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võivad sarnaselt Euroopa Komisjoni algses mõjuhinnangus kirjeldatule heidutada kollektiivlepingute sõlmimiseks läbirääkimistesse astuda soovijaid³.

Seda põhjusel, et iseseisvaid teenuseosutajaid käsitleb konkurentsioigus ettevõtjatena, kelle kaubaturgude piiramisele ja hindade määramisele suunatud kokkulepped on karistusühvardusega keelatud. Samas tuleb Euroopa sotsiaaloiguste komitee hinnangul tagada nõrgema läbirääkimisjõuga iseseisvatele teenuseosutajatele võimalus kollektiivselt tegutseda hoolimata konkurentsieeskirjadest⁴. Mõistliku tasakaalu leidmisel eelkirjeldatud vastandlike järelduste vahel saab kaaluda nelja lähenemist⁵:

- a) Kaasuspõhine analüüs Kunsteni-kohtuasja eeskujul, milles antud suunistel on võimalik kollektiivlepinguid sõlmida kui töötajad on valesti iseseisvateks teenuseosutajateks klassifitseeritud (Euroopa Kohtu 04.12.2004 otsus asjas C-413/13). See on hetkel valitsev olukord. Selline lähenemine tagab suurima paindlikkuse, võimaldades erinevate teenuse osutamise platvormide arengut⁶. Samas peetakse kaasuspõhist lähenemist sotsiaalpartnerite ja konkurentsiasutuste jaoks liialt koormavaks⁷;
- b) Välistada konkurentsioiguse mõjualast teatud grupp valesti töötajateks kategoriseeritud teenuseosutajaid seaduse jõuga Iirimaa eeskujul (Euroopa sotsiaaloiguste komitee 12.09.2018 otsus asjas 123/2016). Ka Eesti õiguskirjanduses peetakse muutunud töötamise ja teenuste osutamise struktuuri tõttu vajalikuks konkurentsioiguse muutmist selliselt, et platvormide vahendusel tööd tegevatel isikutel oleks võimalik osutatavate teenuste tingimusi kollektiivselt reguleerida⁸. Samas ei ole Iirimaa eeskujul Eesti oludesse sobiv erineva õigustraditsiooni tõttu (erinevalt Eestist esineb

³ Esialgse mõjuhinnangu lk 2, leitav 30.03.2021 arvutivõrgust: [Collective bargaining agreements for self-employed – scope of application EU competition rules \(europa.eu\)](https://european-council.europa.eu/media/en/press-communications/123/1232016.pdf)

⁴ European Committee on Social Rights, Decision on the Merits 12.09.2018, *Irish Congress of Trade Unions (ICTU) v. Ireland*, Complaint No.123/2016. Leitav arvutivõrgust 30.03.2021: <https://rm.coe.int/cc-123-2016-dmerits-en/1680902999>

⁵ N. Countouris, V. De Stefano, I. Lianos. The EU, Competition Law and Workers' Rights, lk 22-39. Leitav arvutivõrgust 30.03.2021: <https://journals.sagepub.com/doi/abs/10.1177/2031952519872322>

⁶ Näidetena platvormide erinevate tingimustega kaasnevatest õiguslikest tagajärgedest on Euroopa Kohus kahel korral, Hispaanias ja Prantsusmaal kohaldanud tingimustel leidnud, et Uberi teenus ei ole infoühiskonna teenus, vaid transpordivaldkonna teenus direktiivi 2006/123 artikli 2 lõike 2 punkti d tähenduses (EK 20.12.2017 otsus asjas C-434/15 ja 10.04.2018 otsus asjas C-320/16). Samas viimases, 03.12.2020 Euroopa Kohtu otsuses leiti aga, et Rumeenia platvorm Star Taxi App on infoühiskonna teenus (EK 03.12.2020 otsus asjas C-62/19).

⁷ N. Countouris, V. De Stefano, I. Lianos. The EU, Competition Law and Workers' Rights. Leitav arvutivõrgust 30.03.2021: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3812153

⁸ G. Tavits. Kollektiivsete töösuhete eripärad ja uued töötegemise viisid. *Juridica* 2020/7.



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Irimaal pikaajaline iseseisvate teenuseosutajate kollektiivlepingute sõlmimise praktika⁹);

- c) Kategooriline, kaasusepõhisele analüüsile vastanduv lähenemine, millega laiendada töötaja mõistet. Platvormi vahendusel tööd tegeva ja IKT-põhise mobiilse töö tegija õiguslik staatus on Eestis suurimaks tänaseni lahendamata küsimuseks¹⁰. Selle küsimuse lahendamine tähendaks laiapõhjalisemat tööõiguse reformi;
- d) Konkurentsioiguse rakendusala sisuline ümberhindamine kooskõlas EL õigusesse tekkinud rõhuga sotsiaalsel turumajandusel ja kollektiivläbirääkimistel¹¹. Sellele võimalusele seisab olemuslikult lähedal käimasolev Euroopa Komisjoni uuring, mille eesmärk on selgitada andmeid määruse või juhise andmiseks eelkõige iseseisvatele teenuseosutajatele kollektiivsete õiguste teostamise konkurentsioiguslike takistuste kõrvaldamisel.

