

24/02/2022 Position Paper

EFAMRO and ESOMAR Position Paper

A Response to the draft Guidelines about collective agreements regarding the working conditions of solo self-employed people

This paper is submitted on behalf of:

EFAMRO the European Federation of Associations of Market Research Organisations. Founded in 1992, EFAMRO represents the interests of market, opinion and social research in Europe. Its members are national trade associations for research businesses.¹

ESOMAR the global voice of the data, research and insights community since 1947, it promotes the value of market, opinion and social research and data analytics.²

1. About Market, Opinion and Social Research

- 1.1. EFAMRO and ESOMAR represent the data, research and insights sector, accounting for in Europe a reported annual turnover of €20.87 billion.³
- 1.2. Market, opinion and social research is the systematic gathering and interpretation of information about individuals or organisations using the statistical and analytical methods and techniques of the applied social sciences to gain insight or support decision making. It involves systematic study of different spheres of society, politics, and the economy. Research, insight and analytics stand at the heart of all well-informed commercial, social and political decisions. Insight into what makes a product, business initiative or government policy work is often the hidden – yet defining – factor between success and failure. It is our sector that provides the deeper intelligence needed for our world today.
- 1.3. Many research and analytics providers subscribe to established self-regulation schemes that enable research respondents and participants to enforce their rights. These are built on established international standards set forth by the ICC/ESOMAR International Code and national codes across many EU countries⁴.

2. Purpose of our Response

- 2.1. Our associations are responding to the Commission's proposed *Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-*

¹ For more about EFAMRO see: <https://efamro.eu/>

² For more about EFAMRO see: <https://efamro.eu/>

³ ESOMAR Global Market Research Report, which includes contributions from national associations including EFAMRO members: <https://esomar.org/global-market-research-report>

⁴ ICC/ESOMAR International Code on Market, Opinion and Social Research and Data Analytics: <https://esomar.org/code-and-guidelines/icc-esomar-code>

employed persons, which includes recommendations to improve the working conditions of people working through digital labour platforms.

- 2.2. Whilst our associations support the EU Commission's overall aims with its proposal, as a sector our concern is whether the proposed text might have adverse effects on those who receive **payments for activities which are not work related**. We are particularly concerned regarding research respondents and participants who take part in research projects. We believe this is an unintended consequence of the current draft of the communication from the Commission and recommend increased clarity regarding the scope of the guidelines.

3. Detailed Feedback

Definition of solo self-employed persons [*Introduction to the Guidance including footnote 1*]

- 3.1. For the purposes of the Guidelines the term 'solo self-employed persons' relates to persons who *do not have employment contracts or who are not in an employed relationship and who rely primarily on their own personal labour for the provision of the services concerned*.
- 3.2. There can be people who do not have employment contracts, who are not employed and rely upon personal activity for provision of services, who are **not** solo self-employed persons. For example, within the research sector research respondents and focus groups participants may receive modest financial incentives to **encourage them to take part** in market, opinion and social research activities. Incentives, usually a gift, payment or other consideration, are required to encourage people to give their time to take part in research when they have so many other calls upon their time.
- 3.3. However, participation in market research is not a 'job', hourly or otherwise. Individuals' participation in research projects renders individuals into research subjects, not employees or workers. Being a research subject is not meant or represented as a dependable source of income to support an individual or family. Research subjects are not a workforce.
- 3.4. The use of incentives to encourage research subject's participation has been the case since research's inception many decades ago. The form and amount of incentive depends on such factors as: the length, mode, method and circumstances of the research; the specialized knowledge, experience, demographics, or background of the research subject mix, among other factors.
- 3.5. Research subjects are also not solely or even primarily motivated by monetary incentives. When research subjects and participants take part in research, they are taking the opportunity to express their personal views and opinions, to leverage their right to freedom of expression which is part of democratic engagement. Taking part in research is the opportunity for research subjects to provide their opinions on a wide variety of subject matters, including the desired course of a public policy such as undertaken by Eurobarometer, their concerns or feelings about a corporate brand, the need for new medicines, the design of a new smartphone, or changes to their favourite breakfast cereal.⁵ Through their participation, research subjects are able to influence or impact the future course of policy, products, services, innovations and ideas.

⁵ Eurobarometer is the polling instrument used by the European Commission, the European Parliament and other EU institutions and agencies to monitor regularly the state of public opinion in Europe on issues related to the European Union as well as attitudes on subjects of political or social nature. Eurobarometer provides quality and relevant data for experts in public opinion, researchers, media and the public. For more information see: <https://europa.eu/eurobarometer/screen/home>

- 3.6. Not all incentives are monetary, and some research projects have no incentives. As alternatives to monetary incentives, some research projects offer an entry in a free prize draw as the incentive; others provide research subjects flexible choices in what kind of incentives they prefer, including different ways to spend “points” received from a given study, or the ability to donate the value of the incentive to charity (sometimes a specific charity of the research subject’s own choosing).
- 3.7. In summary, research incentives provided to research subjects to encourage them to take part in research are NOT:
- contracted payments for work
 - work
 - payments for time
 - payment for opinions
 - ‘thank you’ payments for the provision of opinions
 - remuneration
- 3.8. For decades, the research sector has committed to developing and regulating ethical research Codes of Conduct, such as the ICC/ESOMAR Code and national Codes regulated within individual EU countries; and quality standards including *ISO 20252:2019 Market, opinion and social research, including insights and data analytics — Vocabulary and service requirements* to set rigorous standards for the monitoring of research subjects and participants including quality processes to ensure that incentives exploitation and repeat participation does not take place, protecting the quality of research data, outputs and insights.^{6 7}
- 3.9. As such research subjects and participants and the incentives they receive to encourage them to take part in research should be exempted from the *Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons*.

