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Thematic Review 2021 on Platform work

Synthesis report

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## Key messages

**Platform work is growing, yet it still remains a moderate to marginal form of economic activity across the EU.** The lack of a conceptual quality framework and a unified approach to data collection does not allow extensive comparative evidence on the incidence, structure and characteristics of platform work. Existing studies use different methodologies and differ in their country coverage. The aim of this report is to present the most recent evidence and challenges related to work through digital platforms from various international sources and from unpublished country articles for the EU-27 Member States produced in the context of this Review<sup>1</sup>. This covers developments up to March 2021 with key exceptions such as Spain’s Riders’ Law passed in May 2021.

Based on the information included in the country articles produced for the EU-27 Member States, it can be concluded that:

- Platform work is a marginal to moderate share of economic activity and overall employment in the Member States. The type of platform work (on-location as opposed to online web-based activities)<sup>2</sup> appears to significantly affect its share, especially under the effects of external shocks such as the COVID-19 pandemic. As detailed statistics are not systematically available across EU Member States, making a statement on prevalence is not yet possible.
- In some Member States, however, recent national research reveals reasonable estimates on the number of digital labour platforms and/or on the number of people working through platforms. A more systematic approach for data collection on the prevalence of platform work across EU Member States would improve knowledge on trends and prevalence of the platform economy. This in turn could more reliably inform relevant policy decisions.
- Among all platforms surveyed in this Review, multinational platforms operating across EU Member States appear to be more often active in transportation, food/parcel delivery services and in online microwork<sup>3</sup>. Local platforms appear to be more often active in on-location personal and household services including care services, teaching and hospitality services.
- Leading multinational platforms can be identified both in online and on-location platform work. If the country-specific regulatory frameworks allow platform operation, the marginal costs for establishing and operating a platform in additional EU Member States are low. This facilitates the growth of the same platforms across a higher number of Member States. At the same time, the fact that platforms operate online, and they can obtain a market share without a formal registration or establishment in each Member State in which they operate, allows the delegation of tax obligations onto workers in some Member States. Cross-border information exchange and cooperation between national authorities is essential for compliance with EU and national legislation on taxation, labour (mobility) and social protection.

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<sup>1</sup> The country articles were produced by the 27 country experts listed in the acknowledgements, specifically to support this Thematic Review.

<sup>2</sup> On-location platform work refers to e.g. passenger transport, the food/parcel delivery sector, personal and household services and domestic work, while online platform work refers to e.g. work where tasks do not depend on location but are performed via teleworking, including microwork tasks, translations, research assistance, data encoding, tagging pictures, IT or design projects.

<sup>3</sup> Where businesses and other clients have access to a large, flexible workforce (“crowd”) who are geographically dispersed around the world to undertake short, simple and mostly clerical tasks and are remunerated on the basis of task or piece completed (ILO, 2018)

- While the COVID-19 pandemic has led to a 35% decrease of passenger transport services in 2020, experts reported a rapid increase in platform work in other sectors for all EU Member States. The increase affected, most notably, food and goods deliveries both for multinational and newly established local platforms, which have grown by 125% in 2020, as well as online work that can be performed as teleworking. This trend is associated, first, with increasing demand for platform-delivered services, and second, with the loss of jobs in some traditional economic sectors, with displaced workers seeking employment opportunities in the platform economy. On the other hand, supply of online services through platforms exceeds demand, putting downward pressure on the income of people working through platforms (ILO, 2021).

**The country articles confirm the findings of the recent ILO study (2021) that people working through platforms are most often young, male and highly educated but also that the profile of people working through platforms is influenced by the type of platform work considered.** In personal and household services, as well as the care sector, women are more widely represented for instance. The COVID-19 pandemic seems to have generated a crisis in the care sector, whereby demand for personal care in households, especially for older persons, has been increasing, while anecdotal evidence shows that social distancing measures have been preventing a boost in this form of platform work. Also, evidence from across the EU Member States shows that people providing services online are generally more spread out throughout the national territory, though they tend to be clustered in and around big cities (Urzì Brancati et al. 2020).

**Within the general trend that existing trade unions do not extensively represent the interests of people working through platforms, several initiatives by trade unions to act on behalf of the people working through platforms, or to organize them are documented in some EU Member States (e.g. France, Denmark, Italy, Slovakia, Spain, Sweden).** Some countries saw platforms joining national employers' federations and their increased interaction with governments in order to facilitate policies that do not restrict but enable their continuous successful operation in specific EU Member States.

