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New European Commission guidelines on collective agreements regarding the working conditions of solo self-employed persons

September 29, 2022 – The European Commission adopted its “Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons”. The guidelines set out important rules to determine if collective agreements between solo-self employed persons and their professional customers may result in infringements of the EU competition law.

New European Commission guidelines on collective agreements regarding the working conditions of solo self-employed persons

The European Commission adopted on September 29, 2022, its “*Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons*”.

The guidelines point out that self-employed persons, even if they are individuals working on their own, are in principle undertakings within the meaning of EU competition law. As such, the collective negotiations that solo-self-employed persons may carry out with economic operators to which they provide services in order to improve working conditions create a context where certain competition restrictions prohibited by EU legislation could occur, such as market sharing or price fixing agreements.

In this context, the guidelines set out the main principles the Commission will use to determine if agreements concluded between solo-self-employed persons and their professional customers are likely to infringe EU competition rules and should therefore be subject to further investigation from this perspective. The principles are based on definitions and explanations of key concepts, such as:

- **solo-self employed person**, meaning a person who does not have an employment contract or who is not in an employment relationship, and who relies primarily on his or her own personal labour for the provision of the services;
- **working conditions** of solo self-employed persons, which include matters such as: remuneration, rewards and bonuses, working time and working patterns, holiday, leave, physical spaces where work takes place, health and safety, insurance and social security, and conditions under which solo self-employed persons are entitled to cease providing their services or under which their counterparty is entitled to cease using their services;
- channels for negotiation and conclusion of collective agreements between solo self-employed persons and their professional customers.

The guidelines also indicate types of collective agreements the Commission specifically excludes from the scope of EU competition law or against which it will not intervene, namely agreements concluded by solo self-employed persons who are in a situation comparable to that of workers or who experience an imbalance in bargaining power compared to their counterparties. The Commission also establishes the criteria for identifying such collective agreements excluded from the scope of the guidelines.

In addition to clarifying specific matters related to application of EU competition law, the Commission also took the opportunity to address a series of sensitive aspects highly relevant in the context of the recent transformations in the labour markets, especially due to digitalization. As such, the guidelines contain important explanations and clarifications, also based on relevant caselaw of the EU Court of Justice, related to:

- definition of **digital labour platforms** and the situation of solo self-employed persons working through such platforms;
- criteria for identifying **false self-employed persons** and **self-employed persons comparable to workers**;
- **economic dependence** of solo self-employed persons on their professional customers;
- criteria for assessing a potential **imbalance in bargaining power** between solo self-employed persons and their counterparties.

It is therefore highly likely that these clarifications from the Commission will also shape the future approach of national labour and tax authorities, as well as national courts of law, in determining the potential worker status and related tax implications in connection with solo self-employed persons, thus raising new challenges for economic operators using the services of such persons in their business activities.

[For further questions regarding the aspects mentioned in this alert, please contact us.](#)



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