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# The New Working (Poor) Class. Self-Employment and In-Work Poverty in the EU: a Supranational Regulatory Strategy

Veronica Papa\*

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## Abstract

The paper aims to discuss the intersections between self-employment and in-work poverty in the EU. In the first part of the article, after an analysis of the polysemic concept of self-employment, the Author examines the self-employment/poor work dyad in the European Union. The second part of the paper deals with the possible answers to in-work-poverty in terms of policies and regulatory options at EU level, considered in the framework of the overall aim of fighting poverty and social exclusion in the European Union.

**Keyword:** In-work poverty; Self-employment; Minimum wage; Minimum income; EU anti-poverty policies.

## 1. Premise: the dyad self-employment/in-work poverty in the EU.

In-work poverty is a hybrid notion that require, for its demarcation, a previous definition of the concepts of worker and poverty.

According to Eurostat, individuals (workers) are at risk of in-work poverty (later on, also *IWP*) when they work for over half of the year and their equivalised yearly disposable household income is below 60% of the national household median income level.<sup>1</sup> So, this is

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\* Veronica Papa, Associate Professor in Labour Law, University of Catania. This article has been submitted to a double-blind peer review process.

<sup>1</sup> According to Eurostat [*EU statistics on income and living conditions (EU-SILC) methodology - in-work poverty*, 2021], the in-work at-risk-of-poverty “refers to the percentage of persons in the total population who declared to be at work (employed or self-employed) who are at-risk-of-poverty (i.e. with an equivalised disposable income

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a notion of in-work poverty deduced from the household income, in which a low-wage worker might not be automatically attracted and in which, instead, a worker living in a low-work-intensity household might more easily be included (in addition, obviously, to those affected by a combination of the two drivers of in-work poverty).<sup>2</sup>

Based on these conventional parameters, about 9% of the European workers belong to a household at risk of (relative) poverty, with a peculiarly high incidence of in-work poverty on self-employed workers. For the latter, the exposure to the in-work poverty risk is more than doubled with respect to full-time employees (22%).<sup>3</sup>

The IWP risk for self-employed was naturally destined to expand, as it has already happened, in connection with the health, economic and employment crisis triggered by the Covid-19 pandemic. In fact, despite the almost generalised negative effects on the labour market, the adverse consequences of the pandemic have disproportionately affected those engaged in precarious working relationships.<sup>4</sup>

The European Commission itself showed to be aware of the asymmetrical impact of the Covid-19 crisis, observing that “the crisis is a test for our social protection systems and necessary investments need to fill the gaps in coverage that have become apparent in the crisis [...] for those self-employed”.<sup>5</sup> Similarly, in response to the economic shocks caused by the 2020 lockdown, most European governments adopted forms of income support for self-employed workers – especially in the form of *una tantum* monetary supports - and the extension of some social security protections. This might be seen as a partial acknowledgement of the socio-economic weakness of large segments of self-employment, in particular, of the so-called *solo self-employed*.<sup>6</sup>

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below the risk-of-poverty threshold, which is set at 60 % of the national median equivalised disposable income (after social transfers)”. Eurofound, *In-work poverty in the EU*, Luxembourg, 2017, 5. Looking at this definition it can be easily argued that “the most precarious workers, those with volatile and marginal labour market attachment during the income reference period, are not included”: Horemans J., Marx I., *Poverty and Material Deprivation among the Self-Employed in Europe: An Exploration of a Relatively Uncharted Landscape*, in *Iza Discussion Paper*, 2017, 11007, 11.

<sup>2</sup> For a more precise semantic and conceptual demarcation between notions that can be only partially overlapped, it is therefore necessary to distinguish between *working poor* and *low-wage workers*: Lohmann H., Marx I. (eds.), *Handbook on In-Work Poverty*, Edward Elgar Publishing, 2018, 8.

<sup>3</sup> See Eurostat, *People at risk of poverty or social exclusion by most frequent activity status (population aged 18 and over)*, 2020.

<sup>4</sup> Eurofound, *Economic downturns expose the vulnerability of a growing number of precarious workers*, 21 April 2020; EAPN, *The impact of Covid-19 on people experiencing poverty and vulnerability. Rebuilding Europe with a social heart*, EAPN Report, July, 2020.

<sup>5</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, *Europe's moment: Repair and Prepare for the Next Generation*, COM(2020) 456 final. Significantly, in the legislative proposal for the SURE regulation, the Commission referred explicitly to the necessity of supporting the “increased financial burden of Member States for short-time work schemes and similar measures that help protect jobs and thus employees and self-employed against the risks of unemployment and loss of income” (see Proposal for a Council Regulation on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak, COM/2020/139 final). In addition to that, it is possible to detect in the text of the SURE Regulation multiple citations to the need of providing for “short-time work schemes” (for the employees) or “similar measures” (for the self-employed), thus reducing “the incidence of unemployment and loss of income” [see Article 1, par. 2, of the Council Regulation (EU) 2020/672 of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak].

<sup>6</sup> However, given the un-systematic nature of those emergency measures, it is too soon to predict a progressive extension of social security and welfare protections to the self-employed. For a comparative analysis of the

It is from this viewpoint that – even if bearing in mind the polysemic nature of self-employment - the dyad self-employed/in-work poverty in the EU will be analysed in the first part of this article (§ 2). The second part of the paper will focus on the viable regulatory options to combating in-work poverty for the self-employed, in the wider framework of EU anti-poverty policies (§§ 3-4). In this latter regard and given the potentially very broad extension of this topic, the attention will be focused on just two of the many possible anti-poverty tools – currently widely discussed at European level - adequate minimum wages (§ 4) and guaranteed minimum incomes (§ 4.1).

## 2. The multidimensional notion of self-employment. An overview.

As numerous empirical studies pointed out, self-employed are highly exposed to the risk of in-work poverty.<sup>7</sup> From these data arise the necessity of a shift in the investigation of self-employment, that may be analysed, in this regard, as the ultimate form of flexibility (or better, precarity) of employment relationships.<sup>8</sup> This perspective, however, cannot be referred to self-employment as a whole and needs to be precisely demarcated.

