



# Guidelines on collective agreements of the solo self-employed persons

**27 January 2022**

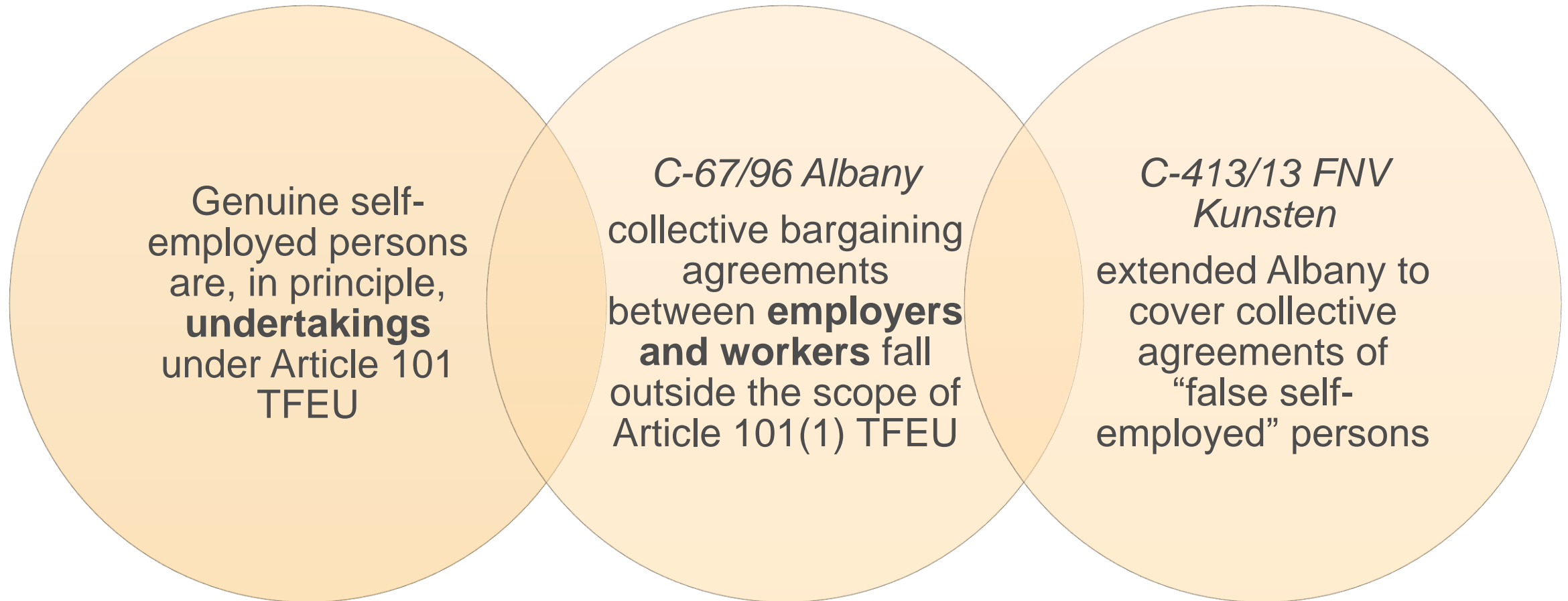
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\*The views expressed are the speaker's only and not representing the official views of the Commission

# 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
- Collective agreements of self-employed persons are an important tool to improve working conditions **but** there is a risk of infringement of Article 101 TFEU.
- **Legal uncertainty** on whether self-employed persons can bargain collectively.
- The Guidelines aim to clarify the circumstances under which EU competition law does not stand in the way of collective agreements to improve the working conditions of certain self-employed persons.

# Status quo of the case law on Article 101 TFEU



# General framework of the Guidelines

## What the Guidelines are about:

- Clarify when collective agreements on working conditions by SSEs:
  - Either fall outside the scope of Article 101 TFEU;
  - or the Commission will not intervene against the parties to such agreements.

## What the Guidelines are not about:

- No interference with MS prerogatives in social policy or the social partners' autonomy.
- No change in the definition of “worker” or “self-employed person”.
- No impediment to seek re-qualification of employment status.
- No obligation for the parties to engage in collective negotiations (collective agreements are voluntary).

Other types of collective agreements made by SSEs not covered by these Guidelines will be assessed on a case by case basis.

# Types of agreements covered (*material scope*)

Negotiated and concluded **collectively** between SSEs and counterparties

Concern by their nature and purpose the **working conditions** of the SSEs

Any form of collective negotiations (not only collective bargaining *stricto sensu*)

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

**Pre-agreements on negotiation goals** if necessary and proportionate

**NOT COVERED**

- **One-sided actions** and **cartels** between parties in 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. non-poaching)

