

## PREFACE

# Collective bargaining for solo self-employed persons within the European Union

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The issue of labour platforms as part of the platform economy has been the subject of academic research and of legal policy initiatives worldwide since 2016. Initially, special attention was paid to driving service providers and to courier drivers (e.g. UBER, Foodora, Take eat easy). In general, the services available via such labour platforms are performed by solo self-employed persons and, to a lesser extent, by employees. Some Member States of the European Union, such as Austria, Germany, Portugal, and Spain, recognise a category of ‘persons similar to employees’, who, in contrast to employees, are not personally dependent but are economically dependent on a main principal (client) and therefore in need of social protection comparable to the protection granted to employees.

Member States have, in some cases, taken legislative measures to protect such persons (e.g. the Riders’ Law in Spain). Separately, in December 2021, the European Commission launched an initiative to improve working conditions in platform work. This initiative includes a proposal for a directive<sup>1</sup> and draft guidelines on the collective bargaining of solo self-employed persons. The directive, which has not been adopted yet, primarily aims to facilitate the determination of the employment status and to improve access to legal protection. It should be mentioned that this does not imply the extension of the concept of ‘employee’ to include all platform workers in labour law. In general, labour platforms assume that the services are provided by solo self-employed persons under contracts for services or contracts for work. Therefore, in addition to the proposal for a directive, the European Commission adopted, on 21 September 2022, guidelines on collective bargaining for solo self-employed persons (the ‘Guidelines’).<sup>2</sup> It is worth emphasising that some of these solo self-employed persons are economically dependent on a principal (client) or are actually bogus self-employed persons. Therefore, the right to collective self-help through collective agreements should be granted to them.

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1 Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work, 21 . 9. 2021, COM(2021) 762 final.

2 Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons (2022/C 374/02), OJ 30 September 2022, C 374/2.

The right to collective bargaining is granted to solo self-employed persons in need of social protection at least by Article 6 No. 2 of the Revised European Social Charter (RESC). However, this legal provision comes into conflict with the ban on cartels in Article 101 of the Treaty on the Functioning of the European Union (TFEU). In the Guidelines, the European Commission specifies which categories of collective agreements of solo self-employed persons are, in its interpretation, not affected by the ban on cartels or, at least, with regard to which the ban on cartels should not be enforced. However, the categories developed by the European Commission only partially correspond to the collective agreements existing or recognised in the Member States. In particular, collective labour law and social partnership are strongly influenced by the social and historical developments in each Member State.

This issue is, therefore, devoted not only to the Guidelines of the European Commission, but also to collective bargaining for solo self-employed persons in the Member States, and thus maps the current developments taking place with regard to labour platforms. Most of the authors already collaborated in 2021 in a project on economically dependent solo self-employed persons and the legal protection granted to them in certain Member States of the European Union, the results of which collaboration were published in 2022 by Beck, Hart and Nomos under the title ‘Economically-dependent Workers as Part of a Decent Economy’.

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