Even considering the complex and heterogeneous socio-economic composition of self-employment as a category, a possible basic taxonomy of self-employed workers may be aggregated – according to a Eurofound report – around five *clusters*,<sup>9</sup> including, respectively: self-employed with employees, “stable” self-employed without employees, small traders and farmers, vulnerable and concealed self-employed.

According to this categorisation, the first two clusters – employers and stable own-account workers – comprise the majority of self-employment and are mainly self-employed “out of opportunity”, enjoying economic independence and autonomy in their work.<sup>10</sup>

The last two groups – vulnerable and concealed self-employed – include at least a quarter of self-employment and are mostly characterised by economic dependence, low levels of

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emergency measures adopted by European governments: Battista L., *Covid-19 and Self-employment: emergency measures and unsolved challenges*, in *Italian Labour Law e-Journal*, 1, 2020, 85; Mangan D., Gramano E., Kullmann M., *An unprecedented social solidarity stress test*, in *European Labour Law Journal*, 3, 2020.

<sup>7</sup> It is true, from one side, that the reliability of income data for the self-employed is somewhat debated, given “the potential problem of under-reporting of income” [Bardone L., Guio A. C., *In-work poverty: New commonly agreed indicators at the EU level* (Statistics in Focus, Population and Social Conditions No. 5/ 2005. Population and Living Conditions), Office for Official Publications of the European Communities/Eurostat, Luxembourg, 2005, 3] and, from the other, that the in-work poverty rate of the self-employed may not be “a robust measure of their actual living conditions for reasons related to the difficulty of assessing their income accurately”. For this reason, it was observed that the IWP indicator for self-employed should be “complemented with other indicators, such as material and social deprivation” (see Peña-Casas R., Ghailani D., Spasova S., Vanhercke B., *In-work poverty in Europe. A study of national policies*, European Social Policy Network - ESPN, Brussels, 2019).

<sup>8</sup> Conen W., Schippers J. (eds.), *Self-Employment as Precarious Work. A European Perspective*, Edward Elgar Publishing, Cheltenham, 2019.

<sup>9</sup> Eurofound, *Exploring self-employment in the European Union*, Luxembourg, 2017.

<sup>10</sup> Unfortunately, this statement might deserve to be reconsidered in the light of the destructive impact of the pandemic on this kind of workers, as already demonstrated by numerous empirical studies: Eurofound, *Living, working and COVID-19, COVID-19 series*, Luxembourg, 2020.

autonomy and financial vulnerability.<sup>11</sup> Economically dependent workers and the bogus self-employed are likely to be included in these two groups. Clearly, within this taxonomy, the rising working poor class of (mostly false) autonomous workers - i.e. riders and, broadly, platform workers - will be included alternatively, or maybe transversely, in one of these latter groups of “weak” self-employed.

If, in the last few years, the overall percentage of self-employed in the European union remained stable – around 15% of the workforce<sup>12</sup> – the internal composition of this heterogeneous group has shifted over the time. On the one hand, the relative weight of the self-employed without employees has gradually increased<sup>13</sup> and, on the other, that of some traditional professions has decreased; conversely, there has been an increase in the share of self-employed in the service sector.<sup>14</sup>

Another trait of precarization of self-employment concerns the dilatation of the share of involuntary self-employed – about 20% of the autonomous workforce<sup>15</sup> – that, far from deliberately taking the risks of under-utilization by their clients, are induced to accept a, more or less genuine, classification of their working contracts as self-employment.<sup>16</sup>

So, it is possible to detect a series of trends converging towards a line of investigation grounded on the multiple grades of precariousness to which a great deal of the “new generation of self-employed” is exposed. This is particularly relevant with regard to the risks of discontinuity and income-poverty (and, in a future projection, pension-poverty) as well as, more generally, to limited access to traditional labour protections.<sup>17</sup>

Considering that the risk of IWP affects not only the false self-employed but also the genuine ones - such as freelancers in a weak position on the labour market - the remedies to in-work poverty for both kinds of workers need to take into account the diversity between

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<sup>11</sup> In particular, the difference between vulnerable and concealed autonomous workers, although destined to overlapping in practice, would lie in the economic vulnerability of the former ones, characterised by a very small number of clients to rely on, and in the lack of work autonomy of the second ones, whose working relationships recall the typical traits of subordinate work.

<sup>12</sup> Eurofound, *Exploring self-employment in the European Union*, nt. (9), 7.

<sup>13</sup> Conen W., Schippers J., Schulze Buschoff K., *Self-employed without personnel between freedom and insecurity*, in *WSI Study*, 2016, 5.

<sup>14</sup> In this context and using a different taxonomy, it could be noted that the category of I-Pros (*Independent professionals*) is on the rise too. The acronym I-Pros refers itself to self-employed without personnel, mainly working in intellectual professions in the service sector and exposed to risks of income-discontinuity and low-wages. On the I-Pros, see Rapelli S., *European I-Pros: A Study*, London, 2012; Leighton P., *Future Working: The Rise of Europe's Independent Professionals*, London, 2013.

<sup>15</sup> Eurofound, nt. (12), 10. To this portion of involuntary self-employed it should be added another 16% of self-employed who “became self-employed based on their own preferences, but also because there were no other alternatives for work”.

<sup>16</sup> As a study commissioned by the European Parliament demonstrates, the likelihood of ending up in precarious working relationships is higher for those who become self-employed as a necessity: Broughton A., Green M., Rickard C., Swift S., Eichhorst W., Tobsch V., Tros F., *Precarious Employment in Europe. (Employment and Social Affairs)*, European Parliament. Directorate-General for Internal Policies, Brussels, 2016. In addition to that, different studies showed that, even if self-employment rate has not increased in the last few years, what has increased, especially after the economic crisis, is the share of self-employed without employees (most of them working part-time).

<sup>17</sup> Schippers J., Conen W., *Between freedom and insecurity: future challenges*, in Conen W., Schippers J. (eds.), nt. (8), 261 ff.

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them, differentiating tools and regulatory options for the two categories of “autonomous working poor”.

From one side, a normative strategy calibrated on the divergencies between these two hypotheses should consider the opportunity to include those in a situation of economic dependence and in a single-client relationship within the scope of minimum wage guarantees (§ 4). From the other, it would be necessary to provide, for self-employed workers with insufficient income levels, the extension of welfare safety nets and the inclusion under the protective umbrella of a guaranteed minimum income (§ 4.1).