Definition of Employment [Introduction to the Guidance including Footnote 14]

- 3.10. The Courts have defined the essential feature of the employment relationship is that “*for a certain period to time one person performs services for and under the direction of another person in return for which he received numeration.*” Research subjects and participants do not provide opinions and attitudes under the direction of another person, they are free to choose which research they take part in, or to refuse to take part, their opinions are their own and incentives are not remuneration for those opinions. As such being a research subject and participant is not an employment relationship.
- 3.11. As currently stated however, without further clarification, the definition of solo self-employed person could be deemed to include those engaged in research activities such as research data subjects and participants. It is vital that the Commission’s Guidance clarifies the scope and includes exemptions of activities which may share some of the characteristics of solo self-employed persons but are outside of the proposed scope of the guidance and the application of competition law.

⁶ For the ICC/ESOMAR Code: <https://iccwbo.org/publication/iccesomar-international-code-on-market-and-social-research/>

⁷ ISO 20252:2019 standard: <https://www.iso.org/standard/73671.html>

Definition of false self-employed persons and workers [Introduction clause 5 and 8 and 9]

- 3.12. It is also important to clarify that research subjects and participants are not false self-employed persons or workers. Research participants choose whether they wish to take part in research, there is no obligation to the research provider, no direction in terms of how research is completed (other than technical instructions such as found on questionnaires e.g., *please choose one of the following response options*), no presumption of participation, no salary or wages, no economic dependence, no situation of subordination or legal presumption.
- 3.13. It is essential that the guidance makes clear when providing examples of exemptions of those who are not solo self-employed persons that *de facto* such individuals are also not either false self-employed persons and/or workers.

General scope of application of the guidelines [Clause 19]

- 3.14. The guidance provides for some situations which fall outside the guidance, i.e., where the activity of the solo self-employed person consists of situations relating to sharing or exploitation of goods or assts or the resale of goods/services.
- 3.15. To address situations such as research subjects and participants it would be helpful to have a similar clarification when a person's activities for which they receive payment would not be deemed solo self-employment.

Online platform economy and provision of labour through digital labour platforms [Clause 30]

- 3.16. The guidance clarifies the definition of digital labour platforms and the need to meet all of the following requirements:
- It is provided at least in part at a distance through electronic means such as a website or a mobile application
 - It is provided at the request of a recipient of the service
 - It 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
- 3.17. Research subjects participating in research are exercising their democratic right to engage in policy, business and social development, including via digital platforms, this however is not the organisation or completion of work as defined by clause 30 of the Guidance. To address situations such as research subjects and participants it would be helpful to have a clarification of what is and is not 'work', as defined within the scope of digital labour platforms.

4. Implications to the sector

- 4.1. Whilst we welcome the creation of the Guidance by the European Commission to assist those sectors where solo self-employed persons and digital labour platforms are prevalent, it does need to be clearer regarding which activities are excluded from the Guidance as well as those included.
- 4.2. The Guidance has been drafted more with the workers of a digital workforce in mind than research subjects in connection with research studies. In fact, research is diametrically opposite from these digital workforce platforms, and we strongly recommend that the Guidance makes this distinction clear.

4.3. The burden associated with paying for opinions, if they are considered equivalent to labour, would create insurmountable hurdles for research companies (the vast majority of whom are small-medium-enterprises). The net effect would be to significantly reduce the amount of research that can be undertaken, reduce the participation rates for those taking part in studies and significantly weaken the quality and representation of research results, some of which, like Eurobarometer, is an essential policy tool for ensuring that long-term trends and attitudes related to Europeans' affairs are tracked. Without enabling research to continue as it does now, how will the EU institutions have the means to "reveal Europeans to themselves" as it does now?⁸

5. Next Steps

5.1. We welcome the opportunity to further discuss the European Commission's proposal and we invite the Commission to provide clarity on the exemptions, definition and application of digital labour platform labour as it relates to the research sector. It is important that the proposal carefully considers the nature, purpose, value and dynamics of the research sector providing Guidance which allows research to continue to flourish.

5.2. EFAMRO and ESOMAR welcome the opportunity to assist the European Commission in updating the Guidance. Helping to shape the scope and its applications. To contact us for more information:

- Kaleke Kolawole, Head of Policy: kaleke.kolawole@efamro.eu
- Claudio Gennaro, Senior Advocacy Programmes Coordinator: claudio.gennaro@esomar.org

⁸ The Eurobarometer project was initiated in 1974 within the European Commission by Jacques-René Rabier, former collaborator of Jean Monnet and Director-general for Information, and was first conceived as a means to "reveal Europeans to themselves".