



Commissioner Schmit
Jobs and Social Rights

Bilateral with Miki Kuusi, CEO of Wolt

19 September 2022, 15:00 – 15:30
CAB room

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| Members of Cabinet in charge: Ana Carla PEREIRA Briefing coordination: [REDACTED] | Main contributors: [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] |
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Scene-setter

On 19 September you will meet with Mr Miki Kuusi, CEO of Wolt to discuss the proposal for the **Platform Work Directive** and the **draft Guidelines on the application of EU competition law**.

In the letter of 29 August addressed to you and Executive Vice-President Vestager, Mr Kuusi is requesting the Commission to:

- Publish Guidelines unlocking collective bargaining as soon as possible (*Mr Kuusi expressed serious concerns about the delay in the publication of the final Guidelines*);
- Align the Platform Work Directive with the Guidelines for collective agreements (concretely, treat collective bargaining similarly to voluntary benefits and protections in Recital 23);
- Ensure that solutions to platform work are as uniform as possible across the EU (Wolt is advocating for EU-level criteria, warning against national criteria or automatic presumption).

You met with Mr Kuusi on 9/06/21 to discuss the Platform Work initiative. On 17/06/22, Ana Carla Pereira met with Wolt's couriers. Wolt was present at the consultation meeting with platforms on 20/09/21. Wolt has been in principle supportive of the Directive and the Guidelines, as long as the combination of the two instruments enables collective bargaining for self-employed and allows platforms to offer better protections of people working through platforms without the need to reclassify them as workers.

Line to take

[On the Draft Guidelines on the application of EU competition law]

- The Commission appreciates and welcomes Wolt's support.
- Self-employed people working through platforms constitute one of the categories covered by the draft Guidelines. After the publication of the Guidelines, their collective agreements with the platforms to which they provide their services fall outside the scope of EU competition law.
- The Commission understands the need for a swift adoption of these Guidelines. We are working in this direction, with the aim to adopt in autumn 2022. Adoption was slightly delayed (initial planning was to adopt on Q2 2022) in order to ensure coordination with other related projects.
- The Guidelines will ensure **full alignment** with the definition of "digital labour platform", a term used and defined in the Proposal for the Platform Work Directive. DG COMP will ensure that the two initiatives will remain aligned on this aspect. In particular, if the definition of "digital labour platforms" in the adopted Platform Work Directive differs materially from the one in the Guidelines, DG COMP will update the Guidelines accordingly, in order for the two initiatives to remain aligned.

[On the Platform work Directive]

- Digital labour platforms, such as the Finnish company Wolt bring innovation to the Single Market. Their services are greatly appreciated by consumers as well as by the people who work through them, be it as a full-time job or as a secondary activity.
- The Commission fully supports the sustainable development of the platform economy, and recognises the benefits that platform companies such as Wolt bring. We want to make sure that these benefits are spread equally and accessed fairly.
- Our proposal for a Directive aims to **improve working conditions in platform work** while supporting the conditions for a **sustainable growth** of the EU's platforms, by workers, consumers and businesses alike.
- The Member States will be able to transpose the Directive in a flexible way, in respect of their labour market traditions. For instance, the Directive allows for social partners to be entrusted with the transposition.
- The key provision of the Directive is the **rebuttable presumption**. It is based on a list of EU criteria that indicate whether a platform is exerting control over people working through it.
- To establish the criteria of control, determining whether the legal presumption of employment relationship would apply, the Commission has analysed relevant national and ECJ cases.
- Rather than opting for general criteria such as for example "subordination", the Commission proposes a list of more specific criteria relevant for platform work that are operational and that would not require complex legal analysis from those who would evoke the presumption.
- The presumption can be rebutted based on Member States' national approaches to labour market policy and definitions of "worker".
- There is no trade-off between employing someone and organising their work in a flexible manner. We already have many examples of flexible employment e.g. in the retail and hospitality sectors.
- The Commission welcomes platforms' initiatives to improve the working conditions of self-employed people working through platforms. This is why the proposed Directive states that where a platform decides to pay for social protection or insurance, those benefits should not be regarded as determining elements indicating an employment relationship.
- The proposal is now being discussed by the European Parliament and the Council. The co-legislators have different views on the presumption and the criteria. It is still too early to pre-empt what will be the final result.