### 3. Anti-poverty policies in the EU.

The fight against in-work poverty is a fundamental part of the broader strategy to combat poverty and social exclusion pursued by the institutions of the European Union. Although the word *poverty* is not expressly associated, in the Treaties, with the objectives of social inclusion<sup>18</sup> and the notion of IWP became part of the institutional lexicon of the EU only relatively recently, in 2003, with the introduction of the AROP (“At-Risk-of-Poverty”) index,<sup>19</sup> the institutions of the EU conducted pilot projects and programs designed to combat poverty and exclusion since the 70s, even if in absence of a legal basis on this subject.<sup>20</sup>

The situation changed with the entry into force, in 1999, of the Treaty of Amsterdam, which embedded the fight against social exclusion among the objectives of Community social policy.<sup>21</sup>

Social inclusion then became, since the adoption of the Lisbon Strategy, in 2000, a crucial objective to be pursued in the context of the open method of coordination.<sup>22</sup> At the same time, with the aim of combating social exclusion and poverty, art. 34 of the Charter of Fundamental Rights of the European Union provided – even if with a vaguely generic formulation - a right to social and housing assistance, with the purpose to “ensure a decent existence for all those who lack sufficient resources”.

However, in the two decades following the adoption of the Lisbon Strategy - which was also followed by the emphasis on poverty reduction in *Europe 2020* - and even after the

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<sup>18</sup> Apart from its citation with limited reference to relationships of the EU with third countries. See: art. 208 TFEU – where is proclaimed that the “the eradication of poverty” is the “primary objective” of Union development cooperation policy; articles 3 and 21 TEU, where the eradication of poverty and the support to sustainable development constitutes principles orienting the “external action” of the EU (art. 21) and its relationships “with the wider world” (art. 3).

<sup>19</sup> The AROP index was introduced by the Regulation (EC) No 1177/2003 of the European Parliament and of the Council of 16 June 2003 concerning Community statistics on income and living conditions (EU-SILC).

<sup>20</sup> Cf. Council Resolution of 21 January 1974 concerning a social action programme.

<sup>21</sup> In the TFEU, references to social exclusion are made by art. 153, par. 1, j, and in the social mainstreaming clause contained in art. 9 TFEU. For an analysis of the progressive rise of the issue of in-work poverty in EU policies and of the relevance, for this purpose, of the Proposal for a Directive on adequate minimum wages, Ratti L., *La proposta di direttiva sui salari minimi adeguati nella prospettiva di contrasto all'in-work poverty*, in *Diritto delle relazioni industriali*, 1, 2021, 59.

<sup>22</sup> Another piece of the European framework on the fight to poverty and social exclusion is the Commission Recommendation of 3 October 2008 on the active inclusion of people excluded from the labour market (2008/867/EC).

establishment of the Social OMC,<sup>23</sup> the role of the Union in the fight against poverty remained exclusively confined to soft governance initiatives, such as the formulation of non-binding objectives and targets and the monitoring of Member States' progress in this field.

It is not like saying that Social OMC, first, and the European semester, then, were completely ineffective in the field of contrasting poverty and social exclusion.<sup>24</sup> But, if the inadequacy of mere peer pressure strategies might have been predictable, *ex-ante*, twenty years of (excessively) soft approaches made this opinion scarcely disputable, *ex-post*.

### 3.1. In-work poverty and the EPSR.

More recently, the issue of in-work poverty has been specifically addressed within the European Pillar of Social Rights.<sup>25</sup>

In this document – even if the context of a soft law text<sup>26</sup> – for the first time, is explicitly stated the necessity to guarantee the right to “fair wages that provide for a decent standard of living”; to prevent “in-work poverty”<sup>27</sup> and, moreover, to provide “the right to adequate social protection”, “regardless of the type and duration” of the employment relationship for workers, and, “under comparable conditions” for the self-employed, too.<sup>28</sup>

Besides, Principle 14 (*Minimum income*) provides, for those “lacking sufficient resources”, “the right to adequate minimum income benefits ensuring a life in dignity at all stages of life”, stating, at the same time, for those who can work, that “minimum income benefits should be combined with incentives to (re)integrate into the labour market”.

Although contained in a mere solemn proclamation, without binding effects, the principles stated in the Social Pillar brought a sort of a new impetus for a political commitment of European institutions to the aim of (re)launching legislative initiatives in the Social Law field.<sup>29</sup>

Anyway, the perception of weakness regarding the European strategy to combat poverty – and IWP, in particular – will not be destined to change until, as was requested even by institutional actors, the EPSR will not be implemented via binding legal documents.<sup>30</sup>

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<sup>23</sup> The Social OMC was instituted by the Communication of the Commission, COM (2005) 706 of 22 December 2005, *Working together, working better. A new framework for the open coordination of social protection and inclusion policies in the European Union*.

<sup>24</sup> On this theme: Wang J., van Vliet O., Goudswaard K., *Minimum income protection and EU coordination*, in *European Journal of Social Security*, 3, 2018, 253.

<sup>25</sup> See European Pillar of Social Rights, solemnly proclaimed by the European Parliament, the Council and the Commission at the Social Summit in Gothenburg in November 2017.

<sup>26</sup> For a dialogue on the prospects of implementation of the EPSR, see Ferrera M. (ed.), *Towards a European Social Union. The European Pillar of Social Rights and the Roadmap for a fully-fledged Social Union. A Forum debate*, Turin, Centro di Ricerca e Documentazione Luigi Einaudi, 2019.

<sup>27</sup> Principle 6 (*Wages*) of the Social Pillar.

<sup>28</sup> Principle 12 (*Social protection*) of the Social Pillar.

<sup>29</sup> The “social activism” of the Von der Leyen Commission could be almost defined as unprecedented. Among many other initiatives in the social law field, it is sufficient to recall, with this regard, the newly issued Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work, COM(2021) 762 final.

<sup>30</sup> See the European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights, where – in the paragraph devoted to *Updating existing labour and social standards* – the Parliament invited “social partners and

A light, at the end of the tunnel of the ineffectiveness of EU anti-poverty policies, started to shine with the initiatives carried out by the Commission<sup>31</sup> and especially with the proposal for a directive on adequate minimum wages, which cites, among its “sources of inspiration” the anti-poverty principles of the Social Pillar.<sup>32</sup>

If that is true, it has to be underlined that on the issue of combating poverty through the introduction of minimum income schemes, the current approach of the Commission, remarked with the Action Plan, is still focused on the adoption of non-binding measures and, notably, of a Proposal for a Council Recommendation on minimum income to effectively support and complement the policies of Member States (to be issued in 2022).

