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COLLECTIVE BARGAINING FOR THE SELF-EMPLOYED

LEGAL FRAMEWORKS AND TRADE UNION PERSPECTIVES



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1. INTRODUCTION

This research report was produced in the framework of the CB4SE Project and is the product of an investigation into the current state and potential of collective bargaining for the self-employed across Europe, with a particular focus on the trade union perspective. The following chapters provide background on self-employment in Europe and its legal and practical dimensions (Chapter 2), a country-by-country overview of the main issues arising in different national contexts (Chapter 3), a summary of the comparative findings (Chapter 4), and a discussion of their implications (Chapter 5).

2. BACKGROUND

Self-employment remains an important but changing component of the European labour market. During the course of the last two decades, the overall share of self-employed workers has generally stagnated or declined,[1] while the composition of self-employment has shifted towards a larger proportion of solo self-employed workers (self-employed without employees), including freelancers, independent professionals, and those engaged in some types of platform-based work.[2] The prevalence of self-employment also varies considerably across EU Member States. In 2023, self-employment accounted for over 27% of total employment in Greece and over 20% in Italy, compared with less than 10% in Cyprus, Denmark, Germany, and Luxembourg.[3]

At the same time, policymakers have become increasingly concerned about the working conditions and social protection of vulnerable groups of self-employed workers, especially those who are economically dependent on a small number of clients. Almost 70% of all self-employed today are solo self-employed – and while some are highly successful, enjoy high incomes, and appreciate the advantages of self-employment in terms of work-life balance, many find themselves trapped in a highly precarious situation, characterised by conditions that would constitute serious violations of labour law in the case of an employee, such as severe underpayment and excessive working hours.[4]

Collective bargaining could, in principle, be the answer to many of the challenges faced by the self-employed. Especially in the case of 'genuine' self-employment, the blanket application of statutory labour law might not be a viable means of protection. For instance, if workers genuinely determine the number and extent of the work tasks they accept from their clients and design their own work schedules, the key to avoiding excessive work hours will not be the application of statutory working-time law, but rather the determination of minimum rates of pay for the tasks they perform, so that there is no pressure to overwork. Joining forces could thus be a game changer for those who lack the individual bargaining power to achieve fair terms of work when negotiating with clients or principals. At the same time, collective bargaining for the self-employed is clearly still in its infancy across Europe.

The present report takes stock of developments and existing experience in collective bargaining for the self-employed from a legal and trade union perspective and explores its potential and possible ways forward. This naturally involves questions concerning the role of EU law, and more specifically EU competition law.

In this regard, the 2014 judgement of the Court of Justice of the European Union (CJEU) in *FNV Kunsten* (Case C-413/13) illustrated the considerable tension that exists between EU competition law (effectively Article 101 of the Treaty on the Functioning of the European Union (TFEU) concerning the prohibition of anti-competitive

1 According to Eurofound, self-employment as a share of total employment fell from 15.4% in 2010 to 13.7% in 2022, continuing a longer-term trend of stagnation or decline. This decrease has been driven largely by demographic change, including the retirement of older self-employed workers and insufficient entry of new self-employed workers to replace them. See Eurofound Research report: Self-employment in the EU: Job quality and developments in social protection (2024).

2 Refers to digital labour platforms, i.e. online services or applications that organise or facilitate paid work by connecting self-employed persons with customers or clients.

3 See Insee, Travailleurs indépendants en Europe (2025), https://www.insee.fr/fr/statistiques/8376565?sommaire=8376600.

4 Cf. presentation by Tina Weber at the 1st in-person workshop of the CB4SE project in Dublin.

agreements between undertakings) and the fundamental right to collective bargaining. This is also illustrated by the contrast between the CJEU's findings and the views expressed, for example, by the European Committee of Social Rights (cf. the case concerning Ireland discussed below), as well as in numerous rulings by the International Labour Organization's (ILO) Committee on Freedom of Association.[5]

The European Commission's *Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons* were adopted on 29 September 2022. Their purpose is to clarify when solo self-employed workers can engage in collective bargaining without infringing Article 101 TFEU. They take the form of a Communication in which the Commission recognises that many solo self-employed workers face bargaining power imbalances similar to those experienced by employees.

The Guidelines focus on solo self-employed persons, meaning self-employed individuals who do not employ workers and who provide services primarily through their own personal labour, negotiating working conditions with one or more counterparties (clients, companies, platforms, or other contracting entities). The goal is to enable agreements on working conditions for those workers, as long as such agreements are not considered a genuine threat to fair competition on the European internal market.

For this purpose, the Commission identifies three categories of solo self-employed workers whose collective agreements are *considered to fall outside Article 101 TFEU*. First, economically dependent solo self-employed workers are individuals who rely heavily on a single client (obtain at least 50% of their work-related income from one counterparty over a reference period of up to two years). Second, solo self-employed workers working 'side by side' with employees are self-employed persons who perform the same or similar tasks as employees working for the same organisation. Third, solo self-employed workers working through digital labour platforms are included. These categories are thus effectively presumed to fall outside the scope of competition law, although one would need to caution, from a legal perspective, that this would still need to be determined on a case-by-case basis according to the case law of the CJEU.

For workers not falling within the above categories, the Guidelines commit the Commission not to intervene against certain collective agreements involving solo self-employed workers who are in a weak bargaining position. This commitment concerns, first, collective bargaining with counterparties that possess significant economic strength,[6] creating an imbalance in negotiating power. Second, it applies to collective bargaining by self-employed persons that is expressly provided for under EU or national legislation implementing public policy objectives.

Several years after the adoption of the Guidelines, their impact (or lack thereof) on the collective bargaining landscape of selected EU Member States is of particular interest for the present report. Yet, the scope is effectively broader, in order to examine the challenges of collective bargaining for the self-employed in a more holistic way and to develop strategies for stakeholders seeking to address them. For this purpose, the next chapter provides an in-depth examination of the situation in a representative set of countries.

5 For a more in-depth discussion from a legal perspective, see Hiessl (2023), "Enforcement priorities" as an escape route from European competition law? An appraisal of the Commission's Guidelines on collective bargaining for the solo self-employed. In: Jorens (Eds.), The Lighthouse Function of Social Law (123-141). Springer. ISBN: 978-3-031-32821-3. doi: 10.1007/978-3-031-32822-0_7.

6 I.e. an aggregate annual turnover and/or annual balance sheet total over EUR 2 million or a staff headcount equal to or more than 10 persons – whereby the values are added up if there is more than one party on the 'employers" side.

3. COUNTRY-BY-COUNTRY OVERVIEW

3.1 AUSTRIA



3.1.1 Legal perspective

3.1.1.1 The classification of working individuals

Austrian law differentiates between employees, self-employed service providers, and an intermediate category of economically dependent 'employee-like' (*dienstnehmerähnlich/arbeitnehmerähnlich*) persons. Probably the most important practical consequence of categorisation as belonging to this group of employee-like persons (which is not necessarily defined identically in all legal acts referring to it) is that these workers are fully subject to the social security system for employees, with the principal responsible for paying the equivalent of employer's and employee's contributions.

Note also that the definition of an employee is not entirely equivalent in labour and social security law; nonetheless, in practice, for example, the reclassification of a worker by the social security institution is seen as a very strong indicator that the person concerned should also be viewed as an employee under labour law, including industrial relations law.

In certain cases, the law itself states that the group in question can be regarded as self-employed despite features that might otherwise point towards an employment contract.

For journalists, Section 16 of the Journalists Act expressly refers to a category of 'constant free collaborators', who work for a particular media undertaking as their main occupation without possessing their own business structure. This is frequently seen as legislative confirmation that individuals working under such an arrangement can be categorised as self-employed. In the past, this view was further supported by a clause in the collective agreement for journalists (see below) that made it possible to hire journalists on a fixed monthly wage basis while otherwise treating them as self-employed. That particular clause was abolished in 2013. Similar legal provisions, which make the classification of certain groups as employees more difficult – as the law clearly assumes that they could or should be self-employed in typical cases – exist for newspaper deliverers and domestic care workers.

3.1.1.2 Legal assessment under the framework for industrial relations and collective bargaining

Under Austrian law, the prevailing view to date has been that collective labour rights are restricted to employees (*sensu stricto*). Thus, neither traditional self-employed entrepreneurs nor employee-like persons are regarded as workers within the meaning of the legal acts regulating collective labour relations (notably the *Arbeitsverfassungsgesetz*, ArbVG). Moreover, the legal rules on company-level representation, regulated by the same law, are considered to be limited to employees, so that works councils cannot represent self-employed staff in the way prescribed by law for employees.

The law provides for very specific exceptions for journalists and other professions in the media sector (Sections 17 et seqq. *Journalistengesetz*, Section 5 *Mediengesetz*, Section 32 *ORF-Gesetz* and Section 49 *Bundesgesetz über audiovisuelle Mediendienste*). Additionally, Sections 43 et seqq. *Heimarbeitsgesetz* permit the conclusion of collective agreements for 'home workers' – defined as persons who engage in the manufacture, processing, and packaging of goods in their own homes or at their own workplaces on behalf of and for the account of persons who assign them work to be performed at home. These home workers can also be included in the scope of company-level works council agreements, according to Section 36 ArbVG.

A recent reform (BGBl I 2025/75) intends to 'implement' the Commission's Guidelines by giving all employee-like persons access to collective bargaining. This would, however, not seem to overcome the legal obstacle to collective bargaining for those self-employed persons whose profession requires them to obtain a business licence – irrespective of whether the person works as a solo self-employed worker or as an entrepreneur

who hires employees. Work conducted on the basis of a business licence entails mandatory affiliation with the Chamber of Business – the most important actor in collective bargaining on the *employers'* side, which concludes virtually all sector-level collective agreements with the trade union federation. Thus, this group of self-employed persons, which may include platform workers, taxi drivers, own-account consultants etc., is effectively beyond the reach of trade union organisation, as both the workers' and the employers' side need to remain 'opponent-free' under Austrian law in order to be able to conclude valid collective agreements.

3.1.1.3 Legal assessment under competition law

Competition law has so far not played any significant role in discussions about the legal feasibility of collective bargaining for the self-employed – mainly because, when collective bargaining is already made impossible by industrial relations law, there is no need even to discuss how such agreements would be viewed under competition law.

3.1.2 Trade union perspective and developments in practice

3.1.2.1 Collective organisation of the self-employed

Extent of representation and representative organisations

Due to the above-mentioned difficulties, unions in Austria have so far not organised groups of self-employed persons who work on the basis of a business licence and who are mandatorily affiliated with an organisation on the employers' side. However, the major unions have created specific structures for (employee-like) self-employed workers (Vida Flex and IG Flex). These members are offered various union services, even though they are not covered by negotiations on collective agreements.

The major white-collar workers' union, Gewerkschaft GPA, has had a dedicated strategy for the self-employed since 2003. From the start, the priority was to achieve the reclassification of vulnerable workers as employees, rather than to develop collective bargaining structures for the self-employed.

No information is available on the number of self-employed workers who take advantage of this opportunity. Generally speaking, individuals who are pushed by their principals to work as self-employed service providers – which is reported to be a frequent phenomenon, including among journalists – are significantly more likely to consider union membership than those who consciously choose more flexible forms of work.

Apart from the traditional trade unions, separate associations exist that represent the interests of self-employed professionals in several occupations. Union representatives report that cooperation between the unions and such associations, which somewhat resemble non-governmental organisations (NGOs), exists and can be fruitful, but may also prove difficult in practice. For instance, the journalists' union identifies mixed signals from the association of self-employed journalists, with the latter calling for violations of self-employed journalists' rights to be addressed, while fearing that overly assertive enforcement of such rights could threaten its members' jobs (as they enjoy no protection against dismissal, even in cases of long-term cooperation with certain publishers). In addition, significant turnover among the representatives of associations of self-employed professionals is reported to complicate cooperation.

Recent and current developments

No particular trend was identified regarding the propensity of the self-employed to join trade unions. Union representatives emphasise, however, that, since a large share of the self-employed who are interested in union membership are presumably bogus self-employed, increasing numbers of self-employed union members would not necessarily be a positive sign.

Regarding the phenomenon of bogus self-employment, union representatives identify a consistent tendency among companies to try to push workers into working for them as (bogus) self-employed service providers rather than as employees. At the same time, they particularly welcome the increased willingness of social security institutions to challenge the contractual categorisation of workers as self-employed. Examples of larger-scale reclassification efforts based on the joint approach by unions and social security institutions include those involving call centre staff, teaching professionals, and journalists. This increased litigation and inspection activity, together with the personal liability of company representatives under the Act on Combatting

Wage and Social Dumping (enacted in 2011 and renewed in 2016), is reported to have successfully deterred employers, at least in certain sectors, from misclassifying their employees as bogus self-employed. At the same time, new players in the market – especially international tech companies, including digital labour platforms – are promoting forms of contractual arrangement for self-employed work whose legal validity may be questionable. More generally, solo self-employment among precarious, low-wage workers without a noteworthy business structure is surging in the transport and logistics sector. This is illustrated by the recent termination, by the employers' side, of the sectoral collective agreement for platform delivery riders, followed by the large-scale reclassification as solo self-employed of riders who had previously been covered by it.

Main legal and practical challenges

Based on the above, the current challenges are both legal (the requirement for an 'opponent-free' composition of social partner organisations) and practical (the reluctance of self-employed professionals to unionise).

3.1.2.2 Collective bargaining for the self-employed

Status quo before the Guidelines and main challenges

The legal situation as described above has so far made collective bargaining for the self-employed impossible for most professional groups.

However, the aforementioned limited legal exceptions have been used in practice, so that there are currently collective agreements for home workers, works council agreements covering the personnel of public broadcasters, and collective agreements covering self-employed journalists in force. Those collective agreements for journalists have established and renewed special provisions for self-employed workers for decades; union representatives describe the indexation of minimum fees for different types of texts and pictures, as well as lump sums for infrastructural equipment, as a routine exercise in collective bargaining that is not inherently different from negotiations on the indexation of wage scales for employees.

Union representatives emphasise, however, that, for self-employed journalists, non-compliance with the terms of the collective agreement is particularly problematic in practice. They report a pervasive practice among media undertakings of interpreting the category of 'constant free collaborators', who are covered by the collective agreement, as narrowly as possible in order to avoid paying the minimum fees to self-employed journalists.

Finally, in practice, minimum fees for self-employed lecturers working for the Austrian Public Employment Service (*Arbeitsmarktservice*, AMS) have been included in the collective agreement for the private education sector. This inclusion has no particular basis in law, meaning that the legal effect of the clause may be uncertain. So far, however, its validity has not been challenged, and lecturers therefore effectively receive collectively bargained minimum fees.

Noteworthy changes since the Guidelines

Due to the legal difficulties described above under national law, the Guidelines have not, as such, unlocked initiatives for collective bargaining for the self-employed. However, they have inspired a legislative debate, which led to the inclusion of a legal framework in the coalition agreement of the current government, and, more recently, to a firm legislative proposal concerning employee-like self-employed persons (see above).

Outlook and potential

Union representatives confirm that, as soon as the necessary legislative basis is in place, the union movement plans to proactively initiate talks with a view to concluding collective agreements for different groups of self-employed persons. The sectors and occupations identified as priority concerns include education (notably lecturers in adult vocational education and private tutors), advertising and marketing, social services, platform workers (particularly delivery riders), various consultancy services, and journalists not yet covered by the current legal framework for collective bargaining. The union representatives report that opening up collective bargaining possibilities for such groups could have great potential, but caution that – based particularly on the experience of collective bargaining for journalists – practical implementation may remain a substantial challenge even if collective agreements for these categories are concluded on paper. Accordingly, even the successful conclusion of collective agreements for the self-employed would not put them in a position comparable to that of employees, as they enjoy no protection against unfair dismissal and may thus be deterred from demanding their rights in practice.

3.1.2.3 Trade union perspective on the way forward

From a union perspective, the most important steps to improve the present situation would start with the enactment of legislation that unequivocally allows collective bargaining for the self-employed.

At the same time, it is stressed that coverage by a collective bargaining agreement for the self-employed would effectively be only the 'second best' solution for workers who effectively depend on their principal, as they should also benefit from other legislative protections, notably paid sick, maternity, and parental leave. Protection against dismissal would also be key, both to enable workers to demand their own rights and to make them less reluctant to act as witnesses in legal claims against employers who systematically violate their obligations. Thus, the preferred route remains to achieve the reclassification of such workers as employees.

Despite a number of past successes in this regard, in reclassifying bogus self-employed workers, there is still room for improvement in judges' assessment of contractual relationships and the degree to which economic realities are taken into account in this process. Social security institutions, which have already come a long way in terms of questioning dubious contractual arrangements, should also further intensify their investigations – for example, in relation to platform riders who used to be employed by the Austrian subsidiary of the Just Eat group and were collectively recategorised as self-employed without substantial changes to the way in which they work.

Finally, a change of mindset on the employers' side would be welcome, as many employers still seem to seek ways to profit from legal uncertainties, rather than look for sustainable solutions that would allow them to avoid getting into conflict with the law. In this regard, union representatives regret that the sanctions currently in place for violating labour law are not nearly deterrent enough. Notably, there are only administrative fines of relatively low amounts, rather than criminal sanctions.

3.2 BELGIUM



3.2.1 Legal perspective

3.2.1.1 The classification of working individuals

Belgium has a binary system in which working individuals are either employees or self-employed. Article 3 of the 1978 Law on Employment Contracts (*arbeidsovereenkomstenwet*) defines employees as persons performing work in return for remuneration in a relationship of subordination (i.e. under the authority of an employer). The four 'general criteria' for the existence of subordination as defined in Article 333, Section 1 of the Programme Law (I) of 27 December 2006 are: the will of the parties as expressed in their agreement; the freedom to organise working time; the freedom to organise work; and the possibility of exercising hierarchical control.

