

***Squaring the circle?
The labour law possibilities of “alt-
labour” organisations***

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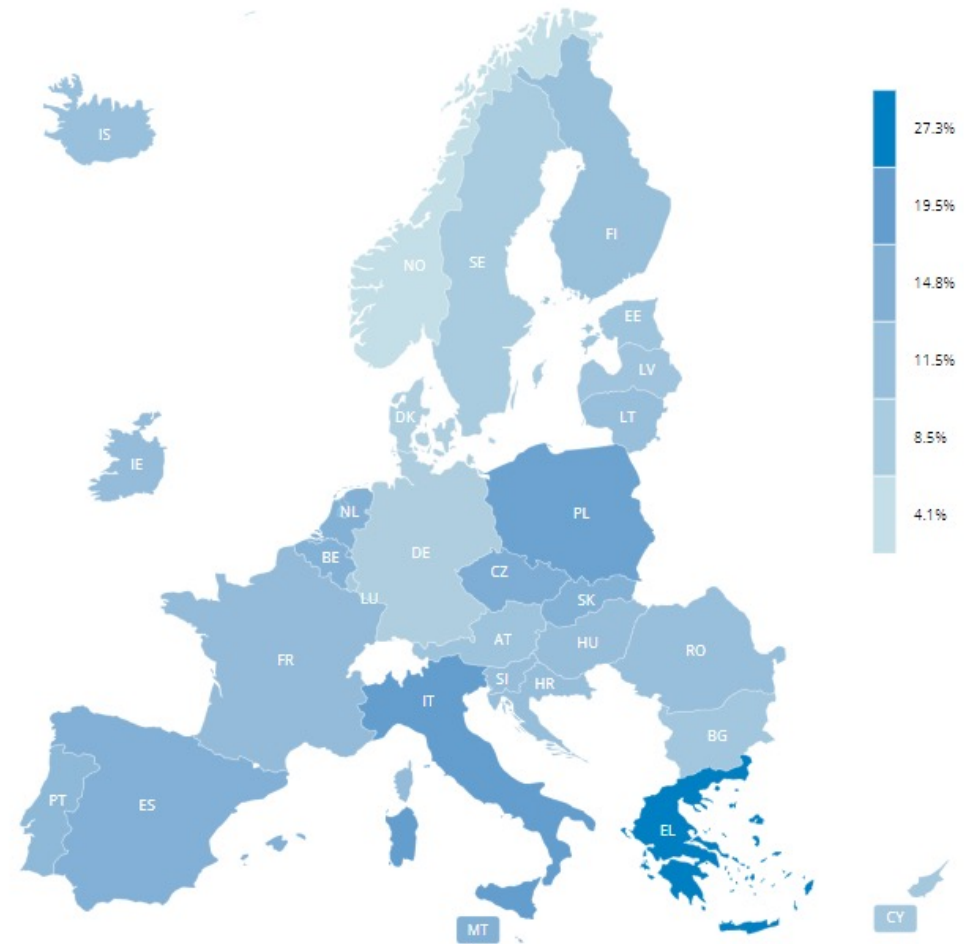
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The challenge

- The use of non-employment relationships has become a popular means of *increasing competitiveness* due to its *cost-effectiveness* and *looser regulation*, which threatens to defeat the purpose of labour law.
- With the emergence of modern forms of work, the number of *people in the grey zone* between the employed and the self-employed has increased dramatically, with an increasing number of *de iure* self-employed people whose economic situation is qualitatively no different from that of an employee.

European Union
Labour Force
Survey (EU LFS)
original data
collection

Share of self-employed people (in %) across countries in 2022



Competition law vs labour law?

- Although the right to exercise collective rights is declared in several fundamental international documents (ILO: Universal Labour Guarantee: *Work for a brighter future. Global Commission on the Future of Work*), competition law, in sharp contrast, prohibits agreements or concerted practices between undertakings.
- The binary logic of traditional regulation would inevitably bring persons who are not employees within the scope of competition law.
- The conflict between competition law (“cartel phenomenon”) and international labour law requirements creates legal uncertainty which, in the light of the ever-increasing number of self-employed workers, is putting the Community legislature under increasing pressure to act.

CJEU

- The Court of Justice of the European Union (hereinafter: the “CJEU”) has extensive case law on the collective bargain of the self-employed. The judicial practice of recent years – through the satisfaction of the “**Albany exceptions**” – allows exemption from restrictions of competition law.

The Collective
Agreements of the Self-
Employed According to
the New Guidelines of
the European
Commission

- Although – for the moment – the **Guidelines** have no binding power whatsoever on the legislation of the Member States, they do provide important guidance regarding the interpretation of the “status comparable to that of an employee”.
- According to that, such a “comparable situation” may arise in **three types of cases**: (1) self-employed workers who are in an economically dependent situation, (2) self-employed workers who work “parallel” to employees, and (3) among self-employed individuals who work through digital platforms.

„Alt labour“

- Trade unions and other alternative, flexible structures of interest representation are emerging with an innovative, open and network-like organisational logic. These phenomena are often referred to in labour law literature as ‘alt-labour’.
- **Step 1: Right to organise!**

Good example

- ***Therefore, the TVG (in Austria) makes it possible for the interest representation organisations of such persons to sign collective agreements with the representative bodies of principals or clients.***
- **Step 2: right to bargain collectively**

Step 3: Right to strike?

- *“Without the right to strike, collective bargaining becomes collective begging.”*
- Samuel Estreicher: Collective Bargaining or “Collective Begging”? Reflections on Antistrikebreaker Legislation. Michigan Law Review, 1994/3.
- If there exists the **right to organise**, then there must also be the **right to bargain collectively**, and if there is the right to bargain collectively, then the **right to strike** must also be guaranteed.

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***Thank you for
your
attention!***