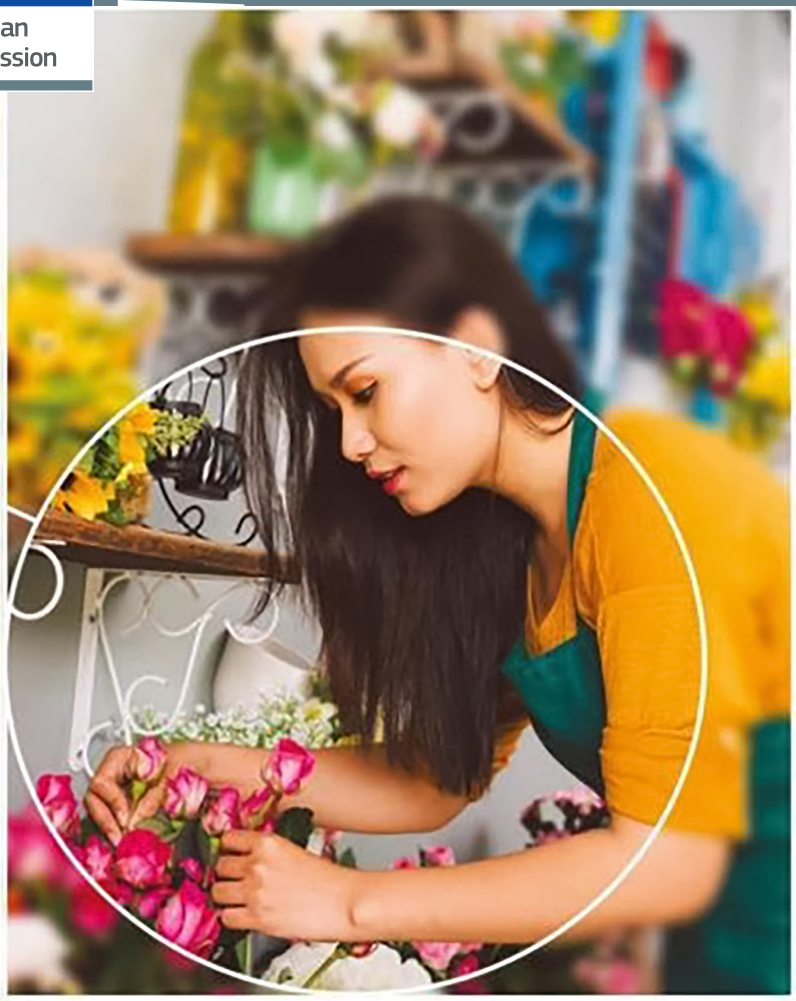
European Commission



Study to support the impact assessment of a possible EU initiative to the application of competition rules to collective bargaining by self-employed