It should also be noted that, since 2016, a collaborative economy regime has been established in Belgium. This regime allows people to work up to a certain amount (€7,700 in 2025) in the 'sharing economy' without having self-employed or employee status. Many delivery platform workers operate under this regime, despite doubts about the legal validity of this categorisation.[7]

3.2.1.2 Legal assessment under the framework for industrial relations and collective bargaining

Article 2 of the 1968 Law on Collective Agreements (*CAO-wet*) includes within its personal scope employees (a concept which, according to the prevailing opinion, should be interpreted in line with the definition under employment contract law cited above), as well as other persons working in a relationship of subordination. This requirement of a relationship of subordination makes it difficult to see how self-employed persons could be included within the personal scope.

This likely means that the conclusion of collective agreements for the self-employed under general contract law is not excluded as such but would not have the same legal effect as collective bargaining for employees – notably in terms of the possibility to achieve an *erga omnes* effect and universal sectoral applicability. It would probably also differ quite strongly in terms of the institutional setting, as collective bargaining for employees in Belgium is highly institutionalised and takes place in negotiating bodies defined by law and administrative regulations, whereas bargaining for the self-employed would need to take place on a more ad hoc basis and would probably focus more on individual enterprises.

3.2.1.3 Legal assessment under competition law

Due to the lack of noteworthy practical examples of collective bargaining for the self-employed, the question of their assessment under competition law has never been raised in practice. Pecinovsky (2023, p. 395)[8] refers to an informal commitment by the Belgian Competition Authority to adjust its practice to the EU Commission's Guidelines if confronted with a pertinent case of collective bargaining for the self-employed.

3.2.2 Trade union perspective and developments in practice

3.2.2.1 Collective organisation of the self-employed

Extent of representation and representative organisations

There are currently no organisations in Belgium with a specific focus on representing self-employed individuals, apart from special cases like professional nurses' associations, and business/employers' organisations specialising in small and medium enterprises (SMEs). Traditional trade unions currently admit self-employed

7 The Labour Appeals Court's judgment on Deliveroo expressly considers its use for delivery riders unlawful.

8 Pecinovsky, P. (2023), 'Collective agreements regarding the working conditions of solo self-employed persons in Belgium', *Zeitschrift für Vergleichende Rechtswissenschaft*, 122, pp. 390–398, at p. 395.

members, but very few members join when self-employed. Remaining a trade union member while changing from employed to self-employed status seems to be a much more frequent occurrence, but no data exist as members' occupations are only reported at the time of joining the union.

Self-employed union members have access to various union services, including legal support, but are not covered by collective agreements.

Recent and current developments

The number of self-employed is increasing; in addition, many employees are performing self-employed activities as a side job. Union representatives have noted no significant changes in terms of solo self-employed workers' propensity to unionise.

Main legal and practical challenges

Union representatives consider that the legal difficulties and uncertainties surrounding the collective organisation of the self-employed are significant but note that the practical and organisational difficulties may be even greater. An important first step would be to find more effective ways of identifying and counteracting bogus self-employment. Union representatives observe that more and more workers have self-employed status despite the presence of a more or less evident relationship of subordination across many sectors. The share of bogus self-employed workers in the labour market is considered significant, with representatives pointing to illustrative examples such as some platform workers.

Union representatives consider that there is also room for improvement in the unions' current policies, both in the degree to which they focus on self-employed members and their needs, and in the resources dedicated to promoting the correct (re-)classification of workers.

3.2.2.2 Collective bargaining for the self-employed

Status quo before the Guidelines and main challenges

So far, there have been no attempts to introduce collective bargaining for self-employed workers, apart from individual initiatives in the platform economy. Notably, in October 2022, the transport section (Belgian Transport Workers' Union, BTB) of one of Belgium's three relevant union federations, the General Federation of Belgian Labour (ABVV), announced that it had concluded a framework agreement with Uber regarding representation of its drivers, who are considered to be self-employed by the platform (but not by the courts – see below). However, no details about the agreement have been published. Deliveroo and Take Eat Easy used to have an agreement with the 'Smart' cooperative – a workers' association which also acted as an intermediary to provide employment contracts to riders. Both platforms, however, cancelled that arrangement and forced riders into self-employment as from 2017.

Union representatives stress that, in the meantime, a number of platform workers who have taken their cases to court have been recategorised as employees by second-instance courts in both the ride-hailing and food delivery sectors, with the Court of Cassation's assessment still pending. In this context, bargaining for these workers' rights as *self-employed* would not be an obvious choice for a union that primarily pursues their reclassification as employees.

Noteworthy changes since the Guidelines

To date, the Guidelines have not triggered significant changes or initiatives to pursue collective bargaining for any group of self-employed workers.

Outlook and potential

Union representatives stress that the lack of both a clear legal framework and any experience among the social partners in negotiating for the self-employed are obstacles that should not be underestimated.

3.2.2.3 Trade union perspective on the way forward

Union representatives stress that the correct classification of contractual relationships remains a challenge. Although they agree that the scope of those benefiting from collective bargaining should be extended to cover individuals facing modern-day forms of precarity and economic dependence, they clearly reject the idea of creating intermediate categories between the statuses of employee and self-employed person. In this respect, they consider the collaborative economy regime a regrettable precedent, as it allows for the circumvention of the traditional classification of workers as either employees or self-employed. Instead, the concept of employee should be interpreted broadly, as collective bargaining is only one of the rights connected to employee status that should be granted to all those working in a situation of dependency.

As for the creation of collective bargaining rights for the genuinely self-employed, union representatives support the creation of a dedicated legal framework, stressing, however, that this should be carefully prepared and designed, as 'opening up' the 1968 Law on Collective Agreements requires great caution so as not to endanger the functioning of the established system.

Finally, they assert that the union movement also has 'homework to do' in terms of engaging with vulnerable individuals who are currently classified as self-employed, learning more about their situation and needs, and devising a strategy to support them.

Union representatives also declare that they are eager to exchange best practices between countries on this issue.

3.3 DENMARK



3.3.1 Legal perspective

3.3.1.1 The classification of working individuals

Denmark has a binary system in which working individuals are either employees or self-employed. There is no statutory definition of the concept of employee; this is decided on a case-by-case basis, whereby the criteria developed by case law include the degree of control of one contractual party over the work done by the other, the allocation of risk and economic gains, and the worker's freedom to delegate work to a third party. To complicate matters further, there is no single concept of employee – meaning that the boundary between employment and self-employment can be drawn differently for individual areas of law, with the result that the same person might be considered an employee for some, but not all, of the relevant areas of law (tax, social security, labour, and competition law).

A number of collective agreements include provisions to curtail the risk of bogus self-employment.

3.3.1.2 Legal assessment under the framework for industrial relations and collective bargaining

Collective bargaining in Denmark is not regulated by statutes, so the most important principles have been clarified by the case law of the labour courts. Under that case law, trade unions have generally been found legally entitled to bargain for all of their members irrespective of their status, provided that those members work under conditions that are at least 'similar' to those of employees and provided such bargaining does not violate competition law. Munkholm (2023, p. 404)[9] notes that the labour courts have, in fact, traditionally taken a stricter approach than the Competition Authority when assessing whether collective agreements legitimately cover self-employed workers.

3.3.1.3 Legal assessment under competition law

The Danish Competition Authority has traditionally taken a strict stance against collective bargaining for the self-employed. This position, which was also backed by the labour ministry in charge, eventually quashed efforts of concluding a collective bargaining agreement for journalists some five years ago and led to administrative decisions in 2020 that declared the original collective agreements with the cleaning platforms, Hilfr and Happy Helpers, in violation of competition law. However, there were also cases in which the authority expressly declared that collective bargaining agreements conformed with competition law, for example, in relation to freelance veterinarians working for slaughterhouses under the same conditions as employed veterinarians.

After the publication of the Commission's Guidelines, the Danish Competition Authority did not publish any official statements as to whether and how they would influence its position.

3.3.2 Trade union perspective and developments in practice

3.3.2.1 Collective organisation of the self-employed

Extent of representation and representative organisations

Unionisation is not a new phenomenon among the self-employed in Denmark, but the picture varies significantly across sectors. In the journalists' union, 25% of all members are self-employed, whereas in other sectors the proportion is (almost) zero. Generally, the propensity to unionise is greatest among those who do not con-

9 Munkholm, Natalie Videbæk (2023), 'Collective Agreements regarding the Working Conditions of Solo Self-Employed Persons – Denmark', *Zeitschrift für Vergleichende Rechtswissenschaft*, 122(4), pp. 399–408, at p. 404.

sciously choose to become self-employed but become self-employed because this is the form of work offered by their clients/principals. Professions with a rather high degree of organisation among the self-employed include – apart from journalists – engineers, economists, accountants, lawyers, and medical professionals. In these areas, self-employed professionals who themselves have employees also join unions.

Despite the presence of individuals who are employers themselves, all the groups mentioned are organised by the traditional unions rather than alternative professional associations.

Recent and current developments

According to trade union surveys, the share of self-employed workers in the Danish labour market is low and has remained stable over the past decade. During times of economic growth, when high-quality employed positions are available, even fewer individuals choose to become self-employed. However, there are still numerous cases in which individuals do not consciously choose to become self-employed but do so because of the nature of the job opportunities available in their sector or profession. For instance, there are two national public television broadcasters, one of which offers work on the basis of fixed-term employment contracts, while the other uses self-employed professionals. Thus, in practice, journalists working for public television will conclude different contracts depending on the broadcaster that offers the work, even though the way they work does not differ significantly between the two broadcasters.

There are no signs of either an increase or decrease in self-employed professional's interest in unionisation. Unions continue to monitor developments, as shifts in values between generations might also lead to changes in choices regarding professional life.

Main legal and practical challenges

Union representatives note that the services currently offered by unions could be better tailored to the needs of the self-employed. This includes social security concerns, which are less relevant to employees subject to mandatory full protection. The self-employed in turn lack equivalent mandatory paid leave entitlements for sickness, accident, pregnancy, and childcare, as well as unemployment insurance protection, and they are themselves responsible for ensuring adequate pension provisions. Accordingly, alleviating social risks (including by political lobbying for better statutory social security rights for the self-employed) is a key task for unions in relation to this group.

3.3.2.2 Collective bargaining for the self-employed

Status quo before the Guidelines and main challenges

In Denmark, there have been no firm attempts at collective bargaining for the self-employed. However, some trade unions have specific articles in their collective agreements that cover freelancers/self-employed (e.g. journalists). For self-employed journalists, an attempt at establishing 'guiding principles' for their work conditions was rejected by the Competition Authority several years ago.

For cleaners working through digital labour platforms, collective agreements were concluded on the basis of the unions' assumption that they could be regarded as employees – an assumption that was rejected by the Competition Authority in two decisions of August 2000, with the result that changes had to be made to the contractual arrangements before a new collective agreement could be concluded.

An alternative route to ensuring social rights for self-employed workers is the creation of umbrella organisations that act as agencies. This route has been adopted, for example, for graphic designers through the freelance agency Teknik & Design, which forms part of the trade union *Teknisk Landsforbund* (TL) (https://tl.dk/faasvar/selvstaendig/freelancer-hos-td/). The trade union concerned offers to act as the employer of its members, in the sense that it concludes contracts for services with the clients for whom its members plan to work, so that the members can provide their services as employees of the umbrella organisation and are fully covered by social security. In return for assuming the obligations and liabilities of an employer (including in the event of problems with the client or public authorities), the organisation charges a fee amounting to a percentage of the contract value. The trade union HK has established a similar scheme (see https://www.hk.dk/raadogstoette/freelancer).

Union representatives evaluate this system, which has already been in existence for some 15 years, as an effective way of dealing with the shortcomings of the current system, but maintain that properly addressing these shortcomings (e.g. by introducing better social security rights for the self-employed) would clearly be preferable. Moreover, unions have in the past promoted the extension of the system to various other sectors, but without success, as self-employed members in those sectors indicated that they considered it too expensive.

Noteworthy changes since the Guidelines

No new attempts at collective bargaining for the self-employed have been made since the Guidelines were published.

Outlook and potential

Union representatives see a unique opportunity to reboot ideas such as the aforementioned guiding principles for journalists – that were rejected by the Competition Authority – and to force the Competition Authority to take a stance on whether the situation should be assessed differently in light of the European Commission's Guidelines. They also identify other groups of self-employed professionals who could benefit greatly from collective bargaining initiatives, including those working in communication, graphic design, arts, music, and writing.

Although collective bargaining for the self-employed is thus seen as a useful and necessary tool, it is not expected to be a panacea. Representatives note that – especially in the context of the trade union confederation for professionals and managers – union affiliation is (very) high in the public sector (some 98%), but very low in the private sector (10%, comprised mainly of those working for former state companies). Highly skilled professionals who possess sufficient individual bargaining power to negotiate fees at an appropriate level may also generally be less interested in collective bargaining over remuneration levels. This, however, does not mean that such individuals are not vulnerable to various social risks, so there is considerable potential for bargaining about aspects such as pension schemes and holiday and sick leave entitlements, including for those earning an appropriate level of income from self-employed work.

Thus, in sectors where the establishment of highly representative union structures is not realistic, better protection through state legislation (e.g. on social security) may be more effective than creating collective bargaining rights that have a slim prospect of being used in practice.

3.3.2.3 Trade union perspective on the way forward

Union representatives stress that exploring collective bargaining for the self-employed will be an important route to achieving improvements – yet its role may be more important in lower-skilled sectors such as transport (including for platform workers). By contrast, questions of social security coverage are at least as important as collective bargaining, and this also applies to highly skilled professionals (including platform workers, notably computer engineers). As long as there is no systematic solution to these social vulnerabilities, initiatives such as the aforementioned establishment of umbrella companies are viewed as promising interim solutions.

Representatives also note that information comparing social security regimes governing self-employed service providers in different European countries would be very helpful, as this could be used in campaigns demanding better social security protection for the self-employed at national level.

3.4 FINLAND



3.4.1 Legal perspective

3.4.1.1 The classification of working individuals

Finland has a binary system in which working individuals are either employees or self-employed. Employee status is assessed on the basis of Chapter 1, Section 1 (1) of the Employment Contracts Act, which stipulates five criteria: work must be performed under contract for another, for consideration, personally, and under both the management and supervision of that other. According to case law, the will of the parties can be taken into account, but only if it corresponds to the actual performance of the contract. An additional overall assessment should be carried out if there are clear indications that any of these five criteria may not be met.

3.4.1.2 Legal assessment under the framework for industrial relations and collective bargaining

The Finnish legislation on industrial relations is basically considered to be limited to employees. Article 1 of the 1946 Collective Agreements Act refers to 'registered associations of employees' as the competent entities that can engage in collective bargaining on the workers' side. Article 13 of the Constitution protects freedom of association for 'everyone' but does not refer specifically to the context of social dialogue or collective bargaining. Therefore, it is generally assumed that collective bargaining for the self-employed can take place in the form of a civil law contract, but it might not necessarily be subject to the legal guarantees provided for collective bargaining for employees.

3.4.1.3 Legal assessment under competition law

The Finnish Competition Authority has not previously adopted any specific decisions or developed a position on the permissibility of collective bargaining for the self-employed. Following the publication of the Guidelines at EU level, it confirmed that it would follow the EU Commission's approach.

3.4.2 Trade union perspective and developments in practice

3.4.2.1 Collective organisation of the self-employed

Extent of representation and representative organisations

Union representatives estimate that the extent to which self-employed professionals are organised is still concentrated in only a small number of sectors and occupations. These include journalists, as well as translators and interpreters. The union representing language specialists organises just a handful of the roughly 1,000 interpreters in the labour market, but about a third of all audio-visual translators. In this context, it is stressed that language specialists include professions in which employment contracts are rare, meaning that union membership also includes self-employed professionals. By contrast, in some other sectors, unions do not yet seem to admit self-employed members or, at least, do not actively recruit them. This may be partly due to a lack of awareness of the (legal) possibility and potential of including the self-employed in unions.

As an alternative to union membership, various professional associations are organising self-employed professionals (including in the language specialist sector) without any intention of entering into collective bargaining or other union activities in the strict sense.

Recent and current developments

Unions observe that an increasing number of companies are actively trying to push the individuals who work for them into self-employment as a means of cutting costs, leading to a significant number of workers who are in practice in a situation of dependency working under contracts for services. Such groups could clearly benefit if union membership were to become 'normal' for self-employed workers.

Yet, as virtually everywhere in Europe, the overall trend in union membership (among employees) is decreasing. At the same time, there is a growing interest in the collective representation of freelancers, which has been reinforced by the Commission's Guidelines. At present, it seems difficult to determine how these opposite trends will influence the overall level of union membership among the self-employed.

Main legal and practical challenges

Effectively, there are no legal obstacles to the unionisation of the self-employed; the fact that it remains concentrated in only a few sectors is instead the result of practical challenges.

3.4.2.2 Collective bargaining for the self-employed

Status quo before the Guidelines and main challenges

In the journalism sector, a handful of collective agreements already included provisions that extended also to freelancers before the adoption of the Guidelines, but none of them actually regulated the wages and working conditions of those workers.

Generally, competition law was widely viewed as preventing proper collective bargaining for the self-employed. This even stifled attempts to publish (non-binding) fee guidelines for contracts with self-employed professionals. According to trade unions, the most they felt able to publish without overstepping the boundaries of competition law were surveys of the fees typically paid in different sectors, without making any express recommendation.

Noteworthy changes since the Guidelines

The Finnish unions reacted to the Guidelines by approaching the Competition Authority for guidance on whether and how they would apply in the Finnish context. The Competition Authority confirmed, first in direct conversation with the unions, then by formal communication, that commencing a collective bargaining process for the self-employed in line with the criteria outlined in the Guidelines would not be investigated as a potential breach of competition law.