Background

[Collective agreements regarding the working conditions of self-employed]

In recent years, there has been a **noticeable increase of self-employed in the EU**. This development has increased the flexibility and accessibility of the labour market, but has also led to the deterioration of working conditions in the platform economy and beyond. **Some solo self-employed** are in a weak position vis-à-vis certain digital platforms or professional customers, and have **little influence** over their working conditions.

The European Court of Justice has carved out collective bargaining from the scope of EU competition law. But this exemption only applies to employees. Self-employed are in principle considered as “**undertakings**” when they sell services on the market. Self-employed therefore **risk infringing** the prohibition against anticompetitive agreements in Article 101 of the Treaty, if they collectively negotiate their fees and working conditions.

This risk has created a **chilling effect**. In other words, solo self-employed and their counterparts are discouraged from collectively negotiating.

The aim of the new Guidelines is to remove that chilling effect. No more, no less. This initiative is not regulating working conditions or changing how social dialogue and collective bargaining are regulated by Member States.

The evidence collected confirms the initial indications that this problem goes beyond the platform economy. It **affects both the online and off-line economy**. For example, we have seen that the issue is very present in the artistic or translation services sectors.

There are two broad categories of self-employed that have difficulties in influencing their working conditions.

Firstly, solo self-employed who are in a comparable position to workers and thus, cannot be seen as genuinely independent.

Secondly, solo self-employed who, even if they may not be in a position “comparable to workers”, are in an unbalanced negotiating position towards their counterparties.

Against this background, the draft Guidelines apply to all sectors and exclude the application of competition law to collective agreements of **solo self-employed who are in a position comparable to workers**. These are people who are economically dependent from their counterparty because they earn their income exclusively or predominantly from one company; or people who work “side by side” with workers in the same company doing similar tasks as workers; or finally, people who work through platforms. We can do this exclusion by relying on a purpose driven interpretation of the existing case law from the European Court of Justice that explicitly allows false self-employed to collectively bargain due to their lack of independence.

The draft Guidelines also recognise that **self-employed** that are not in a situation comparable to workers may nevertheless be **in an unbalanced negotiating position**. Such persons may thus need to collectively negotiate their working conditions. The

Commission will commit in the Guidelines not to intervene against such collective agreements.

Finally, collective agreements of solo self-employed, which do not fall into the scope of the Guidelines do not automatically infringe the EU competition rules. These will be assessed on a case-by-case basis, under the conditions of Article 101 TFEU as any other type of agreement.

The Commission launched a public consultation on draft Guidelines on collective bargaining of self-employed in early December. This public consultation ran until the second half of February. The Commission received 209 contributions and has adjusted the proposed text where necessary in light of that input.

Next steps:

- DG COMP has made some small amendments to the text following the input of the public consultation.
- The final adoption is expected during early autumn.

[State of play of the platform work proposal]

The Czech Presidency held 2 meetings of the Council Working Party on Social Questions to discuss the Platform Work proposal. During the last meeting on 5 September the delegations discussed a PRES note on the mechanism and the criteria of the rebuttable legal presumption, and conducted an article-by-article examination of Chapters V (remedies and enforcement) and VI (final provisions). Most Member States generally support the proposal. The rebuttable presumption and the criteria triggering it remain the main contentious issue – however most Member States agree with the proposed approach to set criteria at EU rather than national level. The next SQWP meeting is scheduled for 26 September. The Czech Presidency aims at reaching a general approach by December.

The EP rapporteur Elisabetta Gualmini (S&D, IT) presented her draft report to the EMPL committee on 19 May. It suggests a broader employment status presumption and extending the algorithmic management provisions to all workers who interact with algorithms in their work environment. Amendments of the other political groups have been tabled in June, shadow's meetings started in July. The vote in the EMPL committee is planned for October and in plenary by the end of the year.

[WOLT's Position vis-à-vis the Guidelines]

Wolt has actively called for regulation of platform work and supports the ability of self-employed to organise and collectively bargain in a way that is adapted to independent, flexible and platform-enabled work. They thus argue that self-employed should be able to organise and negotiate directly with the platforms.

