the first to take advantage of the reform as the Bill recognises the rights of these workers to be represented by a trade union and to conduct collective bargaining.

1. **Do you consider that the Commission has correctly and sufficiently identified the issues and the possible areas for further EU actions?**

The EFJ **welcomes** the consultation launched by the European Commission on 26 April 2017. It considers that the Commission has correctly identified the issues and areas for further EU action. In particular, we agreed on the **urgent need** to address the growing challenge to define and apply appropriate rights for new and non-standard forms of employment relationship in order *“to avoid unfair practices and ensure that workers’ rights are safeguarded”*.

Freelancing is not uncommon, nor new in journalism and the media industry. In fact, it is becoming “typical” rather than “atypical”. The reality is that the work of many freelance journalists is often identical to that carried out under standard employment contracts and the relationships of dependency and subordination often fully or partially remains, despite the varied nature of the working arrangement. However, these freelance workers are considered **secondary** and **treated unequally** because of the lack of legal protection which allows the unfair practices to continue to exist. The precarious working conditions of freelance journalists have become a growing concern for the EFJ and its membership across Europe.

Therefore, **we welcome strongly EU action to close the existing legislative gap** for workers with the so-called “atypical” and non-standard employment relationships. Such legislative actions at the EU level should also go hand-in-hand with the promotion of access to social protection of all workers (as launched by the European Commission in a separate consultation in which the EFJ also responded).

2. **Do you think that the Commission should engage into legislative work in one or several of the identified possible areas for further EU action?**

We believe that **EU legislative action is long overdue**. The EFJ has been lobbying in the past for legislative action from the EU. It supported the parliamentary reports on [“Atypical contracts, secured professional paths, flexicurity and new forms of social dialogue” \(2009/2220\(INI\)\)](#) and on [“A European Pillar of Social rights” \(2016/2095\(INI\)\)](#) which called for equal treatments and equal rights for all workers. **EU legislative action is desperately needed** to address the existing unfair practices and legal loophole to exploit certain types of workers.

The EFJ agreed the three elements proposed in the consultation.

- i) **Definition of workers:** It is necessary to develop a common definition of worker or employee for the purpose of the application of the Directive. Currently, there is no common standard across member states regarding the definition of workers or employee. The existing notion of employee has become obsolete because it often excludes the so-called “atypical” workers. Therefore, the EFJ welcomes the reference to the definition developed in the framework of free movement of workers in the case-law of the EU Court. The EFJ encourages the Commission to develop the definition that is in line with and recommended by the International Labour Organisation. Such a definition should be broad enough to include all workers who engage in non-standard employments.
- ii) Without any discrimination, the Directive shall **cover all workers** and include trainees / apprentices. The growing “atypical” form of employment is not only limited to certain sectors. It has become widespread and *typical*. The EU should take this opportunity to revise the Directive with the aim to be inclusive and address the core issues arising from the changing labour market for the future.
- iii) The EFJ welcomes the consideration of removal of certain exclusion provisions as many freelance works of journalists are of short-term nature as described in the beginning and governed by short-term contracts. Exclusion can only lead to unequal treatment and unfair practices.

As rightly pointed out in the consultation, existing EU laws (naming Directive 97/71/EC, Directive 99/70/EC and Directive 2008/104/EC regulating part-time work, fixed term work and temporary agency work) are not sufficient to address the extent of the problem arising from the changing labour market.

The EFJ **agrees on the EU proposal to offer legislative protection and certainty for all workers regardless of their employment relationships.** It believes that in order to make the Written Statement Directive valid and relevant in today's and future's changing labour market, it should govern also the content of the contractual relations between employer and workers, as recommended by the ILO in its 2006 Recommendation.

The proposal to introduce a set of minimum or **core rights for all workers** is particularly welcomed. The set of core rights shall be applicable universally for all workers regardless of their employment relationship. It will allow them to be treated equally for their equal work and guarantee decent working conditions.

In addition to the set of core rights identified by the Commission, the EFJ would propose to include the following rights which are essential and fundamental for workers as defined by the *European Social Charter and EU Charter of Fundamental Rights* as well as the *International Labour Organisation*. These rights include:

- *freedom of association* *the right to*
- *collective bargaining* *the right to*
- *social protection* *the rights to*

The EFJ believes that the above rights are essential in guaranteeing decent working conditions and fair treatment of “atypical workers”. The failure to include these rights would contradict the whole purpose of the consultation in particular the aim to avoid unfair practices. These rights are particularly crucial for “atypical” workers as they are in a much weaker position (compared to employees) to negotiate with employers. The ability for these workers to be represented by a trade union and conduct collective bargaining is therefore essential. In addition, only can the entitlement of these rights allow social dialogue to take place between employers' and workers' organisations.

3. **Would you consider initiating a dialogue under Article 155 TFEU on any of the issues identified in this consultation?**

Social dialogue, however, crucial is only effective to address the issues identified when clear employment relationship in which rights and responsibilities are established. Therefore, without legislative action, meaningful social dialogue cannot take place. The EFJ is a member of the Audio-visual Social Dialogue Committee and engage in ongoing social dialogue to employers' organisations.

Finally, the EFJ strongly believes that the revision of the Written Statement Directive to extend its scope to government employment relationships and clarify rights and responsibilities for employers and workers is a good opportunity to allow innovation and entrepreneurship to flourish. The EFJ also endorses the response from the European Arts and Entertainment Alliance (EAEA) which reflects our concerns for the media industry as a whole.