**The COVID-19 pandemic has impacted differently on different groups of people working through platforms.** While some were recognized as essential workers in some EU Member States, and thus gained access to social protection measures and did not face restrictions on their activities, in general national governments did not introduce measures (e.g. income support measures) specifically targeting people working through platforms. The most important debate related to the eligibility for support refers to the employment status of people working through platforms and is different for employees and the self-employed.

**The employment status of people working through platforms has been widely debated by policy makers and in research.** The country articles confirm a set of observations putting the challenge into perspective:

- **The employment status of people working through platforms has predominantly been in focus in relation to the most visible (on-location) personal transportation and food delivery sectors.** In some EU Member States (including Belgium, France, Germany, Italy, Spain and the Netherlands), where litigation procedures on the employment status in these sectors have reached the final stage and have resulted in rulings by the highest courts, the result has been a (re-)classification of bogus-self-employed platform workers as employees (e.g. Belgium, France, Spain, The Netherlands) or under an existing intermediate or third status (e.g. Germany, Italy). The employment status of people working through platforms who are



providing other types of services, such as cleaning services, home care and parcel delivery, are receiving increased attention in some Member States (e.g. the Netherlands) but often from the perspective of a possible classification as temporary agency workers.

- **People working through platforms mainly perform platform work as a secondary activity and with a view to earning additional income.** Most have another main (professional) occupation through which they already have an employment status. There is however evidence in some EU Member States that the still relatively small group of people working through platforms who depend on earnings from platform work is growing. Most people working through platforms are not contracted as employees for their platform work, which does not necessarily imply that they are systematically self-employed. This is because EU Member States apply a wider variety of employment statuses (including third or intermediate categories) and/or mechanisms under local taxation regimes allowing individuals to perform 'occasional' work or earn additional income on top of their main professional income. People working through platforms who are contracted as self-employed may be bogus self-employed, in which case they may be reclassified as employees by enforcement agencies or courts in accordance with EU or national legislation. For some sectors such as cleaning services or household services, specific rules on labour rights and social protection apply in some Member States, also when services are intermediated by digital labour platforms.
- **The ambiguous employment status of people working through platforms, which is prevalent in many EU Member States** (with around 11% of the EU workforce stating they have already provided services through a platform), **primarily affects a small, yet growing, number of persons working through platforms.** They are often dependent on platform work as their main source of income. The ambiguity of their employment status yields implications for their social and pension rights that differ between employees and those working as self-employed.
- **Very few EU Member States have taken legislative action to introduce rights for people working through platforms or to regulate their employment status.** France, for instance, has introduced specific labour rights for self-employed people working through platforms, such as the right to have access to insurance against work accidents, the freedom to associate, the right to take collective action and the right to continuing professional training. Other Member States have addressed employment status for specific types of platform work. For example, in May 2021, Spain introduced a legal presumption on the employee status of food and parcel delivery riders whereas Lithuania assigned a legal presumption on the self-employed status of drivers in the personal transportation sector. Italy introduced specific legislation on the labour conditions of self-employed people working through platforms in the food and parcel delivery services.
- **Digital labour platforms are increasingly considered as (potential) temporary work agencies** in some EU Member States (e.g. Austria, the Netherlands) and in some economic sectors such as domestic services when work is performed for a single client on a regular or continuous basis. This may also be of relevance for online platform work when provided to businesses, a type of platform work that is currently largely unaccounted for.

**Turning to the rights and obligations of platforms and of people working through platforms, the country articles confirm the difficulty in classifying digital platform businesses in the statistical classification of economic activities**

**(NACE) and in traditional sectors of industry.** Platform businesses generally consider themselves as technology companies providing information society services. This however has been challenged and ride-hailing apps are increasingly classified as personal transportation or food delivery services by national courts. More recently, the question of whether digital labour platforms could be classified as temporary work agencies for both on-location and online platform work has been raised in some EU Member States.

**Very few EU Member States (e.g. Belgium, France) currently require digital labour platforms to register as businesses in the registries of national tax authorities,** unless they are locally considered as temporary work agencies which are subject to specific national registration rules. The lack of obligations to register also facilitates lack of reporting obligations on the earnings of people working through platforms. Country articles mention the problems of the tax base erosion and profit-shifting by platforms and of undeclared work by people working through platforms, especially in what regards online platform work. In addition, since platforms are not registered as legal entities in all the Member States where they operate, this also creates challenges on the respect of labour legislation: currently, platforms have a choice to opt out from a particular Member State's labour legislation by hiring self-employed (freelancers) in that Member State while being established in another Member State. While evidence on this is currently limited to a small number of cases, it raises an important policy-related challenge at the EU level given the different country-specific labour legislations and the acknowledged labour market status of people working through platforms.

