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CESI STATEMENT ON COLLECTIVE BARGAINING AGREEMENTS FOR SELF-EMPLOYED – SCOPE OF APPLICATION OF EU COMPETITION RULES

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The European Confederation of Independent Trade Unions (CESI) is a confederation of more than 40 national and European trade union organisations from over 20 European countries, with a total of more than 5 million individual members. Founded in 1990, CESI advocates improved employment conditions for workers in Europe and a strong social dimension in the EU. Most of CESI's affiliates are employed in the fields of central, regional and local administration, education, training and research, security and justice, healthcare, postal services and telecommunications, defence and transport. CESI represents public and private sector workers.

In a position paper on *Future of work – A trade union perspective: Social protection, decent employment & interest representation* CESI has advocated, where this is not yet the case, the right of association especially for the precarious and vulnerable self-employed, regardless of the economic sector, and to explicitly allow them to become trade union members.¹

A general prohibition of collective bargaining for the self-employed via trade unions on the grounds that there may be cartel-forming through joint wage negotiations which is not in line with the spirit and the purpose of EU competition law. Justifying the prohibition of collective bargaining by reference to the need to maintain the integrity of the single market (article 101 TFEU) is a misplaced contextualisation of EU law, especially when it is applied to vulnerable and precarious self-employed persons (these often working as solo self-employed and having only few or a single customer).

This misplaced contextualisation is all the more true when considering that collective bargaining only affects the wage of the service provider and thus only a limited part of the total cost of a service provision, which is in fact determined by many further elements.

Here, the establishment and preservation of collective ‘wage’-bargaining powers are legitimate to guarantee a general balance of powers and interests between all actors involved, i.e. the service provider the service taker, and, given the case, the intermediate (such as platforms), and to avoid that those concerned are excessively sold out by market powers and forced to provide work for indecently low wage levels. It is therefore of major importance to allow and strengthen the collective labour rights especially of the precarious and vulnerable self-employed.

¹ https://www.cesi.org/wp-content/uploads/2014/02/CESI-Presidium-Future-of-work-position-paper-20191211_adopted.pdf



CESI would greatly appreciate the extension of the right to collective bargaining especially to the precarious and the vulnerable self-employed. CESI stresses that such a right to collective bargaining must be embedded in a four-tier approach which gives the concerned self-employed (1) the right to join trade unions, (2) the right to collective bargaining, (3) the right to become a part of collective agreements, and thus (4) also the right to take industrial action.

Option 3 should be the preferred policy solution, making EU competition law compatible with collective bargaining at least for 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. This should be implemented by a clear **Council regulation** and be coupled to a clear-cut **definition and a positive list of regulated liberal professions** which are not facing precarious employment as a result of their self-employment (e.g. heads of notary, auditor and tax advising practices, architect bureaus, pharmacies, dental practices).

CESI stresses that this initiative should not be aimed to alleviate challenges for the bogus self-employed, which by definition is work in exploitative and precarious conditions. Bogus self-employed are denied regular employee contracts because employers want to avoid higher social ‘costs’. Supporting the right of collective bargaining for the bogus self-employed would mean treating symptoms, not tackling roots.

Bogus self-employed are, as the term reveals, false self-employed and de facto employees. What is necessary here is to ensure that they are considered as regular employees with all consequences (regular individual and collective labour law and rights and social security schemes applied to them), thus eliminating bogus self-employment in the first place.

Clear legal frameworks are required and (well-staffed and resourced) labour inspectorates need to be put in place to control their application and issue (deterring) sanctions for violations. It should be noted that the problem of bogus solo self-employment currently also persists in regulated liberal professions (among lawyers, dentists, etc), where persons may be employed under precarious self-employment conditions while they are in fact dependent workers (in the law firm, dental practice), just like regular private sector employees.