The persistent adoption of a soft law strategy, if comprehensible in the light of the political obstacles to hard law initiatives,<sup>33</sup> is nevertheless questionable for its lack of effectiveness, reminding - as Olivier De Schutter recently did - that “if poverty could be eliminated with good intentions, the EU would have long eradicated it”.<sup>34</sup>

#### 4. Minimum wage and self-employment: revising the scope of Labour law?

“When set at adequate levels, minimum wage protection ensures a decent living for workers, helps sustain domestic demand, strengthens incentives to work, and reduces in-work poverty and inequality at the lower end of the wage distribution”.<sup>35</sup>

In this part of the paper, the connection between in-work poverty and self-employment will be addressed analysing potentialities and constraints of viable EU policies on minimum wage.

Leaving aside here a thorough study of contents and prospects of implementation of the proposed directive on adequate minimum wages,<sup>36</sup> it is necessary to deal with the opportunity

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the Commission to work together to present a proposal for a framework directive on decent working conditions in all forms of employment, extending existing minimum standards to new kinds of employment relationships”. For a detailed analysis of the possibilities for implementing the principles of the Social Pillar, with an indication of the legal bases that can be used, see the study of Lörcher K., Schömann I., *The European pillar of social rights: critical legal analysis and proposals*, in *ETUI Report*, 2016, n. 139.

<sup>31</sup> The reference is made to the *Action Plan to implement the European Pillar of Social Rights*: European Commission, *European Pillar of social rights Action Plan*, 4 March 2021, <https://op.europa.eu/webpub/empl/european-pillar-of-social-rights/en/>; European Commission, *The European Pillar of Social Rights: turning principles into actions*, Brussels, 4 March 2021, Press release. In this perspective, see also Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A strong social Europe for just transitions*, COM(2020) 14 final, 14 January 2020.

<sup>32</sup> See in particular the citations of Principle 6 of EPSR: Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union, Brussels, 28 October 2020, COM(2020) 682 final.

<sup>33</sup> Not to mention the issues related to the legal base, on which see § 4.1.

<sup>34</sup> Statement by Professor Olivier De Schutter, United Nations Special Rapporteur on extreme poverty and human rights, on his visit to the European Union (25 November 2020 to 29 January 2021), Brussels, 29 January 2021.

<sup>35</sup> COM(2020) 682 final.

<sup>36</sup> Apart from the expected negative reaction of Business Europe (Business Europe, BusinessEurope position paper on the proposal for an EU directive on fair minimum wages: [https://www.busseurope.eu/sites/buseur/files/media/position\\_papers/social/2020-12-04\\_pp\\_minimum\\_wages.pdf](https://www.busseurope.eu/sites/buseur/files/media/position_papers/social/2020-12-04_pp_minimum_wages.pdf)), the Directive proposal is also strongly opposed by Nordic trade unions, fearing

that the proposed legislation includes, among its beneficiaries, those self-employed who are in a situation of economic dependence and/or who work, mainly or exclusively, for a specific client.<sup>37</sup>

Should the Directive be approved,<sup>38</sup> its potential of protection towards self-employed workers will mainly lie in a “purposive” extension, according to the canons of teleological interpretation<sup>39</sup> and of the *effect utile*, of the notion of worker so far elaborated by the Court of Justice.<sup>40</sup> A teleological interpretation of the guarantees of wage adequacy should bring with it, as a matter of fact, the necessity to extend any regulatory provision on this theme to economically dependent as well as, obviously, to false self-employed workers. This is particularly true considering the explicit anti-poverty inspiration conferred to the Proposal, which repeatedly refers to the anti-poverty principles of the EPSR and, in its Explanatory memorandum, to the need of “improving working conditions and reducing in-work poverty by establishing a framework for adequate minimum wage levels”.<sup>41</sup>

From this point of observation, an analysis of the proposed scope of the Directive shows lights and shadows. With regards to the “lights”, it should be observed that the list of non-standard workers cited in the Preamble of the Proposal – recalling the definition contained in the Directive 1152/2019<sup>42</sup> – may allow the inclusion within the scope of a relevant portion

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that it will undermine their social models. See S. Engblom, *EU Minimum Wage: Unlawful, Unfit for Purpose and Utmost Complicated*, in <https://www.tco.se/tco-bloggar/bloggare/samuel-engblom/eu-minimum-wage-unlawful-unfit-for-purpose-and-utmost-complicated/>.

<sup>37</sup> According to the OECD Employment Outlook 2014, dependent self-employed workers may be defined as follows: “own-account self-employed – i.e. independent contractors without employees who either autonomously produce and sell goods or engage with their clients in contracts for services, regulated by commercial law – whose conditions of work are nonetheless similar to those of employees, in the sense that they work mainly or exclusively for a specific client-firm [...] with limited autonomy and often closely integrated into its organizational structure. Even though their degree of subordination is similar to that of an employee, they are usually not protected by employment protection rules because these rules do not apply to commercial contracts. In addition, they typically have the same fiscal and social protection regimes as for the other self-employed, which is typically less burdensome for their employers”.

<sup>38</sup> Currently both the European Parliament and the Council approved the mandate for negotiations of the Proposal. On November 25th, the European Parliament plenary confirmed the mandate to enter into “trilogue” negotiations with the Commission and the Council, on the basis of the Report of the European Parliament’s Employment and Social Affairs Committee (EMPL) on the European Commission’s proposal for a directive on adequate minimum wages (Committee on Employment and Social Affairs, Report on the proposal for a directive of the European Parliament and of the Council on the adequate minimum wages in the European Union, (COM(2020)0682 – C9-0337/2020 – 2020/0310, 18 November 2021). On December 6th the Council agreed its position on the Commission proposal (Council agrees on mandate for negotiations on a EU framework on adequate minimum wages, Council of the EU Press release, 6 December 2021).

