

**Minutes of the meeting of 14 October 2021 between
Executive Vice-President Vestager and ETUC**

Attendance:

For ETUC

[REDACTED] at the European Trade Union Confederation (ETUC)
[REDACTED] at the European Trade Union Confederation (ETUC)
[REDACTED] at the European Trade Union Confederation (ETUC)

For Commission: *Executive Vice-President Vestager (EVP), Werner Stengg, Penelope Papandropoulos (CAB), [REDACTED]*

The meeting was dedicated to the status of the initiative related to collective bargaining agreements for self-employed and the scope of application EU competition rules (hereafter DG COMP's initiative).

ETUC's position

The absence of access to collective bargaining by solo self-employed is problematic. It has led to a real deterioration of working conditions, both online and offline. ETUC welcomes DG COMP's initiative but fears it could interfere with the setting of collective bargaining at Member State's level through recognized social partners. ETUC highlighted the importance of collective bargaining agreement to create a level playing field about the working conditions of both self-employed and workers and to avoid a race to the bottom on labour cost. Excluding all collective bargaining agreement from the cartel prohibition is in ETUC's view the best option. In that sense, ETUC mentioned that in some countries, trade unions already represent solo self-employed, for instance in the media sector.

About the options set out in the Inception Impact Assessment of DG COMP's initiative, ETUC's view is that they could lead to a fragmentation of the self-employed's situation between those who will be entitled to bargain collectively and those who will not. ETUC is of the opinion that this would go against the fundamental rights of the individuals concerned, especially in relation to the option that would exclude collective agreement by self-employed on the basis of the size of their counterpart (i.e. option 2).

ETUC welcomes the fact that DG EMPL's initiative about platform workers (hereafter DG EMPL's initiative) is run in parallel with DG COMP's initiative. Although ETUC is happy about the presumption of employment contained in DG EMPL's initiative, it highlighted the risk of not covering solo self-employed in the offline economy through DG COMP's initiative, citing interpreters and translators as examples of solo self-employed in real need of collective bargaining. In ETUC's view, a coherent eco-system that would avoid circumventions of various legislations and shifting costs from companies to self-employed needs to be created. This would be beneficial to the economy as a whole.

In relation to the existing solutions at national level, ETUC warned against a model promoting entrepreneurship regardless of the social cost it entails, such as the current approach in France. ETUC would support a system with sectoral collective bargaining agreements, which could start at company/platform level and then be extended to a whole sector, and cited Italy as an example. About the approach taken by platforms, in light of the recent requalification cases, ETUC cited that some, such as Glovo have started to use subcontractors to employ individuals. Others such as Just Eat

recruit individuals directly with the status of worker but the latter however keep a high degree of flexibility in how they work. This in ETUC's views shows that the status of worker is not incompatible with flexibility.

EVP Vestager clarifications

EVP Vestager took the opportunity of the meeting to thank ETUC for its interactions with DG COMP in order to find the best solution. DG COMP's initiative is now at the level of the Regulatory Scrutiny Board and various options are still being assessed. They have to be seen in light of DG EMPL's initiative about platform workers as the latter, through a presumption of employment, will end many abuses of the (false) self-employed status and provide an EU-wide solution. It will thus impact the scope of DG COMP's initiative, since collective bargaining for workers is already outside of the scope of Article 101 TFEU. When choosing the option, EVP Vestager highlighted the need for coherency between the two initiatives. She also highlighted the importance of having a certain flexibility in the labour market.

DG COMP's initiative will result in guidelines. The guidelines will enable the Commission to have a dynamic approach and to protect the solo self-employed who need it. It may include solo self-employed in sectors requiring a high-level of education (e.g. journalists or lawyers) depending on the circumstances. One of the key issue is the bargaining power of the solo self-employed vis-à-vis their professional counterpart. Collective bargaining vis-à-vis consumers will, remain prohibited. DG COMP's initiative will keep the distinction between self-employed (i.e. undertakings) and workers. EVP Vestager confirmed that the initiative will not create a new category between these two.

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