This opportunity was taken up by the social partners in the field of audiovisual translation services, leading to the conclusion in 2023 of the world's first collective agreement covering solo self-employed professionals in this field. The bargaining process was facilitated by the fact that a collective agreement for employees had already been in place between the bargaining partners since 2014, and minimum rates for self-employed professionals could effectively be incorporated into that existing framework.

The agreement is seen as an important step forward by the union movement, especially as it concerns a group of self-employed professionals who are particularly dependent on a small number of companies that dominate the market. At the same time, union representatives caution that it is not a sector-wide agreement, as not all the relevant players on the employers' side have signed it. Notably, international corporations, which generally attach less value to collective bargaining, have not joined the agreement – which is described as problematic as they represent a large share of the job opportunities in the field.

Outlook and potential

Although collective bargaining for the self-employed is still very recent and limited, the constructive communication between the unions and the Competition Authority has reassured the unions that legal challenges would not present an obstacle to broadening collective bargaining initiatives for the self-employed. Rather, practical problems are seen as the main hinderance, including both the unions' lack of experience (perhaps also knowledge and courage) and the employers' lack of commitment and motivation to allow inclusion of the self-employed.

This has become particularly relevant in practice for journalists, for whom no collective agreement has so far been negotiated despite efforts to do so, and despite a relatively high degree of unionisation among freelancers. Regarding audiovisual translators, the generally rather hostile approach to collective bargaining (even for employees) among certain international companies headquartered in the United States or Asia has led to the restriction of the agreement's scope. This tendency makes it even less likely that collective bargaining for the self-employed can be easily achieved in even more internationalised sectors, such as the platform economy, where unions have been so far pushed in vain for the initiation of a collective bargaining processes.

Even so, union representatives remain optimistic that a broader culture of collective bargaining for the self-employed is developing in Finland and will gain further momentum once unions with less experience in this area also realise the potential offered by its favourable assessment under competition law. In any event, much work still lies ahead for the unions.

3.4.2.3 Trade union perspective on the way forward

Union representatives stress that unionisation and collective bargaining are generally under strain, and that an integrated approach would be needed to tackle the issues that also affect collective bargaining for employees. One example is the Finnish government's recent decision to abolish the tax-deductibility of union fees – which particularly affects the most vulnerable groups, for whom paying the cost of union membership themselves is most difficult.

Additionally, union representatives see room for improvement in the guidance provided by courts and state institutions on the correct classification of working individuals as employees or self-employed.

Finally, the trade union movement itself is viewed as still having much to learn in terms of becoming familiar with the very idea of collective bargaining for the self-employed and the potential benefits of a joint approach (i.e. collective bargaining for everyone working in a particular sector or occupation) for both the self-employed workers and employees.

3.5 FRANCE



3.5.1 Legal perspective

3.5.1.1 The classification of working individuals

French law does not entail a statutory definition of the employment contract in the sense of Articles L.1221-1 et seqq. of the Labour Code (*Code du travail*). The test applied by the courts expressly disregards the contractual designation and the will expressed by the parties, focusing exclusively on the de facto conditions: a relationship of subordination, characterised by the performance of work under the authority of an employer who has the power to give orders and directives, to control their execution, and to sanction violations.

An irrebuttable presumption of employment is stipulated in Part Seven of the Labour Code for certain occupational groups that would likely be treated as self-employed in other countries (e.g. journalists and artists). Conversely, where the purported employee is entered in a business register, this creates a presumption of self-employment according to Article L. 8221-6 of the Labour Code. Thus, even if it is clear that an individual registers as an independent entrepreneur at the request of a client (such as a digital platform) for which they wish to work, such registration gives rise to a presumption that the individual is self-employed.

Although not formally recognised as a third category, the 2016 El Khomri Law inserted into the Labour Code specific provisions for self-employed workers using one or more digital platforms to provide personal services (Articles L. 7341-1 and Article L. 7342-1). The main criteria for falling within the scope of these provisions are economic and technical dependence on a platform, which determines the characteristics and sets the price of the service provided. Under these conditions, self-employed workers are covered by core collective labour rights and are entitled to accident insurance cover.

Even more specific were the rules inserted into the Labour Code in December 2019 by the Orientation Law on Mobility (*Loi d'orientation des mobilités*) , which concern exclusively platforms engaging drivers or riders notably requiring such platforms to provide workers with relevant information and to refrain from certain sanctioning mechanisms.

France also has a legal framework (Articles L1254-1 à L1254-31) for umbrella companies, known as *portage salarial*. This allows workers with changing clients or principals to choose and contract with their contractual partners as self-employed persons while working as employees of the umbrella company for each assignment, thus being fully covered by labour law and social security protections.

3.5.1.2 Legal assessment under the framework for industrial relations and collective bargaining

Legal provisions on collective bargaining generally cover only employees. The self-employed are not entitled to participate in workplace elections that determine which unions represent workers at the different levels of collective bargaining. However, as mentioned above, the 2016 El Khomri Law introduced a separate system of collective bargaining for self-employed platform workers.

3.5.1.3 Legal assessment under competition law

Recently, the question of the relationship between competition law and the new bargaining system for platform workers has been assessed in an opinion issued by the Competition Authority at the request of the Authority for Social Relations of Employment Platforms (*Autorité des relations sociales des plateformes d'emploi*, ARPE), the organisation responsible for deciding on the extension of collective agreements. The opinion (Avis 25-A-03 du 21 janvier 2025) concerns a collective agreement concluded with an association of platforms strongly dominated by Uber, which guaranteed rights for platform workers reflecting commitments already implemented by Uber. Accordingly, the Competition Authority cautioned in its opinion that the agreement was likely to further strengthen Uber's market domination. It therefore advised that, before considering an extension of the agreement to the entire sector, ARPE should carefully consider the consequences for all parties involved.

3.5.2 Trade union perspective and developments in practice

3.5.2.1 Collective organisation of the self-employed

Extent of representation and representative organisations

Unionisation in France is generally low, especially when compared with the very high level of coverage by collective agreements. No numbers are available on the proportion of trade union members who are self-employed, but it is estimated to be negligible. Recently, due to the dedicated legal framework for collective bargaining for platform workers (see above), there has been some improvement in the representation of this group, notably in the delivery sector. Union representatives report that some non-union organisations exist, for example, for platform workers, journalists, and different types of freelancers. These organisations sometimes approach the unions for advice, and there has been some cooperation between them and the unions, although such cooperation can also be difficult.

Recent and current developments

The fact that 58% of France's four million self-employed workers are solo self-employed is seen by union representatives as just one symptom of a broader development in which an ever-increasing number of workers no longer work on the basis of a standard employment contract, leading to problems for their collective organisation.

Main legal and practical challenges

The individualisation of work (not only among self-employed workers) is considered one of the main challenges to effective collective organisation. Ideas of industrial democracy are difficult to promote when they appear far removed from the current realities and from the unions' capacity to achieve immediate gains for the self-employed. The prospects for organising a strike among self-employed workers are considered poor in the current situation, making it very challenging to build union power. The prevalence of foreign workers among the most vulnerable groups, including those in self-employed positions, further complicates the situation. The employers' side, in turn, seems content with the fragmentation of the workforce into categories ranging from regular employees to fixed-term and intermittent employees, workers working through umbrella companies, and self-employed workers registered as entrepreneurs.

3.5.2.2 Collective bargaining for the self-employed

Status quo before the Guidelines and main challenges

France's highly institutionalised system, with multi-level bargaining and a focus on the sectoral level, results in high systematic collective bargaining coverage for employees but makes it difficult to include the self-employed. Systematic representation of self-employed providers in a particular occupation at sectoral level is hardly realistic within the current structures, in which the self-employed have no right to vote in workplace elections. Company-level bargaining, in turn, focuses on issues such as working time, making it difficult to envisage the inclusion of rights for the self-employed.

However, for the specific case of umbrella companies, collective agreements had already been in place long before the Guidelines were drafted. Thus, workers covered by the system enjoy not only legal rights under labour and social security law, but also the entitlements provided for by the different sectoral collective agreements covering umbrella companies.

Noteworthy changes since the Guidelines

The Guidelines are considered an important step forward by union representatives. Yet, they have not so far had any specific impact. The fact that collective agreements have recently been concluded for self-employed platform workers under the specific legal system for platform work explained above seems to be more a coincidence than a development specifically triggered by the Guidelines. The Competition Authority's aforementioned opinion on the sectoral extension of the ride-hailing collective agreement mentions the Guidelines but does not appear to draw any particular conclusions from them, also noting that they are, in principle, not applicable to decisions of national authorities.

Outlook and potential

Union representatives report a determination to pursue the representation of self-employed workers but consider the current situation to be very challenging. There seems to be a vicious circle in which the surge in atypical forms of work makes unionisation more difficult, which in turn makes it less likely that the unions will have a strong voice in the political debate that could lead to the introduction of a dedicated legal framework for collective bargaining for the self-employed.

3.5.2.3 Trade union perspective on the way forward

Union representatives point to social security as one of the key means to ensure the protection of self-employed workers. They also report high expectations regarding the transposition of the Platform Work Directive, and specifically the presumption of employment, as it might help address the extraordinary legal uncertainty surrounding the status of these workers, which has so far resulted in over a thousand court judgments in France. Unions will also call for implementation that extends the presumption of employment to other (non-platform) workers. The idea of introducing any intermediate status between employees and the self-employed is generally rejected by the union movement. All in all, the outlook is characterised by uncertainty, inter alia because of the fear that artificial intelligence may further diminish the importance of traditional jobs in favour of atypical and self-employed forms of work.

3.6 GERMANY



3.6.1 Legal perspective

3.6.1.1 The classification of working individuals

In Germany, there is no definition of self-employed status. Section 611a of the German Civil Code (*Bürgerliches Gesetzbuch*) describes an employment contract as one under which the worker is obliged to perform work in a relationship of personal dependence and subject to instructions (regarding the content, manner, time, and place of work). The definition expressly requires an overall consideration of all the circumstances, with the degree of personal dependence varying according to the nature of the activity concerned; anyone who is not essentially free to organise their work and determine their working hours is considered to be subject to instructions. If the actual implementation of the contractual relationship indicates the existence of an employment relationship, the contractual designation of the relationship must be disregarded.

Section 12a of the Act on Collective Agreements (*Tarifvertragsgesetz*, TVG), introduced into law in 1974, expressly allows 'employee-like' self-employed persons to bargain collectively. To be considered 'employee-like', the person concerned must receive at least half of their income from a single client or principal. For persons working in cultural, artistic, and journalistic professions, the threshold for being considered employee-like is reduced from one half to one third.

3.6.1.2 Legal assessment under the framework for industrial relations and collective bargaining

Article 9(3) of the German Constitution protects the right to freedom of association and collective bargaining for 'everyone', indicating that everyone should have access to some form of collective bargaining, even if they are neither employee nor an employer. Section 12a of the Act on Collective Agreements (TVG) stipulates that 'employee-like' self-employed persons, as described above, are to be treated as employees for purposes of the Act, meaning that unions can bargain collectively on their behalf under the same conditions as for employees.

3.6.1.3 Legal assessment under competition law

Although collective bargaining for the self-employed has long been recognised under labour law, competition law concerns have repeatedly played a role. Most notably, the German Act against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen*, GWB) used to contain an express clause permitting non-binding recommendations on fees under certain circumstances. As part of a reform in 2004, this clause was abolished, as the German legislature considered that no general statement could be made as to whether such recommendations would violate EU competition law. Accordingly, employers' associations in the newspaper and magazine sector declared in 2017 that they no longer considered themselves bound by the 'allowance rules' for journalists, which had effectively ensured minimum fees in the sector since 2010.

3.6.2 Trade union perspective and developments in practice

3.6.2.1 Collective organisation of the self-employed

Extent of representation and representative organisations

Today, all the main German trade unions accept solo self-employed members. With around 30,000 self-employed members, the service-sector trade union, ver.di, is the largest union for self-employed professionals in Europe. IG Metall, the world's largest trade union, amended its statutes in 2015 to formally include self-employed workers. NGG (*Gewerkschaft Nahrung-Genuss-Gaststätten*), a trade union specialising in the food and hospitality sector, and GEW (*Gewerkschaft Erziehung und Wissenschaft*), which represents workers in education and academia, also have a significant share of self-employed members. The share of self-employed members is somewhat lower in IG BAU (*Industriegewerkschaft Bauen-Agrar-Umwelt*), which represents workers

in construction, engineering, and agriculture. Among the unions that are not part of the German Trade Union Federation (*Deutscher Gewerkschaftsbund*, DGB), self-employed workers account for a significant share of the membership, notably in the journalists' union (*Deutscher Journalisten-Verband*, DJV), and the theatre union (*Genossenschaft Deutscher Bühnen-Angehöriger*, GDBA. Ver.di is the only union with a specialised department dealing with issues concerning self-employed members.

As an alternative to union membership, the self-employed also have the option of joining a professional association. Such associations are particularly common in the cultural and media sectors, and, for a number of occupations (including medical professions, handicrafts, and industrial and trade occupations) membership of an association is in fact mandatory. The latter associations typically also organise employers and are therefore not authorised to conclude collective agreements on the workers' side.

No data exist on the extent to which self-employed workers are collectively organised, but union representatives estimate that, in the exceptional case of journalists, up to 80% may be organised in some form, whether in a trade union or an association.

Recent and current developments

Generally, since 2012, the share of self-employed workers in the German economy has been declining. In contrast to most other countries, even groups such as food delivery riders working through digital labour platforms generally have regular employment contracts. Recently, the judicial reclassification of a music teacher in the landmark *Herrenberg* case has also clarified the criteria to be applied when assessing teaching activities and is expected to lead to numerous changes in the classification of workers in the sector. Educational institutions have received a political 'grace period' of two years to adapt to the newly clarified criteria, during which social security institutions have committed not to conduct any inspections.

Whether this has also led to a decline in the number of self-employed union members, or whether increasing interest in unionisation may actually lead to an increase in collective organisation, is difficult to determine due to a lack of data.

Main legal and practical challenges

From a legal perspective, there do not appear to be any obstacles to unions admitting solo self-employed members, and there is also broad agreement that this is permissible in light of the constitutional guarantee of freedom of association (see Article 9(3) of the Basic Law). By contrast, a union that also recruits self-employed professionals who employ their own employees may endanger its 'opponent-free' composition, which is essential to maintaining its legitimacy to bargain collectively on the employees' side. Therefore, unions currently recruit only solo self-employed members.

The practical challenges appear to be considerably more important than the legal ones. In the recent past, various union initiatives have focused on vulnerable self-employed workers, ranging from counselling and legal advice to the organisation of strikes and other forms of collective action. A significant share of these initiatives concerned the platform economy. Some of them have been successful, but even these do not necessarily lead to large increases in union membership among workers who are difficult to reach, inter alia because of their fluctuating work situation, low income, and/or lack of information. Among union officials, too, awareness of the possibilities and potential benefits of recruiting self-employed members may sometimes be lacking.

3.6.2.2 Collective bargaining for the self-employed

Status quo before the Guidelines and main challenges

Immediately after the insertion of Section 12a in the TVG in 1974 (see above), negotiations concerning self-employed professionals started with all public broadcasters and, by 1976, all of them had concluded collective agreements. After German reunification in 1990, public broadcasters in the new federal states were included. Those agreements, concluded separately with each local broadcaster, are very similar, though not identical, and regulate the working conditions of employee-like persons in considerable detail, including, for example, maternity protection and protection against dismissal.

In contrast, the collective agreement for employee-like journalists working for daily newspapers is somewhat short and limited to core issues.

Another example is a 'collective agreement' for design services, although its legal status is questionable, as the designers' association that concluded it on the workers' side does not meet the legal criteria to act as a trade union. So far, however, no objections have been raised in practice, and the parties continue to adhere to the agreement.

Finally, 'General compensation rules' were agreed between the unions and various publishers' associations on the 'employers'' side in 2010. However, in 2017, the association of daily newspaper publishers officially terminated the agreement, arguing that the amendments to German intellectual property law – and, specifically, the introduction of the possibility of bringing collective litigation – had made the agreement superfluous. Despite its termination, the rules remain available and adherence to them is still recommended. In other areas, such as literature, 'General compensation rules' are still in place.

Certain initiatives to reach other sectors have not been successful. Union representatives point to the example of a collective agreement negotiated for all personnel employed by the municipality of Berlin in the education sector, from adult education centres to music schools. They report that negotiations had essentially been concluded when the municipality retracted at the last minute due to pressure from other federal states, which were concerned that the agreement would set a dangerous precedent. The content of the negotiated agreement was not lost, however, but was passed as a municipal regulation that provided for, among other things, the fees and social security contributions to be paid for employee-like self-employed teaching personnel.

All in all, the German experience shows that, at least in the public sector, collective bargaining for the self-employed is realistic and can produce agreements with rather extensive rights. Notably, the motivation to enter into negotiations on the employers' side can be enhanced by strategic litigation aimed at reclassifying workers as employees, as was the case with public broadcasters.

Although the German legal framework created in the 1970s is not limited to specific sectors, in practice it has not been possible to extend collective bargaining for the self-employed beyond the aforementioned sectors and occupations. To a large extent, this is due to the fact that, in other sectors, there are no social partners capable of negotiating agreements, as the self-employed may be reluctant to join unions, while the principals on whom they depend economically are not organised in employers' organisations or equivalent bodies. Moreover, in the private sector, there are few occupations in which the majority, or at least a very significant proportion, of self-employed workers would qualify as employee-like within the meaning of the law (i.e. deriving at least 50% of their income from a single client).

Noteworthy changes since the Guidelines

The German trade unions were actively involved in the consultation process preceding the publication of the Guidelines, and in the debate about their impact in Germany. Nonetheless, developments in Germany have so far been limited to the publication of expert opinions, which are mostly very cautious in assessing the legal implications of the Guidelines for Germany.

