



Guidelines on collective agreements by solo self-employed persons

**Mutuus Final Conference on Social Protection
for Professional Self-Employed – 28.03.2023**

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The problem we aim to tackle

- Significant self-employment in the EU and rise of the platform economy: greater flexibility but also **difficult working conditions** for some people.

A policy package from the Commission:

Guidelines on collective agreements
by solo self-employed persons
(SSEs)

Proposal for the Platform Work
Directive

- **Legal uncertainty** on whether SSEs can negotiate/conclude collective agreements improving their working conditions.
- The Guidelines clarify in which instances **EU competition law will not stand in their way** to do so.

Legal context

Genuine **self-employed persons** are, in principle, **undertakings** under Article 101 TFEU.

C-67/96 Albany:

Collective bargaining agreements between **employers and workers** fall outside the scope of Article 101(1).

C-413/13 FNV Kunsten:

Extended *Albany* to cover collective agreements of “**false self-employed**” persons, on a “case-by-case” assessment.



The Guidelines are about EU competition law only

The Guidelines **do not**:



Interfere with Member States' prerogatives in social policy or the autonomy of social partners



Change the definition of “worker” or “self-employed person”



Impede someone to seek re-qualification of employment status



Oblige the parties to engage in collective negotiations (collective agreements are voluntary)



Collective agreements by SSEs, not covered by these Guidelines, do not automatically infringe Article 101 TFEU but should be assessed on a case by case basis

Persons covered



Solo self-employed people (SSEs)

- no employment relationship
- no employees

Relying **primarily on their own personal labour** for the provision of services



Counterparties

- undertakings to which SSEs provide their services

Types of agreements covered

Collective agreements

- Negotiated and concluded **collectively** between SSEs and counterparties;
- Concerning the **working conditions of the SSEs**;
- Stemming from **any form of collective negotiations**.

“Opt-in”

- SSEs wishing to be covered by an **existing** collective agreement

Pre-agreements on negotiation goals

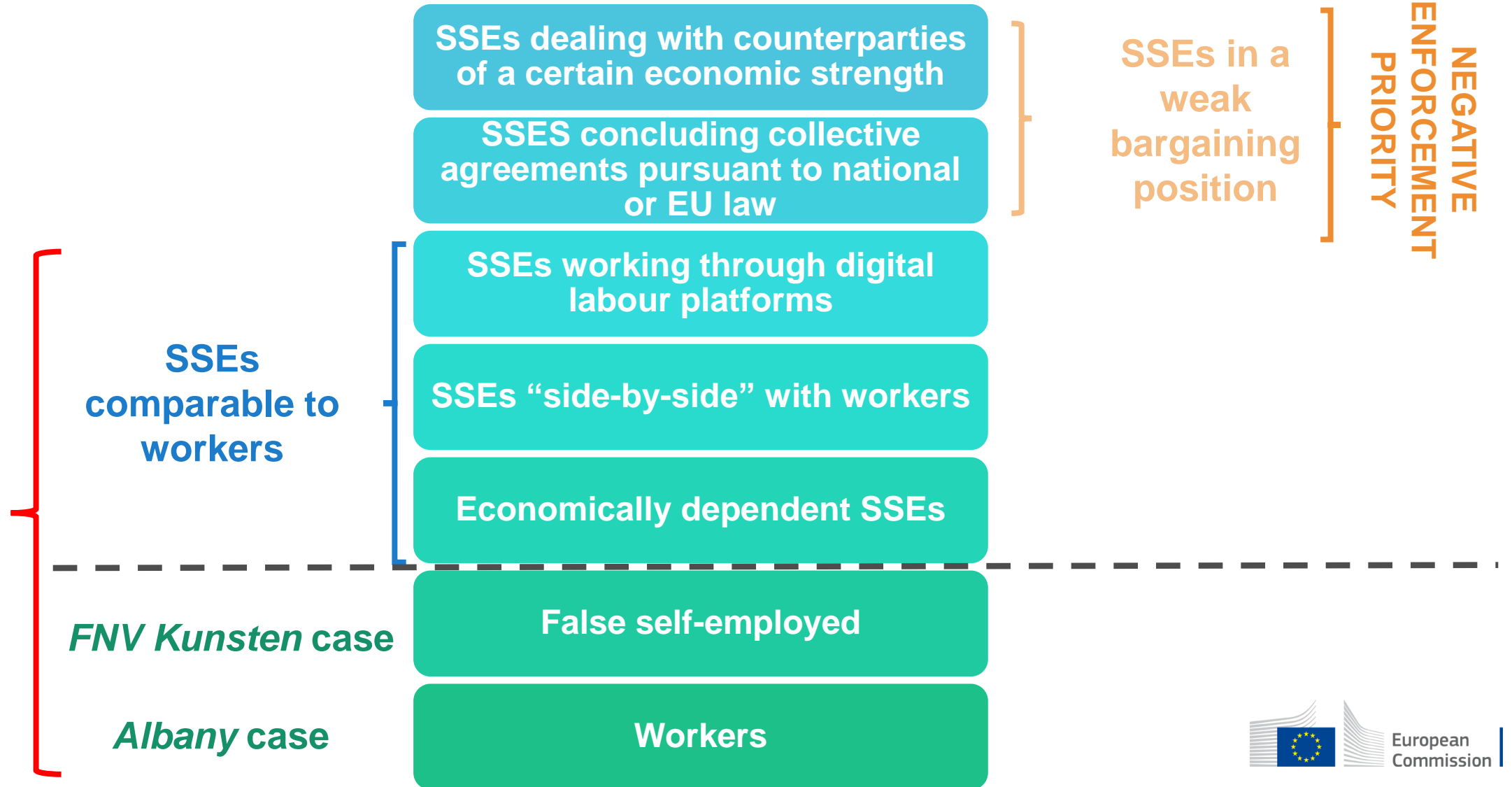
- If **necessary and proportionate** for the negotiation / conclusion of a collective agreement

