



# The European Commission Project on collective agreements regarding the working conditions of self-employed workers

by Andrea Zoppo

**Tag:** #EuropeanCommission #collectiveagreements #self-employedworkers

The European Commission on December 9, 2021 proposed a series of measures to improve the conditions of work in digital platform, with the aim of supporting the sustainable growth of digital work platforms in the EU. The project includes 1) a proposal for a directive on the improvement of working conditions at work through platforms (F. Capponi, *Dalla Commissione Europea una proposta di direttiva sul lavoro tramite piattaforma digitale: il punto sulle previsioni in materia di qualificazione del rapporto di lavoro*, on Bollettino ADAPT 13 December 2021, n. 44); 2) a communication defining how to exploit the benefits of digitalisation for the future of work and finally, 3) a draft guidelines **aiming to clarify the application of EU competition law on collective agreements for self-employed workers**, including those working through digital work platforms.

The Commission has launched a **public consultation**, inviting various stakeholders (citizens, businesses, social partners, academia, government bodies and all the various stakeholders) to submit comments on the project relating to collective agreements concerning the **working conditions of self-employed workers and the related contradictions with the competitive matter**. The objective, as reiterated by the European Commissioner for Competition Margrethe Vestager, is to "consult stakeholders on a project aimed at ensuring legal certainty by specifying the areas in which competition law does not hinder the efforts made by these workers to collectively negotiate better deals". Until now, in fact, **self-employed workers have been considered by EU legislation and case law as companies, thus risking violating art. 101 of the TFEU if they collectively negotiate their remuneration and treatment conditions**. Several rulings that have taken place over time, such as the Albany ruling and the FNV Kunsten ruling, have confirmed this restrictive orientation, which has effectively cancelled the agreements signed collectively by associations of actors, musicians or other self-employed workers.

The Commission's draft, put up for consultation, specifies the areas in which competition law does not **hinder collective bargaining aimed at improving the working conditions of a certain category of self-employed workers**. The project traces the current jurisprudence and existing rulings on the subject and then proposes a series of directive criteria by which workers are not included in the scope of application of art. 101 TFEU. It is also specified that, in the case of individual self-employed workers with a weak negotiating position, the agreements stipulated would not involve the intervention of the Commission pursuant to

Article 101 of the TFEU. The line followed by the Commission take note of the structural change in the **self-employment markets where workers no longer enjoy the independence that normally derives from the status of self-employed**. Therefore, some of them may find it difficult to improve their situation and, not having adequate bargaining power, **they may be subjected to a worsening of income and working conditions**.

**The Commission's initiative concerns a large number of individual self-employed workers such as economically dependent workers**, those who work alongside other workers in the world of platforms, people who negotiate their working conditions with counterparties of a certain economic weight, workers participating in collective bargaining agreements on copyright matters. The Commission, having assessed the comments of the stakeholders (to be submitted by February 24, 2022), **will continue with the publication of the guidelines that will be binding in the interpretation and subsequent application of the EU competition rules** and will be published by the second quarter of 2022.

The relevance of the guidelines takes on its importance as they aim **to illustrate how the Commission will apply EU competition law**, without prejudice to the prerogatives of the Member States and the social partners. With this new approach, the **European Commission opens up to a new perspective of intervention and reflection: the spaces are opened for a new negotiation of employment conditions regardless of the reference contract**. In this way, the previous guidelines of the Court of Justice which have fuelled the contrast between the collective bargaining of self-employed workers and competition law are reversed.

*Andrea Zoppo*  
ADAPT Junior Fellow  
 @AndreaZoppo