

EU Commission initiative on collective bargaining for self-employed

The World Employment Confederation-Europe calls for promoting and valuing diverse forms of work while remaining critical on an EU regulatory intervention to provide collective bargaining rights to self-employed

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EXECUTIVE SUMMARY

The World Employment Confederation-Europe calls for fully recognising and valuing the benefits of diverse forms of work on the European labour market. Direct employment relationships, triangular work relationships and self-employment all fulfil important and complementary functions on the labour market and in the changing world of work. It is important that people have clarity at national level on their employment status and are classified in the correct way, including the attached rights, obligations and freedoms. The World Employment Confederation-Europe acknowledges the important history, practice and regulation of collective bargaining rights by the EU Member States, including on issues of access, and given the diversity of these practices, the regulation of access by the self-employed should be left to the national level.

Benefits of diverse forms of work for more dynamic and inclusive labour markets

- The World Employment Confederation-Europe calls for recognising and valuing the benefits of diverse forms of work, which contribute to offering more choices on the labour market for workers, enhance labour market participation and inclusion.
- Diverse forms of work are particularly relevant and important in the current, fragile economic and labour market context of the Covid-19 pandemic, in which periods of lockdown or followed by the gradual reopening of economic activities and renewed tightening of measures.

Need for clarity at national level on the employment status and to respect national diversity

- At the national level of the EU Member States, clear rules and national laws define the employment status, the collective bargaining rights, working conditions and social protection.
- Workers, temporary agency workers and self-employment (which include most of the online talent platform labour suppliers) have different employment statuses and need to have clarity on their rights.

Potential for action for the actual, but involuntary self-employed

- EU policy or regulatory initiatives should differentiate more clearly between voluntary and involuntary self-employment and limit policy interventions at EU level to addressing involuntary self-employment

1. General assessment and the benefits of diverse forms of work

- 1.1. The World Employment Confederation-Europe does not see a need to change existing EU competition law rules to allow self-employed persons, including self-employed working via platforms to engage in collective bargaining or agreements concerning wages.
- 1.2. Diverse forms of work, including direct employment relationships, temporary agency work and self-employment all contribute to more dynamic and inclusive labour markets. The private employment services industry in Europe is offering access to the labour market for nearly 11 million workers on a yearly basis. Any initiative on collective bargaining rights for self-employed needs to take account of the diversity and differences of national situations. People who are self-employed, including the provision of services via online platforms, carry out their services with commercial contractors and are often considered as undertakings. In these cases, they are subject to rules of prohibition of price cartels between economic actors and must adhere to competition law to avoid restrictions or distortion of competition.
- 1.3. Research conducted by World Employment Confederation-Europe members shows that self-employed are either pushed or pulled into working for themselves. The pull self-employed are job makers and their number is likely to increase when unemployment is low. Push self-employment is more likely to occur due to a lack of alternatives when unemployment is high, which often leads to involuntary self-employment.
- 1.4. The World Employment Confederation-Europe calls upon the European Commission to differentiate more clearly between these two forms of self-employment. It is vital for both the business community and for individuals that legislative frameworks facilitate and encourage entrepreneurship. It is important that policymakers do not prohibit genuine own account self-employment for all practical purposes. Whilst not everyone wants to be an employee, it is important to be mindful of the involuntary self-employed, usually low-paid who are forced into self-employment due to a lack of alternatives as a result of high unemployment rates. The main difference between temporary agency work and self-employed is the organisation of social protection. Whereas the agency workers are workers in accordance with national law and thus covered by social protection schemes in accordance with national law practice, self-employed typically do not have access to the statutory social protection schemes and rely on insurance-based schemes. Furthermore and with regard to the involuntary self-employed, a certain percentage may in fact be bogus self-employed should be reclassified at national level as employed. Any policy on collective bargaining for self-employed needs to respect the principle of proportionality and thus assess whether the approach of offering collective bargaining rights is the right instrument. As the issue of access to social protection for self-employed is already addressed by national policies in several EU Member States and covered by an already adopted Council Recommendation on access to social protection for workers and self-employed, there is no need for further, EU regulatory intervention, but a need to respect the principle of subsidiarity.

2. Need and priority to ensure the correct classification at national level

- 2.1. The main, established employment statuses, including the workers in accordance with national law, the temporary agency workers, who work in a triangular work relationship under the supervision and control of the client company and the self-employed provide the relevant and appropriate framework to organise the world of work. Uncertainty about the actual employment status or the misclassification as self-employed or worker should be avoided as such uncertainty leads to legal uncertainty, ambiguity and fragility in the workplace.
- 2.2. The World Employment Confederation-Europe believes that to address the vulnerability of self-employed, the issue of misclassification must be tackled first by the European Commission based on the already well-established, national definitions of a worker and fully respecting existing national legal frameworks, differences and diversity. It is important that this allows for the correct identification of false self-employment where it arises and to provide a remedy or a sanction a national level to deter people from engaging in this practice.
- 2.3. At the same time, it should be left to the EU Member States and social partners at national level, respecting national competences to decide if and how to address issues of representation of workers in different forms of work. With regard to this issue, the principle of subsidiarity should prevail and there is no need for a common EU level policy approach.
- 2.4. Already based on the current legal framework there are existing exemptions as interpreted by the European Court of Justice which exempting collective agreements for employees from the scope of competition law. Some countries include an exemption from competition rules for agreements on pay and working conditions and those competition laws can provide that such regulations shall not apply to collective bargaining and agreements in respect of certain categories of workers. Where this arises rules will be prescribed to allow for a process to enable unions to apply for a regulatory exemption (from competition laws) for other groups of false or dependent, self-employed workers.

3. Potential for action for the actual, but involuntary self-employed

- 3.1. For the group of actual, but involuntary self-employed, the World Employment Confederation-Europe sees some value in allowing for representation. First experiments in this respect have been discussed and tested on a voluntary basis in some countries for self-employed working via online talent platforms in some countries, especially in Northern Europe. The principle of practicing collective bargaining on a voluntary basis only must be respected, which is subject to national codes practices, definitions, and legislative requirements. The World Employment Confederation-Europe is manifestly opposed to the practice of false self-employment. It provides a competitive advantage to those who would flout the law at the expense of the majority of compliant individuals and businesses who observe existing tax and employment rights legislation.
- 3.2. With regard to bogus self-employed, the World Employment Confederation-Europe believes that this problem should not be addressed via competition rules. The effective enforcement of employment status issues remains a priority, actions should be taken to avoid misclassification. Furthermore, steps should be taken to ensure existing inspection mechanisms and facilities are adequately resourced. There is also merit in encouraging member states in their efforts to build awareness of employment rights and responsibilities to continue with a balanced and impartial awareness campaign on what constitutes a contract of employment.

- 3.3. In this context it is important to consider that where workers and clients/employers have a need for flexible form of work that still offer a safety net for workers, there are already other solutions in place, including for example agency work. In the context of temporary agency work, the agency worker benefits from the social protection attached to the status of workers, which includes collective bargaining rights in many countries to settled pay and certain working conditions and social protection elements. For the World Employment Confederation-Europe is convinced that policymakers and EU and national level should focus policy interventions on ensuring that a level-playing field between different and diverse forms of work is maintained, including social contributions.

About the World Employment Confederation-Europe

The World Employment Confederation-Europe is the voice of the employment industry at European level, representing labour market enablers.

The World Employment Confederation-Europe includes in its membership national federations from all across Europe, as well as several of the largest international workforce solutions companies. It is therefore fully representative of the industry, both in size and diversity. The World Employment Confederation-Europe brings a unique access to and engagement with European policymakers (EU Commission, European Parliament, and Council) and stakeholders (trade unions, academic world, think tanks).



The World Employment Confederation-Europe strives for a recognition of the economic and social role played by the industry in enabling work, adaptation, security and prosperity in our societies. Its members provide access to the labour market and meaningful work to almost 11 million of people in Europe.