**NOT
COVERED**

- **One-sided actions** and **cartels** between parties on the same side
- Agreements on the terms of services (e.g. price) **offered to consumers**
- Agreements **limiting the freedom of employers** to hire (e.g. no-poach agreements)

The mechanism of the Guidelines

OUTSIDE ARTICLE 101 TFEU



Collective agreements falling outside Art. 101 TFEU



Economically dependent SSEs

- provide their services **exclusively or predominantly** to one counterparty
- economic dependence: earning **at least 50 % of income** from a single counterparty



SSEs “side-by-side” with workers

- perform the **same or similar tasks** “side-by-side” with workers for the same counterparty



SSEs working through “digital labour platforms” (DLPs)

- Comparable to workers in light of recent **case-law and legislative developments** at national level.
- **DLPs**: platforms **organizing the work performed by individuals** (same definition as in the proposal for the Platform Work Directive)

Non-intervention from the Commission



Collective agreements with **counterparties of a certain economic strength**

- **Presumption** of imbalance in bargaining power when counterparty/-ies:
 - represent(s) the **whole sector or industry**; or
 - is / are **bigger than a microenterprise**.
- Other instances depending on the **individual circumstances**.



Collective agreements **pursuant to national or EU legislation**

- **National laws that:**
 - **either** explicitly grant to SSEs the **right to collective bargaining**; or
 - **exempt from national competition law** collective agreements of certain professions.
- **Copyright Directive (EU law):** SSEs authors and performers to achieve **fair remuneration** through collective agreements.

Thank you !



