

INCEPTION IMPACT ASSESSMENT

Inception Impact Assessments aim to inform citizens and stakeholders about the Commission's plans in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options.

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| TITLE OF THE INITIATIVE | Collective bargaining agreements for self-employed – scope of application of EU competition rules |
| LEAD DG (RESPONSIBLE UNIT) | COMP A4 |
| LIKELY TYPE OF INITIATIVE | [Legislative or non-legislative instrument] |
| INDICATIVE PLANNING | Q2 2022 |
| ADDITIONAL INFORMATION | [website to be created] |

The Inception Impact Assessment is provided for information purposes only. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by the Inception impact assessment, including its timing, are subject to change.

A. Context, Problem definition and Subsidiarity Check

Digitalisation and the need for increased flexibility in the labour market have led to the emergence of new forms of work.¹ Evidence shows that a growing number of individuals engage in **platform work**.² While services provided via digital labour platforms have opened up new opportunities, there is growing uncertainty on a number of issues, including working conditions and access to **collective bargaining**. People working through platforms are often not involved in the determination of the price of their services³ and may lack the individual bargaining power to negotiate their terms and conditions.

Some issues related to the platform economy seem also present in certain forms of self-employment **outside the platform economy**. A growing number of individuals work through individual commercial service contracts⁴ and face similar challenges in terms of representation, earnings and social protection.⁵ A [2017 Eurofound study](#) shows that a quarter of the self-employed in the EU experience rather unfavourable working conditions (including lower levels of income), and points to collective bargaining as an appropriate way for some self-employed to improve their situation.

In particular, a [2016 study carried out for the European Parliament](#) shows that **self-employed without employees** (solo self-employed) are at a higher risk of precariousness compared to those with employees. The Commission aims for **dignified and proper working conditions** for everyone in the EU. The Commission is also working on an initiative to improve the working conditions of people providing services through platforms, as announced in the Commission Work Programme 2021.

Problem the initiative aims to tackle

Article 101(1) of the Treaty on the Functioning of the European Union (“the Treaty”) prohibits agreements between undertakings that restrict competition. According to the EU case law, **collective bargaining between employees and employers** is outside the scope of EU competition law. However, self-employed are considered “undertakings”

¹ See e.g. [New Forms of Employment](#) (2015).

² See e.g. the [first](#) and [second](#) Collaborative Economy and Employment (COLLEEM) surveys.

³ See e.g. [Study to gather evidence on the working conditions of platform workers](#) (2020).

⁴ [Non-standard workers: Good practices of social dialogue and collective bargaining](#) (2012). See, also, for example, [Platform Workers in Europe](#) (2018), [New Evidence on Platform Workers in Europe](#) (2020), [Study to gather evidence on the working conditions of platform workers](#) (2020).

⁵ See [Study to gather evidence on the working conditions of platform workers](#) (2020).

under EU law and an agreement between them risks being in breach of Article 101 of the Treaty.

As reported by the [OECD](#), some solo self-employed might be in a situation of unbalanced negotiation power vis-à-vis certain firms/buyers of labour with monopsony power, leading them to be price-takers and have little say over their working conditions. Collective bargaining⁶ can be a powerful tool to achieve improved working conditions. However, for individuals who are not employees, competition law can be an obstacle for collectively bargaining to improve their precarious situation.⁷

Ensuring that **EU competition law does not stand in the way** of collective bargaining by those who need it can be one part of the puzzle to ensure that the working conditions of (some) self-employed, including people working through platforms, improve.

In the absence of EU intervention, self-employed, including those in need of protection, may be prevented from entering into collective bargaining. As boundaries between employment and self-employment are increasingly blurred, individuals may sometimes not have clarity about their employment status, and thus about their access to collective bargaining. This situation may have a “chilling effect” preventing those individuals from bargaining collectively out of the fear of EU competition rules. Action at EU level may thus be needed

Basis for EU intervention (legal basis and subsidiarity check)

If the initiative leads to a legislative instrument, the legal basis for this initiative could be Article 103(2)c of the Treaty. The initiative thus falls within the scope of the EU competition policy, which, pursuant to Article 3(1)(b) of the Treaty, is an area of exclusive competence of the EU.

B. Objectives and Policy options

The **objective** of the initiative is to ensure that EU competition law does not stand in the way of initiatives to improve working conditions through collective agreements for solo self-employed where they choose to conclude such agreements, while guaranteeing that consumers and SMEs continue to benefit from competitive prices and innovative business models, including in the digital economy.