1.3. Arvestades eeltoodud kaalutlusi ning asjaolu, et Euroopa Komisjoni eesmärgiks on hetkel eelkõige faktilise olukorra selgitamine, sõltub edasine õigusandlik tegevus õiguspoliitilisest valikust. Sealjuures on Eesti Advokatuuri tööõiguskomisjoni hinnangul ülal punktis a) viidatud lähenemisel võimalik teenuseosutajatel, kellel selleks tegelik vajadus esineb, kollektiivselt õigusi teostada ka kehtiva õiguse mahtu laiendamata. Samas on käesoleval ajal klassikalisele tööõigusele allumatutele teenuseosutajatele kollektiivsete õiguste tagamise tagajärjed ebaselged.

2. Vastused küsimustikule

2.1. Advokatuuri tööõiguskomisjon saab avaldada seisukoha võimalike vastuste osas alates küsimustiku 11. leheküljelt, sest sellele eelnevad ankeetandmete küsimused. Järgnevalt on toodud küsimused ja vastused inglise keeles:

⁹ Euroopa sotsiaalõiguse komitee otsuse p 48. European Committee on Social Rights, Decision on the Merits 12.09.2018, *Irish Congress of Trade Unions (ICTU) v. Ireland*, Complaint No.123/2016. Leitav arvutivõrgust 30.03.2021: <https://rm.coe.int/cc-123-2016-dmerits-en/1680902999>

¹⁰ J. Vallistu, T. Danilov. Riigikogu Arenguseire Keskus 2018. Tööturg 2035. Tööturu tulevikusuunad ja -stsenaariumid, lk 34.

¹¹ „Kuna ühenduse eesmärgid ei ole ainult majanduslikud, vaid ka sotsiaalsed, peab kaupade, isikute, teenuste ja kapitali vaba liikumist käsitlevatest asutamislepingu sätetest tulenevate õiguste puhul võtma arvesse sotsiaalpoliitika eesmärgi, mille hulgas on vastavalt EÜ artikli 136 esimesele lõigule eelkõige parandatud elamis- ja töötingimused, et võimaldada nende ühtlustamist samal ajal jätkuva parandamisega, piisav sotsiaalkaitse ja tööturu osapoolte dialoog“ (Viking, C-438/05 p 79).



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	Küsimus	Vastus
I. Understanding of the situation in your Member State		
1	How common is it that existing collective bargaining agreements also cover solo self-employed in your country?	Not common at all.
2	Could you tell us in which sectors?	N/A
3	What types of solo self-employed are covered by collective bargaining agreements in your Member State?	N/A
4	For each category selected above, please select the elements that are usually governed by the collective bargaining agreements for the solo self-employed.	N/A
5	What are, in your view, the reasons why solo self-employed cannot benefit from collective bargaining agreements in your country?	There are no collective agreements covering this type of work.
6	As far as you know, what are the main reasons why self-employed have opted out of the collective bargaining agreement in your country?	Other. Unorganised labour.
7	In your view or based on your experience, do solo self-employed lack the power to negotiate with companies their payment and other working conditions?	Yes, across all sectors.
8	Please specify in which sectors:	N/A
9	Have you experienced or become aware of any instance where collective bargaining did not happen for fear of infringing EU or national competition law?	No.
10	To your knowledge, have there been any recent boycotts by solo self-employed people to renegotiate the payment of their labour or other working conditions in your Member State?	Yes.
11	Does your country have specific legislative provisions that deal with, or try to resolve, any conflicts between competition law and collective bargaining or that exempt, partly or in whole, the collective bargaining by self-employed from the application of competition rules?	No.
12	Are there cases decided by Labour Courts in your Member State concerning admissibility or limits in relation to collective bargaining for self-employed?	No.



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13	Do solo self-employed enjoy the right to strike or to organise collective protests in your Member State (or in any Member State, to your knowledge)?	No.
14	In your Member State, is the right for solo self-employed to strike or to organise collective protests subjected to different limits or conditions comparing with that for employees?	N/A
15	Are there cases decided by Labour Courts in your Member State concerning admissibility or limits on the right of solo self-employed to strike or to organise collective protests?	No.
II. EU action for collective bargaining by solo self-employed		
16	Do you think that it would be a positive or negative development if competition law were not to stand in the way of collective bargaining by solo self-employed?	Current approach based on Kunsten judgement provides collective entitlements for those who genuinely need it. Broader legislative activity within competition law with the purpose of widening access to collective bargaining for those who might not need it, would have unforeseeable impact.
III. Discussing the different EU policy options for collective bargaining by solo self-employed		
17	In your view, as explained in the Inception Impact Assessment, EU competition law should not stand in the way of collective bargaining by ...	Solo self-employed providing their own labour through digital labour platforms.
18	To the best of your knowledge, what would be the minimum size of the professional customer (namely, counterparty) to allow collective bargaining agreements by solo self-employed?	Medium size enterprise
19	Please specify	Solo self-employed providing their own labour through platforms may be empowered to have easy access to collective bargaining with large enterprises.



