

# **Opening the doors wide to the self-employed**

**How trade unions are recruiting and organising  
self-employed workers as members**

Report prepared  
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### INTRODUCTION: ORGANISING THE SELF-EMPLOYED

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In recent years, UNI has coordinated the functioning of an informal but effective Freelance Network, designed to bring together trade unions in Europe which have direct experience of organising and servicing self-employed members. The Freelance Network, which has met regularly since 2002, is held as part of the activities of UNI IBITS (Industry, Business Services and IT) sector<sup>a</sup>.

UNI MEI (Media, Entertainments, Arts) and its affiliates also have extensive experience of meeting the needs of freelance and self-employed members. UNI-MEI has estimated that it is likely that about 50% of the membership of its affiliate unions are self-employed.

This report, prepared for the Freelance Network Conference held in Luxembourg in October 2005<sup>1</sup>, draws on this combined experience to explore some of the current issues to be addressed in organising self-employed workers. It looks at examples of good practice by trade unions in Europe, making use of data obtained from a questionnaire circulated by UNI to affiliates in the summer of 2005.<sup>1</sup> The report also looks at the broader context of the discussions within the European Union on the evolution of labour law and the needs of non-employee workers.

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<sup>a</sup> Among those unions participating in these meetings have been FNV Bondgenoten (Netherlands), SIF (Sweden), ver.di (Germany), HK (Denmark), GPA (Austria), Comedia (Switzerland), CFDT Cadres (France), ALAI-CISL (Italy), FILCANS-CGIL (Italy), FSU (Norway) and CF (Sweden). From trade union federations, the ÖGB (Austria) and DGB Nordrheinland-Westfalia (Germany) have participated. Other trade unions who have also contributed to the work of the network include Amicus (UK/Ireland), FES-UGT (Spain), ERTO (Finland), SSFV (Switzerland), UNIE (Netherlands), OGB (Luxembourg), IDA (Denmark).

<sup>1</sup> This questionnaire was completed by fourteen unions in eleven EU countries.

### SELF-EMPLOYMENT IN EUROPE

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About one working person in seven in Europe is self-employed.

For the 25 EU member states taken together, self-employed people make up 15.9% of total employment (2004 figures). This represents a slight decline from the situation ten years ago (16.9% in 1995) but a slight increase on the position in the years 2001-2003. The figures for the pre-enlargement EU-15 are very similar to those for the EU-25.

In industry and the services sector (excluding public administration), the percentage of self-employed people in the workforce in the enlarged EU-25 is exactly 10%: one in ten workers in industry and the services is self-employed.

These European-wide figures, however, hide marked variations between individual countries. As the tables at the end of this report demonstrate, the numbers of people self-employed are highest in Greece (40%), Italy and Portugal and lowest in Sweden (5%), Luxembourg, Denmark and France.<sup>2</sup>

The overall category of self-employed also hides an enormous range of working situations, ranging from the poorly treated and poorly paid people whose self-employed status is effectively bogus (in other words, where employers are trying to evade their employment responsibilities) to well-paid and well-educated autonomous workers, for example in the IT or consultancy sectors. Some people who are self-employed operate their own micro-enterprises and are themselves employers.

As Professor Adalberto Perulli has put it in a study undertaken for the European Commission, "We could almost speak of separate worlds of self-employment, peopled by players who do not necessarily share any common or interconnected features".<sup>3</sup>

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<sup>2</sup> Data supplied to author by Eurostat, Sep 2005

<sup>3</sup> Adalberto Perulli, Economically dependent/quasi-subordinate (parasubordinate) employment, [http://europa.eu.int/comm/employment\\_social/labour\\_law/docs/parasubordination\\_report\\_en.pdf](http://europa.eu.int/comm/employment_social/labour_law/docs/parasubordination_report_en.pdf)

### ISSUES OF LEGAL DEFINITION

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In every European country's legal system, there is a fundamental divide between those people who are classified as employees and those who have self-employed status. (We can leave to one side those countries where civil servants can be treated as a third, distinct, category).

Employees are treated as being in a position of subordination to their employer. Historically, this form of relationship can be traced back to the master/servant model, but it developed into the dominant form of work relationship during the industrial age, particularly in relation to the factory system ("Fordism"). Employees contribute their labour, using as necessary their employer's equipment, and are subject to control through a system of hierarchical supervision. The employee concedes dependency in exchange for security and the chance to earn their living.

This relationship is mediated by employment law, which is based on the need to protect the individual employee who is seen as being the weaker of the two parties to the employment contract. Legislation has intervened to redress this inequality in various ways. Trade unions have been given rights to collectively represent and bargain on behalf of individual employees.