The initiative seeks to achieve this objective by providing **legal certainty** about the applicability of EU competition law to collective bargaining by self-employed. Individuals should be able to know, without complex legal or economic analyses, whether or not EU competition law prevents them from bargaining collectively. Legal certainty would also reduce enforcement and litigation risks (and the respective costs).

In the **baseline scenario**, **EU competition law** would continue to have a chilling effect on collective bargaining by self-employed. Only employees would have sufficient certainty that they are allowed to bargain collectively without risking to infringe Article 101 of the Treaty.

As far as the **Member States** are concerned, in the baseline scenario it is possible that some of them would adopt (or maintain existing) measures allowing the self-employed (or specific categories of self-employed) to negotiate collective bargaining agreements under national competition or labour law rules. However, only the EU can remove the EU competition rules obstacle. Therefore, the initiative aims to clarify when certain self-employed and their counterparts may collectively bargain without the risk of violating EU competition rules. The negotiations and resulting agreements should be confined to the improvement of the working conditions (including fees) of the self-employed. Neither collective negotiations/agreements concerning trading conditions (such as prices charged) to private consumers nor unilateral price fixing would be covered by this initiative. In addition, the initiative would not introduce any obligation on any of the parties to enter into such negotiations or to conclude collective agreements: it would merely clarify that EU competition law would not stand in the way of such agreements where the parties concerned chose to enter into them.

Against the baseline scenario, the Commission will consider different policy options that may be implemented through a **Council Regulation or a Commission Communication**. The Commission has identified four **policy options** concerning the scope of the initiative. As mentioned above, according to Eurofound, one in four self-employed, can be seen as facing more precarious situations, with lower levels of income and job security. One way

⁶ For this competition law initiative, collective bargaining refers broadly to collective negotiations and/or agreements aiming at improving working conditions and not to its narrower sense under labour law.

⁷ See e.g. [Independent Workers and Industrial relations in Europe](#) (2018); [Collective Bargaining in Times of Platform Work](#) (2020).

to identify these self-employed in need of protection, could therefore be to focus on those self-employed who have no employees and who rely on their own labour, as they can be expected to be in a weak position on the labour market. Therefore, re-sellers of goods would not be covered.

- **Option 1: all solo self-employed providing their own labour through digital labour platforms.** Under option 1, only individuals providing their own labour through platforms would have access to collective bargaining. It has been shown that some people working through platforms face significant challenges in terms of earnings and working conditions. Evidence indicates that “*most platform workers have little bargaining power*” and challenges in terms of working conditions seem to exist both in online and on-location platform work,⁸ especially in the case of low-skilled, repetitive, easily replaceable tasks. Therefore, this option would cover all people working through platforms, doing online and/or on-location work through platforms.
- **Option 2: all solo self-employed providing their own labour through digital labour platforms or to professional customers of a certain minimum size.** This option is broader than option 1, because in addition to platform work it would also include traditional professions in the off-line economy, as long as they are not covered by other specific competition law provisions included in sectoral instruments.⁹ As mentioned in Section A above, a growing number of individuals are economically active through individual commercial service contracts (e.g. independent contractors, freelance workers), and in the last decades there has been a sharp increase of freelancers in intellectual and technical occupations in the service sector. This option includes a minimum size threshold for the counterparty with whom the self-employed may bargain collectively. The minimum size threshold would aim to prevent that the balance of negotiation power tilts against that counterparty. For the purposes of determining the minimum size of the counterparty, the use of the [definition/thresholds of the SMEs](#) could be considered.
- **Option 3: All solo self-employed providing their own labour through digital platforms or to professional customers of any size with the exception of regulated (and liberal) professions.** Under this option, self-employed exercising regulated/liberal professions would not be covered by the initiative. These professionals are often perceived as not being in a position of weakness. An issue to consider under this option would be the absence of a generally applicable EU definition of regulated/liberal professions.
- **Option 4: All solo self-employed providing their own labour through digital labour platforms or to professional customers of any size.** Under this option, which is the widest in scope, there would be no restriction as regards the size of the counterpart in the collective bargaining/agreement. Those counterparts would be allowed to bargain collectively too, for example across a certain sector, mirroring traditional collective bargaining. This may ensure that also small businesses could gain enough countervailing bargaining power against solo self-employed negotiating jointly. Under this option it could be further analysed whether public or semi-public professional associations that unite all professionals exercising regulated professions should be allowed to negotiate on behalf of their members. In any event, as in all options, unilateral price setting agreements are excluded.