<sup>39</sup> On the notion of worker and its link with the scope of EU Labour law, Szpejna M., Boudalaoui-Buresi Z., *The scope of EU labour law*, in Publication for the committee on Employment and Social Affairs, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.

<sup>40</sup> Cf.: CJEU, Case C-66/85, Deborah Lawrie-Blum v Land Baden-Württemberg, ECLI:EU:C:1986:284; CJEU, Case C-428/09, Union Syndicale Solidaires Isère v Premier ministre and Others, ECLI:EU:C:2010:612; CJEU, Case C-413/13, FNV Kunsten Informatie en Media v Staat der Nederlanden, ECLI:EU:C:2014:2411.

<sup>41</sup> This might be read in the *Explanatory memorandum of the proposal*, 4. The aspects related to in-work poverty are clearly underlined in the Commission staff working document: Commission Staff Working Document, *Analytical document Accompanying the document Consultation document Second phase consultation of Social Partners under 154 TFEU on a possible action addressing the challenges related to fair minimum wages*, SWD(2020) 105 final 3 June 2020.

<sup>42</sup> Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, recital 8.



of self-employed, that could be defined as “not independent”.<sup>43</sup> According to paragraph 17 of the Preamble, a comprehensive list of workers potentially involved in fake self-employed job relations and generally excluded from the scope of wage guarantee measures - such as “domestic workers, on-demand workers, intermittent workers, voucher based-workers, bogus self-employed,<sup>44</sup> platform workers, trainees and apprentices” - should “fall within the scope” of the proposed Directive”. As for the shadows,<sup>45</sup> it has to be remarked that this “inclusive” approach is immediately withdrawn or, at least, weakened by the subsequent clarification according to which the salary protection of non-standard workers should be granted with limited reference to the cases in which they fulfil the “criteria established by the Court of Justice of the European Union for determining the status of a worker”.<sup>46</sup> Even sharper, in the perspective of the exclusion of “authentic” self-employment relationships, is the next passage of par. 17 of the Preamble, in which is clearly stated that “genuinely self-employed persons do not fall within the scope of this Directive since they do not fulfil those criteria”. What is clear, reading this part of the Proposal, is that the outright exclusion of genuinely self-employed persons from the Scope continues to push the economically dependent self-employed within the notion of genuine self-employed and outside of the protective umbrella of minimum wages.<sup>47</sup> This exclusion seems to be in stark contrast with the anti-poverty purposes allegedly pursued by the Proposal, which should include whoever doesn’t have control over the price of business transactions (i.e. on the salary), regardless of the formal classification of the contract.<sup>48</sup>

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<sup>43</sup> After all, similar views have already been expressed by the CJEU in *FNV Kunsten* [CJEU, Case C-413/13, nt. (40)], where the Court stated “it must be recalled that, according to settled case-law, on the one hand, a service provider can lose his status of an independent trader, and hence of an undertaking, if he does not determine independently his own conduct on the market, but is entirely dependent on his principal, because he does not bear any of the financial or commercial risks arising out of the latter’s activity and operates as an auxiliary within the principal’s undertaking”. Similarly, in *Allonby* (CJEU, Case C- 256/01, *Debra Allonby v Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional and Secretary of State for Education and Employment*, ECLI:EU:C:2004:18), the Court declared “the formal classification of a self-employed person under national law does not exclude the possibility that a person must be classified as a worker within the meaning of Article 141(1) EC if his independence is merely notional, thereby disguising an employment relationship within the meaning of that article. In the case of teachers who are, *vis-à-vis* an intermediary undertaking, under an obligation to undertake an assignment at a college, it is necessary in particular to consider the extent of any limitation on their freedom to choose their timetable, and the place and content of their work. The fact that no obligation is imposed on them to accept an assignment is of no consequence in that context”.

<sup>44</sup> With specific regard to false self-employment, it is possible to read that “bogus self-employment occurs when a person is declared to be self-employed while fulfilling the conditions characteristic of an employment relationship, in order to avoid certain legal or fiscal obligations. Such persons should fall within the scope of this Directive” [COM(2020) 682 final, 19].

<sup>45</sup> About the shadows, it should be also noted, from an anti-poverty perspective, that one of the most disputable aspects of the Proposal is that it does not provide for a “threshold of decency” below which statutory minimum wages cannot fall (see the requests for improvements of the Directive formulated by ETUC: *European Trade Union Confederation. Crucial wages directive needs improvement*, Press Release, Brussels, 28 October 2020 and, more recently, Müller T., Schulten T., *More ambitious European minimum-wages directive demanded*, in Social Europe, 26 November 2021, <https://socialeurope.eu/more-ambitious-european-minimum-wages-directive-demanded>).

<sup>46</sup> COM(2020) 682 final, 12.

<sup>47</sup> And in fact in the Preamble it is also stated that “a minimum wage would not be appropriate for genuinely self-employed persons”.

<sup>48</sup> See Countouris N., De Stefano V., *The Labour Law Framework: Self-Employed and Their Right to Bargain Collectively*, in *Bulletin of comparative labour relations*, 2021, relying on the notion of “predominantly personal work” as a new conceptual tool for re-defining the scope of the fundamental right to bargain collectively.

Anyway, and beyond its intrinsic limitations,<sup>49</sup> it is the possibility of a *purposive interpretation* of the scope of labour protections<sup>50</sup> potentially arising from this proposal that deserves to be emphasized and preserved. In this direction, it will be necessary to verify if the notion of worker emerging from CJEU case law might be further extended, to go beyond the “false” self-employed, and further adapted, to some extent, to genuine but vulnerable self-employed,<sup>51</sup> following an expansive trend of labour protections’ scope already plainly admitted for other areas of European social law (namely, for anti-discrimination law).<sup>52</sup>

#### 4.1. Minimum income schemes as a last safety net for self-employed in times of crisis.

If an adequate minimum wage may be a viable option for low-wage autonomous workers in a situation of economic dependence, the mere provision of a wage floor could not cope with the issue of low work intensity, another major driver of IWP.<sup>53</sup>

Even if minimum income schemes (MIS) are addressed to poverty in general and not specifically to in-work poverty - and beyond the necessity to provide for *ad hoc* social protection measures for self-employed persons - the introduction of MIS may be necessary to complement the protection guaranteed by minimum wages and for the hypotheses in which one is not eligible for social insurance payment.

