

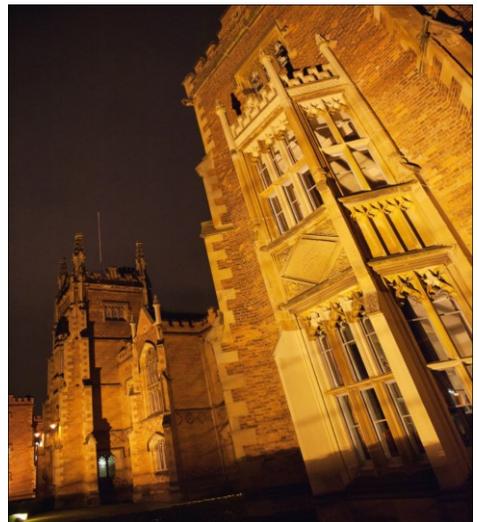
Collective bargaining by own account workers – limitations by and opportunities under EU law and policy

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OVERVIEW

- Relevance collective bargaining (normative)
- EU Treaties – Barriers
 - Competition Law
 - Economic Freedoms
- EU Treaties - Opportunities
 - Enhanced relevance of CFREU
 - Re-interpretation of competition law and economic freedoms
- EU legislation – opportunities & barriers (e.g. Dir 2019/70 – copy rights and related rights in Digital Single Market)



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Relevance of collective bargaining

- Own-account workers have nothing to market than their own labour, resembling workers of an early industrial age
 - Combining forces necessary to avert drive into ruinous underbidding or outperforming cycles. Early anti-trade union legislation (Loi de Chapelier, British Combination Act) arguably first emanation of bans on cartels....
- Collective bargaining as opportunity of self-determination and active participation in times when computerised evaluation and grading practices require restoring dignity
 - Weakness of trade union powers suggest that other regulation needed
 - Collective bargaining may use early forms, e.g. ring agreements, branding exploitative practices (on both see ILO 2018), mutualisation (social security) as well as collective action and potentially agreements on working conditions



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EU TREATIES – BARRIERS

Competition Law

- Article 101 TFEU: agreements on wages and working conditions may be classed as cartels
 - ECJ FNV KIEM C-413/13
- Article 102 TFEU: barriers for mutualisation (e.g. creating health care funds or basic protection from unemployment), especially if involving employers (customers)
 - AGR Prevoyance C-437/09

Economic Freedoms

- collective action of own-account workers with cross-border effect has been classed as violation
 - COM v France C-265/95 (1997)
- Court might not recognise any protection by Art 28 CFREU (as in Laval et al)
- Collectively agreed social security has been challenged under Article 49 TFEU
 - ECJ UNIS C-25/14 and C-26/14



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EU TREATIES – OPPORTUNITIES

CFREU

- Increasingly used to inform EU law overall
- Here: Articles 12, 28 on collective bargaining, 34 and 31 on social security and fair working conditions

Economic Freedoms

- Utilise public interest justification (while supporting wider notion of workers for purposes of Article 12, 28 CFREU - in line with ILO CEACR “case law”)

Competition Law (1)

- Notion of workers to include economic dependence
- Bargaining in favour of potentially competing own-account workers
- Utilise ancillary restraints

Competition Law (2)

- Maximise EU Commission competences as EU Competition authority (guidelines, regulations)



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Notion of workers

- Build on FNV KIEM, which introduced an economic notions of workers for competition law
 - Economic dependence on principal due to operating as auxiliary (para 33 FNV KIEM)
 - Reminiscent of cases on agents (Suiker Unie, 40 et al/73) and petrol stations (CEEES, C-217/05)
- New proposal
 - Avoid penalising own account worker for employers’ endeavour to shift the commercial risk onto own-account workers while defining all the parameters of competition
 - Take that the shifting of risk as indicator of economic dependency.

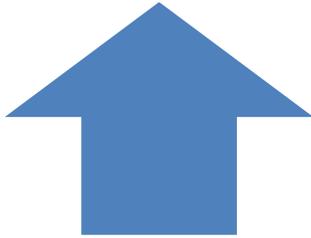


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EU legislation –opportunities & barriers



Directive 2019/790 recognises collective bargaining for content producers, who are typically own account workers while there are caveats in relation to EU law compliance, implementation offers opportunities



Limited legislative competences for collective action or wage setting



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