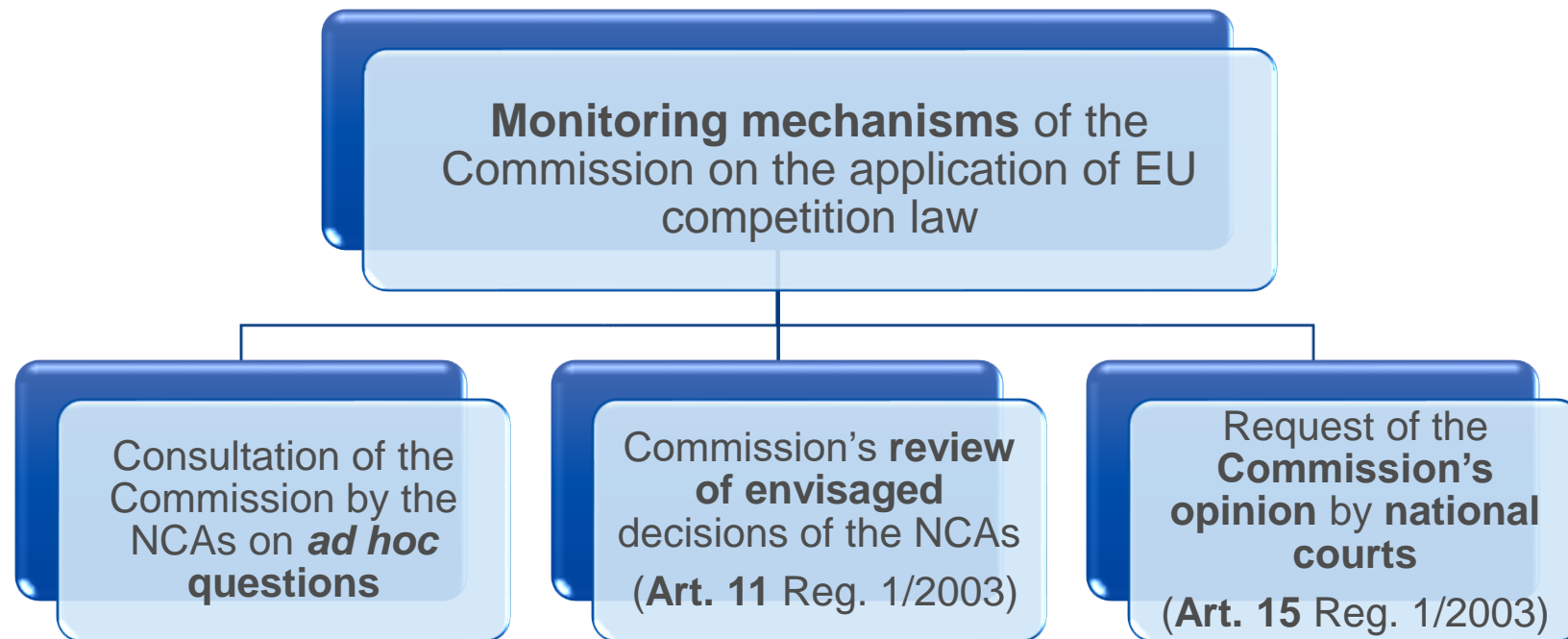
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Application and Monitoring of the Guidelines

- Guidelines in force as of 29 September 2022 and **binding for the Commission**.
- **Influence of the Guidelines** on enforcement by National Competition Authorities (NCAs) and courts.



“Better working conditions” in the spotlight

Guidance and advocacy by other regulators

	<p>Dutch agency publishes guidelines on independents' collective bargaining</p> <p>07 February 2023 (ACM's 2019 Guidelines revision)</p>
	<p>October 7, 2022</p> <p>FTC Issues Policy Statement on Gig Work</p>
	<p>29 August 2022</p> <p>Press Release: Competition Commission advises on employers' joint negotiations with employee bodies on employment matters</p>
	<p>Comment: Classifying gig workers as independent contractors can harm competition, US DOJ says in latest labor market action</p> <p>14 Feb 2022 20:45 GMT Comment</p>

The “ripple effect” of the Guidelines

Freelance EU interpreters in Brussels set to unionise

Monday, 30 January 2023

ABVV-BTB and Uber strike historic deal for thousands of drivers

Category: news | Published: Friday, 21 October 2022 15:04 |




Union ABVV-BTB and Uber today announced a groundbreaking collaboration - a first of its kind within the EU - to improve working conditions for thousands of drivers who use the Uber app in Belgium.