



Questions and answers: Commission adopts Guidelines on collective agreements of self-employed people

Brussels, 29 September 2022

1. What is the scope of the Guidelines on collective agreements of self-employed people ('Guidelines') and who is covered by them?

These [Guidelines](#) clarify when self-employed people can negotiate their working conditions collectively without the risk of EU competition law standing in the way. They cover solo self-employed people who are service providers and who do not have any employees but rely primarily on their own personal labour. The solo self-employed people have little influence over their working conditions either because:

- they are in a situation comparable to workers; or
- they are in a weak negotiating position towards their counterparty/ies.

Both the solo self-employed people and the undertakings they negotiate with are covered by the safe harbour set out in the Guidelines.

The Guidelines cover all collective negotiations and agreements as long as they concern the working conditions of solo self-employed people (for example working hours, remuneration, holidays or sick leave). However, agreements on the terms and conditions imposed on consumers (for example, the prices consumers will pay for the service), are not covered by the Guidelines and normally infringe EU competition law.

2. Which categories of solo self-employed people are considered by the Guidelines as "comparable to workers"?

On the basis of the [Albany](#) and [FNV Kunsten](#) judgments, the Guidelines provide that the collective agreements regarding the working conditions of solo self-employed people who are in a situation "comparable to that of workers" fall outside the scope of Article 101 of the Treaty on the Functioning of the European Union ('TFEU').

The Guidelines identify three such categories of solo self-employed people:

- **economically dependent solo self-employed people**, i.e. those solo self-employed people providing their services exclusively or predominantly to one counterparty. In order to facilitate this assessment, the Guidelines provide that solo self-employed people who depend on one counterparty for at least 50% of their work-related income shall be considered as economically dependent. This percentage is calculated over a period of less than a year, a year or two years;
- **solo self-employed people working "side-by-side" with workers**, i.e. those solo self-employed people who provide the same or similar tasks "side-by-side" with workers working for the same counterparty;
- **solo self-employed people providing their services to or through a digital labour platform**. This category mirrors the increasing trend of national jurisprudence and newly introduced laws recognising the economic dependence of solo self-employed people working on digital labour platforms. The term "digital labour platform" is defined in the same way in the Guidelines and the Commission proposal for a Directive on improving working conditions in [platform work](#).

3. Which categories of solo self-employed people are considered to be in an imbalanced negotiating position, according to the Guidelines?

Some solo self-employed people may have little influence over their working conditions even if they are not in a position comparable to that of workers. They may thus be in an imbalanced negotiating position. Collective agreements on the working conditions of such solo self-employed people, could still fall under the scope of Article 101 TFEU, but the Commission here commits not to act against

such agreements.

The Guidelines identify two categories of such solo self-employed people:

- ***solo self-employed people facing an imbalance in bargaining power due to negotiation with counterparties of a certain economic strength.***

This is the case, in particular, when solo self-employed people are providing their services to counterparties, which represent the whole of a sector or industry. The same stands for those cases where solo self-employed people deal with counterparty/-ies whose annual aggregate turnover equals or exceeds €2 million or their staff headcount equals or exceeds 10 workers (individually or jointly).

The Guidelines recognise that outside these two cases, solo self-employed people may also face an imbalance in negotiating position depending on the underlying circumstances.

- ***solo self-employed people bargaining collectively pursuant to national or EU legislation.***

In certain cases, the national or EU legislator has identified situations where solo self-employed people may need access to collective bargaining in order to address their imbalanced negotiating position. In particular, some national laws, in pursuit of social objectives, either explicitly grant the right to collective bargaining to certain professions or exclude them from the application of national competition law. The [EU Copyright Directive](#) also foresees the possibility of collective bargaining for authors and performers in order to ensure a fair and appropriate remuneration for the use of their works.

4. I think I am a “false” self-employed person. Can I still use the Guidelines?

Any solo self-employed person is entitled to seek reclassification of his or her status by national courts.

