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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the document

COMMUNICATION FROM THE COMMISSION

**Guidelines on the application of EU competition law to collective agreements regarding
the working conditions of solo self-employed persons**

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Executive summary sheet (max. 2 pages)
Impact assessment accompanying the guidelines on collective bargaining for solo self-employed people
A. Need for action
What is the problem and why is it a problem at EU level?
<p>From an EU competition law standpoint, workers are considered as incorporated into the undertaking with which they have an employment relationship. Therefore, Article 101 of the Treaty does not apply to them, but only to the undertaking that employs them. Self-employed people are in principle considered “undertakings” carrying out their activity on the market as independent economic operators in relation to their principal. Therefore, they fall under the scope of Article 101 TFEU.</p> <p>The binary distinction between workers and self-employed people on which the application of competition rules relies, means that self-employed people may infringe EU competition rules, if they negotiate collectively their working conditions. This problem of legal uncertainty affects particularly some self-employed working on their own, i.e. without workers, who rely on their personal labour for making a living (hereafter “solo self-employed”). They have most difficulties in influencing their working conditions. In light of these considerations, the main problem, which the current initiative intends to tackle, is that there is legal uncertainty about the application of EU competition law to collective agreements on the working conditions of certain solo self-employed, who may have little influence over their working conditions.</p>
What should be achieved?
<p>The general objective of the initiative is to ensure that EU competition law does not stand in the way of collective negotiations and agreements about working conditions for solo self-employed people having little influence over their working conditions. To achieve this objective, the initiative will (i) identify those solo self-employed people having little influence over their working conditions who should not be hindered to negotiate and agree collectively their working conditions; and (ii) provide clarity as to the application of EU competition law on collective agreements regarding the working conditions of self-employed people.</p>
What is the added value of action at EU level (subsidiarity)?
<p>The subsidiarity principle does not apply as the Commission has an exclusive competence in this field. EU action is essential to address the uncertainty surrounding the application of EU competition rules to collective agreements regarding the working conditions of solo self-employed. In the absence of EU intervention, the legal uncertainty, the infringement risks and the associated chilling effect will remain.</p>
B. Solutions
What are the various options to achieve the objectives? Is there a preferred option or not?
<p>In light of the objectives of the initiative and the Commission’s margin of discretion to address these objectives, two initial policy options have been impact assessed: Option 1 excludes from Article 101 of the Treaty collective negotiations/agreements by solo self-employed people who lack bargaining power because they are not sufficiently independent from their counterparty. They are therefore in a position comparable to that of workers. The categories considered comparable to workers are: (i) economically dependent solo self-employed people; (ii) solo self-employed people working side-by-side with workers and (iii) solo self-employed people working through digital labour platforms. Option 2 also excludes agreements by those comparable to workers from Article 101 of the Treaty. In addition, it gives assurance that the Commission will not intervene against collective agreements of other solo self-employed that are in an imbalanced negotiating position (even if not comparable to workers) by using the priority setting powers of the Commission. An imbalance in bargaining power is presumed to be at hand when the solo self-employed are: (i) dealing with</p>

counterparties of a certain economic strength, or (ii) entitled to collectively bargain under national or EU legislation.

A comparison of the two policy options reveals option 2 as the preferred policy option.

What are different stakeholders' views? Who supports which option?

EU stakeholders, overall, regard this initiative as a positive development. The majority of the stakeholders (including EU citizens, trade unions and digital platforms) were in favour of the broadest option.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise of main ones)?

The direct benefit of the preferred option is the increase in legal certainty for self-employed and their counterparts as well as for Member States. Indirectly, this option is also expected to: (i) increase the number of the solo self-employed that would be covered by collective agreements by 2030; (ii) raise the average pay rate of those benefitting from such collective agreements; and (iii) reduce the number of solo self-employed and members of their family at risk of poverty.

What are the costs of the preferred option (if any, otherwise of main ones)?

The anticipated increased recourse to collective agreements may, in turn, lead into higher remuneration for the solo self-employed and, ultimately to a price increase of the final services. The pass-on to consumers, however, depends on a number of factors, such as the effects on the variable costs of the provided services and the market structure. The profits of businesses that are relying on solo self-employed are also expected to be affected, although this impact is mitigated by pass-on to consumers and possibly by increased productivity of the solo self-employed, benefiting from higher remuneration.

What are the impacts on SMEs and competitiveness?

The preferred option would help level the playing field in terms of competitiveness by redressing the imbalance between businesses relying on the solo self-employed model and those relying on the employment model. Nevertheless, SMEs tend to rely more heavily on services by solo self-employed than other firms in the offline economy and may therefore be more affected by the increase in their costs than larger firms may. However, the preferred option addresses and avoids the risk of any disproportionate burden on SMEs.

By establishing better pay and working conditions, the productivity of solo self-employed may increase, fostering the overall productivity growth of businesses. No appreciable effects on the internal market and competitiveness are expected. The possibility of an impact on international competitiveness is negligible. Whilst an increase in "labour" cost for solo self-employed in the EU could lead to certain activities becoming more attractive outside the EU, this would be relevant only for activities performed fully online and already exists in the form of work relocation to countries outside the EU.

Will there be significant impacts on national budgets and administrations?

The increased pay of solo self-employed working for professional customers may also have a positive effect on the state budget in the form of less expenditure on minimum income support and on in-work benefits and more income from tax revenues. The clarification that competition law will not stand in the way of collective agreement by well-defined groups of solo self-employed is more likely to eliminate competition enforcement costs. Administrative costs associated with collective bargaining for businesses and solo self-employed are also likely to be limited.

Will there be other significant impacts?

Beyond the direct impact of removing the chilling effect for the solo self-employed and their counterparts, the preferred option is expected to generate, mainly, indirect impacts. At economic level, the preferred option would have a limited impact on employment and the creation of jobs overall, despite the increase in labour costs that may come along with the

conclusion of collective agreements for solo self-employed (economic indirect impact). From a social standpoint, the preferred option may encourage Member States to establish a more inclusive social dialogue.

Proportionality?

The preferred option would be proportionate through covering “solo self-employed” defined as individuals who: (i) do not have an employment contract or an employment relationship; (ii) do not hire employees; and (iii) rely primarily on their own personal labour for the accomplishment of the services concerned. In addition, it would only cover collective negotiations/agreements (i) between the (representatives of) solo self-employed and the (representatives of) digital platforms/professional customers to or through which the service was provided; (ii) confined to improving the working conditions of the solo self-employed, including their fees. However, collective negotiations/agreements on prices and conditions applied to the final consumer would not be covered.

D. Follow-up

When will the policy be reviewed?

The evaluation of this initiative will be an ongoing exercise of periodical stock-taking based on the Commission’s internal intelligence and close contacts with National Competition Authorities (“NCAs”), social partners and other stakeholders. There will be a qualitative evaluation based in particular on the actions by NCAs, Member States legislative amendments, uptake of collective bargaining agreements by self-employed people – when available – and the opinions of stakeholders involved. In light of this the Commission will consider after the first 8 years of application (or sooner, if the monitoring reveals an urgency) whether the present initiative would need to be amended.