**The contracting of people working through platforms is often done through standard terms and conditions which are unilaterally enforced** and do not always cover all relevant issues such as dismissal procedures and notification periods, access to complaint-handling mechanisms, protection of working time, the right to information and explanation of (semi-automated) decisions, the right to provide services to different platforms simultaneously and the right to portable work histories.

**Because they do not have the employment status of employees, most people working through platforms are insufficiently protected in terms of their working conditions and social protection.** Very few EU Member States have taken legislative action and regulated the working conditions of people working through platforms. In some EU Member States (e.g. Denmark, Italy), collective agreements have been concluded to tackle working conditions and social protection-related challenges for people working through platforms. The country articles indicate that the most important concerns of people working through platforms in terms of working conditions and social protection relate to risks of work accidents, occupational disease and to income replacement schemes in case of short-term work interruptions (sickness, unemployment, etc.).

**There is great diversity in national regulatory frameworks and policy responses on the issue of AI and algorithmic management in the workplace.** This Review found that with the exception of Spain's recent 'Riders Law'<sup>4</sup>, no Member State has adopted labour legislation specifically addressing algorithmic-related challenges in platform work.

Diverse policy and regulatory approaches range from non-existent regulation or policy debates related to AI, or the adaptation of existing policies and/or national legislation

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<sup>4</sup> Royal Decree-Law 9/2021 of 11 May amending the consolidated text of the Workers' Statute, approved by Royal Legislative Decree 2/2015 of 23 October, to guarantee the labour rights of persons engaged in distribution in the field of digital platforms. Available [online](#).

to the conditions of platform work, to new policy proposals, to the creation of overarching national strategies regulating the use of digital technologies including AI. Several EU Member States, including Belgium, Denmark, France, Portugal and Slovakia, see future EU-level regulation on AI as a key benchmark for national policies in this area. Two cross-border regional initiatives have emerged in the Nordic-Baltic region and the Central and Eastern European region to declare a common approach and support EU-level regulations on the use of AI in economic development.

**In relation to labour inspection, a mixed picture emerges in terms of the approach to platform work.** Some EU Member States, including Italy, the Netherlands and Poland have begun to increasingly emphasise inspecting platform work and combating bogus self-employment. In other EU Member States, labour inspectorates do not play a significant role in ensuring fair employment conditions for persons working through platforms, since this does not fall within their competences.

## 1 Introduction

The platform economy is growing, with around 11% of the EU workforce stating they have already provided services through a platform (Urzı Brancati et al. 2020). A number of challenges associated with platform work persist, including a lack of transparency and predictability in working conditions, inconsistent income levels, ambiguous health and safety regulations, low representation, insufficient social protection and issues around personal data and algorithmic management of work. At the same time, platform work also offers new opportunities by generating new jobs and income streams to people struggling to find work in the traditional labour market and to those who enjoy the flexibility of platform work.<sup>5</sup>

The following sections further explain the concept of platform work, its characteristics and prevalence, exploring the available data, challenges facing those working through platforms across the EU Member States, and the impact of the COVID-19 pandemic, including remedial state measures that concern the platform economy.

Data for this European Centre of Expertise (ECE) Thematic Review are mainly drawn from unpublished country articles<sup>6</sup> on the characteristics and challenges of platform work in the EU-27 Member States, in addition to existing published comparative and country-specific evidence.

### 1.1 Understanding the concept of platform work

A **platform** is an online facility or marketplace operating via digital technologies owned by an undertaking, enabling a match between the demand and supply of services provided by people working through platforms (Hauben et al. 2020). **Platform work** is understood as all labour provided through, on, or mediated by online platforms in a wide range of sectors, where work takes various forms and is provided in exchange for payment (European Commission, 2020). **People working through platforms** refer to those performing platform work regardless of their legal employment status (employee<sup>7</sup>, self-employed or third-category status).

A basic distinction can be drawn between **on-location platform work** (e.g. passenger transport, the food/parcel delivery sector, personal and household services and domestic work) and **online platform work** (e.g. work where tasks do not depend on location but are performed via teleworking, including microwork tasks, translations, research assistance, data encoding, tagging pictures, IT or design projects).