Outlook and potential

The Guidelines are seen as a potentially powerful tool for countering tendencies to use competition law arguments against collective bargaining, but there is no expectation that they will eliminate such tendencies. There is also concern that, as a reaction to one initiative or another, the 'German case' could ultimately come before a court, and that the compatibility of Section 12a TVG with competition law might eventually have to be defended before the CJEU.

In any event, unions are proactively preparing to take the first steps and initiate negotiations, but want to approach such negotiations with utmost care, as it seems crucial for future developments to ensure that the first initiatives set positive examples. Therefore, trade unions intend to proceed one step at a time. One possible area to consider would be solo self-employed providers working in the public education sector. Another important sector would be transport and delivery, including platform workers (although food delivery riders are generally employed, the same is often not true, for example, of parcel delivery drivers).

In sectors where the actual working conditions show a high degree of dependence on the principal, union representatives stress that the primary aim would be reclassification as employees. Specifically, in the transport and delivery sector, consideration might be given to a legal prohibition on concluding contracts for self-employed services, similar to the prohibition introduced several years ago for workers in the meat industry.

3.6.2.3 Trade union perspective on the way forward

Unions consider that some form of collective judicial action, allowing them to bring proceedings before the courts on behalf of a group of workers, would be an important tool for enforcing the rights of groups that would be unlikely to initiate litigation on their own.

Another idea relates to legal presumptions or a reversal of the burden of proof, which could be implemented more broadly rather than being limited to platform workers, as required by the Platform Work Directive (PWD).

Notably, public sector employers would also have a particular responsibility to set a good example in this respect, rather than relying on services provided by bogus self-employed professionals and shying away from collective bargaining.

3.7 IRELAND



3.7.1 Legal perspective

3.7.1.1 The classification of working individuals

Irish law does not contain a single definition of either 'worker' or 'employee'.

The Irish Industrial Relations Act defines the term 'worker' broadly, including 'persons... working under... a contract personally to execute any work or labour'. The mechanism for making collective agreements concluded with unions binding across an entire sector through 'sectoral employment orders' (Labour Court (Sectoral Employment Orders) Rules 2016) refers to this definition. When collective bargaining agreements also covering self-employed workers began to emerge in the 1990s, the question of whether these workers even fell within the scope of the Industrial Relations Act appears to have been of little relevance in practice; instead, the legal debate focused on competition law (see below).

3.7.1.2 Legal assessment under the framework for industrial relations and collective bargaining

The Irish Constitution does not provide for a right to bargain collectively. On the contrary, the Constitution has been interpreted by the courts as encompassing an employer's right to disassociate itself and refrain from collective bargaining. In such cases, only unions capable of engaging in effective collective action, if necessary, have the power to compel the employers' side to negotiate.

When collective agreements have been concluded and the union concerned has a sufficient degree of penetration and representativeness, sector-wide application can be achieved by seeking a 'sectoral employment order' from the Labour Court.

3.7.1.3 Legal assessment under competition law

In Ireland, unlike in most other EU countries, the competition law aspect of collective bargaining for the self-employed has been exceptionally relevant in practice for decades. As early as 1997, the National Newspapers Association (representing newspaper companies outside Dublin) withdrew from its agreement on pay rates with the National Union of Journalists, claiming that it amounted to price-fixing in violation of competition law. In 2004, the Irish Competition Authority declared collective agreements covering voice-over artists, freelance photojournalists, and session musicians to be contrary to European competition law.

When the Competition Authority upheld its position following the CJEU's 2014 decision in *FNV Kunsten*, unions brought a claim before the European Committee of Social Rights, which in 2017 found a violation of Article 6.2 of the European Social Charter. In the same year, a reform amending the Competition Act introduced the legal definition of 'false self-employed workers', as referred to in *FNV Kunsten*, and of 'fully dependent self-employed workers'. This allowed trade unions to apply for a declaration that a particular group of self-employed workers belonged to one of those legally defined categories and was therefore entitled to bargain collectively in respect of their labour rights.

3.7.2 Trade union perspective and developments in practice

3.7.2.1 Collective organisation of the self-employed

Extent of representation and representative organisations

Unionisation is estimated to remain relatively limited among the self-employed in Ireland. The level of union membership is considered highest in the arts and entertainment sector, followed by journalism; in some other sectors, it may even be non-existent.

Where self-employed workers are collectively organised, they are generally represented by traditional trade unions rather than by associations representing the self-employed.

Recent and current developments

The decision by the Competition Authority in 2004 to challenge the validity of collective bargaining for the self-employed had a profound impact on the union movement, which has never entirely recovered, even after the adoption of the Competition Amendment Act in 2015. As no new collective bargaining agreements could be concluded following the 2004 decision, workers may also have had less motivation to unionise. While there was probably no significant loss of existing members, in a volatile sector such as arts and entertainment, simply maintaining existing membership levels requires the constant recruitment of new members, which became more difficult after 2004.

It is estimated that the peak of unionisation among the self-employed in Ireland occurred in early 2004, followed by a downward trend for several years.

In sectors where the legal status of existing contracts was more questionable, Irish trade unions have led a number of successful initiatives against bogus self-employment. This has, for instance, put an end to the widespread use of solo self-employed contractors in sectors such as construction. Thus, in such sectors, the relatively low proportion of self-employed union members is largely a result of the fact that many formerly bogus self-employed members have since been reclassified as employees.

Main legal and practical challenges

One fundamental challenge, which is not limited to the self-employed, is the lack of a statutory right to collective bargaining. Employers are entirely free to enter into collective bargaining with a union or refuse to do so. Thus, in sectors where the potential to organise successful strikes is limited, for example, due to a lack of experience, employers have little incentive to engage in bargaining. For the self-employed, these problems are further aggravated by the fact that a strike by self-employed workers would in itself raise questions under competition law and that self-employed professionals on strike generally have no protection against dismissal.

3.7.2.2 Collective bargaining for the self-employed

Status quo before the Guidelines and main challenges

Until 2004, collective bargaining for the self-employed was expanding in Ireland for various individual groups of self-employed professionals. This took place within the general collective bargaining system that also applies to employees. As the self-employed are generally represented by union organisations that also organise employees, many collective agreements have been designed to align the entitlements of the two groups. This is the case, for instance, for self-employed film technicians and camera operators, whose entitlements under the applicable collective agreement, including financial entitlements, are equivalent to those of employees. The only difference is that they receive an allowance in lieu of annual leave.

As mentioned previously, in 2004 the Irish Competition Authority declared that collective agreements for voice-over actors, freelance photojournalists, and session musicians were contrary to European competition law. Although the legislative reform of 2017 incorporated trade unions' demands to a considerable degree and triggered hopes for a resurgence in collective bargaining activity for the self-employed, this has not occurred. Existing agreements, for example, in the film and television industry, remain in force; yet the new legal possibility of obtaining an exception has never been tested in practice.

The sectoral employment orders applicable today generally concern sectors that are not characterised by a high proportion of self-employed providers, such as the security industry, construction, and contract cleaning (and, formerly, catering and hairdressing). Yet, the fact that collective agreements such as that in the construction sector are, in principle, also applicable to the self-employed plays an important role in making the use of bogus self-employed workers less attractive.

Noteworthy changes since the Guidelines

So far, the Guidelines have not triggered any change in approach among the relevant stakeholders. Nor has the Irish Competition Authority responded to them in any particular way.

Outlook and potential

Even after the publication of the Guidelines, union representatives have identified lingering concerns among all parties involved that existing collective agreements also covering the self-employed may be in breach of competition law.

There is also agreement among the unions that certain self-employed professionals, such as veterinary surgeons who run their own business and employ their own staff, can legitimately be excluded from collective bargaining on competition law grounds. The situation should clearly be different for solo self-employed persons, however. Representatives familiar with working conditions in the arts, music, and journalism confirm that professionals in those sectors are often not bogus self-employed workers and would generally not regard themselves as disguised employees. Nonetheless, they are often in a situation of economic dependence that makes collective bargaining a vital tool for improving their position. The same would appear to be true of various forms of platform work.

Collective bargaining for the self-employed is thus considered still to have considerable potential in Ireland, although the realisation of that potential is currently impeded by a lack of engagement on the employers' side and by the fact that strike action in the sectors concerned seems entirely unrealistic at present.

3.7.2.3 Trade union perspective on the way forward

Trade union representatives view the introduction of collective bargaining rights for unions with a certain level of representativeness as the most promising approach to addressing the current situation. In the recent past, the main problems seem to have had less to do with competition law and more to do with the lack of an effective means for self-employed workers to take strike action and thereby compel the employers' side to bargain collectively. In this regard, the Minimum Wages Directive is seen as a potential step forward, as it compels the government to think about ways to promote collective bargaining in general. Referring to the United Kingdom's statutory trade union recognition procedure as an example, representatives call for any such system to be designed with great care and due consideration to ensure that it is effective in practice.

Another regulatory strategy welcomed by the unions is the use of social dialogue-related conditionality in public procurement. For instance, several years ago, government departments introduced a system of withholding final payments under contracts in the film and entertainment industry where the company concerned had unresolved union complaints because it refused to engage in collective bargaining and/or had outstanding industrial relations matters when the final payment was claimed. Such collective bargaining clauses provide a strong incentive to engage and could also improve the situation in other sectors if extended to all forms of public procurement, including public financing, licencing, access to premises, and even eligibility to tender for government contracts.

3.8 ITALY



3.8.1 Legal perspective

3.8.1.1 The classification of working individuals

Italian law distinguishes between various categories of working individuals.

According to Article 2094 of the Italian Civil Code, a 'subordinate employee' is 'a person who agrees to collaborate with an entrepreneur in exchange for a remuneration, performing intellectual or manual work *under the direction* and at the dependence of the entrepreneur'. To determine whether a particular situation falls within this definition, courts rely on factors such as compliance with prescribed working hours, the use of work equipment owned by the employer, the absence of any risk of loss related to the business activity, and the performance of work activity on the company premises.

Anyone who does not fulfil these criteria is generally considered self-employed. However, the position of self-employed workers varies vary significantly depending on the degree to which their working situation resembles that of employees.

Since the 1970s, Italian law has recognised the category of '*co.co.co.*' (*collaborazioni coordinate e continuative*), which had already been implicitly recognised since the 1950s. This category comprises self-employed workers who have a personal and durable working relationship with a particular principal and are granted certain rights, such as access to the labour courts, social security protection (since the 1990s), and leave entitlements. Within these *co.co.co* relationships, a new subcategory was created by Legislative Decree No. 81 of 2015, referred to as 'collaborative relationships that result in mainly personal, continuous work and whose execution methods are organised by the principal.' The main feature of this subgroup is thus that, although their work is not directed by the entity for which they are working ('*etero-diretto*'), it is nevertheless organised by that entity ('*etero-organizzato*'). For self-employed workers in this group, all the rules applicable to employees apply, *unless* a collective agreement concluded with national-level representatives provides otherwise.

In 2017, the Italian legislature passed Law No 81/2017, known as the 'Self-employment Statute'. It covers all self-employed workers, whether or not they are *co.co.co*, except entrepreneurs as defined in Article 2083 of the Italian Civil Code. It contains provisions addressing the economic dependence that genuinely self-employed workers may also experience, such as protection in the event of late payment or non-payment, as well as against abusive unilateral amendment or termination of the contract by the principal.

As a result, depending on the level of protection afforded under labour and social law, there are effectively five categories: 1) genuine entrepreneurs (employers); 2) self-employed workers enjoying only the protection of the 2017 'Self-employment Statute'; 3) *co.co.co* workers, to whom certain specifically enumerated additional protections apply; 4) *etero-organizzati*, to whom all protections applicable to employees apply *unless* a collective agreement provides otherwise; and 5) employees, who enjoy all such protections, without the possibility of derogation. Under tax law, there are also specific rules governing 'mixed' contracts, where an employment contract and a contract for self-employed services exist between the same parties.

3.8.1.2 Legal assessment under the framework for industrial relations and collective bargaining

There is no particular legal framework that stipulates the rules for collective bargaining for the self-employed, apart from Article 39(1) of the Italian Constitution on trade union freedom. Therefore, all collective agreements are essentially concluded as ordinary private law contracts, having no *erga omnes* effect or other specific consequences determined by law. It is generally undisputed that, viewed purely from an industrial relations perspective, collective agreements for the self-employed can be concluded under the same conditions as those for employees. Moreover, as stated above, the express legal possibility of derogating *by collective agreement* from the provisions applicable to *etero-organizzati* already indicates that the legislature assumes that unions can bargain collectively on behalf of self-employed workers.

In addition, it should be noted that Law No. 49/2023 introduced the principle of fair compensation for professional services provided by self-employed workers: compensation must be proportionate to the quantity and quality of the work performed and must reflect ministerial parameters set out in specific tables. There is no traditional bargaining process between the parties, as these parameters are established by ministerial decree; however, professional orders have certain powers under the law, such as proposing updates to the parameters every two years. The three main Italian trade union confederations CGIL[10], CISL[11], and UIL[12] have requested involvement in drafting these parameters, but this request remains unanswered. The law also provides for a National Observatory on Fair Compensation to monitor implementation of the law; its members include representatives of associative professions, but not trade union organisations (here too, the three confederal unions have requested to be included). To date, implementation of the law remains difficult, particularly with regard to defining the parameters, and some public bodies have acted independently, establishing and agreeing on tables and reference parameters for specific professional profiles.

3.8.1.3 Legal assessment under competition law

In Italy, competition law disputes concerning collective bargaining for the self-employed have not arisen in practice, and the Competition Authority has not issued any statements on the matter. It is widely assumed that competition law should apply fully only to traditional entrepreneurs who employ their own workers, whereas solo self-employed persons should be regarded as exempt from competition law.

3.8.2 Trade union perspective and developments in practice

3.8.2.1 Collective organisation of the self-employed

Extent of representation and representative organisations

In Italy, the three largest and most representative trade union confederations (CGIL, CISL, UIL) have been organising self-employed workers (notably *co.co.co* workers, but not genuine entrepreneurs) for about 30 years. In the late 1990s, NIDIL[13] (affiliated with CGIL) was founded specifically to recruit atypical and self-employed workers. In recent years, CGIL has also created APIQA,[14] an affiliated association, to serve as a bridge with associations of highly skilled self-employed workers and between self-employed workers and CGIL's sectoral federations, with the aim of strengthening their trade union organisation and representation. APIQA also conducts institutional dialogue on highly skilled self-employment on behalf of CGIL. Similar structures now also exist within the other federations.

Over those 30 years, there have been ups and downs, but some good practices have certainly emerged. Today, the interests of the self-employed are also represented in the National Council for Economics and Labour (*Consiglio Nazionale dell'Economia e del Lavoro*, CNEL). Recently, this representation has been instrumental in drafting a legislative proposal regarding social security and paid leave protection for the self-employed, which was drawn up by CNEL and submitted to the Italian Parliament for consideration.

Alternatively, the self-employed can be represented by professional associations. These are non-profit organisations with a specific and advantageous legal status. In professions such as law, medicine, or engineering, such associations have existed for a very long time.

In the past, unions have attempted to collaborate actively with the aforementioned associations on topics of common interest, but this has not led to significant cooperation in practice.

Law No. 4/2013 introduced a legal framework for previously unregulated professions such as translators, interpreters, and webmasters. In this context, new associations representing these professions emerged.

10 *Confederazione Generale Italiana del Lavoro* (Italian General Confederation of Labour).
11 *Confederazione Italiana Sindacati Lavoratori* (Italian Confederation of Workers' Trade Unions).
12 *Unione Italiana del Lavoro* (Italian Labour Union).
13 *Nuove Identità di Lavoro* (New Work Identities).
14 *Associazione Professionisti Italiani Qualificati e Autonomi* (Association of Qualified and Self-employed Italian Professionals).

Recent and current developments

Interest in the collective organisation of the self-employed is growing, both among the union movement and among self-employed workers. The Covid-19 pandemic hit many self-employed service providers particularly hard and illustrated their vulnerable position when acting in isolation. At that point, self-employed workers in different sectors began to put forward their demands collectively, including, for example, demands for income-replacement and social protection measures, thereby playing an active role in shaping the ad hoc legislation that characterised the crisis years of the Covid-19 pandemic.

Main legal and practical challenges

There are no noteworthy legal obstacles to collective organisation, but in practice the self-employed are often reluctant to see themselves as a group with common interests and collective power. Cooperation between self-employed workers within the same profession is becoming established in an increasing number of occupations but, notably, wider cooperation across an entire sector, or even among self-employed workers as a whole (who have shared interests, for example, in relation to the development of social security legislation), remains difficult to achieve. There are also differences between sectors, but union representatives feel that self-employed workers in an increasing number of occupations are becoming willing to organise collectively, with psychologists and psychotherapists as a recent example.

3.8.2.2 Collective bargaining for the self-employed

Status quo before the Guidelines and main challenges

The Italian social partners began negotiating collective agreements for self-employed persons well before this debate reached the European level.

In many instances, this involves integrating provisions on self-employed workers into collective agreements that also regulate the rights of employees. For instance, an annex on self-employed professionals was added to the collective agreement for translators and interpreters in 2012–13. Less frequently, collective agreements are concluded specifically for a category of self-employed service providers. In other cases, such as those of construction workers and call centre workers, the collective agreement itself ensured that these formerly self-employed workers would be given employment contracts.

Noteworthy changes since the Guidelines

A number of collective agreements covering self-employed workers have been concluded since the Guidelines were published. Given the established tradition described in the preceding paragraph, this can hardly be seen as an outcome of, or a development directly linked to, the Guidelines.

In any event, new collective agreements covering the self-employed have also been concluded very recently. These include, for example, provisions for self-employed actors, annexed in 2023 to the existing collective agreement in the sector, as well as two agreements concluded in 2024: one in the sports sector, and another covering delivery riders and drivers who work directly for the company supplying the goods (e.g. a supermarket).

