

Ceemet's response on draft guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons

Preliminary remarks

On 9 December 2021, the European Commission published a set of measures to improve the working conditions in platform work and to support the sustainable growth of digital labour mobility. Within this package, a public consultation on “*draft Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons*” was also released.

Ceemet would like to refer to the content of its response to the previous Commission consultation regarding the application of EU competition law on collective bargaining agreements by self-employed, submitted in April 2021. In its [response](#), Ceemet explains, amongst others, that it does not agree that competition rules are changed in order to allow **genuine self-employed to bargain their fees and other trading conditions**, as these would go against competition law.

Ceemet also refers here to its responses to the [first](#) and [second](#) phase consultation of social partners on addressing the challenges related to working conditions in platform work. On both its contributions, Ceemet puts forward its views on collective representation issues and emphasizes, amongst others, that EU and/or national action in the area of collective representation and bargaining of the “new actors of the platform economy” has to be avoided as it will interfere with the autonomy of social partners.

Ceemet general comments on the draft guidelines

Ceemet agrees with the general objective of improving working conditions of self-employed persons as long as it is done in line with national regulations and industrial relations systems. In this regard, Ceemet is of the opinion that with the proposed guidelines the Commission is going beyond their competence as they are introducing criteria at EU level that determine in which cases a solo self-employed¹ person is in a situation comparable to that of a worker and can thus conclude collective agreements without falling into the scope of article 101 TFEU². The Commission also describes the situations in which a solo self-employed person is in an imbalanced negotiating position towards its counterparty and can conclude collective agreements to improve his/her working conditions without triggering the Commission intervention pursuant to article 101 TFEU.

Ceemet considers that by proposing these criteria at EU level, the Commission does not respect national competence when it comes to defining the term worker or self-employed

¹ For the purposes of these guidelines, the term solo self-employed persons refers to persons who do not have an employment contract or who are not in an employment relationship

² Article 101 TFEU prohibits undertakings to collectively bargain their fees and other trading conditions without infringing competition law. From a competition law perspective, self-employed persons, even if they are individuals working in their own, are considered to be undertakings as they carry out their activity on the market as independent operators in relation to their principal

under national labour law. The Commission should have aimed at clarifying the application of EU competition law on this matter **in line with national regulations** and not by introducing criteria at EU level that determine in which situations a solo-self-employed person can be considered as a worker for the purposes of collective bargaining/agreements.

Further, these guidelines at EU level can potentially contradict national legislation on the matter.

Solo self-employed persons who are in a situation comparable to a worker:

Guidelines 24-26 (economically dependent solo self-employed persons), 26-27 (solo self-employed persons working side-by-side with workers) and 28-31 (solo self-employed persons working through digital labour platform) describe the situations in which a solo self-employed person is considered to be in a situation comparable to that of a worker for the purposes of collective bargaining.

With regard to these guidelines, Ceemet would like to emphasize that the EU has no competence to regulate collective representation issues (article 153 TFEU). However, the Commission is introducing a series of criteria at EU level that determine the cases in which a solo self-employed person is in a situation comparable to a worker for the purposes of collective bargaining/agreements. Furthermore, in such cases, the Commission considers that collective agreements relating to working conditions between a counterparty and “these categories of solo self-employed persons” will fall outside the scope of article 101 TFEU even if the solo self-employed person in question has not been reclassified as worker by national authorities/courts. The Commission is, thus, interfering with a core competence of Member States and of representative national social partners when it comes to determining the organisation, parties and functioning of collective bargaining/agreements systems at national level in the frame of labour law.

Moreover, the Commission proposals *to qualify* “certain categories of self-employed as workers at EU level for the purposes of collective bargaining” are unfamiliar to many national systems, while it is their prerogative to define worker and/or self-employed and the practical implications which go along with this qualification at national level.

Against this background, we would like to stress, once more, that, matters related to the notion of an employment relationship or the concept of a worker or self-employed are a core competence of the Member States fully in line with their national practices and in accordance with the criteria established by national labour and social security systems.

As a matter of fact, in the case of misclassification of the employment status, the clarification of the employment status should be done at national level in accordance with national criteria and concepts (that may vary from one Member State to another). Once it is clear whether the person is a worker or a self-employed, the applicable labour law can be determined and measures to improve working conditions can be put in place for workers. EU interference in this regard will go fully against the principle of subsidiarity.

As expressed above, in the specific case of collective agreements between solo self-employed persons and digital labour platform, Ceemet is of the opinion that it is up to representative and autonomous social partners at national level to decide whether and how to discuss and agree on how to best attract and represent the “*new actors of the platform economy*”. The Commission must respect the diversity of industrial relation systems and national labour markets as well as the autonomy of social partners.

About Ceemet

- Ceemet represents the metal, engineering and technology-based industry employers in Europe.
- Member organisations represent 200,000 companies in Europe, providing over 17 million direct and 35 million indirect jobs.
- Ceemet is a recognised European social partner at the industrial sector level, promoting global competitiveness for European industry through consultation and social dialogue.