Acknowledging the wide variation in conceptual approaches across different countries and research, the following studies provide the broadest and most detailed definitions of platform work, or work via digital labour platforms, in the EU: European Commission (2020), Hauben et al. (2020), Urzı Brancati (2020), Eurofound (2018), Schmidt (2017)

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<sup>5</sup> Source: [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_21\\_656](https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_656)

<sup>6</sup> The information contained in the country articles and in this synthesis report covers the period up to 21 March 2021 when the manuscripts were completed. Beyond this timeframe, the following key developments were included in the synthesis document while this was being finalised: Spain's adoption of the Riders' Law of 11 May 2021; Greece's proposed legislation on labour market regulation containing provisions on platform work from April 2021; the collective agreement signed in April 2021 between Foodora and social partners in Sweden's transport sector and developments in court cases in the Netherlands relevant to the GDPR.

<sup>7</sup> For the sake of clarity, the term 'employee' is systematically used in this Review as referring to a person providing services under the authority of another person in return for a payment. The term 'worker', which is often used in EU policy documents and in EU labour legislation as referring to the same concept, will only be used when explicit reference is made to EU legislative documents. The term 'employee' is preferred over the term 'worker' as it allows easier understanding for most readers, with different national terminologies in the respective labour law contexts.

and Fabo et al. (2017). Based on these studies, both on-location and online platform work include these key elements:

- Paid work is organised through a digital labour platform;
- (At least) three parties are involved: the online platform, the client and the worker;
- The aim is to perform specific tasks, provide specific expertise or know-how or to solve specific problems;
- The work is (often) broken down into particular small-scale tasks;
- The work/services are provided on demand.

## **1.2 Scope of this review**

This review focuses purely on 'labour intensive' activities where people working through platforms mainly contribute via their own labour rather than with assets. Uber, for example, falls into this category, because people working through platforms use their own car but contribute to the business by driving it. Airbnb does not, however, since the contribution of a property far outweighs the labour of the owner.

Platform work, as referred to here, is also distinct from activities performed on not-for-profit 'collaborative platforms' where services or goods are exchanged for free, or where payment only covers the cost of providing the service (e.g. car-sharing). Therefore, the scope of this Review does not include activities such as trade of material or capital goods, non-commercial activities, social media and rental of immovable property.

This synthesis report provides an overview in the 27 EU Member States, in terms of:

- Prevalence of platform work and the associated challenges in EU Member States;
- Legal and policy frameworks relevant to platform work and platforms (in terms of legislation and policy proposals on employment status, rights and obligations of platforms and of people working through platforms, specific actions on algorithmic management);
- Policy and legal proposals aimed at improving the working conditions of people working through platforms and recent country experiences in this respect.

This report is structured as follows: Section 2 discusses the extent and characteristics of platform work across the EU; Section 3 considers issues around the employment status of people working through platforms; Section 4 outlines the rights and obligations of platforms and the prevailing rights of people working through platforms in different EU Member States; Section 5 focuses on specific regulation concerning algorithmic management or the application of AI in the workplace; while section 6 discusses enforcement and the inspection of platforms.

## 2 Prevalence and characteristics of platform work

This section draws both on existing studies and the unpublished country articles for the EU-27, produced in the context of this Review, to discuss the prevalence of platform work, its forms, associated challenges, plus the impact of the COVID-19 pandemic and remedial measures introduced across the EU.

**Detailed survey evidence on platform work across the EU Member States is patchy** (see Annex). Evidence varies in terms of conceptual definitions and scope and country coverage. The available evidence is often limited to on-location platform work without accounting for the online platforms. With this in mind, Urzì Brancati et al. (2020) and Pesole et al. (2019) call for consistency of definitions and survey methods, for example, by focusing on data collection in terms of the regularity of work via platforms, time intensity of such work, and level of income that people working through platforms earn from such work. Almost all country articles point to the need for consistent definitions and concepts to generate systemic and improved statistical data collection.

### 2.1 Prevalence of platform work across EU Member States

Based on evidence collected within comparative surveys (see Annex) and national evidence from Member States, two important statements on the prevalence of platform work can be formulated.

**First, the share of platform work out of the overall economic activity remains low.** The Collaborative Economy Research Project (COLLEEM) II survey indicates that approximately 11% of people in the 16 EU Member States considered has ever provided services via digital labour platforms. (Sept 2018). Meanwhile, only about 1.4% of those surveyed had earned significant income or put substantial hours in platform work (Urzì Brancati et al. 2020: 53).

**Second, the COLLEEM surveys indicate a small but clear increase in the prevalence of platform work, which for the EU as a whole increased from 9.5% (2017) to around 11% (2018)** between the COLLEEM I survey implemented in 14 Member States and the COLLEEM II survey implemented in 16 Member States (Urzì Brancati et al. 2020: 14). This increase can be seen, to varying degrees, in all countries covered by the COLLEEM surveys except for two (Italy and Slovakia). It is particularly stark in Spain (from 12% to 18%) and the Netherlands (from 10% to 14%) (ibid.). Without statistical rigour, the same evidence – an increase in the prevalence of platform work while the overall share of platform work within the economy remains low or modest – is mentioned in the unpublished country articles.