Annex 3
Synthesis of EU-level interviews

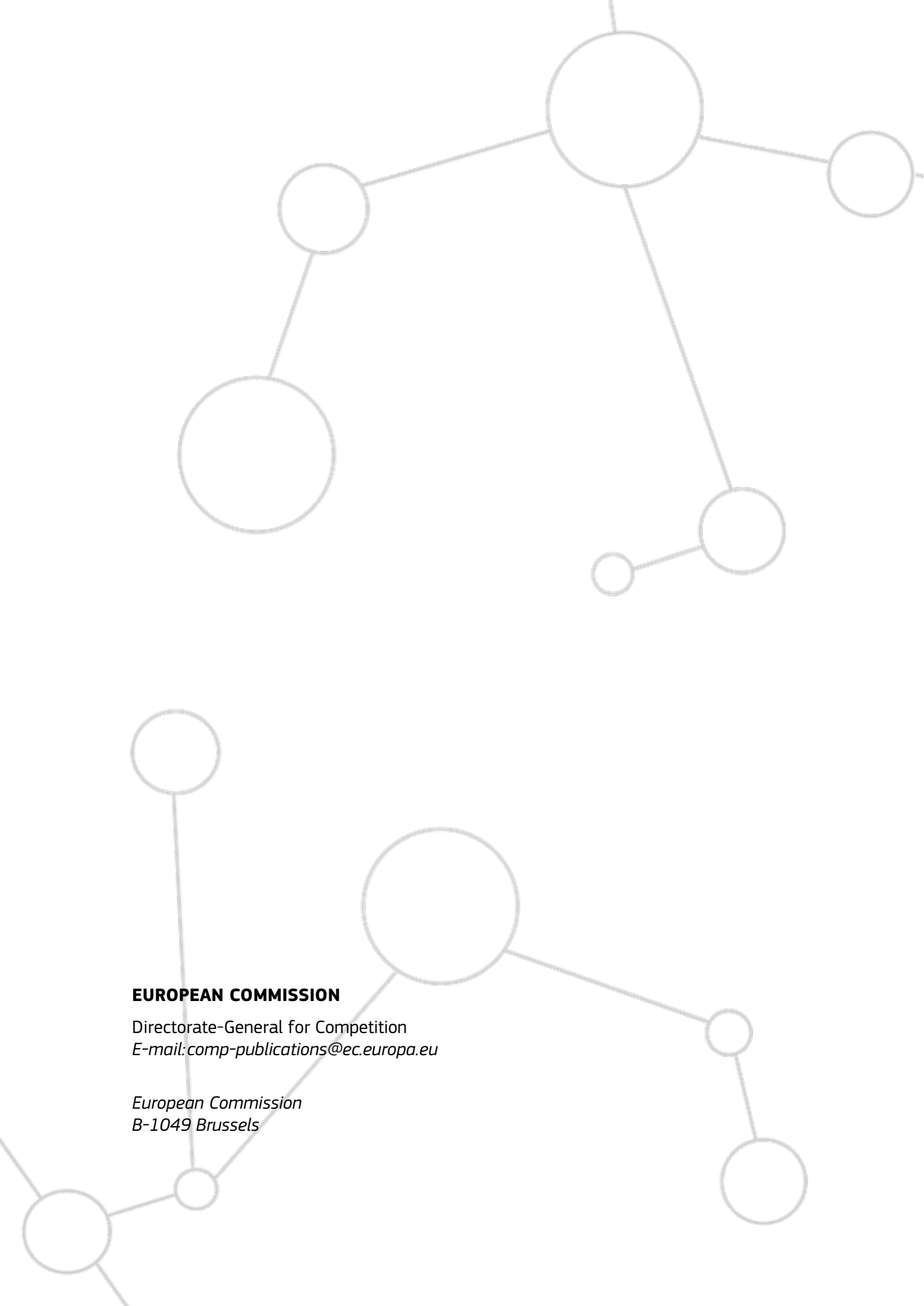
Prepared by

ECORYS ies

ISMERI EUROPA GfK GHS

Universiteit Utrecht

Competition



EUROPEAN COMMISSION

Directorate-General for Competition
E-mail:comp-publications@ec.europa.eu

European Commission
B-1049 Brussels

Study to support the impact assessment of a possible EU initiative to the application of competition rules to collective bargaining by self-employed (COMP/2020/008)

Annex 3 – Synthesis of EU-level interviews

13 October 2021

Europe Direct is a service to help you find answers to your questions about the European Union.

Freephone number (*)**:**

00 800 6 7 8 9 10 11

(*)The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

LEGAL NOTICE

The information and views set out in this report are those of the author(s) and do not necessarily reflect the official opinion of the Commission. The Commission does not guarantee the accuracy of the data included in this study. Neither the Commission nor any person acting on the Commission's behalf may be held responsible for the use which may be made of the information contained therein.

More information on the European Union: https://european-union.europa.eu/index_en

Luxembourg: Publications Office of the European Union, 2022

Catalogue number: KD-05-22-307-EN-N
ISBN: 978-92-76-57015-8
DOI: 10.2763/661886

© European Union, 2022
Reproduction is authorised provided the source is acknowledged.
The reproduction of the artistic material contained therein is prohibited.

Authors:

This report was prepared by a team of experts led by Ecorys between January and September 2021. The Ecorys team comprised Andrea Broughton, Manuel Goncalves Gil, Martin Van der Ende, Sergio Goffredo, Lucija Kilic, Letizia Vicentini, Laura Heidecke and Maire Williams, supported by Andrea Naldini, Carlo Miccadei and Anna Mori from Ismeri Europa, and a team of high-level experts (Nigel Meager, Roberto Pedersini, Frans Pennings, Tony Kerr, Massimo Pallini and Francesco Rossi dal Pozzo). The team is grateful for the support of members of the DG COMP European Competition Network and Private enforcement unit (COMP. A.4). Our thanks also go to Giorgio Monti, Victoria Daskalova, Claudia Schubert, Michael Doherty and Marc Cowling for their expert validation comments.

List of Tables

Interviews conducted at EU level

Methodology

This synthesis assembles the main points emerging from the 14 interviews of EU-level experts and social partners conducted by our research team between February and April 2021 on matters relating to collective bargaining for self-employed. It organises the responses according to the sections of the guide used for interviews.

The interviews involved two main types of experts: representatives of the social partners at EU level (trade unions and employer organisations), who focused specifically on the political aspects of the collective bargaining issue; and academic experts, who focused more on analytical insights. In some cases the responses of the two groups are presented separately in order to differentiate political and analytical arguments. The final list of interviewees was discussed and agreed with DG COMP on 10 March 2021. Table 1 below presents the final list of interviews conducted.