By contrast, the relationship between the self-employed person and the company or individual for whom they are undertaking work is governed not by employment but by commercial law. In other words, contract law normally applies. One implication is that both parties to this contract are treated generally as being on an equal footing to each other (there is no recognition that an individual self-employed person may be negotiating with a dominant client from a position of relative powerlessness). To the extent that the law intervenes, it is normally just to ensure that the market operates correctly, for example by outlawing cartels.<sup>4</sup>

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<sup>4</sup> In Italy, Act 192 of 1998 has introduced a form of protection for companies trading with financially stronger companies. See Perulli, *op cit*

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Having stressed the fundamental nature of the binary split between employee and self-employed status, we should also recognise however that there are a number of country-specific legal provisions which potentially confuse things. For example, in Italy the concept of 'quasi-subordinate workers' (a particular sub-category of self-employed worker) has existed in law for at least thirty years and is significant in relation to pensions and taxation. There can also be problems with terminology: in Germany, for instance, a *freelance* (Freier Mitarbeiter) can be either an employee or a self-employed person.

There is in all countries a grey area between the two types of work relationship. Generally speaking, what matters is the nature of the underlying relationship (whether or not the worker is in a subordinate position), not how the parties themselves may describe it. However, the exact legal mechanisms by which workers are classified as self-employed or employed are complex and vary from country to country. Classification by tax authorities can also be different from that used for social protection for or employment law purposes. (This is particularly true in the case of cultural workers, documented in detail in a study<sup>5</sup> produced by the European Arts and Entertainment Alliance, of which UNI MEI is a member).

In some countries, the 'grey area' is the subject of primary legislation, whilst in others it is decided on the basis of accumulated case law (jurisprudence). More commonly, both legislation and case law is involved. (In Ireland, helpfully, this issue was also the subject of a code of practice drawn up through a process of social partnership).<sup>6</sup>

Typically, a range of factors will be considered legally significant, including the nature of supervision and control, the period of the work relationship, the ownership of any equipment or assets being used, the place where work is being undertaken, the responsibility for ensuring quality, whether or not work can be undertaken for others at the same time, and the possibility or otherwise of an individual arranging for a third party to undertake the agreed work on their behalf.

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<sup>5</sup> European Arts and Entertainment Alliance, Study Relating to the Various Regimes of Employment and Social protection of Cultural Workers in the European Union, n.d.

<sup>6</sup> See EIRO, 'Economically dependent workers', employment law and industrial relations, EIRO Observer, 4/02, [http://europa.eu.int/comm/employment\\_social/labour\\_law/docs/eirostudy\\_en.pdf](http://europa.eu.int/comm/employment_social/labour_law/docs/eirostudy_en.pdf)

### EUROPEAN INITIATIVES ON 'ECONOMICALLY DEPENDENT WORKERS'

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A common view in Europe in recent years has been that the grey area between employment and self-employment is increasing and that reform may be needed to extend the reach of labour law so that non-employees are also protected. The European Commission has promised the publication in 2006 of a Green Paper which will focus on the evolution of labour law in the European Union.

The Green Paper follows the publication in October 2002 of the study by Prof Perulli already mentioned. Perulli's cumbersome title, *Economically dependent/quasi-subordinate (parasubordinate) employment*, itself suggests some of the difficulties of legal definition. A second recent study on the same theme was that undertaken by the European Industrial Relations Observatory also in 2002, *'Economically dependent workers', employment law and industrial relations*.<sup>7</sup>

European thinking can be traced back further, in particular to the Supiot report on the transformation of work and the future of labour law which was presented to the European Commission in 1998.<sup>8</sup> This detailed study, chaired by Alain Supiot, professor of law at the University of Nantes, provided the framework for later discussions. Supiot claimed that much employment law was based on a paradigm of work ("The loyal employee who devotes his/her lifetime to an enterprise in return for the assurance of a 'steady job'") which was increasingly at odds with reality. He warned of a potential rift opening between workers enjoying extensive protection under a contract of employment and those working under some other type of contract.<sup>9</sup>

The argument has been that, as companies look to human capital rather than fixed capital as a source of added value, employees are increasingly required to use their knowledge and brainpower at work. This is reflected in new styles of management stressing participation and networking, so that – for some – the employee experience can increasingly seem to resemble that of the self-employed. At the same time, outsourcing and other work models have encouraged a type of self-employment in which the individual, whilst not in a subordinate relationship, is nevertheless to a greater or lesser extent *economically* dependent on one company for their livelihood. (This latter category is quite distinct from the so-called 'false self-employed' who are in

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<sup>7</sup> *ibid*

<sup>8</sup> Alain Supiot (ed), *Au-delà de l'emploi*, rapport pour la Commission européenne, Flammarion, Paris, 1999

<sup>9</sup> Alain Supiot, *The transformation of work and the future of labour law in Europe: a multidisciplinary perspective*, *International Labour Review*, vol 138 (1999) no 21, page 31-46



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legal terms in a clear employee/employer relationship, but who have been denied employee status by unscrupulous employers attempting to evade their responsibilities).