Collective agreements covering both employees and the self-employed generally aim to ensure equal treatment between the two groups. To counterbalance the less favourable position of the self-employed under labour and social security legislation, their pay rates are generally set higher, for example, at 140% of the rates for employees under the actors' collective agreement.

In total, there are now about 20 collective agreements covering self-employed persons, concluded by unions belonging to the three most representative trade union confederations. Less representative 'yellow' unions have signed some disputed collective agreements in sectors involving low-skilled self-employed work (e.g. platform riders), but not for high-skilled self-employed professionals.

Outlook and potential

No changes are expected in the present-day dynamics of collective negotiation in Italy; at best, the Guidelines have reaffirmed the approach already pursued by the social partners.

3.8.2.3 Trade union perspective on the way forward

Trade union representatives consider equal pay to be the key goal in collective bargaining for the self-employed. At present, this requires the conclusion of collective agreements providing for differential pay rates; at the same time, unions are actively participating in legislative debates to advocate for greater alignment of the social security rights of the self-employed with those of employees. Recently, certain rights have been introduced for self-employed persons under the national health insurance system, but these focus on groups of self-employed persons who are organised in professional orders and thus do not comprehensively cover those groups most in need of such protection.

Union representatives stress that cooperation at European level seems key to developing a common position and common responses.

3.9 THE NETHERLANDS



3.9.1 Legal perspective

3.9.1.1 The classification of working individuals

The Netherlands applies a binary classification: working individuals are either employees or self-employed, with no intermediate categories.

Article 7:610 of the Civil Code (*Burgerlijk Wetboek*) defines the employment contract as an agreement whereby an employee commits themselves to perform work in service of an employer in exchange for remuneration. Established jurisprudence requires an overall assessment of a number of factors to determine whether work is performed 'in service of an employer'; economic dependence may also be taken into account as one of those factors.

In November 2020, the Supreme Court (in *X/Gemeente Amsterdam*) overturned its earlier case law, holding that the parties' intentions are irrelevant to determining whether an agreement constitutes an employment contract. The Supreme Court's judgment in the *Deliveroo* case (March 2023) requires an assessment of whether the following factors point towards subordination or, rather, self-employed work: 1) the nature and duration of the work; 2) the determination of activities and working hours; 3) the integration of the work and the worker into the undertaking; 4) personal work performance; 5) the manner in which the contract was concluded; 6) the determination of remuneration and allocation of commercial risk; 7) the amount of remuneration; 8) entrepreneurship; and 9) other relevant circumstances.

Note that, when assessing the nature of work performance under tax law, the tax authorities and courts are not bound by any assessment already made under civil or labour law, and vice versa. In practice, this leads to a lack of coordination and legal uncertainty, notably since the tax authorities have recently resumed regular scrutiny of potential bogus self-employment, which had been discontinued for a number of years, starting in 2016.

3.9.1.2 Legal assessment under the framework for industrial relations and collective bargaining

The Dutch Collective Agreements Act of 24 December 1927 is exceptionally 'liberal' in that it expressly allows collective agreements (concluded between employers or employers' associations and associations of employees) to regulate not only employment contracts, but also mandates and contracts for work (Article 1(2)). In this sense, industrial relations law certainly does not stand in the way of collective agreements for the self-employed; rather, it encourages them.

3.9.1.3 Legal assessment under competition law

Dutch competition law is almost entirely based on EU law, and the Competition Act references TFEU terminology. It expressly states that it is not applicable to collective agreements within the meaning of Article 1(1) of the Collective Agreements Act, which refers exclusively to employment contracts, leaving unclear the position of agreements falling within Article 1(2), as discussed above. The question became practically relevant in the well-known *FNV Kunsten* case, in which, following the CJEU's preliminary ruling, The Hague Court of Appeal's ruling of 1 September 2015 (ECLI:NL:GHDHA:2015:2305) found that the orchestra musicians at issue were correctly classified as self-employed under contract law but had to be regarded as 'false self-employed' under competition law and were therefore entitled to bargain collectively.

Subsequently, in 2017, the Dutch Competition Authority published its own guidelines on collective bargaining by the self-employed, which also served as inspiration for the Commission's later Guidelines. The document (*Leidraad Tariefafspraken zzp'ers*) was updated in 2023, taking the new European dimension into account.

3.9.2 Trade union perspective and developments in practice

3.9.2.1 Collective organisation of the self-employed

Extent of representation and representative organisations

Among the approximately 1.6 million solo self-employed persons in the Netherlands, slightly less than 20% are organised in some form. Around 20,000 are members of the most representative trade union federation, FNV[15] (which has some 800,000 members in total), while others are members of the second-largest confederation, CNV.[16] Within FNV, a section for self-employed members has existed since 1999, and there are currently 140 occupational groups of self-employed workers, most of them in the services sector.

A much larger proportion of self-employed workers are affiliated with occupational organisations that are not unions and do not have a mandate to bargain collectively (e.g. ZZP Nederland,[17] PZO,[18] Solo Partners, and VZN[19]). Membership of these organisations is frequently volatile and sometimes based on 'opportunistic' behaviour, with self-employed workers joining when they need the support services offered by an organisation but leaving once their individual problems have been resolved.

Recent and current developments

The number of self-employed union members naturally depends on the relative proportion of self-employed workers in the working population. This proportion has changed in recent years, inter alia in response to changes in the legislative framework that can make self-employment more or less attractive.

Main legal and practical challenges

Union representatives consider that, within the current legal framework, being self-employed appears to be an attractive option for numerous workers, who thereby lose legal protection and fall outside the scope of collective bargaining. In some of those cases, workers themselves do not seem to realise that their lack of individual bargaining power hinders them from obtaining better working conditions, nor do they necessarily expect to encounter problems that they may struggle to address in isolation. This makes it difficult to build a stable organisational basis, as many consider membership only once they are in definite need of support.

Moreover, a significant proportion of the self-employed are not even aware that they can become members of a trade union. Conversely, trade unions may be reluctant to actively recruit self-employed workers, as there is a widespread conviction that most solo self-employed persons are bogus self-employed workers, and there is a resulting reluctance to encourage them to affiliate as self-employed members when they have no firm desire to be reclassified as employees.

Such tensions are likely to persist in many sectors as long as the self-employed not only enjoy more favourable tax treatment but may also have better working conditions than employees. For instance, in the care sector, numerous workers consciously change from employed to self-employed status. Employers in these sectors have for too long failed to rethink their approach to working conditions, and workers have responded by opting for self-employment, with 60% of the self-employed workforce in the sector reporting that they were previously employed. This tendency towards increasing self-employment can create a vicious circle if self-employed workers are able to choose which shifts they take, leaving even more of the less attractive shifts (e.g. night shifts) to employed workers who are contractually obliged to work them, and potentially pushing even more workers to opt for self-employment. In this regard, some initial steps have already been taken in the domestic care sector to introduce a degree of flexibility for employees, but for hospital staff there is still a large difference in working conditions that encourages many to opt for self-employment.

As a result, there is also sometimes a certain degree of hostility between employed and self-employed groups in the same sector, making it even more difficult to devise a joint strategy or joint collective bargaining initiatives that could benefit both groups.

15 *Federatie Nederlandse Vakbeweging* (Netherlands Trade Union Confederation).
16 *Christelijk Nationaal Vakverbond* (National Federation of Christian Trade Unions).
17 *Vereniging ZZP Nederland* (Association of Self-Employed Persons without Employees in the Netherlands).
18 *Platform Zelfstandige Ondernemers* (Platform for Self-Employed Entrepreneurs).
19 *Vereniging Zelfstandigen Nederland* (Association of Self-Employed Persons in the Netherlands).

3.9.2.2 Collective bargaining for the self-employed

Status quo before the Guidelines and main challenges

The well-known collective agreement concluded by the Dutch trade union, FNV Kiem, in relation to substitute orchestra musicians, which was the subject of the CJEU's decision in *FNV Kunsten* (Case C-413/13), was the first attempt to regulate jointly the pay and working conditions of employees and the self-employed within the same agreement. The experience of the proceedings at EU level cast considerable doubt on the very concept of collective bargaining for the self-employed.

Yet, several years later, the Competition Authority (whose composition had changed since the *FNV Kunsten* case was heard) took proactive steps to provide legal clarity on the permissibility and limits of collective bargaining for the self-employed. It published internal directives, which later also served as a point of reference for the European Commission when drafting the Guidelines.

This encouraged the social partners to proceed with another collective agreement containing provisions on self-employed architects and even to submit it to the Ministry of Labour with a view to having it declared generally binding for the entire sector. That collective agreement provided for a minimum fee for self-employed architects amounting to 150% of the fee payable to an employed architect. When the first version of the agreement expired, the renewed agreement was supplemented by a right to an 8% annual leave allowance, further equalising the rights of employed and self-employed architects in this respect. Before the conclusion of the agreement, the social partners informally consulted the president of the Competition Authority, who indicated that the arrangement should be compatible with competition law or, at the very least, should not trigger enforcement action by the authority.

Despite this progress and the approval of the Competition Authority, there is still dispute within the trade union movement about the degree to which collective bargaining for the self-employed should be pursued further. In other collective agreements, self-employed workers are usually mentioned only in provisions under which employers undertake to give priority to employment contracts and/or to avoid the use of bogus self-employment (see the overview in the Ministry of Social Affairs and Employment's publication *Cao-afspraken 2025*).

Noteworthy changes since the Guidelines

Given that the Guidelines largely reflect the position already taken by the Dutch Competition Authority, their influence, in practice, has been limited.

Outlook and potential

Negotiations to conclude more collective agreements for various groups of self-employed professionals are ongoing. These concern, for instance, the construction sector, which presents particular difficulties due to the shortage of labour supply and the presence of posted workers from other Member States, who often work through intermediate agencies that classify them as self-employed.

The outlook is uncertain in many areas, but collective bargaining for the self-employed could have considerable potential for various groups of professionals working in sectors such as health and personal care, education, security, information and communications technology, and construction.

At the same time, it is difficult to predict whether collective bargaining for the self-employed is likely to become more relevant in the coming years. One reason is that social security institutions in the Netherlands are generally preparing to apply a much stricter assessment of the classification of contractual relationships in the near future. This could bring many groups within the protection of labour law and make collective bargaining for the self-employed largely superfluous in the occupations concerned. Additionally, in sectors where workers opt to become self-employed mainly because of the poor working conditions they face as employees, employers may increasingly realise that improving those conditions would be preferable to seeing workers move into self-employment, where they may be able to demand more flexibility. This, in turn, may encourage workers in these sectors to return to employed positions, again reducing the need for collective bargaining for the self-employed.

The care sector provides a clear example of both tendencies. A number of cases brought before the competent authorities have shown that the typical situation of a 'self-employed' person in the care sector (where the worker is not responsible for the outcome, the patient may not even know that the worker is self-em-

ployed, etc.) may in fact fulfil the criteria for an employment contract. The pay rates obtained by self-employed workers in the sector also suggest that they do not fully exercise their individual bargaining power in an entrepreneurial way, as the large labour shortages in the sector should, in principle, enable them to negotiate much higher fees. In this regard, the comparison with plumbers, who operate much more entrepreneurially despite being solo self-employed, is instructive. In a survey conducted by FNV, a considerable proportion of self-employed workers in the care sector indicated that they would gladly return to an employed position if working conditions, most notably work-life balance, were improved.

Another important example concerns education, where numerous 'self-employed' teachers work within a school's organisational structure, frequently without even providing their own materials. Similarly, lower-skilled workers in construction are often simply integrated into an existing organisational structure, without any real entrepreneurial freedom.

3.9.2.3 Trade union perspective on the way forward

Union representatives would welcome closer cooperation with associations of the self-employed and their involvement in collective bargaining processes. Notably, in sectors such as construction or health and personal care, where the majority of workers are currently self-employed and very few of them are trade union members, bringing representatives of the solo self-employed to the bargaining table would appear to be a way of strengthening the effective representation of their interests.

Another important issue concerns the concept of employee, and the differences in its interpretation that exist even among state authorities. For instance, the tax authorities – and the courts' ruling on employee status in tax matters – have developed different tests for assessing employment status from those applied by social security institutions and the courts' ruling in civil matters. Even within the Supreme Court, there are differences between the jurisprudence of the fiscal and civil chambers. The nine criteria developed by the Supreme Court's civil chamber in its judgment in *Deliveroo* are very difficult to apply in practice, as there are no guidelines on how they should be weighed against each other. There have also been legislative proposals aimed at improving legal certainty, but these have proved controversial and none has been adopted.

The current situation is characterised by much uncertainty because, for a number of years, Dutch law and administrative practice make it particularly easy for employers to obtain preliminary confirmation that their workers would be regarded as self-employed. This effectively brought enforcement to a halt, as the authorities did not have the capacity to correct inaccurate classifications in individual cases. Now that the system has been reformed and authorities are preparing to resume enforcement activities, it is important to ensure that there is coordination between the assessment criteria applied in the different procedures.

Union representatives also consider that greater clarity and harmonisation at EU level on questions of employment status would be helpful, as also the CJEU's stance on this issue is often difficult to follow.

3.10 POLAND



3.10.1 Legal perspective

3.10.1.1 The classification of working individuals

In Poland, working individuals can be classified as employees, entrepreneurs, or civil contractors. The 1974 Labour Code stipulates that the employment contract involves a person undertaking to perform specific work for the benefit and under the guidance of an employer. On this basis, case law has established a number of criteria for identifying employment contracts, including their voluntary character, the continuous personal performance of work, subordination, and the performance of work for the benefit of an employer who bears the risks associated with the employment relationship. Subordination is generally understood as the obligation to follow instructions concerning the performance of work.

Civil contractors are most frequently mandataries under contracts of mandate, which Article 734 of the Civil Code defines as contracts under which the mandatary undertakes to perform a specific legal act for the mandator. Their legal position can be regarded as intermediate between that of employees and that of self-employed entrepreneurs within the meaning of the 2018 Entrepreneurs' Law, as they are essentially self-employed but enjoy certain social rights, for example, in relation to social security and protection against discrimination. Since an amendment to the Civil Code in 2016, many have also fallen within the scope of minimum wage provisions. However, other labour rights, such as dismissal protection and maternity and annual leave rights, are reserved for employees. This intermediate category has been widely used in practice since the 1990s, resulting in a high proportion of self-employed workers compared with other countries.

It should also be noted that, following the recent revision of Poland's Recovery and Resilience Plan (*Krajowy Plan Odbudowy*, KPO), the government is working on a draft amendment to the Act on the National Labour Inspectorate (PIP) that would, from 2026, allow labour inspectors to reclassify certain civil-law contracts (including B2B[20] and mandate contracts) as employment contracts by administrative decision, without first having to bring proceedings before a labour court. This reform is politically important because it has been presented to the European Commission as a substitute for Poland's original Recovery and Resilience Plan milestone requiring full social security contributions on all mandate contracts.

The proposal was highly contested within the governing coalition and met with strong resistance from employers' organisations, which warned of legal uncertainty and additional labour costs. The reform was primarily driven by the Minister of Family, Labour and Social Policy, a politician from the left-wing New Left party, the smallest – and most openly pro-labour – partner in the current governing coalition.

3.10.1.2 Legal assessment under the framework for industrial relations and collective bargaining

In the past, freedom of association and collective bargaining were considered limited to employees, despite Article 12 of the Constitution, which recognises trade union freedom for all. A constitutional complaint brought by trade union organisations before the Constitutional Court resulted in a judgment in 2015, which also cited ILO Convention No. 87 and the CJEU's ruling in *FNV Kunsten*. This judgment led to a legislative amendment to the Law on Trade Unions in 2018. Under the new regime, the personal scope of the law was extended from employees to all 'persons performing gainful work' (*osoba wykonująca pracę zarobkową*).

3.10.1.3 Legal assessment under competition law

There has never been any noteworthy academic or political debate about the role of competition law, nor any definitive statements by the Competition Authority on whether collective bargaining for the self-employed could be problematic under competition law.

20 Business-to-business.

3.10.2 Trade union perspective and developments in practice

3.10.2.1 Collective organisation of the self-employed

Extent of representation and representative organisations

The three relevant trade union federations in Poland, including the two largest, NSZZ Solidarność[21] and OPZZ,[22] have publicly committed to representing self-employed workers and successfully advocated for the aforementioned legal amendment enabling them to bargain collectively. However, they have not substantially adapted their structures to accommodate self-employed members. There is some attention to bogus self-employed workers who effectively work for a single company, but in such cases the unions' key aim is self-evidently to achieve their reclassification as employees, rather than to recruit them as self-employed members.

Recent and current developments

In Poland, the proportion of self-employed workers in the workforce has always been among the highest in Europe, and in recent years it has declined less than the EU average. One of the factors contributing to this high prevalence is that many workers consider self-employment to be in their own interest because their tax and social security contributions are lower, while frequently being unaware of the long-term consequences of lacking full social security coverage. This also creates some resentment within the trade union movement and reduces the incentive to put the interests of these groups on the union agenda.

Main legal and practical challenges

The problems hindering the recruitment and representation of significant numbers of self-employed workers are mostly connected with the general challenges faced by the Polish trade union movement. For years, as a result of the difficult transition from a socialist industrial relations system and the particularities of the legal framework, trade union activity has focused mainly on the company level. This creates an especially difficult starting point for representing self-employed workers, who often work for more than one principal and would particularly benefit from a form of trade union support that does not focus on an individual company.

A typical example of this type of challenge in organising workers outside traditional company-level structures can be found in cross-border road transport. Several years ago, the largest proportion of drivers in this sector in Europe were Polish and worked under employment contracts. Given that Polish trade unions did not succeed in recruiting significant numbers of these drivers at the time, many consider the prospects of successfully unionising the sector now to be rather limited, particularly as it is increasingly dominated by third-country nationals working as self-employed drivers.