Table 1– Final list of interviewed experts

Name	Title/role	Field of interest	Date
Experts			
Francesco Rossi Dal Pozzo	Independent advisor and professor at the University of Milan	European law	Written contribution received in February
Massimo Pallini	Lawyer and professor of labour law and employment law at the University of Milan	Longstanding experience of cases of false self-employment and abuse of dominant position of large-medium size firms on so-called "semi-dependent workers".	Written contribution received in February
Valerio De Stefano	Professor of Labour Law at the University of Leuven. Former position at ILO	Labour law, labour and technology, competition and collective bargaining.	1 March
Giedo Jansen	Assistant Professor at the University of Twente	Sociology, political science and labour relations; self-employed heterogeneity and their representation.	4 March
Sophie Robin Olivier	Professor of Law at Sorbonne University	International and comparative law, European social law.	19 March
Stijn Broecke	Labour market economist at the OECD	Employment Analysis and Policy division of the Directorate of Employment, Labour and Social Affairs	22 March

Name	Title/role	Field of interest	Date
Cristina A. Volpin	Competition expert at the OECD	Competition law, policy in digital markets, labour markets, sustainability and competition policy in the economic recovery	7 April
EU-level employer organisation representatives			
Rebekah Smith	Deputy Director in the Social Affairs department of BusinessEurope	Industrial relations, labour law and working conditions, social/employment aspects of digitalisation.	8 March
Luc Hendrickx	Director of Enterprise Policy and external Relations at SME United	Responsible for SME policy, better regulation, legal affairs, internal market issues	23 March
EU-level trade union representatives			
Dearbhal Murphy and Dominick Luquer	International Federation of Actors (FIA)	FIA is a global federation representing actors, performers and dancers, but not musicians and technicians, as they are represented by other organisations	11 February
Isabelle Schömann; Joakim Smedman; Ruari Fitzgerald.	European Trade Unions Confederation (ETUC)	Isabelle Schomann (confederal secretary), Joakim Smedman (legal advisor on competition issues). Ruari Fitzgerald (policy advisor on collective bargaining).	11 March

The interviews were conducted according a set of questions organised in seven sections: 1) general questions on the expertise and knowledge of the issue of the experts; 2) Overview of the issue (the need for more social protection of some groups of self-employed and the potential utility of collective bargaining); 3) Legal aspects (the regulatory system of self-employment and collective bargaining); 4) Impacts of covering self-employed by collective agreement (main obstacles and challenges in extending the right to collective bargaining); 5) Benefits and disadvantages of extending collective bargaining; 6) Alternative options (what alternative schemes exist outside of collective bargaining and the different policy options to promote collective bargaining); 7) Future policy (possible range of actions at EU level and potential impacts on EU society and economy). In some cases the interviewed experts preferred to answer only on themes where their knowledge was more developed.

General Questions

All the interviewees recognised how important it is to face the challenges raised by the new features of self-employment and the inadequacy of some of the regulation governing the employment of these workers. The right to collective bargaining and its compatibility with competition law is one of the most complex challenges faced by policymakers.

The issue of the employment conditions of self-employed has emerged relatively recently, in tandem with the rapid growth of platform work. Interviewees agreed that the growth in the number of platform workers is linked to technological changes promoted by the digital revolution and the growth of the new forms of labour that this has enabled. Digital changes are relatively recent and it is to be expected that new ways of working will continue to develop in the future. New technologies are changing contractual relationships and this in turn creates difficulties for labour and competition laws, which are not sufficiently updated and flexible enough to include these new contracting forms. In this respect there is a general awareness that change in the legal framework is needed, but that this should be systemic, including fiscal and regulatory aspects, to avoid prolonged adaptation and uncertainty.

The imprecise definition of self-employment and its application to different forms of self-employment is not a new problem. In many cases, different fiscal and social insurance conditions for employees and self-employed or market protections are at the origin of the growth of self-employment. Hence, the nature of the size and the features of self-employment are structural phenomena, which are the result of a mix of entrepreneurial spirit on the part of individuals, labour and fiscal settings, development of technologies and the sectoral composition of the economy. In general, the magnitude of the cost advantage for self-employment is positively correlated with the number of self-employed, as well as the number of false self-employed and other subordinated forms of self-employment. Some interviewees underlined that the fiscal cause of false self-employment is a difficult political issue, but that it should be addressed. Some attempts in this sense have taken place in the UK and the Netherlands, resulting in the improvement of the working conditions of self-employed without the imposition of more taxation.