# Persons covered (*personal scope*)

## Solo self-employed people (SSEs)

- no employment relationship
- no employees hired by the SSEs

relying primarily on their own personal labour for the provision of services

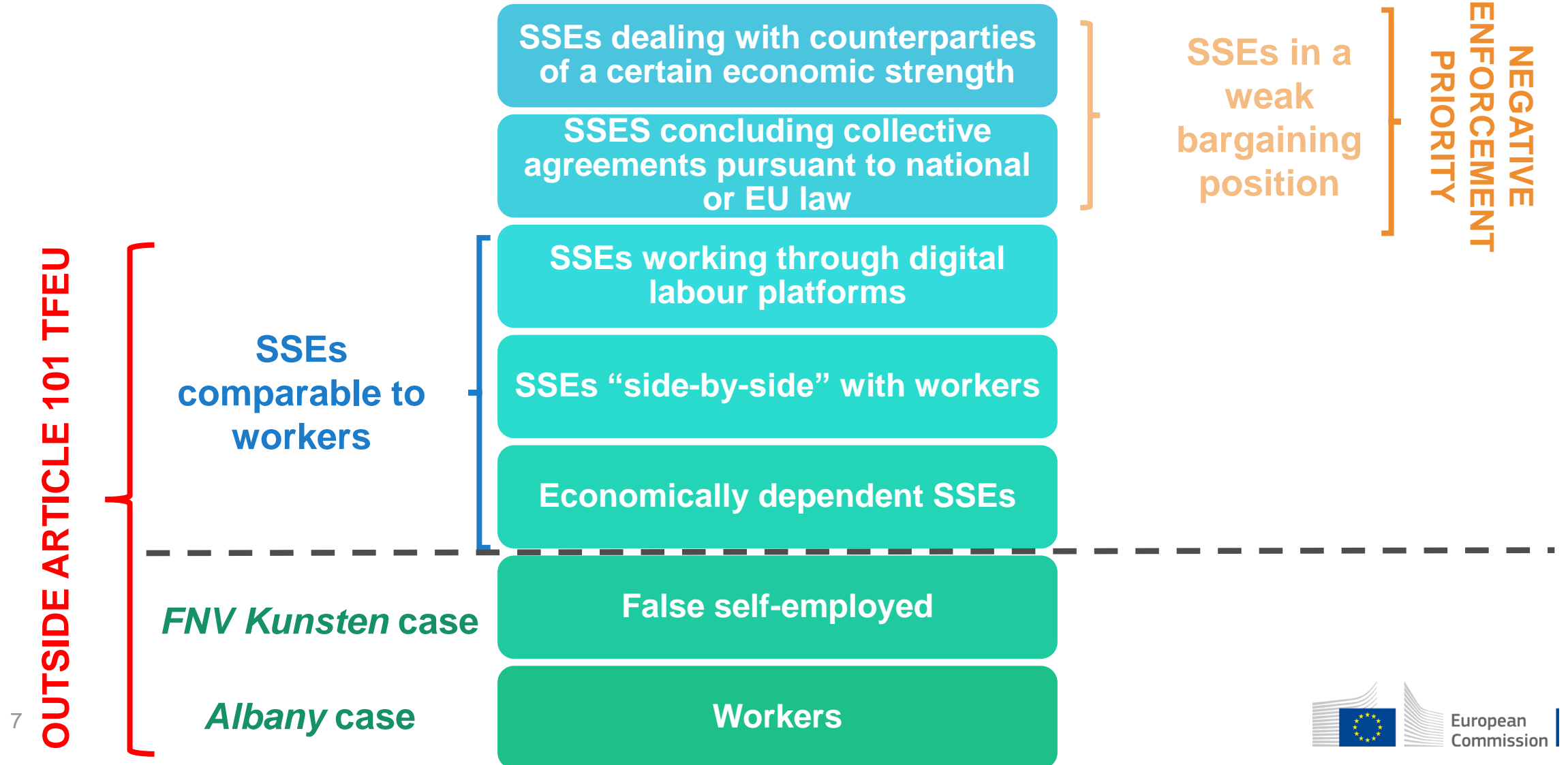
**NOT  
COVERED**

when the economic activity of the SSE consists merely in the **sharing or exploitation of goods or assets, or the resale of goods/services**

**BUT** the use of goods/assets as an **ancillary means** for the provision of the final service **IS COVERED**.

The personal and material scope applies to **ALL the categories** of SSEs covered by these Guidelines

# The mechanism of the Guidelines



# Collective agreements falling outside Art. 101 TFEU (1)

## 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
- provide their services **under the direction** of their counterparty without bearing **commercial risks or enjoying any independence**



# Collective agreements falling outside Art. 101 TFEU (2)

## SSEs working through digital labour platforms

- They find themselves in a position comparable to workers in light of recent jurisprudence and legislative developments at national level.
- Definition of “digital labour platform” (aligned with proposal on Platform Work Directive):
  - *“any natural or legal person providing a commercial service (i) at least in part, at a distance through electronic means; (ii) at the request of a recipient of the service; and (iii) involves, as a necessary and essential component, **the organisation of work performed by individuals**, irrespective of whether that work is performed online or in a certain location”.*

**NOT  
COVERED**

Platforms which do not organise the work of individuals but are simply the means for customer outreach by the SSEs.

# The priority setting mechanism (1)

Collective agreements between SSEs and counterparties **of certain economic strength**

- The Commission will not intervene in cases where there is a **clear imbalance in bargaining power**. Indicatively, this is the case when SSEs negotiate or conclude collective agreements with:
  1. one or more counterparties which represent the **whole sector or industry**; and
  2. with a counterparty whose **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.

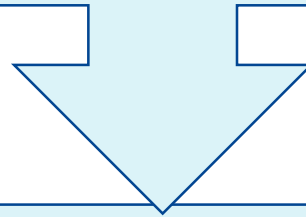
# The priority setting mechanism (2)

Collective agreements concluded by self-employed persons **pursuant to national or EU legislation**

- Collective agreements concluded in compliance with national laws, in pursuit of social objectives, which:
  - explicitly grant to SSEs the **right to collective bargaining**;  
or
  - **exclude from the scope of national competition law** collective agreements by SSEs in certain professions
- Collective agreements concluded by SSEs authors and performers to achieve **fair remuneration under the Copyright Directive**

# Timeline

**December 2021 – 24 February 2022: Public Consultation on the text of the Draft Guidelines**



**Q2 2022: Adoption of the Guidelines and publication of the IA report and support study**

# Thank you !



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