This debate has also reached the ILO, where a report presented to the 2003 International Labour Conference made the following observation: "The situation of dependent workers who are not covered by legislation on the employment relationship, on account of their disguised or ambiguous employment status, is a worldwide problem which lies at the heart of labour law, as the effectiveness of national and international labour legislation depends on it".<sup>10</sup>

It has been suggested by some that a new, third, legal category is needed in European law between employment and self-employment to adequately accommodate economically-dependent workers. This is certainly an approach which has already been followed in Italy, where the law has recognised forms of 'quasi-subordinate' employment for over thirty years; this issue has become much more widely recognised in recent years, particularly since 1998 when the three main Italian union federations responded to the growth of new, atypical forms of work by creating new union structures for workers in this situation. In Austria, too, the issue of economically dependent work (*abhängige Selbständigkeit*) is a live political issue.

However, adopting this approach more widely in Europe is not without some considerable problems. There is a risk, for example, of replacing one grey area with two. The Perulli report advises against this way forward, calling instead for basic social rights to be extended to all types of employment.

The argument that all workers, whatever their legal status, need employment and social rights is one which unions will want to welcome. The insight that self-employed people may be in a situation of relative powerlessness towards, and of economic dependence on, the companies for whom they are working is also helpful. On the other hand, too much focus by the union movement just on 'economically dependent workers' could be a mistake, as could an approach which is centred over-much on legal arguments about employment status. Instead, this report will seek to argue that unions have a broader right and responsibility, to aim to recruit and organise those who meet the much wider definition of self-employed worker

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<sup>10</sup> <http://www.ilo.org/public/english/standards/relm/gb/docs/gb280/pdf/gb-2.pdf>

### Trade union experience in organising the self-employed

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Union organising of the self-employed is not a new idea. Trade unions in many countries have long experience of recruiting and organising workers who are, in one way or another, in self-employment.

In the media and entertainment sector in particular, the self-employed constitute a very high percentage of overall union membership. For example, film technicians in many countries are self-employed and yet levels of unionisation can be high: according to UNI MEI, unionisation is almost 100% in the US film industry and is also high in the UK and in the Nordic countries. In several countries, self-employed members are not only organised in unions, they are also covered by collective bargaining. In a sense, unions in this sector continue to resemble the sort of guilds or craft unions from which industrial unionism developed in the nineteenth century.

In recent years, unions organising in other sectors have increasingly started to pay attention to the needs of the self-employed. In some cases, this has been the result of formal decisions. In Sweden, for example, SIF discussed the issue in 1996 and agreed to change its rules to admit self-employed members.<sup>11</sup> A similar discussion took place in the Netherlands in the union federation FNV, which in 1999 set up a freestanding union for the self-employed FNV Zelfstandige Bondgenoten.<sup>12</sup>

In Austria, the main union federation ÖGB is coordinating a wide-ranging *Flexpower* initiative, focusing on self-employment and the growth of new quasi-subordinate forms of employment. *Flexpower*, set up in 2001 in conjunction with a number of Austrian trade unions, offers an advice and support service for freelance and self-employed workers, including initial help even for non-union members. *Flexpower* has also undertaken a research study into new 'atypical' forms of working. In Germany, the educational institute of the DGB in NordRhein-Westfalen has recently undertaken a detailed study of union

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<sup>11</sup> EIRO, Trade unions open doors to the self-employed, EIRO Observer, issue 5/99

<sup>12</sup> EIRO, Self-employed people without employees seek place in consultation, EIRO Observer, issue 5/99

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organising strategies for the self-employed.<sup>13</sup>

This new interest has often sprung from a desire by unions to retain the loyalty of existing members who become self-employed, particularly when this has been brought about by business restructuring and outsourcing. Sometimes, the push to encourage unions to organise self-employed workers has come from the members themselves, as their own status changes.