Other national differences affect self-employment. For example, definitions of employee and self-employed differ among Member States and therefore does not succeed in capturing the varying types of self-employment and their different characters (such as working with or without employees, dependence on one or more clients, freedom to organise their work, etc.). In some countries self-employed are not permitted to join a union, while in other countries regulation in this area is less strict; moreover, in some countries, specific unions for self-employed or platform workers are emerging and setting up new organisational forms. In other cases, some self-employed are members of public registers and organised in powerful lobbies (lawyers, doctors, fiscal advisers, notaries, journalists, etc.). These differences around the EU are the result of national competences in social and labour policies, which are a significant constraint on an EU-level solution to the collective bargaining issue. In particular, social partner interviewees underlined the limited power of the European Commission on labour law issues regulating self-employed and the necessity for competition law to take into consideration national regulation of collective bargaining and types of labour contract.

All the interviewees felt that there is a need for better working conditions for significant segments of the self-employed workforce, and especially the needs of platform workers. They also agreed with the fact that collective bargaining can be an instrument to achieve this aim, but employer organisations underlined a view that bargaining should not be extended to pay in order not to clash with competition law.

On the other hand, some academics highlighted a view that collective bargaining alone may be not sufficient to protect weak self-employed, as fiscal and social protection differences remain too high and union density among platform workers is still not very developed. In their view, one way forward would be for legal initiatives covering areas such as minimum wages, social security coverage and improvements in labour conditions to join an EU initiative on collective bargaining.

In relation to basic social rights, the situation of platform workers is only the tip of the iceberg, as many self-employed have issues in this regard, and paying attention just to the platform economy would therefore not be a comprehensive solution for everyone. Some interviewees noted that despite prominent debate on platform workers and their contracts, all types of self-employment have a weak and highly dependent component to their working lives.

Interviewees also felt that statistical information and knowledge on the new characteristics of self-employed is poor. The distinction between self-employed with and without employees indicates that the latter are the large majority (around 70%) of the total number of self-employed, but their working conditions, dependence on customers, and working preferences are still poorly reported in official statistics. The general perception among the interviewees was that platform workers are growing in numbers in all the Member States; COLLEEM data appears the main source of information to which interviewees referred.

Some of the interviewees also agreed that it is still impossible to find detailed information on false self-employment, even though this phenomenon is widespread in many Member States. Interviewees felt that the main reason for this is that each country has its own legal criteria for defining employees and self-employed and this makes the compilation of comparable and detailed statistics difficult. Data from the EU Labour Force Survey or other surveys do not match all the national criteria and therefore only the courts can define false or true self-employment on a case-by-case basis.

Overview of the issue

It is an undisputed point that self-employed without employees need greater protection, especially those who did not choose to be self-employed (such as some unskilled workers, some migrants and some young people). These workers are often not covered by any type of unemployment benefit, while their average income, especially among the youngest, is very low and insufficient in terms of paying contributions to pension schemes. In addition, due to their self-employed status they have no protection against the risk of sickness or work-related accidents.

Interviewees agreed that collective bargaining is an important, but not exclusive, instrument for providing these workers with protection. Collective bargaining can increase their contractual power and is sufficiently flexible to adapt to different sectoral and occupational needs. In many cases collective bargaining is a relatively quick solution and can take less time than the passing of new laws or regulations. Further, some experts highlighted the distance between the right to bargain and the effective use of this right. The limited level of organisation among the weaker self-employed and the difficulty in defining their right to representation may be a barrier to the development of efficient collective bargaining in the near future.

On the right to collective bargaining of self-employed, there was generally a difference between the opinion of labour law experts, who consider workers' rights to take precedence over competition rules and other experts, who are more focused on trying to combine the operation of the market and workers' rights. The precedence of rights over other elements is a crucial point in the entire debate and cuts across many arguments.

In particular, **social partners representing employer organisations** stressed that micro enterprises are not permitted to generate cartels to bargain with other larger companies while thanks to this potential EU initiative solo self-employed could do so, and this would create a disparity in the market position of similar subjects.

Another issue raised by employer organisations relates to the obligations deriving from collective bargaining. The adoption of the contractual terms established in a collective agreement could be an option for self-employed even if they do not want be part of the agreement. Furthermore, where collective bargaining is allowed, the general rules cannot conflict with those aspects relating to market

competition. For these social partners, collective bargaining should not involve wages, because this would be detrimental to competition.

However, on that latter point, other experts underlined that the main need to address is the setting of a minimum wage and guarantees for other aspects of social protection (pension, public insurance against diseases and accidents at work, unemployment benefit) which necessarily affect labour costs.

All the interviewees agreed with the fact that the need for protection of the employment conditions of self-employed people differs according to country, sector and occupation. In particular, sectors covering workers who are most in need of protection are identified in: platform services and call centres, logistics and transportation services, cleaning services, and health and elder care services. The weaker workers in traditional occupations (regulated or liberal professions) such as journalism, architecture and law could also be in need of protection. However, within these categories particular attention should be paid to vulnerable workers, either because they often deal with large companies, or for whom insecurity and financial dependency may be predominant factors. Other self-employed have significant market power and deal directly with customers. Furthermore, some interviewees argued that there is no particular reason to differentiate between categories of self-employed people if the main object is to provide better conditions for workers in need of protection, because this is a basic right.

