



“EQUAL RIGHTS FOR FREELANCERS”

10-11 October 2018

Stockholm, Sweden



Taking Stock of the shifting work and employment relationships

- ▶ Media, Arts and Entertainment sector is undergoing a series of major changes due to digital shift, other technological developments, emergence of new business models, all of which present challenges and opportunities
- ▶ New forms of work organisation, outsourcing and new technologies have contributed to the erosion of the so-called conventional employment and working arrangements



Work and Employment Relationships in the Media, Arts and Entertainment Sector

- ▶ *Atypical* work is used to distinguish work which differs from the “standard model” of full-time, permanent and direct employment,
- ▶ *Atypical* work includes part-time, fixed term, interim/temporary agency work arrangements, but also self-employed/independent /free lance contracting
- ▶ Workers in the Live Performance and Audiovisual sectors particularly concerned by this type of work relations



Work and Employment Relationships in the Media, Arts and Entertainment Sector

- ▶ Working conditions self employed workers in European labour markets likely to be characterized by precariousness and vulnerability (Eurofound,2017,European Commission 2017/18)
- ▶ This situation apply to certain categories of workers in the Media, Arts and Entertainment sector; women and young people are particularly affected



Work and Employment Relationships in the Media, Arts and Entertainment Sector

Legal rights for Freelancers – Key themes of the European debate

1. European labour market requires *European 'rules of the game'*, combining free movement with an adequate social model: Key conditions are:
 - ▶ Respect of freedom of association for all workers
 - ▶ Equal treatment of all workers
 - ▶ respect for national collective bargaining and industrial relations systems;
 - ▶ Equal access for all workers to social benefits;



Freedom of Association- a grounded international framework

- ▶ ILO's Labour law standards on freedom of Association and collective bargaining (CN87,CN980)
- No. 87, Freedom of Association and Protection of the Right to Organize (1948)
- No. 98, Right to Organize and Collective Bargaining (1949).
- ▶ ILO Declaration on Fundamental principles and rights at work (1988)
- ▶ CoE /European Social Charter (Revised) (ESC), sets out the right to form, join and actively participate in associations designed to protect their members' professional interests (Article 5).
- ▶ EU's Community Charter of the Fundamental Social Rights of Workers
- ▶ EU Charter of Fundamental Rights



Fundamental Social Rights for Atypical Workers

- ▶ Community Charter of the Fundamental Social Rights of Workers of 1989
- ▶ EU Charter of Fundamental Rights of 2000



Community Charter of the Fundamental Social Rights of Workers of 1989

- ▶ 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



Fundamental Social Rights for Atypical Workers

Issue 1: Legislation to protect atypical workers

- ▶ Council Directive 91/383/EEC on Safety and Health for Temporary Workers
- ▶ Council Directive 97/81/EC on part-time work
- ▶ Council Directive 99/70/EC on fixed-term work.
- ▶ Council Directive 104/2008/EC on Temporary Agency Work Council



EU Charter of Fundamental Rights of 2000

- Freedom of association;
- 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;
- Non-discrimination on any ground;
- Equality between men and women in all areas, including employment, work and pay;
- Rights to information and consultation for workers and their representatives
- Social security and social assistance
- Healthcare
- Right of collective bargaining and right to take collective action*;
- Protection against unjustified dismissal;
- Right to fair and just working conditions, to maximum working hours, breaks and holiday.



Collective Bargaining practices in the media and live performance sector

- ▶ One of the shortcomings of the German law is that the article 12A status needs to be ‘requested’ by the ‘employee-like’ persons themselves, before it can lead to the negotiation of labour agreements.
- ▶ Requesting to benefit from article 12A status proves difficult for a wide number of freelance journalists, feeling insecure about the reaction of their employer and the consequences this could have on the sustainability of their job.
- ▶ Finally, ver.di is also concerned about the rise of ‘work for hire’ contracts whereby workers are paid on the basis of an agreed outcome rather than hours spent.



▶ **Collective Bargaining and competition law**

- ▶ According to competition law theory, freedom of association and collective bargaining is seen as concentration of power within one party (workers) with an effect on the principles of free competition and open market balance (price fixing)
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- ▶ Collective bargaining in most member states has not been exempted from the scope of competition law
- ▶ Competition authorities in certain member states have used their powers to target certain categories of workers who had concluded collective agreements on pay rates (such rates could restrict competition from other providers)
- ▶ Freelance media, musicians and culture workers have been particularly affected by this type of development



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- **Collective Bargaining and competition law**
- *Using judicial recourses (UE, ECSR (CoE) , ILO) and advocacy to better enforce freedom of association and Collective Bargaining*
- ▶ Competition Law and Collective Bargaining - Ireland
- ▶ FNV-KIEM Case – Netherlands



○ Competition Law and Collective Bargaining - Ireland

- ▶ 2004, the Irish Competition Authority published a decision which defined freelance actors who provided voice-over services for advertising production as “undertakings” and the Trade Unions/Organisations who negotiate for them as “associations of undertakings”
- ▶ **Double effect** :
- ▶ Nullifying the collective agreement on rates which had been agreed between Irish Actors Equity and the Institute of Advertising Practitioners in Ireland.
- ▶ Preventing any such collective bargaining from reoccurring for this category of worker, for freelance musicians who were members of the Musicians Union of Ireland (SIPTU) and freelance photographers/Journalists who were members of the National Union of Journalists (NUJ).
- ▶ The unions involved conducted a political campaign against this decision



○ Competition Law and Collective Bargaining - Ireland

- ▶ In January 2015 ICTU requested that the Competition Authority decision be revisited. Negative response by CA.
- ▶ In January 2016 under the initiative of Irish Senator Ivana Bacik , a **Competition (Amendment) Bill was proposed** which sought to act to delimit the application of the Competition Act 2002 to Trade Unions and Trade Union Members.
- ▶ This Bill was passed through the Senat on January 20th 2016 with all party support.
- ▶ lobbying campaign by ICTU at national level but also at ILO and CoE (Committee of the ECSR) played an important role