UNI itself has identified the issue of organising self-employed workers as a priority, a point made by Philip Jennings, General Secretary, in UNI's first year of life in 2000.<sup>14</sup> UNI's World Congress in Chicago in 2005 also passed an action plan which (in the context of cultural workers) made the following call:

*Organise, organise, organise – especially among the growing percentage of freelance workers.*<sup>15</sup>

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<sup>13</sup> Unterstützungsangebote für E-Lancer in Italien, Schweiz, Österreich und der Niederlanden, Hae-Lin Choi, Forschungsbericht für das DGB Bildungswerk NRW

<sup>14</sup> Philip Jennings, General Secretary UNI, speech at Organising in the network economy conference, Edinburgh, 18 July 2000

<sup>15</sup> Motion 6, Culture and Cultural Workers in the Age of Globalisation

### PRACTICAL QUESTIONS FOR UNIONS TO ADDRESS

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Unions need to consider whether self-employed union members should be treated in exactly the same way as employees, whether they should be offered different services and rights (including some form of quasi-autonomous status), and whether or not the union movement should seek to encourage the self-employed to create their own completely autonomous unions within the wider union family.

As we have already seen, different paths have been taken in different countries. In the Netherlands, FNV Zelfstandige Bondgenoten was helped into being as an independent new union through the work of FNV Bondgenoten (the largest affiliate of the FNV federation), which sheltered the fledgling new organisation under its own wing in the first few months and years of its life. FNV Zelfstandige Bondgenoten is now autonomous in terms of its statutes and finances. Since its launch in 1999, its membership has growing to an estimated 6750, and is continuing to grow by about 1500 new members a year.

Also in the Netherlands, the same path was followed by another FNV affiliate, the building sector union FNV Bouw, which has helped create FNV Zelfstandige Bouw for self-employed builders. This new union currently has about 5500 members.

In Italy, the three major trade union centres (CGIL, CISL and UIL) have created organisational bodies specifically to represent the interests of those workers who are self-employed (or more specifically, who fall within the particular legal concept in Italy of economically dependent or quasi-subordinate workers). These new unions are NIDIL-CGIL, ALAI-CISL and CPO-UIL. ALAI-CISL, for example, has an estimated 30 000 members. It helps its members in various ways, including offering business accounting services and free conference room facilities. The three unions have begun to engage in collective bargaining on behalf of the members.

However, other unions have chosen to embrace self-employed members within existing structures. This is the route followed, for example, by SIF in Sweden which now has about 3,000 self-employed people within its ranks. It is also the

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path taken in Germany by ver.di, which claims about 30,000 self-employed members (the majority freelance media workers, previously members of one of ver.di's five predecessor unions IG Medien).

Even though ver.di's self-employed membership is numerically significant, however, it remains only a tiny percentage of the union's overall membership. Outside the particular context of media and entertainments unions, this appears to be generally true of other unions in Europe, too, as the following table<sup>16</sup> makes clear. (There may, however, be an element of undercounting involved. Not all self-employed members can necessarily be identified currently from existing union membership records).

### Some examples of self-employed membership of European unions

<i>Union</i>	<i>Country</i>	<i>Sector(s)</i>	<i>Self-employed members</i>	<i>Total members</i>	<i>Membership fee<sup>b</sup></i>
GPA	Austria	General services	1 500	300 000	€ 100
HK	Denmark	General	2 500	370 000	See <sup>c</sup>
IDA	Denmark	Engineers	300-800	41 000	€ 600
ERTO	Finland	Services/Clerical	300-400	30 000	€ 300 <sup>d</sup>
ver.di	Germany	General services	29 100	2 400 000	See <sup>ef</sup>
ALAI-CISL	Italy	Self-Employed	30 000	30 000	€ 50
FNV ZB	Netherlands	Self-Employed	6 750	6 750	€ 180 <sup>g</sup>
UNIE	Netherlands	Professional	150?	97 000	€ 168
CF	Sweden	Engineers	3 500	100 000+	€ 386
SIF	Sweden	General services	3 000	360 000	€ 360 <sup>h</sup>
SSFV	Switzerland	Film & video	300	325	€ 270
Amicus	UK/Ireland	General	250	1 200 000	€ 160

<sup>b</sup> Approx conversion to euro where appropriate

<sup>c</sup> Between 1% and 2% of pay

<sup>d</sup> Or 1.35% of salary

<sup>e</sup> 1% of pre-tax pay or 0.75% of turnover

<sup>f</sup> Can be offset against tax on business income

<sup>g</sup> Can be offset against tax on business income

<sup>h</sup> After tax relief

<sup>16</sup> Data from UNI Freelance Network questionnaires completed by unions mid-2005 (not FNV or HK), from information supplied at UNI Freelance network meetings 2002 and 2004, from union web-sites and from personal communications with the author

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### *Recruiting self-employed members*

The membership figures given above include self-employed people undertaking a wide variety of jobs, including various kinds of consultancy. HK (Denmark) says that its self-employed membership includes IT specialists, translators, media workers, accountants, marketing specialists, graphic designers and trainers. CFDT-Cadres (France) has a similar list for its independent professionals' network: consultants, trainers, IT workers, journalists, photographers, translators, graphic artists and illustrators. For SIF (Sweden), IT consultants are the most significant category of membership, with sales agents and reps another sizeable group. ver.di (Germany) has given attention to 'new' sectors, including IT, media, logistics and training. ALAI-CISL (Italy) reports that its membership comes from a variety of sectors, including the chemical sector, tourism and commerce.