Interviewees explored two further aspects that can be important for collective bargaining: monopsony power in the labour market and the "grey zone" between employment and self-employment.

Monopsony

On monopsony and more generally the labour market effects in relation to market competition, it has been highlighted that in some cases self-employed face the power of a buyers' monopoly consisting of a few companies, and therefore not allowing collective bargaining would intensify the market power of the employers. This view derives from a new approach to competition regulation, in which both effects on consumers and workers are taken into consideration in assessing the functioning of markets. Effects on the labour market, such as the monopsony power capable of reducing wages or worsening working conditions, have been considered in the US by competition authorities, while in the EU they have still not been fully recognised, and effects on consumers continue to be the main drivers of public decisions. The concentration of market power, especially in the case of the platform industry, where employers exploit their dominant position, is an important indicator for assessing the vulnerability of self-employed. However, this criterion is not all-encompassing and does not allow the identification of all vulnerable workers, such as false self-employed working for small companies or other self-employed.

Opinions of the interviewees concerning the market effects of collective bargaining varied. Labour lawyers in general underlined the view that the effects are irrelevant and independent of workers because prices are defined by companies who can decide on reducing profits, enlarging market shares or raising prices. They also emphasised that the salaries of unprotected self-employed are so low that limited increases cannot significantly alter the market; it has to be noted also that higher wages would increase the disposable income of consumers, therefore balancing the effect on prices.

The grey zone between employment and self-employment

The second topic concerns the "grey zone" in which vulnerable self-employed are concentrated and are difficult to support because there is no clear legal definition of these workers. Two different approaches to tackling this are proposed.

The first approach concerns the identification of those workers who need more protection but are considered self-employed only on the basis of fiscal rules; this is often considered to be **false self-employment**. Some countries have focused on specific occupations in which vulnerable workers are concentrated, and basic employee rights have been extended to these workers. Other countries have looked at "**financially dependent self-employed**" workers for whom major, or total, income depends on one client only. Through the definition of criteria that is as objective as possible, these self-employed

are protected by basic rights. The other approach consists in extending protection to all the main categories of self-employed, therefore also covering workers in the "grey zone"; in this case, however, there is the risk of including in protected categories self-employed who do not need this protection.

Regardless of the criteria used to identified protected categories, it is difficult to decide what kind of protection should be extended and how this should be achieved.

All the interviewees highlighted the necessity of involving professionals and regulated professions in collective bargaining. The interviewees recognised, with different emphases, that these self-employed are in many cases in need of more protection, because they are increasingly exposed to platforms or work organisations with hierarchical relationships and economic dependency that is very similar to subordinated employment. The interviewees also deemed that professionals and regulated professions is a field in which competition rules may be more easily infringed and for this reason particular attention should be paid to the distinction between weaker and stronger workers. Accordingly, some proposals to identify weaker workers include: being a "solo" self-employed worker, being subject to basic work organisation (as opposed to more complex work organisation that is usual in undertakings), lacking direct access to the market, or having no power in determining prices. In this respect, Irish competition law, which would identify some exemptions in relation to the type of work, was mentioned as an interesting example; however, interviewees noted that its relationship with the whole legal framework (labour law, tax system, etc.) should be analysed in detail before examining the possibility of replicating this approach at EU level.

Social partners did not have a specific position on liberal professions and reproposed their general view with regard to different types of self-employed. For employer organisation interviewees, the view was that solo self-employed can negotiate their working conditions, but cannot negotiate wages or prices, in order not to infringe competition law. For trade unions, the view was that the right to collective bargaining should be granted to all workers because is an overarching principle in comparison to competition.

Legal aspects

Different approaches to the issue of collective bargaining were proposed in the interviews; some complement each other, while others are contrasting. Here, we highlight the main proposals that emerged from the discussions with EU stakeholders.

1. *International and European law on labour should drive EU institutions and the interpretation of article 101 TFEU should follow the basic rights of workers.*

This view is shared by trade unions and several labour law experts. This approach is based on the statement that the right to collective bargaining is a fundamental and human right and is granted by international charters, such as the European Convention on Human Rights, the European Social Charter and the ILO Conventions that are binding on all Member States. Following this argument, competition rules in art. 101 TFEU forbidding collective bargaining for self-employed are not compatible with international treaties on labour rights. Therefore, there is a need to seek a compatible solution that makes it possible for self-employed to freely access collective bargaining.