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20	Please explain your answer.	Solo self-employed providing their own labour through platforms have the weakest bargaining power and easing their access to collective bargaining with large enterprises would have the minimum negative impact on development of platform economy.
21	Could you please clarify why you think that regulated and / or liberal professions should be excluded from this initiative?	As stated in the Inception Impact Assessment, these professionals are often perceived as not being in a position of weakness.
22	Do you think public or semi-public professional associations that unite all professionals exercising regulated professions should not be allowed to negotiate on behalf of their members under this initiative?	Yes, should not be allowed.
23	Please explain why.	Following reasoning of ECJ in Wouters v Algemene Raad van de Nederlandse Orde van Advocaten (C-309/99) we find that market distortions may be justified with legitimate objectives in cases of public or semi-public professional associations that unite all professionals exercising regulated professions. Hence easy access to collective bargaining would not be necessary at the same level and under unified conditions as compared to solo self-employed providing their own labour through digital labour platforms.



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24	In your view, should the collective negotiations towards companies to which or through which they sell their products by solo self-employed producing their own handmade goods (i.e. artisans) be excluded from the application of EU competition law?	N/A
25	Please explain in which circumstances.	N/A
26	Please explain why.	N/A
27	In your view, would collective bargaining for solo self-employed increase their power to negotiate with companies their payment and other working conditions?	Yes
28	Could you please explain why?	Collective bargaining entitlement would include industrial action option which might stop the service in case of industrial action.
29	In your view, would the following categories of solo self-employed benefit if they were to be covered by an EU initiative ensuring that EU competition law does not stand in the way of collective bargaining by solo self-employed: Solo self-employed providing their own labour through digital labour platforms	Yes
30	In your view, would the following categories of solo self-employed benefit if they were to be covered by an EU initiative ensuring that EU competition law does not stand in the way of collective bargaining by solo self-employed: Solo self-employed providing their own labour through digital labour platforms and other solo self-employed in the offline economy, insofar as this concerns professional customers of a minimum size	No
31	In your view, would the following categories of solo self-employed benefit if they were to be covered by an EU initiative ensuring that EU competition law does not stand in the way of collective bargaining by solo self-employed: Solo self-employed providing their own labour through digital labour platforms and other solo	Yes



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	self-employed in the off-line economy, insofar as regulated and liberal professions are excluded	
32	In your view, would the following categories of solo self-employed benefit if they were to be covered by an EU initiative ensuring that EU competition law does not stand in the way of collective bargaining by solo self-employed: All solo self-employed providing their own labour through digital labour platforms or in the off-line economy	Yes
33	Could you elaborate on specific benefits that in your view would arise for the solo self-employed?	More control over minimum payment and scheduling of payments
IV. Evaluating the potential impacts of EU action in your Member State		
34	In your view, will an initiative ensuring that EU competition law does not stand in the way of collective bargaining by solo self-employed lead to social impacts?	Yes
35	Please specify the social impacts you expect:	Improved working conditions for solo self-employed
47	Please specify the impacts on fundamental rights and freedoms you expect:	Reinforced freedom of association
48	Please indicate the importance of the overall impact (negative or positive) on fundamental rights and freedoms you expect for each of the four categories of solo self-employed that may be covered by the initiative. 1. Solo self-employed providing their own labour through digital labour platforms	Positive impact on fundamental rights and freedoms
49	Please indicate the importance of the overall impact (negative or positive) on fundamental rights and freedoms you expect for each of the four categories of solo self-employed that may be covered by the initiative. 2. Solo self-employed providing their own labour through digital labour platforms and other solo self-employed in the offline economy, insofar as this concerns professional customers of a minimum size.	Positive impact on fundamental rights and freedoms
50	Please indicate the importance of the overall impact (negative or positive) on fundamental rights and freedoms you expect for each of the four categories of solo self-employed that may be covered by the initiative. 3. Solo self-employed	Positive impact on fundamental rights and freedoms



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	providing their own labour through digital labour platforms and other solo self-employed in the offline economy, insofar as regulated and liberal professions are excluded	
51	Please indicate the importance of the overall impact (negative or positive) on fundamental rights and freedoms you expect for each of the four categories of solo self-employed that may be covered by the initiative. 4. All solo self-employed providing their own labour through digital labour platforms or in the offline economy	Positive impact on fundamental rights and freedoms

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Anne Värvimann
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Rando Maisvee
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