In some cases, unions are recruiting self-employed members from areas of work which might not readily be associated with union membership. FNV Zelfstandige Bondgenoten (Netherlands) has said that, as well as IT specialists, interpreters, consultants, couriers, taxi drivers and financial specialists, it has also signed up ballet dancers, piano tuners and a miller of organic flour (the latter a very active member).

It is clearly easier for unions to recruit and organise employees working in offices and other conventional workplaces. Reaching out to the self-employed can be much more of a challenge. Nevertheless, some unions have shown considerable imagination in the way they approach this task. SIF (Sweden) borrowed telephone marketing techniques for a self-employed recruitment campaign run in 2002-2003, which involved cold-calling many thousands of self-employed people, inviting them to consider membership of the union. Of those telephoned, about 5%-8% decided to join, a remarkably high conversion rate for this type of marketing campaign.

FNV Zelfstandige Bondgenoten (Netherlands) has tried a very similar approach, making use of lists of micro-enterprises which it acquires. The scheme has involved an initial direct mail shot (sent to approximately 15,000 addresses over a six month period) followed up by a telephone call, made from a call centre. According to the union, this technique has proved very effective, with about 7.5%-10% conversion into membership. The cost of recruitment has been

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estimated at between €85-€100 per member.

FNV Zelfstandige Bondgenoten estimates that, in total, about 125,000-140,000 are self-employed and potentially eligible for membership. The union hopes eventually to have 20% of this target group, close to the 25%-30% unionisation rate in the Netherlands. The latest phase of this marketing campaign begins in October 2005, and the union anticipates that a further 750 members will be recruited as a consequence.

Another way of coaxing the self-employed to consider union membership is to offer help and advice initially on request to all, without requiring prior membership. As mentioned above, this has been the approach adopted in Austria by the ÖGB's *Flexpower* project.

Experience from the entertainment and media sector suggests that unions which succeed in becoming recognised as representative professional organisations for their sector can much more readily attract self-employed members, who look to union membership as a way of validating their professional identity and of giving them access to work. As the UNI Organising Manual has pointed out, "This is especially true among young entrants, who may even seek to join before they earn enough to pay minimal fee requirements".<sup>17</sup>

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<sup>17</sup> UNI Organising Manual, 2005

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### *Communicating with self-employed members*

Once self-employed members have been recruited, unions have the on-going challenge of keeping in touch with them. This is potentially more difficult than maintaining contact with employees working in centralised workplaces, who can be successfully reached through traditional union structures.

Most unions are making the most of the opportunities presented by new technology. Many unions offer member-only sections of their websites providing access to information and advice and to informal discussion forums.

In a number of cases, specialist websites have been set up specifically for self-employed members. In Denmark, HK has created [www.freelancer.dk](http://www.freelancer.dk). This includes private space only accessible by members, but there is also an extensive public area of the website, which among other things includes the facility for any freelancer to advertise their services in a searchable database. Several thousand people have taken advantage of this. HK says that, among other things, this service helps it to identify and attract potential new members.

In France, CFDT-Cadres has created a website [www.professionnels-autonomes.net](http://www.professionnels-autonomes.net), as part of its project to build its independent professionals network, Réseau professionnels autonomes.

ver.di (Germany) uses dedicated websites in conjunction with call centre services, as for example with the service for freelance workers [www.mediafon.net](http://www.mediafon.net). The website contains an extensive database of publicly accessible information, designed to be of value to the self-employed. Individuals wanting more assistance can also ring the associated call centre, which operates Mon-Fri for six hours each day, or can email queries through. The call centre has the facility to transfer more specialised enquiries, for example about tax or legal matters, to advisers with appropriate expertise.

Mediafon can be used by non-ver.di members. The union says that it is useful as a recruitment tool (about 15% of non-members using it subsequently join ver.di). It also provides something of an early warning system for the union, flagging up new problems and concerns as they arise, and enabling the union to respond quickly.