According to this, the European Committee of Social Rights, the monitoring authority on the application of the European Social Charter, stated that the right to collective bargaining for self-employed must be granted, but could be restricted to only where justified by specific, proportional and motivated reasons from an appropriate authority. A competition authority must prove that in a specific case collective bargaining involving the self-employed would cause effects that are qualitatively different from cases in which employees are involved, or when collective bargaining would prejudice other fundamental rights. Therefore the approach of European institutions and the international approach appear to diverge.

Defining all self-employed as enterprises and, consequently, applying competition rules to all the self-employed is unrealistic; as discussed before, many of these workers face monopsonic powers and have

no market power themselves. It is generally recognised that self-employed persons whose organisation is a proper enterprise should be subject to competition law, but solo self-employed who do not have a business organisation (eg: an Uber driver who has a car) and have no power in deciding prices cannot be regarded as enterprises under competition law.

In this context, the right to collective bargaining should be granted to all solo self-employed and, according to trade unions, DG COMP has no competence in the matter of collective bargaining, which relates to a basic right under EU legislation and is overarching competition law. DG Comp should only ratify this principle with a guideline or another Act.

Some experts in labour law suggested reversing the possible approach of DG COMP by identifying some categories of self-employed for whom competition law is not applicable; they believe that collective bargaining rights should be extended to all workers and, on a case-by-case basis, the groups of self-employed in conflict with market competition should be identified. This suggestion reverses the political priority ("labour first") but does not solve the identification issue of the different groups of workers and their market powers which rests on national and diverse legal frameworks.

2. The effects on market competition have to be taken into consideration

All the interviewees acknowledged that the effects of collective bargaining on competition and consumers are difficult to define in legal terms.

Recently, national courts have tended to consider platform workers as employees. The reinforcement of this tendency and stronger legal instruments to recognise employees and self-employed could be a way to overcome the conflict between collective bargaining and competition rules. However, this result does not solve the problem for all the self-employed but only reduces the size of the problem.

Three types of remark were highlighted:

1. The large majority of self-employed, when negotiating with their clients, are unable to affect consumer prices. Consequently, collective bargaining, even when wages are involved, does not affect consumers directly.
2. Self-employed who are in a position to create cartels, such as some categories of professionals with market power, could influence consumer prices and market conditions.
3. When self-employed bargain with monopsonic firms they balance the power of the enterprises and could favour competition in the market, generating room for new business solutions. In this sense, it could result in a sort of complementarity between collective bargaining and competition rules.

3. Even if collective bargaining were compatible with competition law, there would be too many problems and obstacles

Representatives of employer organisations want to keep the issue of collective bargaining at national level, noting that the EU cannot intervene on national social policies and labour law which play an important role in regulating this subject. The success of collective agreements depends on the ability and the organisation of national trade unions. According to this point of view, the solution is "not intervening" to regulate the current situation because some problems have to be solved by national laws (for example in the case of new situations in the labour market) or through court judgements (applied case by case), and for the remaining cases it is up to the market to regulate itself.

In addition, collective bargaining does not necessarily ensure better protection or better working conditions for self-employed. Two considerations are proposed in this respect:

- Competition rules are not an obstacle to improving the conditions of platform workers and platform workers could bargain on working conditions but not wages, if they are self-employed;

- The right to collective bargaining would not improve the situation, because the weakest and smallest “enterprises” would not be able to achieve the expected working conditions.

In creating better conditions the differences among self-employed also have to be taken into account, because not all of them may be interested in having social or insurance coverage for all the usual risks identified for employees. Tailored support should therefore be created in order to enable them to mitigate the disadvantaged market conditions in which they work. For example, the coverage of platform workers should depend on the type of tasks they fulfil.

Employer organisation interviewees highlighted the possibility for self-employed to bargain collectively. Indeed, in some countries, such as Spain and Italy, and for some economic sectors, there is already the possibility to bargain collectively and this would prove that there is no problem with competition rules. However, it is necessary to study the agreement in detail because incomes or prices represent “*the red line not to be crossed”*. Defining the level of wages has to remain prohibited so as not to interfere with competition rules. Collective bargaining could be a good instrument for finding agreements on training, working conditions, etc. However, the choice to be covered by the collective agreement should be up to individual self-employed because working conditions are the responsibility of the self-employed themselves.

Impacts of covering self-employed by collective agreement

The main challenges relating to improved social protection for self-employed through collective bargaining are:

- How to prevent national competence on labour and social policies from limiting the effects of change in EU competition rules;
- How to identify vulnerable self-employed to target for initiatives, which technically is a difficult task and again dependent on national legal frameworks;
- How to justify the possible exclusion of some categories of self-employed (including micro enterprises) from the right to collective bargaining;
- How to take into account the wide differences among countries in seeking a common denominator among European self-employed;
- How to prevent an exemption from competition law from generating problems in other sectors.