Swift publication of the Guidelines is paramount in order to put in motion discussion between platforms and self-employed people working through platforms. Withholding the Guidelines has frozen these discussions in the absence of the required legal certainty as to the application of EU competition law in these instances.

Wolt is in favour of further alignment of the two initiatives (Competition Guidelines with the Proposal for a Platform Work Directive).

[Wolt's stance on the EU initiative on platform work]

Wolt supports the EU's effort at bringing legal clarity in the platform economy through harmonised rules and has often cited the P2B regulation as a best practice.

Wolt is opposed to the reclassification of ride-hailing drivers from self-employed to workers. However, they have in the past expressed openness to the idea of a third category status.

In October 2020 the Finnish "Labour Council", an independent body operating under the Ministry of Economic Affairs and Employment, and issues statements about employment protection and regulation issued a statement declaring that platform workers providing food delivery services, including for Wolt, should be considered employees of the platform, and not self-employed. The statement is quite recent, and thus it remains to be seen what effect this will have on the actual working status of platform workers. Wolt published an opinion indicating that reclassification into worker status would lead to lower number of jobs, loss of flexibility and lower earnings of the couriers.

In January 2021, Wolt expanded to Germany and launched a pilot project by which it employs its German riders. Wolt claims this is possible in Germany thanks to the flexible labour market rules. The results of the pilot are yet to be disclosed.

Wolt claims that the only type of control exerted over couriers is that of 'gatekeeping': they fix a maximum number of couriers per any given market, beyond which hires are blocked. Couriers are paid per delivery completed, not per hour worked.

In Denmark, where it has +2000 couriers and has been facing increasing pressure to classify them as employees, Wolt has been in talks with trade unions (including 3F, which already struck a deal with household services platform 'Hilfr') on the possibility of entering a collective agreement.

In a meeting with the Commission's DG EMPL on 29 January 2021, Wolt confirmed it would participate in the Social Partners' Consultation via engagement with Business Europe and national employers' organisations.

In 2022 Wolt has also published a report on algorithmic transparency.



Wolt Algorithmi...

[Overview of national court rulings concerning Wolt]

In October 2020, the Finnish Labour Council (an independent special authority under the Finnish Ministry of Economic Affairs and Employment) issued a legally non-binding opinion defining food-delivery couriers working for Foodora and Wolt as "employees", not independent contractors.

The council stressed that its opinion only applied to couriers who have signed a contracts as individuals, not through a third party like a temporary work agency.

Wolt factsheet

Wolt is a Finnish technology company that operates a restaurant food, grocery, and retail intermediation and delivery marketplace. It operates in 23 countries (16 of which are Member States), serving goods from 60,000 merchants with 130,000 courier partners to 18 million customers.

Wolt was founded in Helsinki, Finland in 2014 by tech start-upper Miki KUUSI, alongside other partners. Wolt is today active in 160+ cities and 23 countries worldwide, including 16 EU Member States (CY, CZ, DE, DK, EE, FI, EL, HU, LV, LT, MT, PL, SK, SI and SE).

Wolt has raised \$856 million in funding from investors such as ICONIQ Capital, Tiger Global, DST, Prosus, KKR, Coatue, 83North, Goldman Sachs, Highland Europe and EQT Ventures & EQT Growth, among others.

In November 2021, it was announced that Wolt was being merged into DoorDash through an exchange of shares, giving Wolt shareholders a minority of shares in DoorDash for a deal worth US\$8.1 billion. In June 2022, DoorDash completed the takeover.

CV of Mr Miki KUUSI



Mikko "Miki" KUUSI (born September 25, 1989 in Helsinki) is a Finnish startup entrepreneur. Since 2014, he has been the CEO of the technology company Wolt, which he co-founded.

Mr KUUSI is known as one of the founders of the growth business event series "Slush". He served as the first CEO of the event series from 2011 to 2015, when he switched entirely to Wolt.

Mr KUUSI previously worked for the gaming company Supercell as a business analyst. He studied finance at the Aalto University School of Economics.

In September 2015, he was 32nd in Wired's list of Europe's 100 Most Influential Technology Influencers. He was also named one of Forbes' 30 most significant consumer technology players under the age of 30 in January 2016.