More generally, the Polish trade union movement stands out for its use of targeted strategic litigation. The constitutional challenge that eventually led to the extension of trade union rights to persons performing gainful work outside an employment relationship was brought by the confederation, OPZZ (Constitutional Tribunal, judgment of 2 June 2015, K 1/13). In addition, NSZZ 'Solidarność' lodged a complaint with the ILO Committee on Freedom of Association concerning the right of workers engaged under civil-law contracts and of self-employed workers to organise and bargain collectively (Case No. 3111 (Poland), Definitive Report No. 378, June 2016).

The current circumstances make it difficult to imagine that these legal victories can be translated into practical progress in involving the self-employed in the trade union movement. Union representatives observe that, among employees too, the motivation to become involved in the trade union movement very often arises from an individual difficulty for which they seek help; few become involved with a view to supporting a proactive, future-oriented model of collective bargaining aimed at improving working conditions more broadly.

21 *Niezależny Samorządny Związek Zawodowy „Solidarność"* (Independent and Self-Governing Trade Union 'Solidarity').
22 *Ogólnopolskie Porozumienie Związków Zawodowych* (All-Poland Alliance of Trade Unions).

3.10.2.2 Collective bargaining for the self-employed

Status quo before the Guidelines and main challenges

Even before the legislative amendment of 2018, there was one collective agreement in Poland covering a group of self-employed workers: kiosk owners selling national lottery tickets. However, this particular collective agreement is no longer in force, not because of competition law concerns, but as a result of the privatisation of the national lottery.

By contrast, the specific legislative framework intended to enable collective bargaining for the self-employed has never been used in practice.

Noteworthy changes since the Guidelines

The Guidelines have not had any noteworthy impact; they are barely known within the trade union movement, as competition law is not regarded as the main obstacle to including the self-employed in collective bargaining.

Outlook and potential

Poland remains the EU country with the lowest collective bargaining coverage rate among employees. In this situation, most trade unionists regard the question of involving the self-employed as something of a 'luxury problem' that can be addressed once the serious challenges facing traditional trade union activity and collective bargaining for employees have been tackled.

As part of the 'milestones' to be achieved under Poland's Recovery and Resilience Plan (KPO), drawn up to unlock EU funding, the Polish government has committed to reforming the legal framework for collective agreements, improving the social security coverage of civil contractors, and eliminating tax incentives, thereby reducing the difference in labour costs between them and employees. After Poland had met the 'super milestones' relating to rule-of-law issues, the funding was eventually unlocked without the EU requiring completion of the milestones relating to social policy. As a result, the reform has not progressed any further.

3.10.2.3 Trade union perspective on the way forward

Trade union representatives consider the current, company-focused framework for collective bargaining in Poland unfit to serve as the basis for building a broad union movement that includes self-employed workers. They see a need for a fundamental change of mindset in the state's approach to legislation and administration. To date, successive governments since the transition from socialist rule have not regarded social dialogue as a valuable and potentially powerful tool for societal progress or as a means of proactively debating and regulating social and workplace issues, such as AI, demographic ageing, work-life balance, and lifelong learning.

Working conditions are regulated by law at a comparatively high level of protection (e.g. extensive annual leave entitlements and overtime premiums of 50% or 100%, depending on the circumstances). This leaves relatively little scope for collective negotiations, but also gives companies a strong incentive to try to misclassify workers. Moreover, the rapid rise in the minimum wage has led to wage compression, in the absence of sectoral-level collective agreements that would ensure workers with higher skill levels and greater seniority are entitled to higher rates of pay. Company-level bargaining is not a suitable substitute for sectoral bargaining in this regard, as the necessary differentiation between skill and seniority levels can hardly be achieved on the basis of the workforce of an individual enterprise.

This lack of both political support and a culture of social dialogue is particularly evident when comparing the approach of multinational corporations (which are sometimes heavily involved in collective bargaining activities in other European countries) with their very different approach in Poland (and other central European countries where there is no strong support for collective bargaining as a matter of principal).

There are no easy, short-term solutions; rather, appreciation of the value of collective bargaining needs to be fostered as a shared responsibility of policy makers and social partners.

Some very specific reforms could bring about immediate improvements in the short term. One example would be rules on trade unions' digital access to workers. At present, the data protection authority accepts that there is sufficient justification for giving trade unions access to the email addresses of workers in a particular workplace only where this is necessary to call a strike vote. This prevents access at any earlier stage of organising. Another

example would be to eliminate formalities that currently prevent arrangement between the social partners from being recognised as collective agreements. Finally, public procurement rules that make the award of contracts conditional on the tenderer's collective bargaining record and commitments could also bring about improvements.

Unions may, however, have to step up their efforts and rethink their strategic approach. At present, their strategy is strongly oriented towards tripartite dialogue at central level, which is important, but not sufficient, to develop a sound collective bargaining tradition. At the same time, there are cautious expectations that some progress could result from the implementation of Article 4 of the EU Directive on Adequate Minimum Wages, which requires Member States with low collective bargaining coverage to strengthen and promote collective bargaining. In Poland, this is likely to involve the preparation of a national action plan aimed at addressing the low level of collective bargaining coverage, which, if taken seriously, could encourage unions to invest more systematically in sectoral and multi-employer bargaining rather than relying almost exclusively on central tripartite dialogue.

3.11 SLOVENIA



3.11.1 Legal perspective

3.11.1.1 The classification of working individuals

Until 2013, Slovenian labour law was characterised by a binary distinction between employees and self-employed service providers. Article 4 of the Employment Relationships Act defines an employment relationship as one where the employee voluntarily integrates into the employer's organised work process and, in return for remuneration, continuously performs work in person according to the employer's instructions and under the employer's control. Anyone who does not meet these criteria is considered self-employed and thus falls outside the scope of labour law. In practice, the existence of a written employment contract is considered a key criterion.

In 2013, a legal amendment introduced the concept of economically dependent persons, defined in Article 213 of the Employment Relationships Act as self-employed persons who, on the basis of a civil law contract, perform work in person, independently, and for remuneration over a longer period in circumstances of economic dependence, and who do not employ workers. Economic dependence means that a person derives at least 80% of their annual income from the same contracting entity.

According to Article 214 of the same act, economically dependent persons are entitled to various elements of social protection (non-discrimination, protection against dismissal, liability rules, taxes, and contributions) and 'payment for contractually agreed work appropriate for the type, amount, and quality of the work undertaken, *taking into consideration the collective agreements ... binding the company...*'.

3.11.1.2 Legal assessment under the framework for industrial relations and collective bargaining

Article 76 of the Slovenian Constitution guarantees employees freedom of association and the right to collective bargaining. While there is no case law on the personal scope of the provision, the prevailing view in legal scholarship is that it also covers the self-employed (cf. Kresal 2021).[23] Article 3 of the Collective Agreements Act stipulates that collective agreements regulate the rights and obligations of 'workers' and employers, without giving a definition of the term worker. The aforementioned reference in Article 214 of the Employment Relationships Act to payment in accordance with collective agreements indicates that at least this subgroup of self-employed workers (economically dependent persons) can be covered by the same collective agreements as employees, provided that the employer is bound by the agreement in accordance with the Collective Agreements Act.

It is not entirely clear, although such an interpretation is supported in the legal literature, whether the concept of 'worker' could be interpreted more broadly so as also to cover self-employed persons who do not fall within the narrower category of 'economically dependent persons'. If a category of self-employed workers is considered to fall outside the scope of the Act, this has consequences for the possibility of achieving sectoral extension and an *erga omnes* effect. Furthermore, this can make the initiation of the collective bargaining process more difficult, because an employer is obliged to engage in collective bargaining once 15% of its workforce are members of a trade union, but it is unclear whether and how this requirement could apply to the self-employed. Note, however, that the Ministry of Culture recently introduced amendments to the Exercising of the Public Interest in Culture Act, under which self-employed persons in the cultural sector who are registered with the Ministry are considered workers (Article 38).

23 Kresal, Barbara (2021), 'Slovenia', in Bernd Waas et al. (eds), *Collective Bargaining for Self-Employed Workers in Europe: Approaches to Reconcile Competition Law and Labour Rights*, Wolters Kluwer, pp. 217–230.

3.11.1.3 Legal assessment under competition law

Competition law issues played at least some role in the national debate in relation to media professionals and language specialists, and later also when the trade union organisation, Mladiplus, began organising platform workers. However, this never resulted in any specific legal disputes or a clear statement by the national Competition Authority on the permissibility of collective bargaining for the self-employed.

3.11.2 Trade union perspective and developments in practice

3.11.2.1 Collective organisation of the self-employed

Extent of representation and representative organisations

The unionisation of the self-employed in Slovenia remains an exceptional phenomenon. It is most developed in the cultural and media sector, where freelancers have a specific status recognised by law. Within the main trade union confederation *Zveza svobodnih sindikatov Slovenije* (ZSSS), the trade union for culture and nature, Glosa, began focusing on the self-employed as early as the mid-1990s. More recently, in 2022, Zasuk was founded as a trade union for the cultural and creative sector. In 2023, these two unions joined forces, inter alia, to organise freelancers in the sector. They have also reached out to other unions, but these have not been willing to organise freelancers.

There is no information on the exact number of self-employed members. This is partly due to the decision of Glosa, the trade union with the longest experience of organising the self-employed, not to require self-employed members to pay union dues for as long as there is no definite collective bargaining activity or other tangible benefit for them.

In other sectors, trade union membership for the self-employed does not seem to have gained much acceptance, either among the unions or among self-employed workers. Recently, Mladiplus, a trade union organisation specialising in young workers in precarious working relationships, has begun to focus on bogus self-employed workers who are highly dependent on their clients, generally in the service sector, including platform workers (notably food delivery riders).

Recent and current developments

There have been no noteworthy recent changes, either in self-employed workers' propensity to join the trade union movement or in that of traditional trade unions to become involved in organising self-employed workers.

Mladiplus reports that its most recent attempts to organise platform workers have actually been less promising than those made two years ago. Workers in the sector generally know about the existence of the union and seek contact with it when they encounter specific problems or are in need of help. However, previous attempts to organise strikes in the sector were less successful than expected and did not force platforms such as Wolt to come to the negotiation table. As a result, many workers lost faith in unionisation. The sector is generally very volatile, with high staff turnover, and very few workers are sufficiently motivated to invest in long-term capacity building in order to achieve lasting outcomes.

There is also agreement that bogus self-employment continues to be a widespread and potentially growing phenomenon throughout the service sector, and that addressing it more effectively could reduce the need for workers in various occupations to rely on collective bargaining as self-employed workers. At present, the efficient identification of bogus self-employment is hindered, inter alia, by staff shortages in the labour inspectorate and a lack of communication between the relevant public bodies, notably between the tax authorities and labour inspectorate. As a result, for many misclassified workers, the only option is to initiate legal proceedings themselves, which is difficult and expensive and may have uncertain long-term consequences.

When Mladiplus initiated two test cases, one concerning a flight attendant hired as a 'student worker' and the other a journalist working for the national radio company, both companies chose to settle out of court rather than risk a judicial ruling on the matter. Nonetheless, at least in the case of the radio company, there was a lasting impact: the journalists working for it have all been given employment contracts.

Main legal and practical challenges

Trade union representatives describe the organisation of the self-employed as particularly challenging in practice: freelancers are often difficult to reach and may have different experiences, social problems, and expectations. This can make it difficult for a union to develop a common strategy, as employed and self-employed members may lack a mutual understanding of the social issues faced by the other group.

These difficulties may be one of the reasons why most traditional trade unions have so far made no efforts to organise the self-employed; another reason may simply be unfamiliarity with their situation and a lack of awareness of the legal possibilities in this respect. While the most important trade union confederation, the Association of Free Trade Unions of Slovenia, has shown awareness of the issue, it has not taken action to address it systematically across sectors, instead regarding it as 'covered' by unions such as Mladiplus, despite its rather limited membership.

Glosa/Zazuk have recently placed particular emphasis on the social security rights of the self-employed, which have emerged as a primary concern and a key reason for freelancers to seek affiliation with a union.

3.11.2.2 Collective bargaining for the self-employed

Status quo before the Guidelines and main challenges

As early as 1991, a Collective Agreement for Professional Journalists was concluded and designed to include self-employed journalists (as confirmed by the national 'Interpretation Commission' for collective agreements). The agreement has been renewed repeatedly since then.

However, this remained an isolated instance, and there is generally a lack of political will to create a legal framework that could provide greater legal certainty.

Noteworthy changes since the Guidelines

Glosa and Zazuk, as members of the EU-level confederation UNI-MEI, have been actively involved in the debate on the collective bargaining rights of the self-employed at EU level and, subsequently, in the policy debate on the regulation of the rights of the self-employed in Slovenia. Ultimately, this did not lead to the creation of a clear legal framework for collective bargaining for the self-employed. Instead, in 2024 the Ministry of Culture passed an administrative act providing that freelancers in the sector were to be treated as employees. Although initially there was no amendment of the law, a new amending act (ZUJIK-I) was adopted on 25 September 2025.

As regards actual negotiations aimed at concluding a collective agreement for freelancers, considerable negotiation activity has taken place in the cultural sector, but only with the competent ministry in relation to self-employed persons working under contracts in the public sector. Negotiations in the private sector would be much more difficult even to commence, as there is no sufficiently representative bargaining partner on the employers' side.

Two years ago, Mladiplus expressly relied on the Guidelines when calling for the initiation of collective bargaining with platform companies such as Wolt and Glovo. It even obtained a letter of support from the ETUC and a statement from the labour ministry confirming that engaging in collective bargaining was entirely lawful. Nonetheless, while the platform companies did not expressly dispute the legality of collective bargaining, they did not consider themselves obliged to participate in it, and even occasional strike action was insufficient to force them to the bargaining table.

Outlook and potential

Union representatives consider the Guidelines an important tool for addressing the legal uncertainty that had surrounded collective bargaining for the self-employed before the Guidelines were adopted. At the same time, recent developments do not necessarily make them particularly optimistic about the prospects for successful collective bargaining for the self-employed in the future.

Although no breakthrough has been achieved so far, unions continue to focus on sectors in which the position of the self-employed is particularly challenging. One example is that of live performers, actors, musicians, and visual artists, who may be highly dependent on their clients. Many of them may fall within a grey area in which it is difficult to determine whether they should be regarded as bogus self-employed workers who are in fact employees or as genuinely self-employed individuals with a high degree of economic dependence. In any

event, their individual bargaining power is often insufficient to ensure that they receive a fair share of the profits that others gain from their work. Accordingly, establishing rights through collective bargaining that do not depend on employment status could greatly improve their situation and enhance legal certainty.

It is uncertain at present whether these first positive steps will result in greater participation by the self-employed in the trade union movement and eventually lead to collective bargaining for the self-employed. Mladiplus representatives have the impression that platform companies, for example, are increasingly adopting strategies that make both the reclassification of their workers as employees and their organisation into trade unions less likely. Notably, when comparing the platform workers' experiences in terms of the offers they receive through platforms, it appears that algorithms have been recalibrated to give preference to workers who perform delivery tasks only occasionally or as a student side job, thereby making it increasingly difficult to work for a platform on a regular, continuous, employee-like basis. Thus, although fees are decreasing and many former full-time platform workers are in a difficult situation, most are more likely to seek employment elsewhere than to unionise and hope for a solution through collective bargaining.

3.11.2.3 Trade union perspective on the way forward

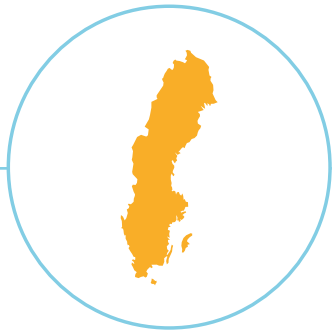
Self-employed workers in Slovenia face various social issues. For instance, the social security system does not function effectively for them in many cases. Union representatives report cases in which newly self-employed professionals can receive a subsidy from the employment office, but this amount is subsequently considered part of their business income, resulting in taxes and social security contributions that can make the business unviable before they have even had a chance to establish themselves in the market. Similar instances show that the interests of the self-employed tend to be underrepresented and misunderstood. The applicable legislation is also highly complex, to the extent that even legal specialists within trade unions can have difficulty assessing its impact on the self-employed.

Recently, there have been some positive developments in terms of social security coverage. For instance, pension rights for self-employed professionals in the cultural sector have been improved. However, there are still issues of legal uncertainty, for example, about the precise personal scope of the legislation, which the government is required to clarify following a Constitutional Court judgment.

Small steps to improve the situation might include obtaining better data on issues such as workforce composition. Statistical analyses, in most cases, treat the self-employed as a single category, whereas from a trade union perspective, it would be useful to distinguish between employers and solo self-employed persons. More importantly, increasing the capacity of the labour inspectorate and improving cooperation between the different public authorities dealing with worker misclassification could significantly reduce bogus self-employment. More specifically, Mladiplus also advocates transposing the Platform Work Directive in a way that extends the presumption of employment to all sectors rather than limiting it to platform work.

Real improvement might also require a reconsideration of traditional ideas about employment and self-employment, as employment is frequently perceived as a form of work in which personal autonomy is largely impossible. This perception, together with lower taxes and social security contributions, motivates workers in certain professions to consciously choose self-employment. In this regard, a more explicit exploration of the potential for achieving work-life balance as an employee would seem just as important as reducing the differences that currently make self-employment financially attractive.

3.12 SWEDEN



3.12.1 Legal perspective

3.12.1.1 The classification of working individuals

Sweden is the country with the longest tradition of legislation expressly departing from the binary distinction between employees and the self-employed in order to enable collective bargaining for self-employed workers. The legal concept of the 'dependent contractor', as a category of self-employed workers who may be covered by collective agreements alongside employees, dates back to the 1940s and is now codified in the 1976 Co-determination Act.