C. Preliminary Assessment of Expected Impacts

The Impact Assessment will assess, for each policy option, the following types of impact.

Likely economic impacts

The Impact Assessment will assess the impact on the macroeconomic environment, competitiveness, trade and investment flows, SMEs’ operation/conduct, the regulatory burden on business, the functioning of the internal market and competition, consumers and households.

The Impact Assessment will also analyse impacts on innovation and on the competitive position of EU labour markets (e.g. in terms of increased labour costs) with respect to non-EU ones. These impacts are not expected to be significant for the economy as a whole, as the initiative, even in its widest scope under Option 4, will target only

⁸ [Study to gather evidence on the working conditions of platform workers](#) (2020).

⁹ In particular, secondary legislation based on Article 42 of the Treaty has specific provisions when it comes to the application of Article 101 of the Treaty on individuals active in the production and trade of “agricultural products”.

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| <p>solo self-employed individuals. Moreover, the initiative will be limited to the removal of EU competition law obstacles to collective bargaining, leaving the parties involved free to engage in negotiations and agree on conditions that are compatible with existing and innovative business models. The initiative is without prejudice to other limitations to representation and collective bargaining that may exist in the national legal systems of the Member States. The impact assessment will analyze the impacts depending on whether collective agreements could take place also at sectoral level.</p> |
| <p>Likely social impacts</p> <p>Compared to the baseline scenario, it is expected that all policy options will have an important social impact (albeit in differing degrees depending on the option chosen) for the individuals covered by the initiative.</p> <p>The Impact Assessment will assess impacts on access to the labour market, improvement of working conditions, income distribution, access to social protection, the type and manner in which the self-employed carry out their tasks.</p> <p>With more legal certainty as regards the application of the EU competition law to collective bargaining, certain self-employed may engage in collective negotiations. Those negotiations could lead to collective agreements on e.g. earnings, social protection and other working conditions, which would improve the working and living situation of individuals that are currently in need of protection. Expected increased earnings and access to social benefits would reduce the risks of economic uncertainty and precariousness for those individuals, and increase their ability to provide for themselves and their households.</p> |
| <p>Likely environmental impacts</p> <p>The possible impact of the policy options on the environment will be assessed in the Impact Assessment. However, it is expected that the different policy options will have only minor or no impact on the environment.</p> |
| <p>Likely impacts on fundamental rights</p> <p>The Impact Assessment will assess the policy options' impact on fundamental rights, in particular the right to collective bargaining and the freedom to conduct business enshrined in Articles 28 and 16 of the EU Charter of Fundamental Rights. EU Member States have also ratified the ILO, whose "Right to Organise and Collective Bargaining Convention", applies also to the self-employed.</p> |
| <p>Likely impacts on simplification and/or administrative burden</p> <p>The possible impact of the policy options on national public administrations will be assessed in the Impact Assessment. In this regard, it is expected that national competition authorities may be affected by the initiative, as these authorities may no longer be able to intervene in cases of collective negotiations by the self-employed to whom the initiative will apply, depending on the type of the instrument ultimately chosen.</p> |
| <p>D. Evidence Base, Data collection and Better Regulation Instruments</p> |
| <p>Impact assessment</p> <p>The Commission will carry out an Impact Assessment for this initiative.</p> |
| <p>Evidence base and data collection</p> <p>The Impact Assessment will be informed and supported, first of all, by the review of existing evidence underpinning the problem definition, including academic articles and studies concerning the situation of the self-employed and people working through platforms.</p> <p>The Commission will also rely on the evidence collected through the public consultation on the Digital Services Act package. In addition, the Commission will consider further evidence on the possible scope of the initiative, as well as its likely impacts, through support studies targeted for this initiative.</p> |
| <p>Consultation of citizens and stakeholders</p> <p>The main aim of the consultation is to seek the views of stakeholders on the initiative's policy options and their likely impact. The Commission intends to consult all relevant stakeholders, including: (i) self-employed individuals; (ii) businesses, including SMEs; (iv) social partners; (v) national competition authorities, and (vi) consumers.</p> <p>Besides targeted consultation meetings (also with social partners), the Commission will launch an open public consultation as part of the impact assessment process (foreseen for the first half of 2021).</p> |
| <p>Will an Implementation plan be established?</p> <p>No</p> |