The gradual increase of work via platforms can be attributed to a greater share of the population having internet access, the growing popularity of digital technologies (e.g. simple ordering via mobile phone apps), relatively easy access to work and additional income and the opportunity to generate income for workers struggling to gain access to the traditional labour market (e.g. migrants or people with disabilities).

In countries with a low share of platforms, such as Finland, a major constraint is that Uber and other ride-hailing services face strict regulation, leading to a lower market share for such services compared to traditional taxi services.

**Interestingly, the prevalence of platform work as the main source of income decreased between 2017 and 2018.** Around 1.4% of the working-age population in the 16 countries participating in the COLLEEM II survey indicated that platform work accounted for their main form of employment, ranging from 2.6% in Spain to 0.6% in Finland (Urzì Brancati 2020: 17). In 2017, 24% of people working through platforms

reported that they earned at least 50% of their income through platforms, whereas in 2018 this proportion fell to 11% (Urzì Brancati et al. 2020: 16). The drop in the main category of people who work through platforms is entirely due to a sharp decrease in the proportion of those who say that more than 50% of their income comes from platform work. In contrast, the increase is reported in categories that participate in platform work as sporadic, marginal or secondary forms of employment, which are currently the most common forms of platform work (Urzì Brancati et al. 2020).

**Meanwhile, platform work reported as a secondary source of income and involving lower working time than the main economic activity has increased marginally, but consistently, across various types of platform work.** For the total COLLEEM sample, the share of people working through platforms sporadically (less than once a month over the past year) increased from 1.9% to 2.4% between 2017 and 2018 (ibid.). The share of people working marginally via platforms (at least monthly, but less than 10 hours a week and earning less than 25% of their income via platforms) increased from 1.6% to 3.1% (ibid.). Finally, the share of people working via platforms at least monthly for 10-19 weekly hours or earning 25% to 50% of their income through platform work increased from 3.6% to 4.1%; while the share of people for whom platform work is their main form of work decreased from 2.3% to 1.4% (Urzì Brancati et al. 2020: 16).

**While the number of people working via a platform at least once per month grew between 2017 and 2018 by 5.8%, there was a drop-out rate of 58.6% during the same period** (Urzì Brancati et al. 2020). These data only refer to workers included in both rounds of the COLLEEM survey and exclude new entrants since 2018, making it impossible to draw clear conclusions on the overall growth of platform work within this period (ibid.).

On top of evidence on the prevalence of platform work from multi-country surveys, country-specific evidence is available via national data in selected EU Member States. Some examples, from the country articles produced for this Review, are presented below.

**Belgium:** In March 2021, the government authorised 91 platforms to operate in the 'collaborative economy', a concept first introduced in 2016 via income tax legislation aimed at fighting undeclared work. Individuals can perform work mediated through an authorised digital platform in a non-professional capacity and therefore as a secondary activity. The money generated is subject to lower rates of income tax. Fiscal authorities report that in 2019, around 18 458 individuals used this system and earned on average EUR 102 per month working through digital labour platforms. Since not all digital platforms rely on this tax advantage, the total number of digital platforms operating in Belgium is actually higher, estimated at 150.

**Bulgaria:** A study by the Center for Economic Development (Prohazka 2018) based on a nationally representative poll of 1 000 employees aged 18-65 found that 3.3% of respondents have engaged in crowd work at least once. 4.1% of respondents have used platforms for work or trading goods and services online.

**France:** The total number of people working through platforms in France is estimated between 200 000 and 260 000 (CNUM, 2020; INSEE Première No. 1748, April 2019). While these are estimated figures in the absence of accurate statistics, the number of people working through platforms is growing fast. Most work in the transportation sector. In 2018, there were nearly 78 000 registered 'micro-entrepreneurs' (the most common employment status of people working through platforms in France) operating in the transportation sector, virtually all of them are likely to be people working

through platforms, marking a huge increase compared to 2017 (43 000). In 2019, the number of 'micro-entrepreneurs' grew by 10% in France and 30% around Paris.

**Greece:** Greece is not covered by the major multi-country surveys, so evidence on platform work is scarce. The 2016 Eurobarometer survey gives an idea of platform work in the country: 9% of respondents reported they had used the services of a platform, about half the share for the EU as a whole at 17%. Only 1% of respondents (compared to an EU average of 4%), did so regularly. This suggests a lower prevalence of platform work in Greece than in other EU Member States.

