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AEIP response to the European Commission Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons

Today's employment landscape is witnessing the emergence of a high number of workers in non-standard forms of employment, including solo workers¹, which brings serious and urgent issues. For example, self-employed workers often cannot afford to contribute towards adequate pensions as they are not covered by the labour law, nor by social insurance, and in addition they do not have a claim on a minimum wage.

Moreover, this problem has a political and a legal dimension as the growth in the number of self-employed alone is directly proportional to the decline of regular workers. This trend is threatening the balance between the social and labour law as basis to the collective bargaining process. Therefore, the European Association of Paritarian Institutions - AEIP welcomes the European Commission's Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons, with the goal to create an environment of social protection for workers in non-standard forms of employment.

Collective occupational schemes of social protection are inextricably linked with social dialogue and collective bargaining, as part of the wider scope of employment relations. As representative organisation of such schemes, the mission of AEIP is to promote both management and labour initiatives in the context of social protection, and to ensure that they are shared and supported by the European institutions in the development of policies and legislation.

AEIP promotes paritarism as a future source of solidarity and shared progress in defining Social Europe. The principle of solidarity, at the heart of paritarian social protection schemes, ensures that the interests of all stakeholders are reflected in collective agreements in a transparent and inclusive manner.

Main messages

AEIP's position is in line with the European Parliament's Resolution of 16 September 2021 on fair working conditions, rights and social protection for platform workers - new forms of employment linked to digital development (2019/2186 (INI)), (rapporteur Sylvie Brunet, Renew Europe, France), in stressing the need for platform workers and platforms to be properly organized and represented in order to facilitate social dialogue and collective bargaining.

¹ The term is used in accordance with the Commission's definition in its respective Guidelines. "Solo self-employed persons" refers to persons who do not have an employment contract or who are not in an employment relationship and who rely primarily on their own personal labour for the provision of the services concerned.

The Resolution highlights that the occurrence of imbalanced and asymmetrical relationships between digital labour platforms and workers, who often lack the individual bargaining power to negotiate fair terms and conditions, undermines the freedom of association and the right to collective bargaining, which are fundamental rights for all workers. Therefore, a directive on platform workers should ensure that these rights are effective, applied in full and enforced.

Furthermore, in its report, the European Parliament regrets the legal difficulties in collective representation faced by platform workers, and is aware that the solo self-employed are generally considered 'undertakings', and as such are subject to the prohibition on agreements that restrict competition. Therefore, in line with the European Parliament's report, AEIP is convinced that the EU competition law must not hinder the improvement of the working conditions (including the setting of remuneration) and social protection of solo self-employed platform workers through collective bargaining. AEIP urges the European Commission to clarify that collective agreements fall outside the scope of competition law in order to ensure they can unionise and negotiate collectively, and to guarantee a better balance in bargaining power and a fairer internal market.

In light of labour market developments and the increase of non-standard forms of employment, also accelerated by the Covid-19 pandemic, AEIP understands that it is most useful and timely to provide clarification on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons. Such Guidelines can lead to clarity on the scope of Article 101 TFEU in regards to certain categories of collective agreements, thus protecting vulnerable solo self-employed and at the same time ensuring fair competition practices.

By elaborating on the criteria according to which solo self-employed persons are in a situation comparable to that of workers and their relevant collective agreements, AEIP believes that the European Commission strengthens social protection and inclusion of the self-employed. This is also supported by the Commission's stance and non-intervention towards collective agreements that aim to correct a clear imbalance in the bargaining power of solo self-employed persons relative to their counterparties and are intended to improve working conditions.

In addition, the identification of specific categories of solo self-employed falling outside the scope of Article 101 TFEU as well as the reference to particular examples is a most useful approach in contextualizing and further elaborating the guidelines' implementation.

In addition, we appreciate that the Guidelines recognize the important role of social dialogue and collective bargaining and stress the commitment of the EU to "facilitate dialogue between the social partners, respecting their autonomy" in accordance with Article 152 TFEU. This approach is in line with the EU Charter of Fundamental Rights and the European Pillar of Social Rights, which recognizes the right of collective bargaining and promotes the inclusive social protection respectively. As it is understood that solo self-employed face more difficulties to organise and participate in the social dialogue, it must be ensured that the work of social partners is supported. The future of paritarism is strongly linked to that of social dialogue. Collective bargaining can only occur if employers and employees recognise themselves in their representatives. Today the paritarian model is challenged by declining union membership, as well as an increasing number of workers in non-standard forms of employment who are not represented at all and often lack adequate social security benefits. Governments should promote conditions and regulatory

frameworks that foster social dialogue among social partners, which is crucial to the development of the paritarian social model.

It is also well received that the European Commission stresses that the Guidelines do not affect the prerogatives of the Member States in social policy or the autonomy of the social partners, neither the organisation of collective negotiations in the framework of national labour law.

**AEIP Disclaimer**

Founded in 1996, the European Association of Paritarian Institutions – AEIP is a Brussels-based advocacy organization, representing Social Protection Institutions established and managed by employers and trade unions on a joint basis within the framework of collective agreements.

The Association has 15 Associate and Affiliate members – all leading large and medium-sized Social Protection Institutions, from 11 European countries, as well as 14 Task Force Members from 6 European countries. All AEIP members are not-for-profit organizations.

AEIP represents its members' values and interests at the level of both European and International Institutions. In particular, AEIP - through its working groups - deals with EU coordinated pension schemes, pension funds, healthcare schemes, unemployment schemes, provident schemes and paid holiday schemes.