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Response by the Danish Government to the European Commission's draft for guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons

The Danish Government appreciates the opportunity to comment on the Commission's draft for guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons.

The right to collective bargaining is a fundamental labour right and a cornerstone of the Danish labour market model, where the social partners regulate remuneration and working conditions primarily through collective agreements. In this context, it is important that the competition rules does not stand in the way of ensuring fair working conditions for solo self-employed persons in a weak position. This is highly important in the context of platform economy, which affects the way people work including pay and working conditions.

Therefore, the Danish Government welcomes the Commission's efforts to provide legal certainty regarding the application of EU competition law to solo self-employed persons' collective agreements. The guidelines are highly needed and will allow Member States to identify solutions according to their national labour market models.

It is important to underline that it is crucial that the guidelines do not affect the national rules on collective agreements, including the right to negotiate, conclude and enforce collective agreements for workers or the scope/interpretation of those agreements, which exclusively is considered national competence.

Additionally, the Danish Government acknowledges that competition rules constitute a cornerstone of the Single Market ensuring that undertakings compete by delivering innovative products and services of high quality at competitive prices. Therefore, the exemptions to the competition rules must not lead to harmful cartel activities to the detriment of competition and consumers.

Below, please find our specific comments, which is suggestions on how the guidelines can be clearer in terms of its scope and application:

- **Legal status of the guidelines**

Since the Commission's guidelines will not be binding for national competition authorities/courts or the European Court of Justice. The Danish Government encourages the Commission to make this point clear in order to provide as much clarity and guidance as possible.

- **Correlation to the Platform Directive**

The guidelines and the Commission's proposal for a Directive on improving working conditions in platform work are closely connected as a set of measures with the aim of improving the working conditions in the platform economy and to support the sustainable growth of digital labour platforms in the EU. The Danish Government encourages the Commission to elaborate on the correlation between the guidelines and the Directive, e.g. on definitions and scope.

- **Competence of the Member States and the national labour market models:**

The Danish Government appreciate that the role and competence of the Member States are maintained. However, in order to avoid any misunderstandings, we encourage the Commission to clarify that the guidelines do not affect the national rules on collective agreements, including the right to negotiate, conclude and enforce collective agreements for workers or the scope/interpretation of those agreements, which exclusively is considered national competence. Further, it should be clear in para. 36 that the Commission will not intervene against collective agreements involving categories of solo self-employed persons concluded pursuant to national and EU legislation.

- **The definition of "working conditions" (para. 16):**

The Danish Government notes that the list of working conditions mentioned is not exhaustive. We support such an open-ended definition but suggest that the Commission includes a description of the criteria for assessing what is seen as "working conditions" which the solo self-employed persons may negotiate collectively.

- **The definition of "economically dependent solo self-employed persons" (para. 25):**

The Danish Government encourages the Commission to consider whether the 50 % criterion covers solo self-employed which actually is in a weak position. It is important that the exception does not apply to solo self-employed who are not considered to be in a weak position such as lawyers and accountants. The Danish Government encourages the Commission to consider to assess a situation of economic dependence based on criteria ensuring this.

- **The definition of "digital labour platforms" (para. 30):**

In the purpose of legal certainty, it should be clearer demarcation of the term "digital labour platforms". The Danish Government encourages the

Commission to elaborate on what constitutes “organisation of work”, including when it is “a necessary and essential component”. This could be done by giving examples and should be in accordance with the definitions of the Directive and other EU legal acts on this subject.

- **The definition of “counterparties of a certain economic strength” (para. 35):** In order to ensure that consumers continue to benefit from innovative products and competitive prices, the guidelines should justify the threshold and its implications. This will make it clear why solo self-employed persons who are not in a situation comparable to that of workers would need to be able to negotiate collectively. We acknowledge the effort to protect also a possible weak bargaining position on the counterparty side. However, from a competition perspective example 6 of the guidelines, implies a paradox where coordination on the counterparty side (and between possibly competing companies) will not merit intervention by the Commission whereas the same example without coordination could.