**Hungary:** The COLLEEM surveys show that 6.7% (2017) and 6.5% (2018) of the sample generated some income through platform work. However, the Hungarian Labour Force survey identified a significantly lower share of people working through digital platforms and decided not to publish these data because of the small sample. The possible explanation of this discrepancy is that people working through platforms are undeclared workers and therefore less likely to report platform-based work to the Central Statistical Office, which is perceived as a state authority.

**Italy:** While ride-hailing was one of the first platform services offered in Italy, it was immediately challenged in the courts by taxi drivers and professional chauffeurs as unfair competition. The litigation resulted in the blocking of services of UberPop and the subsequent lack of development of this segment of the platform economy in Italy.

**Luxembourg:** Uber attempted to enter the local taxi arena, but quickly abandoned the idea. The government only allowed Uber and its competitors to join the national transportation market in January 2021.

**The Netherlands:** The prevalence of platform work is still somewhat moderate, with a rough estimate of 125 operational digital labour platforms, of which 92 enable on-location work and 33 online work. An estimated 84 000 (or fewer than 1% of the professionally active) engaged in platform work in November 2019 (SER, 2020). Most platforms operate in personal and household services, handiwork, the food/parcel delivery sector, hospitality services and childcare/babysitting.

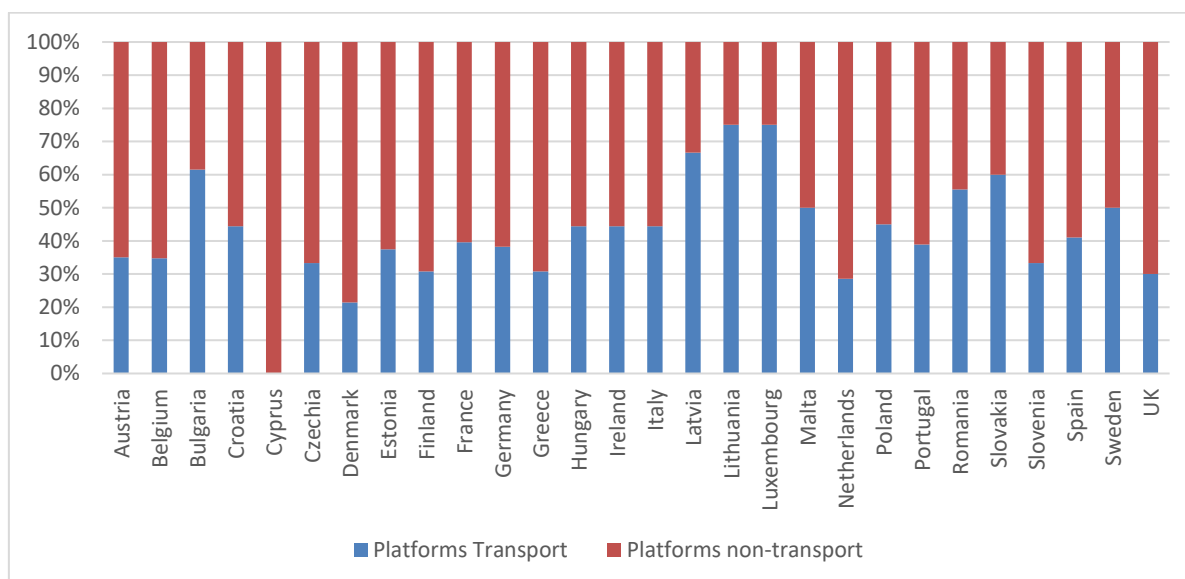
**Poland:** 11% of Poles aged 18-65 have experience of platform work, but only 4% of these do so regularly. For 71% of people working through platforms, this is generally an additional job. Some 31% of people working through platforms could not estimate the average number of hours they worked per week, a quarter (24%) said they worked less than 10h/week, another quarter (23%) between 10 and 20h/week, 14% between 20 and 40h/week, and 9% more than 40h/week (Owczarek, 2018).

**Comprehensive data on the share of various types of platform work**, i.e. work in transportation, deliveries, on-location personal and household services, online microwork and similar, out of the overall economic activity in the Member States **are not available** (the Netherlands is the exception, see box above). The authors' compilation of earlier evidence allows to formulate some important general observations. First, the share and changing dynamics between transportation platforms and other types of platforms, and second, the share of online vs. on-location platform work indicate not only demand for particular types of platform work but also offer insights about the profile of people working through platforms, their skills, age and employment status.