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In Austria, the GPA has made ingenious use of the internet. Via the website [www.interesse.at](http://www.interesse.at) members and non-members can affiliate to one or more special interest groups, including work@flex, which is targeted at flexible workers, including the self-employed. Other interest groups include work@IT for IT workers and work@professional for professional workers and senior staff. The GPA sees these interest groups as a new, third, dimension in the internal democratic life of the union, complementing its traditional regional and sectoral structures.

Work@flex staged a 'Flex in the city' action day in October last year, when a series of stands, games and activities were organised in the centre of Vienna. The activities were designed both to appeal to freelance workers and to draw the work of work@flex to their attention.

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### *Delivering services self-employed members need*

Self-employed members are likely to have needs from their unions which differ in some respects quite significantly from those of employee members.

In particular, they are more likely to have individual problems requiring individual attention, rather than shared issues which can be resolved through traditional collective bargaining mechanisms.

Among the professional and business issues on which the self-employed may look to unions for support, we can identify the following. (This is by no means an exhaustive list).

- Negotiating with clients
- Advice on contracts with clients
- Problems with non-payment etc on work contracts
- Legal advice
- Finding work
- Professional development (career progression, access to training etc)
- Accountancy advice
- Taxation advice (including VAT advice)
- Access to pensions
- Access to health and sickness insurance, and to other forms of social protection
- Access to other forms of insurance
- General small business advice
- Access to business services (eg short-term meeting space)
- Advice on physical and psychological health
- Defence of intellectual property rights
- Opportunities for networking; social activities

Legal advice, training and insurance provision tend to be high on the list of services provided by unions targeting the self-employed, as the following table makes clear<sup>18</sup>:

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<sup>18</sup> Data supplied from UNI Freelance Network questionnaire, mid-2005

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### Some examples of services offered by unions to self-employed members

<i>Union</i>	<i>Country</i>	<i>Legal advice</i>	<i>Insurance</i>	<i>Training</i>	<i>Loans</i>
GPA	Austria	X	X	X	
IDA	Denmark	X	X	X	
ERTO	Finland	X	X (partly)	X	
ver.di	Germany	X	X	X	
ALAI-CISL	Italy	X	X	X	X (via banks)
FNV ZB	Netherlands	X	X (indirect)	X	
UNIE	Netherlands	X	X (indirect)	X	
OGB-L	Luxembourg	X			
CF	Sweden	X	X	X	
SIF	Sweden	X	X	X	
SSFV	Switzerland	X	X		
Amicus	UK/Ireland	X	X	X	

Collective bargaining is likely to play a much less significant role in unions' work with the self-employed. However, it would be wrong to assume that there is no scope at all for collective bargaining.

In the entertainment and media sector, there is considerable experience in some countries of successful initiatives here. As the UNI Organising manual explains, "Collective bargaining has been successfully used, although in different ways than in most traditional sectors. Sometimes this is done through representatives of crafts bargaining with associations of habitual employers in the sector. Sometimes unions or associations of these crafts have no one to bargain with directly but they establish minimum standards or model agreements, which they then seek to enforce as if they had been agreed to by employers. Though the sector may seem unusual at first, these solutions might

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well be applied to other new workers' groups in the emerging Information Age."<sup>19</sup>

Unions in other sectors are also trying to harness the collective strength of organised self-employed workers. GPA (Austria), for instance, has reported on its efforts to establish a works council for bicycle couriers.

There is, however, a potential difficulty here which unions need to be aware of. As mentioned at the start of this report, the relationship between the self-employed and those for who they supply work is, generally speaking, legally deemed to be covered by contract law rather than employment law. In the past, on an intermittent basis and in a number of countries, efforts have been made to claim that attempts by the self-employed to organise collectively to establish minimum working conditions represent an infringement of anti-trust/anti-cartel legislation. UNI MEI reports, for example, of a case from Spain where screenwriters (who are engaged and re-engaged for regular periods of work, each period just short of the time which would establish employee rights) approached the management of the public broadcaster to establish a collective agreement and were threatened with court action for attempted restraint of trade. Somewhat similar problems have been reported from Ireland and the UK. Unions in other countries, including Denmark and the Netherlands, have felt themselves constrained by competition law in relation to what they can encourage their self-employed members to do collectively.

It can be noted that, in the early days of trade unionism, similar ploys were attempted in some countries to try to prevent unions establishing collective agreements for *employees*. If, as unions increasingly seek to organise the self-employed, this problem reoccurs more widely it will be appropriate to campaign at international level (especially at the ILO and within the EU) for changes to the law. It cannot be just for individual self-employed workers with very limited bargaining powers to be prevented from the right to freedom of association and representation because of legislation designed to stop market monopolistic practices.