The law does not exhaustively define the concept of employee. When interpreting the concept in the context of the 1982 Work Employment Protection Act, courts generally consider: the existence of an explicit or implicit obligation to perform work personally; the actual performance of work in person; the variety of tasks performed; the durability of the relationship; restrictions on performing work for others, for example due to the investment of time and resources; instructions and control regarding the performance, place, and time of work; the use of machinery, tools, or raw materials provided by the principal; reimbursement of direct expenses (e.g. travel expenses); remuneration that is at least partly fixed; and whether the person is generally regarded as an employee in economic or social terms.

The concept of 'dependent contractor' is defined in Section 1(2) of the 1976 Co-determination Act as anyone 'who works for another and at that time is not employed by them but has a position that in essentials [sic] is the same as an employee's' (Westregård, 2021).[24]

3.12.1.2 Legal assessment under the framework for industrial relations and collective bargaining

Dependent contractors as defined above fall fully within the scope of the 1976 Co-determination Act, so academic experts consider collective bargaining for them to be permissible under the same conditions as for employees. However, there is a lack of practical experience both with collective bargaining and with strike action or other forms of collective action by dependent contractors. It is considered that, for such contractors to be covered by a particular collective agreement, the agreement itself would need to state clearly that it is intended to cover them (Westregård 2021: 257). As explained below, this is generally not the case with the collective agreements currently in force in Sweden.

3.12.1.3 Legal assessment under competition law

In Chapter 1, Section 2 of the 2008 Swedish Competition Act (2008:579), an express exception from scrutiny under the act is provided for 'agreements between employers and employees relating to wages and other conditions of employment'. According to the preparatory materials relating to the corresponding provision in earlier competition legislation (Government Bill Prop. 1981/82:165), this exception was meant to also apply to collective agreements covering dependent contractors.

Thus, there is a clearly established possibility of collective bargaining for certain individuals who would not be considered employees under general labour law. At the same time, there is no clear statutory provision governing the competition law assessment of collective agreements that extend to self-employed workers who are not 'dependent contractors'. In this respect, it may be of interest to refer to the forestry agreement (see below), which quite clearly covers self-employed contractors who are not in 'a position that in essentials is the same as an employee's'. When an individual solo self-employed contractor working in the sector requested an assessment of the agreement under competition law in 2008, the Swedish Competition Authority, in Decision 2009-03-27, Dnr 364/2008, stated clearly that it did not consider the agreement to be contrary to competition law.

24 Westregård, Annamaria (2021), 'Collective Bargaining for Self-Employed Workers in Sweden', in Bernd Waas and Christina Hiessl (eds), *Collective Bargaining for Self-Employed Workers in Europe*, Kluwer Law International, pp. 247–262.

At least, then, when viewed purely under national law, there is a broad scope for collective bargaining for the self-employed.

3.12.2 Trade union perspective and developments in practice

3.12.2.1 Collective organisation of the self-employed

Extent of representation and representative organisations

A number of trade union organisations in Sweden offer membership to 'sole traders', i.e. solo self-employed persons. In most unions, the position of self-employed union members is not identical to that of employees, as these unions see their role primarily in terms of providing individual support and advocating for those members' rights in policy debates, particularly by seeking to reduce differences in social security protection between employees and the self-employed, rather than pursuing collective bargaining on behalf of those members.

The largest trade union, Unionen, organises private sector white-collar workers, except for those working in journalism and finance. Most of the self-employed it organises are consultants with various specialisations (IT, economics, etc.). Solo self-employment is a more widespread phenomenon among journalists and agricultural professions, both of which are organised separately. Finally, among blue-collar professions, the most important group is taxi drivers, who may work as sole traders while being economically and organisationally dependent on their agency. Most of these drivers are not organised.

All in all, of the roughly 500,000 sole traders in Sweden, about 10,000 are union members.

Recent and current developments

The proportion of self-employed workers in the Swedish economy has been decreasing for a long time, a trend that continues irrespective of the economic cycle or interest rates. Among persons who have reached retirement age, the share of sole traders is much higher, as some former employees also become self-employed after retirement, for example as consultants. Misclassification of employees as bogus self-employed workers is reported to be relatively uncommon, although it does occur, for example, in the construction sector.

Regarding self-employed sole traders' propensity to unionise, no particular changes have been identified in recent years.

Main legal and practical challenges

Most of the self-employed in Sweden are reported to be reluctant to organise collectively as they view themselves as entrepreneurs.

Even when they are members of a trade union, this does not necessarily mean that they want the union to enter into collective negotiations on their behalf, nor that the union would necessarily want to do so. Some remain union members when changing from employment to self-employment, while others join as a testimony of their support for Sweden's organised industrial relations system. Some are mainly interested in membership benefits, such as preferential access to insurance schemes or third-pillar pension schemes with reduced premiums. For journalists and other media professionals, such as camera operators, union membership also enables them to obtain a press ID.

3.12.2.2 Collective bargaining for the self-employed

Status quo before the Guidelines and main challenges

The express legal possibility of concluding collective agreements that cover dependent contractors in addition to employees is virtually never used in practice. However, exceptionally, there are collective agreements that define their personal scope more broadly, without referring to the concept of dependent contractors.

Probably the broadest scope is found in the industry-level agreement for manual workers in the forestry sector (*Kollektivavtal Skogsbruk arbetare SLA-GC*). It includes workers who provide their own tractors, and even those who engage their own assistants (who are then also regarded as employees vis-à-vis the 'main worker's' client for the purposes of the collective agreement). This definition was originally formulated in 1960.

Another decades-old tradition of including self-employed workers exists for journalists. The 'freelance agreement' for journalists (*Uppdragstagaravtalet för journalister*) includes its personal scope in terms that date back to an earlier version of the agreement concluded in 1975. It expressly covers 'physical' (i.e. natural) persons 'who undertake journalist work without being employed' and contains rules on the reimbursement of expenses and protection against dismissal.

The freelance agreement does not, however, regulate remuneration. In this respect, the Union of Journalists issues recommendations on the fees that should be paid to ensure a net income comparable to that of an employed journalist. Union representatives report that, in practice, these recommendations are often not followed, particularly by the large monopsonies, including major news outlets and even public television broadcasters, only one of which follows the recommendations.

A similar system of recommendations has been established for performing artists by the theatre workers' union. In addition, the union in this sector founded its own umbrella company, the Theatre Alliance, which allows members to negotiate their own contracts but perform the work as employees of the umbrella company, thereby notably ensuring their coverage by the social security system as employees. The example of the Theatre Alliance has been followed by a Dance Alliance and a Music Alliance, allowing different types of live performers to work under employment contracts. In this sense, they are freelancers to whom collective agreements apply, but only because they are regarded as employees by virtue of their affiliation with the alliances.

The platform economy does not provide an example of collective bargaining for the self-employed in Sweden, as the only relevant collective agreements to date (such as the agreement covering delivery riders working for Foodora) instead ensure that the workers within their scope are given employment contracts. More generally, when Swedish collective agreements refer to self-employed work, this is usually in the context of provisions requiring employers to avoid using it where employees could perform the same work.

Noteworthy changes since the Guidelines

The Guidelines have not triggered any particular change or development in terms of collective bargaining for the self-employed in Sweden.

Outlook and potential

Trade union representatives do not report any specific intention of 'using' the Guidelines to pursue collective bargaining for the self-employed more proactively. They do, however, express concerns about relying on 'guidelines' that use vague and potentially volatile criteria (such as turnover thresholds) as a basis for departing from mandatory primary EU law.

They also caution that the lack of clarity about the possibility of taking collective action on behalf of the self-employed means that any form of collective negotiation would take place under unfavourable conditions, as the workers' side would be unsure whether it could credibly threaten to take collective action. If this were to lead to the conclusion of collective agreements providing only weak rights for workers, it could ultimately cause more harm than good by creating general downward pressure on workers' rights. While none of the established traditional trade unions in Sweden would be likely to settle for an agreement providing questionable workers' rights, it seems important to be aware of the risk of yellow unions taking over if collective bargaining for the self-employed is permitted but shunned by traditional trade unions for the aforementioned reasons.

3.12.2.3 Trade union perspective on the way forward

Trade union representatives report that, among the genuinely self-employed union members, there is currently no particular demand for the union to bargain on their behalf, as they generally possess sufficient bargaining power to negotiate appropriate rights in their individual contracts with clients. This does not mean that precarious working conditions are absent from the Swedish labour market, but rather that precariousness is associated more with particular sectors than with particular forms of employment status. The most precarious workers are often not covered by a collective agreement, irrespective of whether they are employed or self-employed. The sectors in which such precarious working conditions are particularly prevalent include hospitality, cleaning, and, to some extent, transport. In the latter in particular, working conditions have deteriorated in recent years. However, this is not because taxi drivers were necessarily employees covered by collective agreements in the past, but rather because the sector used to be highly regulated and has since been deregulated under national law. Thus, for trade union representatives, the main groups to target in order to reduce precariousness

are not necessarily the self-employed (a group that includes many well paid workers, such as IT specialists), but rather workers in low-skilled, low-paid jobs who are difficult to organise despite being employees.

There are also fears that the creation of a third category of employment status at EU level could ultimately weaken labour rights by increasing the risk of misclassification and creating downward pressure on existing working conditions and protections under collective agreements.

Accordingly, union representatives are sceptical of the Guidelines and caution that EU-level harmonisation (including the Platform Work Directive) may cause national governments to attempt to lower the level of social protection when transposing those rules. They point to the recent 'omnibus' reform proposals at EU level, as well as the policy approach of the current Swedish government, as indications that there is currently little political support for ambitious social policy regulation. Against this background, they consider keeping the existing system as the most promising approach.

4. COMPARATIVE FINDINGS

4.1 Legal perspective

4.1.1 The classification of working individuals

In all countries examined, the distinction between employees and self-employed persons (and potentially further legally recognised categories) remains a difficult issue, not only for the parties to the contract, but also for social partners, public authorities and courts. In several countries (Austria, Denmark, Germany, Ireland, the Netherlands, and Sweden), an additional difficulty arises because the distinction between these categories is not necessarily drawn in the same way across all areas of law. The same person may therefore be considered an employee in one area, but self-employed in another (for example, under labour law, social security law, tax law, or competition law). In some countries (Denmark, Italy, and Sweden), this uncertainty has been addressed by the social partners in collective agreements containing specific provisions on the classification of workers.

In several countries (Austria, France, Germany, Italy, Poland, and Slovenia), the law recognises 'intermediate' categories, either formally or in practice, virtually all of which are relevant in determining the right of the individuals concerned to bargain collectively (see next section). In Belgium, by contrast, there is a special category (frequently used or abused in the case of platform workers) with even fewer rights than those generally granted to the self-employed, notably in terms of social security protection.

In some countries, the classification of workers in certain professions as employees is complicated by the fact that the law clearly assumes that, at least in typical cases, they may be self-employed. This is particularly apparent in, for example, Austrian law and its provisions for self-employed journalists in a continuing contractual relationship with a publisher, for self-employed newspaper delivery workers, and for self-employed domestic caregivers. The same could be said of French legislation for self-employed platform workers in the transport and delivery sectors.

4.1.2 Legal assessment under the framework for industrial relations and collective bargaining

In two countries (Belgium and Finland), the prevailing view is that only employees *sensu stricto* are covered by legislation on collective bargaining. This means that specific provisions governing collective bargaining do not apply to the self-employed, including, for example, provisions enabling collective agreements to cover members of social partner organisations that are not themselves contracting parties, to have *erga omnes* effect, or to be declared universally applicable within a sector. This would not, however, necessarily prevent the conclusion of agreements under general contract law with individual (employer-like) companies undertaking to apply certain conditions to the self-employed persons working for them. The self-employed are also generally not counted for the purposes of establishing works councils or similar bodies of company-level representation (with the exception of home workers in Austria).

At the same time, in most countries, certain subgroups of the self-employed are considered entitled to be covered by collective bargaining agreements under the same conditions as employees. Interestingly, this is most evident in Italy, where there is no legislation on collective bargaining beyond the fundamental constitutional right to freedom of association, and case law has long confirmed that this right also extends to the self-employed. A rather broad personal scope for the general rules on collective bargaining also exists in Ireland, where the relevant legislation refers to all 'personal work', and in Poland, where a constitutional judgment led to the inclusion of a similarly described group ('persons who perform paid work'). Dutch law expressly includes all those working under a mandate or a contract for work. More specific categories include 'economically dependent persons' in Slovenia and 'dependent contractors' in Sweden. In Denmark, case law recognises the inclusion of self-employed workers who are 'similar' to employees, although the criteria for determining this similarity do not appear to be entirely clear. By contrast, German legislation clearly defines the 'employee-like' persons who are covered by legislation on collective bargaining, namely those receiving 50% or more of their income from a single source. A particularly narrow extension of collective bargaining legislation for

the self-employed could, until recently, be found in Austria, where only specifically identified groups (notably journalists and other media professionals, as well as home workers) were covered. Here, the Guidelines played a role in the legislature's decision to extend coverage to all 'employee-like persons' from 2026. Note, however, that this still excludes all self-employed persons working on the basis of a business licence, irrespective of the degree of their actual dependence on the principal. Finally, France has introduced provisions on collective bargaining for the self-employed exclusively for platform workers.

For many countries, constitutional principles and international treaties ratified by the state concerned might also be interpreted as requiring a broader coverage of the self-employed. However, apart from the aforementioned judgment of the Polish Constitutional Tribunal, there is generally a lack of case law confirming such legal opinions. As explained below, in some countries, collective agreements have in fact been concluded for groups that are not formally covered by the specific legal protection afforded to collective bargaining rights.

4.1.3 Legal assessment under competition law

In most countries, competition law does not expressly regulate the assessment of collective bargaining agreements, meaning that CJEU case law is the most pertinent source of guidance. Exceptionally, Swedish competition law expressly exempts collective agreements from the scope of competition law, an exemption that is considered to extend to collective agreements covering dependent contractors. In Ireland, a 2017 amendment introduced specific exceptions, as well as the possibility of applying for an exemption in an individual case.

In practice, competition authorities in most countries have, perhaps surprisingly, never expressly addressed the issue. Among the instances in which individual collective agreements have been assessed by national competition authorities, the Irish experience involved the most far-reaching intervention: three collective agreements (covering voice-over artists, freelance photojournalists, and session musicians) were declared incompatible with competition law before the aforementioned legislation providing for specific exceptions and the possibility of further exemptions was enacted. In Denmark, two collective agreements (one covering journalists and one covering cleaners working through a digital labour platform) have been found unlawful by the Competition Authority, although other collective agreements have also expressly been found to comply with competition law. In France, the Competition Authority issued an opinion that did not directly advise against the extension of a collective agreement for platform workers by the competent authority, but still expressed a highly critical view of such an extension.

The Dutch Competition Authority appears to have been the only national competition authority to issue express general guidance on permissible forms of collective bargaining for the self-employed before the Commission's Guidelines were adopted, and thus also influenced the content of the Guidelines.

In other countries, concerns about competition law played some role in creating uncertainty among the social partners, despite the absence of intervention by the Competition Authority. This includes Slovenia, where the issue featured at least in discussions, and Finland, where the social partners effectively did not dare to enter into negotiations before the Guidelines were adopted at EU level. Cases in which the employers' (principals') side decided at some point to withdraw from previous commitments on competition law grounds include not only the well-known Dutch *FNV Kunsten* case, but also a German incident regarding 'allowance fees' for journalists and an Irish agreement on pay rates, also for journalists, from which the employers eventually withdrew.

4.2 Trade union perspective and developments in practice

4.2.1 Collective organisation of the self-employed

4.2.1.1 Extent of representation and representative organisations

In all countries included in this study, trade unions have recruited self-employed members to some degree, although this is not a mass phenomenon in any of them. In most countries, it is reported that all relevant trade unions appear to accept self-employed members. By contrast, in both Finland and Slovenia, it is emphasised that some trade unions remain restricted to employees. Moreover, in almost all countries, self-employed work-

ers are also organised through associations that are not trade unions and do not have the right to bargain collectively. Trade unions that specifically recruit only self-employed workers and aim to engage in collective bargaining on their behalf do not appear to exist in any of the countries examined. On the contrary, in some countries (Austria, Belgium, Germany, and Sweden), some of the trade unions that bargain collectively for employees restrict their services for self-employed members to matters such as legal advice, collective insurance, counselling, other benefits (for example, the issuance of professional cards), and potentially the organisation of collective action, but do *not* currently engage in collective bargaining on their behalf.

Reliable data on the number or proportion of self-employed trade union members tend to be unavailable, and the limited information that does exist is barely comparable. In absolute terms, the trade union with the largest number of self-employed members is clearly the German service-sector union, ver.di, with about 30,000 self-employed members. Some other German trade unions also have significant numbers of self-employed members, and around 80% of journalists in Germany are reported to be trade union members. In the Netherlands, around 20% of all self-employed workers are collectively organised in some form. Currently, about 20,000 of the 800,000 members of the largest trade union, FNV, are self-employed, while many more are affiliated with non-union interest associations. In Sweden, about 10,000 of approximately 500,000 sole traders are trade union members *sensu stricto*, with significant differences between sectors: trade union membership is very high among journalists but virtually non-existent among self-employed taxi drivers. In Denmark, about 25% of all unionised journalists are self-employed, while a very high degree of collective organisation *sensu lato* is also reported among engineers, accountants, lawyers, and medical professionals.

For the other countries, data on the number and proportion of self-employed trade union members were not reported, but it was often indicated that unionisation among self-employed workers is relatively low (for example, in Belgium and France) or even exceptional (Slovenia), and/or concentrated in a very small number of sectors or professions. This is the case in Finland, for example, where language specialists are almost invariably self-employed, meaning that the relevant trade union has focused primarily on them from the outset. In Denmark, it is noted that those who consciously choose self-employment and genuinely identify as self-employed are unlikely to join trade unions. In Belgium, it is estimated that most self-employed trade union members are former employees who retained their union membership after becoming self-employed. This phenomenon is also observed, but not quantified, in other countries (for example, Sweden).