Figure 1 shows that in 2017, the share of transportation platforms reached 50% or more of the overall platform economy in several EU Member States, notably in Bulgaria, Latvia, Lithuania, Luxembourg, Romania, Slovakia and Sweden. In contrast, the market share of non-transportation types of platforms significantly exceeded the share of transportation in Cyprus, Denmark, the Netherlands and Slovenia.



Figure 1. Share of platforms in transport and non-transport sectors in the EU (2017)



Source: Fabo et al. (2017)

**While the pandemic boosted work via digital technology, the country articles indicate that this varied across different types of platform work.** Demand for personal transportation is assumed to have decreased due to social distancing measures, especially early in the pandemic, and much of the work involving transporting people was redirected to the sub-sector of food/parcel deliveries, which has grown significantly since the spread of COVID-19. Moreover, platforms providing food/parcel deliveries have attracted workers from traditional economic sectors. The retail and hotels, restaurant and catering (HORECA) sectors were significantly affected by the crisis, and a large share of sales and services have shifted online, thus creating new job opportunities in the platform economy. Overall, it is expected that online platforms will also experience growth, both in terms of demand for their services and supply of this type of work (with job opportunities in the traditional economy shrinking). This expectation is partly supported by the longitudinal findings of the COLLEEM surveys, which showed that transportation platforms have a higher turnover rate than professional online platforms or platforms that mediate microwork (Urzí Brancati et al. 2020).

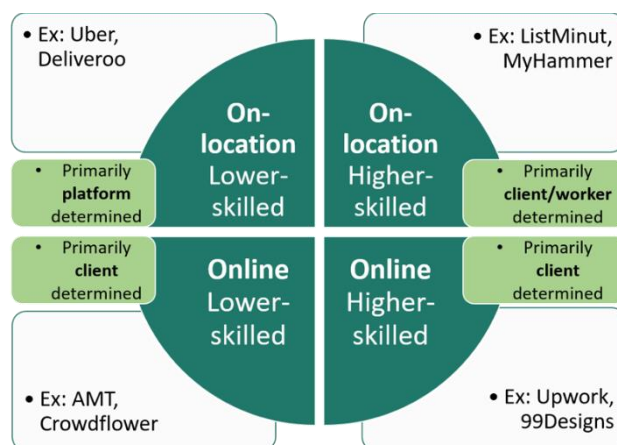
## 2.2 Top platforms operating in EU Member States

**Recent international policy and research papers from Eurofound, the European Commission, the European Parliament and ILO systematically use a common approach based on the Eurofound typology** (Eurofound, 2018). Digital labour platforms are classified based on the fundamental distinction between work provided online (e.g. via remote web-based teleworking) and work performed on-location in public areas, on the road, at someone's home, or that is 'location-specific' (e.g. transportation, deliveries, personal and household services).<sup>8</sup> Apart from the online/on-location differential, a second dimension is considered in the typology of platform work, i.e. the skill level required to perform the specific tasks or services: lower-skilled work (such as tagging, shopping, content review) as opposed to higher-skilled work (graphic design,

<sup>8</sup> ILO in its most recent study (2021) refers to the online web-based platforms and the location-based platforms.

plumbing, software design). The combination of both criteria allows for a typology of four main types of digital labour platforms as presented in Figure 2.

Figure 2: Platform work typology<sup>9</sup>



Source: European Commission (2020)<sup>10</sup>

Other categorisations of platform work derive from treating transportation and food delivery platforms as distinct, since they were the first digital platforms offering services in the UK (2012) and the EU (France, since 2014), thereby capturing most policy and public debate related to the often ambiguous employment status of their drivers and riders (Fabo et al. 2017). This approach generates the following, now rather historic, categorisation of platforms, into:

- **transportation platforms** that can be further divided into platforms that either focus on the transportation of people (about 66% of transportation platforms in 2017) or food and goods;
- **platforms trading offline local services** e.g. personal and household services, (child-) care services, handiwork such as plumbing and repair works, shopping, dog-walking and other tasks delivered on-location;
- **platforms trading online services** e.g. design, IT services and other forms of microwork delivered via teleworking.

Another dimension reflected in the categorisation of digital platforms is captured in Engels and Sherwood (2019) and Schmidt (2017), namely, whether particular tasks within online and on-location platforms are given to selected individuals (e.g. transportation, deliveries, personal and household services) or to a crowd (contest-based creative crowd work and micro-tasking).