With regards to the possibility of providing forms of income integration for self-employed, as a kind of guaranteed minimum income for those below a certain threshold, it is worthwhile to recall the political evolution in the field of decent minimum incomes.

As mentioned above (§ 3.1.), the EPSR contains highly relevant declarations on issues related to low-wage and under-protected workers, even if self-employed, as, e.g., the statement about the workers’ right to “fair and equal treatment”, “regardless of the type and duration of the employment relationship”.<sup>54</sup> Even more important is the provision relating to the “right to adequate minimum income benefits”, to be combined with strategies for the (re)integration into the labour market (Principle 14 of the Social Pillar).

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<sup>49</sup> On which see Peña-Casas R., Ghailani D., *A European minimum wage framework: the solution to the ongoing increase in in-work poverty in Europe?*, in Vanhercke B., Spasova S., Fronteddu B. (eds.), *Social policy in the European Union: state of play 2020*, Brussels: ETUI and OSE, 2021, 133.

<sup>50</sup> This expression is borrowed from the book of Davidov G., *A Purposive Approach to Labour Law*, Oxford University Press, Oxford, 2016.

<sup>51</sup> Risak M., Dullinger T., *The concept of ‘worker’ in EU law: status quo and potential for change*, in ETUI Report 140, 2018.

<sup>52</sup> Barnard C., Blackham A., *Discrimination and the Self-Employed: The Scope of Protection in an Interconnected Age*, in Collins H. (ed.), *European Contract Law and the Charter of Fundamental Rights*, Intersentia, Cambridge, 2017, 197. The principles of the EPSR (especially nr. 4, 12, 14) are undoubtedly an expression of the expansive trend of the scope of Labour law; on this point, L. Ratti, *Self-employment matters – the EU’s response to the lack of social protection for independent workers*, in *European Employment Law Cases*, 3, 2020, 165.

<sup>53</sup> Eurofound, *Minimum wages in 2020: annual review, Minimum Wages in the EU series*, Publications Office of the European Union, 2020.

<sup>54</sup> Principle 5 (*Secure and adaptable employment*), where it is declared the right to “fair and equal treatment regarding working conditions, access to social protection and training”, “regardless of the type and duration of the employment relationship”. In this declaration, it might be seen the willingness to protect all forms of work and therefore also self-employment, see: Caruso B., *I diritti dei lavoratori digitali nella prospettiva del Pilastro sociale*, in WP C.S.D.L.E. “Massimo D’Antona” INT., 146/2018.

But the European framework on decent minimum incomes dates back to the 90s, with the adoption of two recommendations in 1992,<sup>55</sup> which attests the significant acknowledgement, at Union level, of the inability of economic growth to automatically produce the improvement of living and working conditions in the EU.

More explicitly, in 2010, the European Parliament, starting from the awareness of an “increasing number of working poor”, underlined “the need to tackle this new challenge by combining different instruments”, stating “that a living wage must always be above the poverty threshold, and that workers who for multiple reasons remain below the poverty threshold should receive top-ups that are unconditional and easy to take up”.<sup>56</sup>

Lately, the Parliament exhorted the Commission “to present an EU framework on minimum income”,<sup>57</sup> formulating this invitation, significantly, in the context of a Resolution “on reducing inequalities with a special focus on in-work poverty”, in which the issue of the rising number of self-employed working poor is repeatedly highlighted. However, as demonstrated by the decades passed since the Recommendations of 1992,<sup>58</sup> these indications are destined to remain in the limbo of good intentions, if not followed by binding regulatory interventions.

It is true that, until now, the idea of the lack of a supranational legislative competence on minimum income schemes prevailed; this happened mainly in connection with the absence of harmonization powers in the “specific” legal base, namely art. 153 TFEU, paragraph 1, J), expressly devoted to the “fight against social exclusion”.<sup>59</sup>

On this point, however, there is no shortage of alternative legal bases for the adoption of a legislation on guaranteed minimum income.<sup>60</sup> It is sufficient to think about the multiple legal grounds mentioned in an EESC Opinion,<sup>61</sup> in which are invoked a series of “transversal” provisions of the Treaties – such as articles 3 TEU, 9 TFEU and 151 TFEU – in combination with art. 153 and, in particular, to some of its paragraphs, regarding, respectively: c) social security and social protection of workers; h) integration of persons excluded from the labour market; j) combating of social exclusion; k) modernisation of social protection systems.

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<sup>55</sup> Council Recommendation of 24 June 1992 on common criteria concerning sufficient resources and social assistance in social protection systems (92/441/EEC); Council Recommendation of 27 July 1992 on the convergence of social protection objectives and policies (92/442/EEC).

<sup>56</sup> European Parliament resolution of 20 October 2010 on the role of minimum income in combating poverty and promoting an inclusive society in Europe, p. 26. See also European Parliament resolution of 24 October 2017 on minimum income policies as a tool for fighting poverty.

<sup>57</sup> European Parliament resolution of 10 February 2021 on reducing inequalities with a special focus on in-work poverty, p. 34.

<sup>58</sup> As well as the years passed since the inauguration of the Lisbon Strategy.

<sup>59</sup> This is the provision mentioned by the Commission in the Communication from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Launching a consultation on a European Pillar of Social Rights COM/2016/0127 final.

<sup>60</sup> Recently there was a multiplication of declarations, even in institutional documents, on the necessity of an update of the European framework on these matters: cf. Council conclusions on strengthening minimum income protection to combat poverty and social exclusion in the COVID-19 Pandemic and Beyond, 9 October 2020.

<sup>61</sup> Opinion released by the European Economic and Social Committee: EESC, *For a European Framework Directive on a Minimum Income*, 20 February 2019, SOC/584.