If false self-employed people have been successfully reclassified as “workers”, they will enjoy all the rights attached to their worker status, including the right to bargain collectively. Hence, there will be no need for them to rely on the Guidelines. However, as long as they have not been reclassified by a national authority or court, they can benefit from the Guidelines.

5. What are the links between these Guidelines and the Commission's proposal for a Directive on improving working conditions in platform work (Platform Work Directive)?

These Guidelines are linked to the [Commission's proposal for a Directive on improving working conditions in platform work](#). Both instruments aim to improve the working conditions of people working through “digital labour platforms”. These platforms are providers of commercial services, through websites or mobile applications, organising the work of individuals at the request of a client. Besides, the Guidelines also apply to solo self-employed outside the platform economy.

The two initiatives have different perspectives: The proposal for a Directive covers only people working through digital labour platforms. Its aim is to ensure that they are correctly classified as workers or self-employed and gain access to labour rights accordingly.

People working through “digital labour platforms” will benefit from a presumption of employment relationship if certain criteria are fulfilled. If their employment relationship is confirmed by national authorities or courts in application of the Directive, their collective agreements would fall outside EU competition law (as is the case for all workers).

6. I am a self-employed theatre actor performing plays that can last less than a year. Can I be considered “economically dependent” ?

Yes. For a solo self-employed person who has worked less than a year during the year preceding the conclusion of the collective agreement, the calculation of the 50% income threshold will be based on the self-employed person's work related income during that year. This would be irrespective of how long they have worked.

So if a play lasted less than a year and 50% of your income came from the theatre where you performed, you will be able to negotiate collectively or be covered by a collective agreement the next year.

7. I am a solo self-employed person providing services to a micro-enterprise but I am

experiencing difficult working conditions and I have little negotiating power. Can I benefit from these Guidelines?

The Guidelines apply to the collective negotiations and agreements between solo self-employed people and counterparties of a certain economic strength, i.e. in instances of imbalance in bargaining power between the two negotiating sides. The Guidelines presume that such an imbalance occurs when the counterparty/-ies represent the whole of a sector or industry or when they are bigger than a microenterprise. The Guidelines can also cover other instances of imbalance in bargaining power on the basis of a case-by-case assessment.

8. I am a solo self-employed author and performer and my songs are copyright protected. Do the Guidelines change the way I will be remunerated?

The latest Copyright Directive adopted in 2019 (Directive on copyright in the Digital Single Market) explicitly mentions that collective bargaining can be a way to achieve a fair remuneration. Consistently with the copyright rules, the Guidelines apply to collective negotiations and agreements made by solo self-employed authors and performers, which aim to ensure such a fair remuneration for the use of their protected works. In such instance the Commission commits not to intervene under article 101 TFEU.

On the other hand, collective negotiations concluded in the context of the activities of Collective Management Organisations (CMOs) or Independent Management Entities (IMEs) are generally not considered to be collective bargaining under the copyright rules. Therefore, the Guidelines do not apply to them.

9. I am a musician and use my own instrument whenever I play for an orchestra as a self-employed person, can I use these Guidelines?

Solo self-employed people who use certain goods or assets as an ancillary means for the provision of services fall under the scope of the Guidelines. For example, musicians who use their own musical instrument or cleaners who bring their own accessories (such as specific clothes or cleaning products) in order to provide their services would be covered by the scope of the Guidelines. However, sharing or exploitation of goods or assets (e.g. rental of housing) or the resale of goods/services (e.g. resale of automotive parts) do not fall under these Guidelines.

10. How do these Guidelines relate to the promotion of social policy?

The Guidelines neither create any social rights or obligations nor do they aim to change the definitions of the terms "worker" or "self-employed person" under national or Union law. Also, they do not affect the possibility of self-employed people to seek reclassification of their employment status as "workers" by national authorities or courts.

The Guidelines only explain how the Commission will apply EU competition rules to collective agreements on the working conditions of some self-employed people. The prerogatives of the Member States in social policy or the autonomy of the social partners will not be affected.

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