**These specific categorisations of platforms help to classify the platforms currently operating across Member States, even though an exhaustive mapping of all platforms operating across the EU is not available.** Based on information contained in the country articles, Table 1 below provides an overview of *examples* of platforms operating in the EU-27 Member States according to type. The table distinguishes between on-location and online digital platforms and within the former category between (1) personal transportation, (2) food/parcel delivery and (3) other types of services such as domestic services, care services, teaching and handiwork.

<sup>9</sup> See Table 1 for various examples of platforms across the EU Member States.

<sup>10</sup> European Commission, (2020), *ibid.*

Table 1. Selection of platforms operating in the EU Member States

Country	Platforms facilitating on-location platform work			Platforms facilitating online platform work	
	Transport, hailing	ride-	Food/goods delivery	Personal and household services (e.g. gardening, cleaning), care services, teaching, handiwork	Translation, graphic design, software development, legal services, microwork (e.g. transcriptions, tagging)
AT	Uber, Bolt, Free Now		Mjam (part of Delivery Hero Berlin), Lieferservice (part of Just Eat Takeaway.com Amsterdam)	Extrasauber.at, Haushaltshilfe24.at (part of Lemonfrog AG Switzerland), Betreut.at (part of care.com Europe Berlin)	Clickworker
BE	Uber, HEETCH, BEEP, BlaBlaCar		Deliveroo, Uber Eats, Takeaway.com, IzI, Shopopop, Zaatich, Vengo, Hytchers, Shippr	Helper, Bringer  Nanny Nina, Martha, Kidssitting, B-homecare.be, Handyfriend, Harry Butler, Itzu, Trixxo, Youpjob, Dienstenbrigade, Jellow, ListMinut, Teacheronline, Bijleshoek	Clickworker, Freelancer, Upwork
BG			Foodpanda.bg, takeaway.com, ebag.bg	Housecare.bg, phcare.bg, bavachki.bg, maistor-plus.com, domestina.bg	Upwork, fiverr, freelancer.com, gigsbg.com, freelance.bg, dibla.com
CY	Uber, Taxiplon, Beat		Wolt, efood, Bolt Food, Foody Cyprus, BOX, deliveryman	Douleftaras.com.cy	
CZ	Uber, Bolt, BlaBlaCar		Damejidlo.cz, zavezu.cz	robeeto.com, grason.cz, nejremeslnici.cz, supersoused.cz, hlidacky.cz	Navolnenoze.cz, jaudelam.cz
DE	Uber, CleverShuttle (subsidiary of Deutsche Bahn), Moia (backed by Volkswagen), Berlkönig (active in Berlin, provided by the Berlin Public Transportation Company, Via Transportation and Daimler AG), BlaBlaCar		Deliveroo, efood, Wolt, Delivery Hero, Lieferando (subsidiary of the Dutch Eat Takeaway), serving as an umbrella for pizza.de, foodora.de, lieferservice.de, and lieferheld.de, flaschenpost and Durstexpress (subsidiary of Dr. Oetker KG)	betreut.de, haushelden.de, Gewerbeschein, Helpling, Expat.com	Clickworkers, MyLittleJob, Streetspotr
DK	3F Transport, Uber		Wolt, Just Eat, Hungry.dk, Too Good to Go	Happy Helper, Chabber	Upwork, Consultant, Worksome
EE	Bolt (previously Taxify), Uber, Yandex, Wisemile		Wolt, Uber Eats, Zomato, foodpanda, Deliveroo Shipitwise, Bolt, Barbora. Some large supermarket chains have created their own delivery platforms	UpSteam, Care Mate	GoWorkAbit, H2H, Upwork, Handy, Toitla

Country	Platforms facilitating on-location platform work			Platforms facilitating online platform work	
	Transport, hailing	ride-	Food/goods delivery	Personal and household services (e.g. gardening, cleaning), care services, teaching, handiwork	Translation, graphic design, software development, legal services, microwork (e.g. transcriptions, tagging)
EL	Beat (the only space left to platforms is as intermediaries between passengers and licenced taxis)		Wolt, efood, BOX, Bolt Food, UberEats	Douleftaras.gr, Paramana.eu	Freelancer.gr
ES	Uber, BlaBlaCar, Cabify, MyTaxi, Blackcabs.es, En-mercedes.com, Limousinecc.com (also Free Now, Ecologic, Pidetaxi as taxi apps)		Deliveroo, Glovo, Uber Eats, Just Eat, Stuart	Specialised platforms: Cuideo, Aiudo, Wayalia, Cuorecare, Joyners, Cuidum, Familiados, Dependcare, