Brussels, February, 2022

STATEMENT ON GUIDELINES ON THE APPLICATION OF EU COMPETITION LAW TO COLLECTIVE AGREEMENTS ON WORKING CONDITIONS OF SOLO SELF-EMPLOYED PEOPLE

Basic Comment

IMAGO very much welcomes the fact that the EU wants to enable competition and antitrust law collective bargaining for solo self-employed people in the arts, culture, and creative industries to ensure decent and appropriate working conditions for everyone in Europe. The EU-Commission therefore acts in accordance with Art. 3 Paragraph 3 TEU, 28 Charter of Fundamental Rights of the EU, Principle 8 of the European Pillar of Social Rights and the ECJ case law on bogus self-employment and collective agreements.

The guidelines for collective agreements on the working conditions of solo self-employed are therefore another important step to ensure their employment law protection. In this regard, it must not be forgotten that the EU, in its Directive 2019/790 on copyright and related rights in the digital single market, repeatedly points out that collective agreements play an important role in achieving the level of protection set out in the directive. In this respect, it is to be expressly welcomed that the EU Commission will not act against collective agreements that are concluded according to this directive by self-employed authors and performing artists.

Situation of cinematographers and creative people in the film sector

According to the IMAGO Commissions for Working Conditions survey of its members, which was launched years ago (currently being revised for a
new edition], many cinematographers are freelancers who are confronted
with precarious working conditions and low and insecure incomes. They also
have a systemic weak negotiating position vis-à-vis their contractual
partner. Unlike entrepreneurs, these self-employed people are usually
dependent on one or a few clients and have their employment contracts
dictated by them. It is a professional group that is increasingly slipping into
the precariat and, due to incomplete insurance periods, ends up in pre-
programmed old age poverty. In this respect, their situation is comparable
to the working and living conditions of the large number of creative people
in the film sector and in many other sectors in the art and culture industry.
It has gone so far that the film and audiovisual industry has long been seen
as a blueprint for the future world of work.

**IMAGO Claims**

From IMAGO's point of view, the initiative described should be
pursued further. Enabling collective negotiation of minimum fees is a crucial
step in the right direction. The Commission's consideration of suspending
the competition regulation for the group of solo self-employed corresponds
perfectly to everyday reality, because minimum fee catalogs are far removed
from price agreements/cartels, since the latter can only be used by
economically strong players such as corporations and platforms to keep
their profits up.

However, the initiative must be extended and expanded and
sufficiently consider the necessities/particularities of the national law of the
member states. In some EU Member States (Spain, Netherlands, Ireland)
national competition laws prevent professionals in the film sector from
bargaining, while in other EU Member States (e.g., Germany) collective
bargaining is expressly permitted.

It must not be overlooked that the solo self-employed have no lobby
due to a lack of functioning professional representation. The Commission
paper misses a clarification of the role of the social partners. So, it seems
possible that solo self-employed people should conduct wage or collective
bargaining either alone or with other solo self-employed people. It is also not
fundamentally clarified whether trade unions can organize and tariff self-
employed individuals.

This responsibility is in the vital interest of the trade union movement,
which would otherwise lose its political influence due to the changes in the
world of work. On the other hand, however, it should be noted that the
legislative competence of the European Union is limited to antitrust law
within the meaning of Art. 101 TFEU. According to Article 153 (5) TFEU,
regulations relating to the law on coalitions, collective bargaining and
industrial action are expressly excluded from the legislative competence
under European law and are reserved for the Member States. Nevertheless,
the Commission must try to overcome the national differences mentioned
to achieve legal certainty and not to discriminate against the solo self-
employed. In this respect, clarification is required on the part of the Commission to solve the many problems in practical implementation.

Overall, the Commission’s initiative is fully in line with the idea that the future of the EU is inseparably linked to the further development of social standards that benefit all Europeans, in whatever form they work.

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About IMAGO

Founded in 1992 IMAGO is the International Federation of Cinematographers. With 56 national cinematography societies, representing more than 4,000 professional cinematographers across all the continents of the work, IMAGO is an active global network created to bring cinematographers together to discuss solutions to common challenges, promote the art of cinematography globally, and share experience and knowledge.

IMAGO champions the high artistic and technological standards of the cinematography profession and supports the culture of cinematography which is at the heart of the artistic and technological quality of the filmmaking industry.

IMAGO champions working conditions for cinematographers and ensures their voice is heard throughout the filmmaking process, with consultation rights in the presentation of their work through the media.
IMAGO provides guidance and assistance to its members in many diverse environments worldwide, explaining and defending the role of cinematographers where necessary. IMAGO has successfully acted to reverse legislation intended to limit the rights of cinematographers in its members' home nations.

IMAGO leads initiatives against unsafe conditions on film sets. Its Working Conditions Committee (WCC) takes an active responsibility for ensuring a safer future for all cinematographers worldwide.

IMAGO has a duty to educate and encourage the developing cinematography societics among its membership. The IMAGO Technical Committee (ITC) closely follows technology developments and liaises with manufacturers and research institutes. Other IMAGO committees include Education, Authorship, Diversity and Green Initiatives.

**IMAGO AISBL**

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