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<sup>19</sup> UNI Organising Manual, 2005

### SOME ISSUES IN ORGANISING THE SELF-EMPLOYED

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Even though, as mentioned above, some unions have long years of experience of organising the self-employed, not everyone in the union movement necessarily accepts the principle that their doors should be held open to self-employed members. Some suggest that unions should do nothing to encourage the growth of models of work relationships which take place outside established employment law. Some ask whether labour movement traditions of solidarity and collective action can really be embraced by self-employed people working often in a very individualistic way. Some question the role of union membership for those who are, effectively, running their own micro-businesses.

So it is appropriate to ask the question: why should unions seek to organise the self-employed?

There are many possible reasons: Because existing members want to maintain their union links if they themselves become self-employed. Because, increasingly, work is being outsourced and more people are finding themselves working as freelancers or on atypical contracts. Because self-employed workers, if unorganised, potentially drive down the rates of pay for employees too. Because, if unions do not organise the self-employed, others (including commercial organisations antithetical to unionisation) may try to exploit a market opportunity.

Above all, perhaps, because the self-employed *need* strong unions to defend their interests and rights.

But accepting these arguments means that unions have to move on to address other questions.

One of these is whether self-employment should be treated as inherently less desirable than employee status – or in other words, whether self-employment is something which unions should seek wherever possible to confront.

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This report argues that such a response would almost certainly be a mistake, not least since it would commit the cardinal error of failing to pay attention to the views of the self-employed themselves. There are many self-employed people, including those already organised in unions, who clearly are content with their status and lifestyle and who would most definitely wish to resist attempts to reclassify them as employees. Unions would do themselves no favours by adopting an overly simplistic position against self-employment *per se*.

What is needed is a more subtle approach, one which takes into account the enormous variety of work activity which takes place under the overall category of self-employment – those “separate worlds”, in Prof Perulli’s words.

In the case of bogus self-employment, where in reality an employment relationship does exist, unions have a clear duty to attack those companies who are trying to get out of their responsibilities and to call for workers to be given the employee status they merit.

Unions also should be sceptical of schemes for the unemployed which over-enthusiastically encourage them into self-employment.

Where, perhaps as a result of companies changing their work practices through such things as outsourcing, existing staff employees are considering recreating themselves as independent consultants, the union responsibility is to ensure that the individual workers are fully aware of both the advantages *and* the disadvantages of self-employment. The downside of self-employment, which can be overlooked in the initial euphoria of ‘working without a boss’, typically includes work insecurity, loss of income in the event of sickness or accident, loss of social protection, loss of pension rights, and loss of opportunities for training and career development. Not everybody is cut out for the responsibilities of running their own business.

With those people who are happy with their self-employed status, including those who are undertaking professional, creative or highly skilled scientific work, the tasks for unions are likely to be rather different. One is to remind them of the need to price their services high enough to enable them to cover not only their business overheads but also to replace those features of social protection which employees receive automatically. This means that the rates charged by self-employed workers will need to be substantially higher than comparable

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rates paid to employees – typically by at least 50%-100%. By reminding their self-employed members of the importance of fully factoring in the real costs of their non-employee status, unions will also be helping to ensure that the self-employed are not used by companies to undercut the position of employed workers.

The principle here is simply stated: whilst it may in some circumstances be acceptable for companies to seek the flexibility which comes with the use of external self-employed workers, it is not acceptable that the primary driver should be to drive down labour costs.

The union movement needs to state firmly that self-employed workers, just as much as employees, should have freedom of association and the right to representation. Unions may want to remind self-employed individuals that – whatever contract law may imply - they do not approach contract negotiations with large clients as equal partners and that, to protect their interests, collective action with others in their position is both appropriate and necessary.

If unions do indeed, as this report recommends, ensure that their doors are wide open to the self-employed, the question arises as to whether those self-employed people who also employ paid staff should be made welcome within the union family. There is, arguably, a fundamental divide between self-employed workers who work simply for themselves and those who have developed businesses where they have become employers.

This certainly is the stance taken by some unions. SIF (Sweden) for example states very clearly in its marketing material: "SIF membership is open to the self-employed, providing that they in turn have no employees".<sup>20</sup> GPA (Austria) and HK (Denmark) also adopt a similar approach. However, this is by no means a universal position. The Danish engineers' union IDA is happy to welcome engineers as members whether they employ staff or not. However, the IDA is very careful to point out that it would not assist a member who sought advice or support in their role as employer. Some Finnish unions have taken up a similar position.

In practice, too, even those unions with an apparently firm line against having employers as members may adopt a pragmatic approach in particular cases. Unions know that some of their members may from time to time employ

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<sup>20</sup> Sif, Sweden's leading white-collar union (brochure), 2005

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assistants to help with aspects of their business. As one Nordic union put it, why should they throw out someone who has already proved themselves to be union-friendly, just because they take on an employee for a short time?

