ENPA response


In a first part (sections 1, 2) and 3)), ENPA will particularly focus on questions 7 and 8 of the Green Paper which relates to self-employed workers:

In a second part, ENPA will also raise concerns on the working time and the Opt-out of the 48 hour week and increased protection for agency workers.

Our main message is:

- ENPA considers that the current situation in the various EU countries regarding the status of self-employed workers is satisfying and does not call for any additional EU initiative in this area.
- ENPA recommends to maintain the opt-out of the 48 hour week and to avoid increasing rigidity for companies using the services of temporary work agencies.

PART 1 – the status of self-employed workers: independent entrepreneurs

1. A relationships based on a commercial contract

Newspaper publishers in Europe are working together with freelance journalists who contribute on daily basis to the printed and online editions of newspapers.

Publishers conclude commercial contracts with these freelance journalists, who are independent entrepreneurs. In this commercial context, as independent entrepreneurs, freelance journalists benefit from a great freedom of organisation, flexibility and many operational and tax advantages.

They organise their timetable, their working time and their health and safety in a total independence. This status that they deliberately choose differentiates them from employed workers. Their specificity encourages newspaper publishers to call on their services.
Most of the time, freelancers offer their editorial work to various publishing companies and in many different ways. Publishers do not interfere in the way a freelancer organises his work, and do not fix working tools, office equipment, means of transportation, etc. on a contractual basis beforehand. Freelancers work from home and not in the editorial department of the publisher. The publisher is just paying for the end result. The contractual relationship between the publisher and the freelance is purely commercial.

2. No ambiguity as to the status of self-employed workers

The status of self-employed workers in comparison with employed journalists is not ambiguous from the point of view of newspaper publishers. The description of the activities of freelance journalists as we mentioned in the previous paragraph gives clear indications that they are independent entrepreneurs offering commercial services to various publishers and, in this respect, are and should remain differentiated from employed journalists.

This distinction is clear to newspaper publishers at national level and no particular difficulties have been observed in the different EU countries. In this respect, ENPA supports BusinessEurope position paper which believes that existing national legal definitions are sufficiently clear to establish the real status of a worker and that there is no general need to clarify legal definitions across Europe.

The fact that an individual person becomes a self-employed worker or an employee depends on his freedom of choice and the way he/she wants to organise his/her work. This freedom of choice does not depend at all on the employers’ decision. It is important to keep this choice for workers as it is an essential tool for promoting flexibility for both workers and companies.

3. A “floor of rights” for all workers cannot ensure flexibility

A “floor of rights” dealing with the working conditions of all workers regardless of the form of their work contract may bring confusion regarding the respective status of self-employed workers and employees. Furthermore, it could create more difficulties in terms of flexibility of relationships between the publishers and the freelancers.

As we explained in the previous paragraph, the distinction between employees and self-employed workers is clear at national level and should not be blurred by the creation of a “floor of rights”. Such a distinction is useful for publishers as it ensures flexibility in the management of work and enables the smooth running of the company without too many administrative burdens. Providing the same “floor of rights” for freelancers and employees can affect the positive effects that freelance work can offer to publishers’ activities. It can also have negative impacts on entrepreneurship of journalists who choose to be freelancers.

As freelancers are individual entrepreneurs (they pay their own taxes, take care of their own social security, etc), flexibility is also essential to enable them to organise their work freely without any employer’s interference in their activities. If there would be further protection through legislation, freelancers would have less independence regarding companies which are using their services.

ENPA considers that the current situation in the various EU countries regarding the status of self-employed workers is satisfying and does not call for any additional EU initiative in this area.

In addition to the issue of self-employed workers, ENPA would also like to raise the following concerns in the field of labour law:
PART 2 – Other aspects of labour law: Working time/opt-out and Agency workers

1. Working time - Opt-out of the 48 hour week

ENPA would like to stress the importance to maintain the opt-out of the 48-hour week. Any arguments that removing the opt-out will result in increased employment are questionable. Indeed, some sectors may experience difficulty filling highly specialised positions if they were unable to use the opt-out. Though there is some concerns about the long hours’ culture, there is very little evidence that the opt-out is being abused. Opting out is a personal choice and consent can be withdrawn by the employee, with notice, at any time. The opt-out is essential for the newspaper businesses because of the nature of the work. In our view, the current arrangements work well and the withdrawal of the opt-out could create serious difficulties for the industry.

2. Increased protection for agency workers

Agency workers have seen huge improvements in their employment rights over the last decade. Workers enjoy rights under the legislation such as working time, minimum wage, maternity leave etc. Agency workers also enjoy a lot more freedom, better work-life balance, more interesting and varied work, access to jobs they might not otherwise and less employer control. For employers, there are many legitimate reasons for employing agency workers, for instance, to deal with fluctuations in business.

The agency situation is a triangular relationship between the parties. There is no express contract between the end-user and the agency worker. However, in some countries, there have been attempts to change this situation and establish implied contracts between the agency worker and the end-user.

ENPA believes that such attempts of changes are likely to increase rigidity which would have a deleterious effect on the value of this type of working arrangement for the industry. There are clear benefits for agency workers and employers in maintaining the current arrangements. It is a highly flexible and efficient form of employment, freelance journalists’ value being able to work on a number of different assignments and papers, thus expanding their portfolio. We consider that it should be incumbent on one party to have to issue a contract which, in our view, should be the agency.

ENPA is a non-profit organisation of 5100 titles from 24 European countries representing the interests of newspaper publishers to the European Institutions. More than 120 million copies of newspapers are sold each day and read by over 235 million people in Europe. Newspapers online have a significant number of unique visits on their sites on daily basis.

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