In several countries (Austria, Germany, Italy, and the Netherlands), trade unions have established specific sections to accommodate the needs and interests of the self-employed. The Dutch FNV currently has 140 occupational groups with self-employed members. In some countries (Italy, the Netherlands, and Slovenia), trade union delegations specifically representing the self-employed also participate in tripartite social dialogue. Collaboration between such trade unions and non-union interest associations is often reported to exist and to be potentially fruitful, but also difficult due to differences in their aims and methods (for example, in Austria, Belgium, France, Italy, and the Netherlands).

Legal limits on trade unions' ability to recruit self-employed members are reported only in Austria, due to the requirement of independence from the opposing side (*Gegnerunabhängigkeit/Gegnerfreiheit*). This means that, for a union to be recognised as a collective bargaining partner on the employees' side, it must refrain from organising persons who are mandatorily affiliated with its bargaining partner on the employers' side.

4.2.1.2 Recent and current developments

No particularly notable recent trends are reported in the unionisation of the self-employed. The only country in which the degree of organisation has increased recently, notably after the Covid-19 crisis and its devastating impact on many self-employed workers, is Italy. By contrast, a significant decrease occurred in Ireland following the Competition Authority's finding in 2004 that three collective agreements were unlawful. As collective bargaining for the self-employed never fully recovered, workers became less likely to see the benefits of trade union membership. Thus, the continuing loss of members resulting from high turnover in the sectors concerned was not compensated for by a comparable number of new members. More recently, the Slovenian trade union, Mladiplus, lost members when it became clear that it was unable to force platform companies such as Wolt and Glovo to the bargaining table, even by organising strikes. In Finland, both positive and negative factors are currently reported: unionisation is generally declining, including among employees, while the Guidelines, and the subsequent successful negotiation of the first collective agreements for the self-employed in Finland, have also increased interest in unionisation in the areas concerned.

Almost universally, the question of the unionisation of the self-employed is also connected to the share of self-employed workers in the labour market, and particularly that of solo self-employed workers who are strongly dependent on a principal. In Austria, it is stated very clearly that most of the self-employed workers willing to unionise are bogus self-employed workers, meaning that growth in the number of self-employed trade union members would not necessarily represent a positive development. The most frequently observed trend is, in fact, an overall decrease in the share of the self-employed workers in the labour market over recent years or decades. In Sweden, this is described as a long-term trend, albeit with sectoral exceptions (for example, construction). In other countries (the Netherlands, Poland, and Slovenia), reference is made to specific legislative or administrative measures aimed at making bogus self-employment less attractive and/or facilitating enforcement against misclassification. In Austria and Germany, reference is also made to high-profile judicial proceedings that led to the reclassification of workers as employees in representative cases. Note, however, that countervailing trends, such as the persistence of a high share or even growth of self-employment and weak enforcement, are sometimes reported for certain sectors in the same countries (Austria, Poland, and Slovenia). For Belgium and Finland, an increase in self-employment is even reported to be the overall trend, whereas in Denmark the share is considered to have remained stable, at a low level, over time.

4.2.1.3 Main legal and practical challenges

For most countries, both legal and practical challenges to the unionisation of the self-employed are identified. In several cases (Belgium, Poland, and Slovenia), problems relating to the misclassification of workers are reported to be at the core of these challenges, as wide-spread bogus self-employment makes it difficult for the trade unions to develop a coherent and effective policy for the genuinely self-employed. The existing framework of labour law and industrial relations is sometimes, and most explicitly in Belgium, also perceived as a major obstacle, particularly because of the above-described limits on the personal scope of collective bargaining legislation. These limits may stifle the motivation of the groups concerned even to join a trade union that would not necessarily be able to negotiate on their behalf anyway. In Austria, and to some extent also in Germany, trade unions are also weary that recruiting certain groups of self-employed workers as members might have adverse legal consequences due to the aforementioned legal requirement of independence from the opposing side. In some countries, notably Ireland and Poland, it is emphasised that unionisation and collective bargaining face serious challenges and limitations both for the self-employed and employees, meaning that the difficulties encountered by the self-employed are largely not specific to their employment status. For some countries, notably Denmark and Slovenia, even trade union representatives do not necessarily regard collective bargaining as the most effective route towards improving the social protection of the self-employed, considering that more could be achieved through better social security rights. The importance of improved social security rights is also emphasised for France.

Despite the relevance of such legal issues in all countries, practical issues are almost universally considered the most difficult hurdles to overcome. The reluctance to unionise even among self-employed workers who could benefit significantly from joining forces has many reasons, ranging from a lack of awareness to a lack of trust in, or identification and solidarity with, employees or even other self-employed workers (Italy, the Netherlands, Poland, and Slovenia). On the other hand, trade union representatives also note that the union movement might need to step up its efforts to raise awareness, better understanding the needs of the self-employed, and identify strategies that work for them (Belgium, Denmark, Finland, France, Germany, the Netherlands, and Poland).

4.2.2 Collective bargaining for the self-employed

4.2.2.1 Status quo before the Guidelines and main challenges

In all of the countries studied, some collective bargaining activity for the self-employed had already taken place before the issue reached the European level.

Successfully negotiated collective agreements were and are most commonly in place for self-employed journalists (Austria, Germany, Finland, Ireland, Sweden, and Slovenia), although some of those agreements (Finland, Sweden, and Slovenia) have traditionally not contained provisions on fees or income, but rather regulated matters such as intellectual property rights. Other media, television, and broadcasting professionals have also been covered by collective agreements (including minimum fees) for a considerable time (Austria, Ger-

many, and Ireland). These agreements sometimes also include cultural sector professionals, who are or were also covered by specific collective agreements for self-employed actors and other film crew (Ireland), musicians (Ireland and the Netherlands), or designers (under a German agreement that is adhered to in practice, although it was concluded by parties that do not have the status of social partners under the law). This phenomenon of collective agreements concluded outside the applicable legal framework is also mentioned in relation to an Austrian agreement covering lecturers in the public employment service and, formerly, an agreement covering kiosk owners selling lottery tickets in Poland. Other collective agreements covering self-employed workers that had already been concluded before the Guidelines concern language professionals (Italy), home workers (Austria), forestry workers (Sweden), construction workers (Ireland), architects (the Netherlands), and platform workers (France).

In most of the cases just mentioned, collective agreements for self-employed workers are either systematically connected to existing collective agreements for employees, or even form an integral part of them (rather than constituting a separate collective agreement). When agreeing minimum fees for the self-employed, the unions' aim is frequently to set a higher rate than for employees (e.g. ca. 140% in Italy and 150% in the Netherlands), to compensate for the fact that the self-employed often have to pay their own social security contributions, have no right to paid leave, etc. By contrast, where national law creates a special framework for some groups of self-employed workers, the resulting collective agreements can also be very different, both in terms of their content and the role they play for the workers concerned (cf., for example, the agreements for platform workers in France). In cases where no binding collective agreements on remuneration are in place, instruments such as collectively bargained remuneration rules for publishers (Germany) or fee recommendations for journalists and performing artists (Sweden) can provide a basis.

As an alternative to collective bargaining for the self-employed, trade unions in some countries have pursued the strategy of ensuring that workers in occupations that used to be characterised by self-employment can work under an employment contract. This can take the form of a collective agreement in which employers commit to hiring the workers concerned as employees (for example, construction and call centre workers in Italy, or platform workers in Denmark and Sweden). In other cases, trade unions have founded umbrella companies that function as the employer for freelancers whenever the latter agree on an assignment with a client. Such umbrella companies exist, for example, for designers in Denmark and for theatre, dance, and music performers in Sweden. In France, a dedicated legislative framework for umbrella companies has been supplemented by collective agreements for the different sectors in which umbrella companies are active.

Note that not all attempts at collective bargaining for the self-employed have been successful, with noteworthy examples of negotiations that were eventually discontinued including those for platform workers in Belgium, journalists in Finland, and municipal teaching professionals in Germany.

4.2.2.2 Noteworthy changes since the Guidelines

To date, specific changes triggered by the EU-level Guidelines on the assessment of collective bargaining for the self-employed under competition law have not materialised in most countries. Finland is the only country where the Guidelines are identified as the key factor in facilitating the conclusion of the very first collective agreement covering self-employed workers (concerning language specialists). In Austria, the Guidelines have inspired legislative change – not in competition law, but in industrial relations law – so that the social partners are now allowed to bargain for all employee-like persons on the employees' side.

By far the most important development in collective bargaining for the self-employed since the publication of the Guidelines has taken place in Italy, where several collective agreements have been negotiated, concerning, for example, actors, athletes, and supermarket delivery riders. There has also been legislative change, with a new law on fair compensation requiring the consultation of 'professional orders' (interest associations in the profession concerned, rather than trade unions) when determining minimum fees for those professions. However, it may be questionable whether any of these developments are related to the Guidelines, as Italy has a long and exceptionally extensive tradition of collective bargaining for the self-employed, in which competition law considerations have never played a role in practice.

4.2.2.3 Outlook and potential

With the noteworthy exception of Sweden, trade union representatives in all countries studied see the Guidelines as a positive development and a potentially useful tool for strengthening collective bargaining for the self-employed, with most confirming that the unions are planning to intensify their efforts and/or 'test' the potential of the new framework, even though most are well aware that the Guidelines do not necessarily guarantee the legality of collective bargaining for the self-employed. For all countries, it is confirmed that there are specific groups of vulnerable self-employed individuals in the national labour market for whom collective bargaining could bring about significant improvements. When asked to provide specific examples of such groups for which trade unions could envisage initiating negotiations, representatives could spontaneously identify three in Germany, four in Slovenia, six in Denmark, and as many as seven professions in Austria. In Denmark, it is considered particularly crucial to observe how the traditionally very strict Competition Authority will react to the first instances of, or attempts at, negotiations for the self-employed following the Guidelines. In Germany, too, trade unions consider it important to choose the first cases wisely in order to avoid creating precedents with adverse outcomes.

At the same time, trade union representatives' optimism regarding the potential impact of the Guidelines is tempered by their experience. In this respect, representatives in several countries (Belgium, Finland, and Slovenia) caution that social partners on both sides lack experience with the subject, and/or that the main strategy so far has been for collective agreements to impose a commitment on employers to limit the use of self-employed service providers (the Netherlands and Sweden). In some countries (Austria and Sweden), unions report issues of non-compliance with existing agreements for the self-employed, even more so than with collective agreements for employees, especially because self-employed workers usually have no protection against dismissal and are thus wary of asserting their rights. For Finland, it is also noted that the successful negotiation of the first collective agreement for the self-employed following the adoption of the Guidelines has illustrated that domestic companies may be open to such a development, whereas international companies and groups (often originating from countries with a much more limited tradition of collective bargaining) are not willing to join the effort.

4.2.3 Trade union perspective on the way forward

When asked to consider freely the most important or desirable developments that could help to improve the present situation, trade union representatives refer to a wide range of ideas relating to legislative, administrative, judicial, or practical issues.

Some of those considerations relate to the national legal framework. In this respect, for example, Belgian and French trade unions stress that the proper involvement of the self-employed in the collective bargaining framework would require a clear basis in industrial relations law. For Austria and Germany, it is stressed that the relatively clear definition of 'employee-like' groups that are permitted to bargain collectively still excludes important groups of vulnerable self-employed workers. For some countries (Finland, Ireland, and Poland), it is stressed that tackling general issues that prevent collective bargaining (also for employees) from flourishing would also be beneficial for the self-employed. In this context, reference is also made to the Adequate Minimum Wages Directive and the potential of its Article 4. Irish and Swedish representatives also stress that it would be crucial to clarify whether, and to what extent, the self-employed could rely on strike action to support their demands. In relation to competition law, continued uncertainty is also considered a serious 'red flag' in several countries (Germany, Ireland, and Sweden). Representatives in some countries (Austria, Germany, and France) also point to other aspects of the legal system, such as the concept of employee (for which a legal presumption, or a prohibition of self-employment, as already applies in the German meat sector, might be helpful), procedural law (with class actions or similar mechanisms as potentially powerful options), or sanctions imposed in cases of misclassification (which are sometimes insufficiently deterrent).

As for practical issues, representatives in a number of countries (Austria, Finland, France, Ireland, Sweden, and Slovenia) consider one of the most crucial preconditions, which is currently not necessarily present, to be the willingness of the employers' side to engage in social dialogue regarding the self-employed. In Germany, it is considered that public sector employers should assume responsibility for setting a good example in this regard. In some countries (the Netherlands and Slovenia), solidarity between employed and self-employed workers may still need to be developed further. For some sectors, union representatives currently consider

it simply unrealistic that any collective bargaining process could be initiated in the near future, as no appropriate social partner structures can be identified. Representatives in Denmark and Germany also sometimes consider that initiating such dialogue may be more likely in some blue-collar sectors than among professionals and managers.

One repeatedly raised issue of concern (e.g. in Austria, Belgium, and Germany) relates to distinguishing between the desirable initiation of collective bargaining for the genuinely self-employed and the need to avoid condoning the misclassification of workers who should actually be classified as employees. At the same time, some union representatives (e.g. in Denmark and Ireland) also stress that the assumption that all vulnerable workers should be reclassified as employees would correspond neither to working realities nor to the wishes of workers in certain sectors. Belgian and Swedish representatives are particularly vocal in rejecting the creation of (additional) intermediate categories between employees and the self-employed as a possible solution. For several countries (the Netherlands, Poland, and Slovenia), it is stressed that focusing on the aspects that currently make traditional employed work unattractive to workers (higher tax and social security contributions, lack of autonomy) could be very fruitful in preventing workers themselves becoming 'complicit' in their own misclassification.

Finally, representatives in some countries (Denmark, France, Italy, and Slovenia) particularly stress the role of social security, which can play a key part in alleviating hardship among self-employed workers and may in some cases be both more effective and more realistic to improve than collective bargaining. Thus, one key role of the trade union movement is also seen in (political) lobbying for improvements of this kind, especially in cases where significant improvements through collective bargaining cannot be expected in the near future.

Last but not least, most interviewees stress that cross-country comparative information and discussion, as pursued in the present project, would be more than welcome as a source of inspiration for strategies at national level.

5. DISCUSSION AND IMPLICATIONS

The above findings showcase the multifaceted nature of the issues encountered by workers, trade unions, and workers' representatives seeking to engage in collective bargaining on behalf of the self-employed. Based on these findings, it is evident that different stakeholders, as well as different levels of regulation and action, can play a role in developing an approach to the matter.

First, at EU level, the Guidelines demonstrate the European Commission's commitment to addressing the difficulties that have emerged under competition law. While the Guidelines are not binding on any enforcement body (court or authority) other than the Commission itself, the report has shown that they have inspired national competition authorities to adopt their own policies (expressly or implicitly) in line with the Guidelines. At the same time, recent examples (such as the French case described above at 3.5.1.3) also indicate that the 'protection' from the risk of a collective agreement being invalidated on competition law grounds remains far more conditional and uncertain for the self-employed than it would be for an agreement covering traditional employees. In this sense, genuine legal certainty might only be realistic if either Article 101 TFEU were amended (clearly not a very likely scenario) or the CJEU were to clarify the relationship between competition law and collective bargaining in a case brought before it. In doing so, it would hopefully also take into account international and human rights standards that have long been interpreted as guaranteeing a right to collective bargaining for vulnerable workers, irrespective of whether they have the status of employees or otherwise.

At national level, governments, courts and authorities could contribute to the Commission's efforts not only by replicating the aims and spirit of the Guidelines in national policy approaches, but also by ensuring the transparency of these approaches to the social partners. As this report has shown, competition law is effectively only one of the obstacles that make collective bargaining for the self-employed a limited, exceptional, or even non-existent phenomenon in many countries. Other steps that could bring about improvements would include a clearer and possibly broader definition of the personal scope of industrial relations law, thus ensuring that the same rules that have been established for collective bargaining on behalf of employees also apply to collective bargaining processes concerning the self-employed. In addition, this report has revealed numerous concerns relating to the effectiveness of national collective bargaining systems in general. Addressing these would offer an opportunity to improve conditions for all workers and social dialogue as such, irrespective of the classification of the workers intended to benefit from it.

Finally, while lawmakers, courts, and authorities might all be able to contribute to the creation of a legal and policy environment conducive to social dialogue, it is ultimately for the social partners both to shape the system and to make use of it in order to 'normalise' collective bargaining for the self-employed. From the research conducted for this project, it is clear that the 'employers' (principals') side in particular has so far shown little interest in, or even awareness of, the benefits that social dialogue could also bring to them. On the trade unions' side, similar issues of a lack of awareness or motivation are aggravated by problems of fragmentation. More specifically, certain sectoral divisions or even entire trade unions may still be very employee-centred and/or insufficiently persuaded that proactively pursuing the interests of self-employed workers will ultimately benefit all workers. What is more, self-employed workers in many countries are actually more likely to affiliate with professional associations that do not view themselves as trade unions, might not have the ambition or even the capacity to engage in genuine collective bargaining, and might also include entrepreneurs who are themselves employers. Accordingly, much remains to be done on the part of the trade unions to persuade both their existing constituents and self-employed workers, who are reluctant to affiliate, of the benefits of a comprehensive vision of workers' representation that will eventually achieve more for all workers. Such an approach would appear to offer the only way of combatting tendencies whereby achievements in the protection of 'traditional' workers could be circumvented through the use of self-employed workers who lack the protection afforded by collective labour rights.

Having said that, the report also showcases that trade unions in many countries have already taken important steps forward and launched initiatives to include the self-employed in the social dialogue landscape. While not all of these initiatives have been successful or had a significant impact, the sum of these developments, as illustrated in this report, may provide fertile ground for further progress following the publication of the Guidelines. The country examples described above may serve as inspiration for the way forward.



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