These obstacles also include the representativeness of self-employed and their heterogeneity. A large number of them are not members of a trade union and do not work permanently in a single sector; this will limit the effectiveness of the extension of existing collective agreements by sector and not by occupation. On the contrary, there have been cases in Europe in which trade unions have negotiated on behalf of self-employed in specific occupational groups of workers (e.g. in the Netherlands for musicians, painters and to some extent architects).

The autonomy of some self-employed could be affected by collective bargaining, especially in the case of those who would not like changes in their working conditions.

Finally, uncertainty about the application of competition rules could hamper initiatives for collective bargaining or make them very risky. As claimed by interviewees from employer organisations, labour law is designed for workers while self-employed are classed as enterprises, as the Court of Justice of the European Union has clearly stated.

Trade union interviewees made two main observations about the lack of representativeness among self-employed. First, businesses are reluctant to comply with the obligations and prefer to externalise any risks and responsibility by moving workers from dependent employment contracts to false subcontracting or self-employment contracts. In such situations, self-employed have to be identified as workers in need of protection and in a weak situation either by the courts or by law (as is the case in

California and in Italy); in these cases, they should not need to be represented by trade unions to achieve more protection, but by the state. Second, when self-employed are represented by trade unions, there is often no counterpart to negotiate with, because employer associations do not want to comply with the obligations arising from the rights or necessary protection of self-employed.

Benefits and disadvantages

The benefits and the disadvantages of collective bargaining depend on the content of the agreement and the degree of market power of firms and competitiveness among workers. On this point, there were a number of views from the interviewed experts and social partners. Below we list some of the main elements selected from the interviews.

Among the benefits were:

- rebalancing the contracting power between self-employees and firms and the consequent better conditions for a significant number of workers;
- collective bargaining as a flexible, adaptable and rapid instrument to find agreements tailored to sectoral and occupation needs;
- more people will be free and keener to become self-employed;
- extension of basic rights to all workers, irrespective of their type:
- mitigation of monopsony positions in the labour market.

Among the disadvantages were:

- work for self-employed could change very quickly and gaps between agreed contracts and the needs of workers and enterprises may occur;
- it is not certain that collective bargaining will produce better working conditions for vulnerable workers;
- pay bargaining may negatively affect competition because it would have effects on costs and prices and;
- an exemption of competition rules is highly problematic because it could be stretched to cover non-vulnerable self-employees, with negative impacts on consumers.

Alternative options

Experts proposed alternative, or complementary, options to collective bargaining. These are:

- to put into place mechanisms for setting wages focusing on minimum prices or predetermined target prices;
- self-employed could self-organise as a “mutual group” by making available financial instruments in order to mitigate the social risks;
- national legislative interventions or administrative decrees (even adopted by labour market authorities) could set rules or minimum standards on pay and/or social protection in order to offer better conditions to self-employed. In this way better conditions are assured, but these instruments are rigid and they do not take into account the differences among types of self-employed;
- a gradual approach: an option could be to segment the self-employed and identify the groups that have a greater need for improved working conditions. Dealing first with the larger sectors, such as taxis, or with the more obvious situations that need to be regulated, could lead the way

to extending protection in a similar manner to small companies or situations less evident in which there are workers in need of protection.

- to identify and protect vulnerable self-employed, it would be possible to divide the initiative on regulation into two steps:
    1. The first step, at EU level and using soft law, identifies a wide category of workers, using analytical criteria such as market monopsony power and low mobility and allows this category to bargain collectively.
    2. The second step, at administrative level and national level, asks competition authorities or Ministries of Labour to interpret European soft law, adapting it to national conditions in order to make the general indications applicable.

Interviewees from employer associations - Instead of collective bargaining, these social partners suggested focusing on aspects such as P2B Regulation (platform to business) or payments to workers (timings and direct payments). Moreover, there is a European Council recommendation (2019) on access to social protection for all workers and for self-employed, and this recommendation should be implemented in the Member States, but since social protection is, in principle, exercised at national level, in such a way that it is not an obligation but an affordable cost for all self-employed.

Employer association social partners also proposed to include people who want to become self-employed in information and training processes, which could clarify the legal aspects of self-employment and make people aware of their rights and risks. Being a self-employed worker does not mean per se earning more money, contrary to what people often think. Indeed, in Europe, the poverty rate is higher among self-employed than among employees.

Representative organisations of self-employed could also negotiate with bigger enterprises when there are problems concerning specific working conditions. These organisations are already trying to improve the situation at national level for their members because they can influence legislation in order to improve conditions and solve problems for self-employed.