Anyway, should a political will on this point arise,<sup>62</sup> further elements for the legal feasibility of a framework directive on minimum income could be detected in the detailed legal opinion provided by a pool of experts appointed by the EAPN (European Anti-Poverty Network).<sup>63</sup>

Particularly interesting is the identification, within this document, of a kind of “squaring of the circle” for a directive on *adequate minimum income*: with the recourse to a mechanism already used for social law legislation in the past – for example, for adopting Regulation 883/2004<sup>64</sup> – that is the foundation on two different, but complementary, legal bases. This dual legal basis – composed by article 153, paragraph 1, letter h), and 175 TFEU – compared to those relying only on Article 153, would allow the overcoming, on the one hand, of the obstacle represented by the unanimity rule – provided by art. 153, paragraph 1), letter c). On the other, it would make it possible to avoid the limitations deriving, respectively, from the application of art. 153, paragraph 1, letter c) – which refers only to “workers” – or, conversely, from its letter h) – which refers only to “people excluded from the labour market”.<sup>65</sup> So, considering the lack of self-sufficiency, in terms of subjective coverage, of the two mentioned letters of art. 153 TFEU, if used separately,<sup>66</sup> in the EAPN opinion it is recalled, alongside letter h) of art. 153, the legal basis contained in article 175 TFEU, which can be invoked for regulatory provisions aimed at increasing social cohesion and reducing disparities between Member States.<sup>67</sup>

The solution grounded on the combination of article 153, paragraph 1, letter h), and 175 TFEU could, in this perspective, allow a legal intervention capable of protecting “all persons at all stages of life”, as required by Principle 14 of the Social Pillar.<sup>68</sup>

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<sup>62</sup> As the European Economic and Social Committee pointed out, in fact, “the question of introducing a decent minimum income guaranteed by the EU is highly political” (par. 1.7.).

<sup>63</sup> A Van Lancker A., Aranguiz A., Verschuere H., *Expert Study on a binding EU framework on Adequate National Minimum Income Schemes. Making the case for an EU framework directive on minimum income*, 2020; see also Servulo & Associados for the European Anti-Poverty Network, *An Eu Directive on Adequate Minimum Income: A legal assessment*, 2010. Many other documents of EAPN deal with the notion of *adequate minimum income*; see, *ex alii*, EAPN, *EAPN Position Paper on Adequate Income*, 2020.

<sup>64</sup> Regulation (EC) no 883/2004 of The European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, adopted on a dual legal basis, represented by the combination of Articles 48 and 352 TFEU. More recently see also the Recommendation on access to social protection for workers and the self-employed (Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed 2019/C 387/01), in this case, the dual basis resulted by the combination of article 153 and 352 TFEU.

<sup>65</sup> This provision, in fact, with a limitation opposite to the one contained in letter c), would not apply to those who are, in some way, “included” in the labour market, even if lacking sufficient resources.

<sup>66</sup> As well as the impossibility of referring to a combination of both. In fact, the possibility of a joint application as legal bases of the two letters of article 153 – letter c) and h) – is precluded by the diversity of the respective legislative procedures: a special legislative procedure, with the adoption by the Council unanimously under letter c); the ordinary legislative procedure, with the approval by qualified majority, under letter h).

<sup>66</sup> As well as the impossibility of referring to a combination of both. In fact, the possibility of a joint application as legal bases of the two letters of article 153 – letter c) and h) – is precluded by the diversity of the respective legislative procedures: a special legislative procedure, with the adoption by the Council unanimously under letter c); the ordinary legislative procedure, with the approval by qualified majority, under letter h).

<sup>67</sup> As provided by Article 174 TFEU – in combination with art. 175 – the Union shall “develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion” and shall aim, in particular, “at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions”.

<sup>68</sup> Van Lancker A., Aranguiz A., Verschuere H., nt. (63), 31.

In any case, even considering a framework directive on minimum income as one of the necessary tools for alleviating IWP and, lately, for mitigating the disruptive effects of the pandemic, it has to be underlined that the recourse to minimum income schemes (MIS) for self-employed should be intended as a “last safety net”. This is particularly true considering that it is necessary to avoid the risk that “the recurrent use of the MIS to alleviate situations of IWP [...] may contribute to a social acceptance of low-wage employment and to acquiescence with the benefit being used to subsidise both capital and low wages, without regard to the underlying causes of low wages”.<sup>69</sup>

## 5. Which medium and long-term routes out of in-work poverty? From quality jobs to collective voice.

A conclusive reflection must be devoted, in this paper, to the insufficiency of mere wage guarantees or income support strategies, in front of the notorious multifaceted nature of in-work poverty.<sup>70</sup> These kinds of strategies, however crucial – especially, in times of crisis, as economic stabilisers<sup>71</sup> – might contribute to reducing the impact of in-work poverty intended as income insufficiency or income discontinuity of a single low-wage earner. But they could hardly work as self-sufficient *ways out of in-work poverty*.

Although it is not possible, in this paper, to address the phenomenon of poverty as a whole, it is worth pointing out that a credible strategy can only derive from an *integrated system* for combating in-work poverty. Such a systematic approach should require that in-work incentives, life-long learning and active labour market policies, from one side, and income support measures and social transfers, from the other, are properly theorised and structured as complementary tools.<sup>72</sup>

From this perspective, it should be incidentally remarked that a medium-long term strategy should also include and coordinate a whole series of direct and indirect measures to combat IWP on the side of access to goods and services, taxes and social security contributions<sup>73</sup> and, most importantly, the removal of gender inequalities, as an issue inevitably linked to in-work poverty.<sup>74</sup>

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<sup>69</sup> Rodríguez Cabrero G., Arriba A., Marbán V., Montserrat J., *Thematic Report on In-work poverty: Spain*, European Social Policy Network (ESPN), Brussels, European Commission, 2019.

<sup>70</sup> It is not possible, in fact, to detect unique or exclusive causes, even within apparently homogeneous social groups, for the exposure to the risk of poverty; cf. Crettaz E., Bonoli G., *Why Are Some Workers Poor? The Mechanisms that Produce Working Poverty in a Comparative Perspective*, in *REC-WP*, 12, 2010.

<sup>71</sup> How it can be read in the Council conclusions on strengthening minimum income protection, nt. (60), 3 “minimum income schemes not only contribute in an essential manner to the social protection of those groups that have been hit hardest by the crisis, they also have a stabilising effect on the overall demand for goods and services produced in the economy”; on this point see also European Parliament, Study on “*The Role of Social Protection as Economic Stabiliser: Lessons from the Current Crisis*”, 2010.

<sup>72</sup> For a classification of the measures adopted by different Member States on *in-work poverty*, Tufo M., *The Working Poor in the European Union*, in *Italian Labour Law e-Journal*, 1, 2019, 99.

