

February 2022

Feedback to the European Commission on Guidelines on collective agreements of self-employed persons

The Malta Chamber and Malta Business Bureau agree that the solo self-employed should have the possibility to negotiate collectively with companies to obtain better working conditions. This would certainly strengthen their position compared to when acting individually. Nonetheless, one must avoid any risks that would enable the solo self-employed to act against the spirit of free and fair competition.

The objectives of the initiative, i.e. to clarify the link between competition policy and the collective representation of solo self-employed is welcome, and particularly due to the fact that it is being presented in the form of guidelines, which in our view is proportionate and respects the diverse realities in different national industrial relations systems. It is also positive that nonetheless the European Commission will continue to have the ability to intervene where necessary to enforce competition policy.

As a matter of principle, we believe that both the solo self-employed and companies must retain the prerogative and freedom to request, accept and/or reject the offer to engage in negotiations with one another. These guidelines must not lead to the understanding or an interpretation that any party is in any way under an obligation to negotiate. Furthermore, given the way terms such as collective bargaining or collective negotiations are understood within the context of industrial relations, one must avoid the risk that any outcome of negotiations, or rather, a collective agreement, are used as a justification for an employment status.

Specific points:

Self-employed collectively decide to suspend services

Point 16 from the guidelines (extract below) refers to a specific case of suspension of services by solo self-employed towards a particular counterparty, such as in a situation whereby a counterparty is not willing to negotiate or enter into an agreement on working conditions, to be treated for the purpose of these Guidelines. In line with the position outlined above, neither party should be obliged to enter negotiations. While these guidelines aim to clarify the link between collective agreements and competition policy, in our view, this proposition would conflict with other provisions of the EU Treaty; in this case Article 153 TFEU on social policy, which excludes the EU's competence from intervening on the right to strike or impose lock outs.

Point 16: “However, agreements under which solo self-employed persons collectively decide not to provide services to particular counterparties, for example because the counterparty is not willing to enter into an agreement on working conditions require an individual assessment. Such agreements restrict the supply of labour and may therefore raise competition concerns. To the extent that it can be shown that such a coordinated refusal to supply labour is necessary and proportionate for the negotiation or conclusion of the collective agreement, it will be treated for the purposes of these Guidelines in the same way as the collective agreement to which it is linked (or would have been linked in the case of unsuccessful negotiations).”

Setting of fees/prices

While, as stated in the beginning, we support negotiations between solo self-employed and companies on working conditions to strengthen their bargaining position on aspects such as for example social protection, training and other specific insurances, we cannot support that the guidelines (as referred to in point 18 example 1) exempt from competition policy negotiations and/or agreements regarding the setting of fees/prices. We consider that this would provide a possibility to solo self-employed to collude directly to fix prices, which would mirror a cartel behaviour and distort competition. Such arrangements would superficially inflate prices and restrict supply, also putting companies in a weaker bargaining power. For such cases Article 101 TFEU should apply and this must be reflected in the guidelines.

For the same reason, i.e. maintaining a balance in bargaining power but in a broader sense, we would welcome a limitation of scope of the guidelines to solo self-employed and professional customers of a minimum size. This could be aligned to the EU’s SME definition.

The Malta Business Bureau is the EU-advisory organisation of the Malta Chamber of Commerce, Enterprise and Industry and the Malta Hotels and Restaurants Association. The MBB is also a partner of the Enterprise Europe Network.



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