In other words, what seems initially to be a clear-cut divide turns out to be much more complex in real life. Some unions with a firm 'no-one who employs staff' rule are already beginning to reassess their membership rules. What seems universally accepted by unions, however, is the principle adopted in IDA's approach – that it is not for unions to offer *employer* advice to members.

When it comes to forms of collective organisation, unions should be prepared to recognise that the forms taken by representative bodies for the self-employed may not immediately resemble those of more traditional unions. UNI MEI reports that it works in some parts of the world with semi-organised guilds and associations which may choose not to adopt the term 'union'<sup>21</sup> at all, but which nevertheless are effectively performing the functions of a union. They should be recognised as part of the movement. These types of association may even have the advantage of being lighter on their feet organisationally, able to adapt and ride out difficult times. Freelance and self-employed organisations may be able to exist with a much smaller level of activity and membership than a trade union traditionally requires.

Certainly, servicing the needs of self-employed members requires different techniques and working methods from those which are effective for employees working together in communal workplaces. For unions looking to build up their membership among the self-employed, this is likely to raise issues of staffing and resources. As mentioned earlier in this report, self-employed members are more likely to have needs which unions will have to meet on an individual rather than collective basis. The corollary is that self-employed members may increase significantly the individual case-work which union officials have to deal with.

Unions which are prepared to re-examine their own structures and embrace new ways of operating can meet these challenges, however. In many cases, specialist services (such as legal or tax advice, or insurance provision) can be bought in by unions from external suppliers, rather than necessarily supplied in-house. ver.di (Germany), for example, is itself making use of self-employed advisers in delivering services for its self-employed members.

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<sup>21</sup> The author acknowledges helpful comments received from Jim Wilson, UNI MEI, used in this section of the report



### CONCLUSIONS

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- There is already within UNI and its affiliates considerable experience of organising the self-employed. This experience needs to be shared and disseminated more widely.
- Self-employed people should be encouraged to take their place in trade unions. Protecting their rights and living conditions indirectly helps protect employees' rights and wage levels, too; there is a fundamental identity of interest between both groups of workers.
- Unions have shown themselves perfectly comfortable in organising managers, professionals and cadres. Organising the self-employed can be seen as a comparable process. Only at the point, perhaps, where self-employed individuals themselves start employing workers may there begin to develop potentially difficult conflicts of interest.
- UNI and its affiliates need to engage in the European debate on the development of labour law, and to respond to next year's Green Paper. The starting point for unions should be to demand that all who work, whatever may be their employment or legal status, should have access to core rights as workers. This includes freedom of association. Self-employed people should have the right to form associations and to engage in collective bargaining. These forms of association may not immediately resemble traditional unions but nevertheless should be welcomed into the union family.
- Self-employment is not per se a 'bad' or a 'good' thing. There are circumstances in which it is exploitative and should be opposed. There are other circumstances when it can be welcomed. The answer, therefore, is not always to seek to reclassify self-employed people as employees. Listening to the views of the self-employed themselves is important.

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### APPENDIX

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#### Self-employed as % of total employment

	<u>2004</u>
European Union (25)	15.9
European Union (15)	14.9
Belgium	16.3
Czech Republic	18.8
Denmark	7.0
Germany	10.9
Estonia	9.6
Greece	40.2
Spain	14.8
France	8.8
Ireland	17.4
Italy	25.2
Cyprus	24.0
Latvia	13.3
Lithuania	18.4
Luxembourg	6.7
Hungary	14.2
Malta	8.7
Netherlands	14.1
Austria	18.9
Poland	29.0
Portugal	24.1
Slovenia	16.7
Slovakia	12.3
Finland	11.5
Sweden	4.9
United Kingdom	12.8

## Opening the doors wide to the self-employed

### Self-employed as % of total employment in industry and services

	<u>2004</u>
European Union (25)	10%
European Union (15)	10%
Belgium	9%
Czech Republic	13%
Denmark	5%
Germany	8%
Estonia	7%
Greece	19%
Spain	13%
France	6%
Ireland	10%
Italy	20%
Cyprus	15%
Latvia	4%
Lithuania	5%
Luxembourg	5%
Hungary	10%
Malta	12%
Netherlands	6%
Austria	7%
Poland	9%
Portugal	13%
Slovenia	6%
Slovakia	10%
Finland	7%
Sweden	7%
United Kingdom	9%

Source: Eurostat<sup>22</sup>

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<sup>22</sup> Data supplied to author by Eurostat, Sep 2005