<sup>73</sup> For an in-depth analysis of these themes, see Ratti L. (ed.), *In-Work Poverty in Europe. Vulnerable and Under-represented Persons in a Comparative Perspective*, Wolters Kluwer, Alphen aan den Rijn, forthcoming.

<sup>74</sup> On the connections between in-work poverty and gender inequality (and on the recurrent overlap between low work-intensity households and in-work poverty): EAPN, *Gender and Poverty in Europe. EAPN briefing note*,

Turning back to the specific features of *in-work* poverty and given that poor-quality jobs can be included among the main drivers of IWP, active labour market policies and incentives to work should be directed to the creation of *quality jobs*. In this respect, a fundamental role can be assigned to training policies<sup>75</sup> and in particular to lifelong learning policies.<sup>76</sup>

Finally, in an integrated strategy of support to self-employment, there should be space for options of collective “voice” for weak self-employed workers.<sup>77</sup> In this context, the collective organisation of self-employed should be considered a “necessary response to increasing income inequality”,<sup>78</sup> both with regard to neo-mutualistic organisations and traditional forms of collective representation. It is true that, until now, the Court of Justice, in compliance with the flat assimilation of self-employed to businesses, has mainly analysed the issue of collective labour agreements laying down minimum fees in the shadow of competition law,<sup>79</sup> excluding the violation of Article 101 TFEU only with regard to *false* self-employed workers.<sup>80</sup> But it is also true that such an interpretation deserves to be revisited in front of the legal and economic weakness of kinds of self-employed, other than the false ones, that are certainly more similar to subordinate workers than to companies.<sup>81</sup>

On this point, since 2020 the European Commission launched a process to address the issue of collective bargaining for the self-employed,<sup>82</sup> coming to admit that, even beyond the cases of misclassification and bogus self-employment, “solo self-employed persons [...] may nevertheless be in a weak bargaining position vis-à-vis their counterparties and therefore may be unable to significantly influence their working conditions”.<sup>83</sup>

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2017; Ponthieux S., *Gender and in-work poverty*, in Lohmann H., Marx I. (eds.), *Handbook on In-Work Poverty*, Edward Elgar Publishing, Cheltenham, 2018, 70.

<sup>75</sup> Principle 1 (*Education, training and life-long learning*) of the EPSR is devoted to these subjects, stating that “everyone has the right to quality and inclusive education, training and life-long learning in order to maintain and acquire skills that enable them to participate fully in society and manage successfully transitions in the labour market”.

<sup>76</sup> Even if among the working poor are currently included the so-called I-Pros, the correlation between low levels of education and low-skilled jobs is a well-known feature of in-work poverty.

<sup>77</sup> In this field it should also be taken into account the aim of supporting small and medium-sized enterprises (art. 173 TFEU) and of promoting entrepreneurship as an “instrument to improve employability levels” (cf. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Entrepreneurship 2020 Action Plan, Reigniting the entrepreneurial spirit in Europe*, COM/2012/0795 final).

<sup>78</sup> On these subjects, recently, Razzolini O., *Collective action for self-employed workers: a necessary response to increasing income inequality*, in WP C.S.D.L.E. “Massimo D’Antona”.INT – 155/2021.

<sup>79</sup> Court of Justice of the European Union 18 July 2013, C-136/12, *Consiglio nazionale dei geologi v Autorità garante della concorrenza e del mercato*.

<sup>80</sup> Court of Justice of the European Union 4 December 2014, C-413/13, *FNV Kunsten*.

<sup>81</sup> These workers might also be affected by the “pathologies of work” traditionally typical of employment relationships (see Jaeggi R., *Pathologies of Work*, in *WSQ: Women’s Studies Quarterly*, 3 & 4, Fall/Winter, 2017, 59) and this fact could easily justify a re-assessment of the balancing paradigms between the right to bargain collectively and the tight constraints imposed by EU antitrust law. In this sense, see Caruso B., Papa V., *A new rationale of collective social rights for self-employed workers*, Paper presented during the webinar *Labour Law Beyond Subordination. Issues, ideas, proposals and perspectives*, International Society for Labour and Social Security Law (ISLSSL), 7th Seminar on International and Comparative Labour Law (21/22/23 June 2021).

<sup>82</sup> Competition: The European Commission launches a process to address the issue of collective bargaining for the self-employed, press release, Brussels, 30 June 2020.

<sup>83</sup> Annex to the Communication from the Commission, Approval of the content of a draft for a Communication from the Commission, Guidelines on the application of EU competition law to collective

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This is just one step on the long and dangerous path that could possibly lead to a partial overcoming of competition law constraints for self-employed collective voice, but this is path that deserves to be encouraged and attentively followed.<sup>84</sup>

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agreements regarding the working conditions of solo self-employed persons, Brussels, 9.12.2021 C(2021) 8838 final: <http://ec.europa.eu/competition/consultations/open.html>.

<sup>84</sup> This path should be monitored and accompanied for avoiding simplistic slips, that are already appearing in the text of the Draft Guidelines, according to which collective bargaining tailored to solo self-employed should be allowed with limited reference to these two hypotheses: a) collective agreements concluded by solo self-employed persons with counterparties of a certain economic strength; b) collective agreements concluded by self-employed persons pursuant to national or EU legislation (see Annex to the Communication from the Commission, nt. (83), 13 ff.). Referring in particular to the cases listed under letter a), it is highly disputable the provision of an economic threshold for identifying the imbalance of power between solo self-employed and their counterparties. See, in particular, p. 13 of the Draft Guidelines, where is stated that the "imbalance in bargaining power will be considered to exist at least: where solo self-employed persons negotiate or conclude collective agreements with one or more counterparties which represent the whole sector or industry; and where solo self-employed persons negotiate or conclude collective agreements with a counterparty whose annual aggregate turnover exceeds EUR 2 million or whose staff headcount is equal or more than 10 persons or with several counterparties which jointly exceed one of these thresholds". For a brief comment, cf. *ETUC on competition law and collective agreements for self-employed*, 09.12.2021, Press release, where is possible to read that "making the fundamental right to collective bargaining of self-employed workers conditional upon thresholds such as the size or turnover of the employer, as proposed in the guidelines, is unacceptable. Collective agreements establish a level playing-field for both workers and business, which must not be undermined by allowing for exceptions for small enterprises".

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