Interviewees from trade unions - A concern expressed by these social partners is to avoid splitting collective bargaining for self-employed from that for employees doing the same work. Once the type of work of the self-employed worker has been identified and, if in that sector a collective agreement is in place, that contract should be applied, because the externalisation of the work in this way is also an infringement of the collective bargaining for employees. This would respect the principle of “equal treatment” among workers and in this regard new bargaining actors are not needed since sectoral trade unions already represent the workers. Even in the case of platform workers or workers in the digital economy, it is possible to refer to sectoral collective agreements without separate bargaining (e.g. in transport platforms the transport collective agreement can be easily applied).

Future policy

According to some experts, among the scenarios that the European Commission would like to consider in order to assess European intervention, the only viable option that the Commission can undertake is “make collective bargaining for all the self-employed possible”, because it is not possible to limit access to collective bargaining and every worker must have access to collective bargaining, regardless of their employment status.

These experts noted that the Commission does not have to redefine fundamental concepts that are already in place, in regulating the equilibrium between collective bargaining and competition law. On the contrary, they stressed that the Commission must be driven by fundamental rights and concepts expressed in the Charter of Fundamental Rights. This concept is strongly supported by trade unions.

Moreover, in adopting its decision, they stressed that the Commission should produce very clear guidelines or give adequate notice so that national competition authorities do not hinder collective

bargaining for self-employed persons, and this can also help to foster a harmonised approach within EU countries. At a later stage, the Commission could think about adopting a Regulation, provided there is a widespread consensus in Member States. However, the most important step that the Commission could undertake is that of providing a clear and motivated guideline, without excluding any type of self-employed arbitrarily, in order to "guide" the CJEU in adopting decisions that can ensure collective bargaining for the self-employed.

Employer associations affirmed that DG COMP should continue not to deal with the collective bargaining issue, because competition law does not hamper collective bargaining of working conditions but only of fees. The approach of collective bargaining is not "universal" for all those vulnerable workers, such as retailers or micro enterprises, who do not have a bargaining position in relation to bigger enterprises; they would be penalised by an extension of the collective bargaining power of other self-employed. In addition, it is impossible to find a logical and legal division among different types of vulnerable workers.

Lessons learned

Here, we propose some lessons that we have drawn from a cross-analysis of the interviews.

1. The predominance or not of labour rights on competition rules is a determining factor. The potential conflict of these two basic principles of EU foundations has to be clarified in order to be able to adopt a consistent and effective initiative. In addition, because they are general principles it is particularly difficult to design their application to limited groups of workers or enterprises.
2. The legal definition of work and its actual application are inadequate in the Member States in terms of fully representing the reality of many solo self-employed. This, on the one hand amplifies the number of false self-employed and the insufficient protection for many self-employed, while on the other hand it makes it difficult to limit competition law and collective bargaining to specific groups of workers;
3. According to the previous point, national competences on many social and labour policies may limit and differentiate the national effects of an EU initiative on competition. An initiative able to effectively coordinate EU and national decision-making levels would have greater effectiveness;
4. The large distance between the opinions of trade unions and employer associations is understandable, but denotes also the implicit political cost of any initiative in this field;
5. The analysis of the potential effects on competition of an initiative for collective bargaining would require, more than in other cases, innovative approaches capable of embracing the effects on the labour market and for consumers. Potential effects on consumers were not perceived as remarkable or alarming, while effects on the labour market in terms of a reduction in monopsony power and social imbalances were considered to be substantial.
6. The capacity of collective bargaining in improving working conditions of self-employed is not exclusive and sufficient alone. Social protections and health and safety insurance depend on national policies, and the activation of collective bargaining may take time and differ among countries. The coordination of the initiative on competition with other initiatives for weak self-employed is necessary to reach the expected goals.

These lessons help the definition and the selection of the policy options of the EU initiative according to the preferences highlighted in the interviews.

- First, the considerations of the interviewed experts push to adopt a "simple" option, in which national rules concerning definitions of self-employed or collective bargaining can be less intrusive and administrative burden less heavy. Option 1 and option 4 seem better respond to this criterion.

- Second, the preferences of the main interviewed stakeholders are divergent[1]: trade unions prefer option 4, while entrepreneurial associations prefer option 1 with minor coverage and market influence. Option 4 seems to be generally preferred by interviewees who give the highest priority to the extension of collective bargaining because it introduces fewer divisions in the labour market and represents the basic rights of the workers more effectively.
- Third, options 1 to 3 seem less capable of covering the weakest self-employed requiring support because although these workers are concentrated in platforms they are distributed across all sectors and occupations.
- Fourth, the control of competition rules seems easier in option 1, where the coverage is minor and the possibility of collective bargaining is relatively limited.

[1] In the interview we have not explicitely submitted the 4 options to the stakeholders, but they had already met DG COMP and knew the contents of the EU initiative.

KD-05-22-307-EN-N

https://europa.eu/!Tc4f4Y

Publications Office
of the European Union

ISBN: 978-92-76-57015-8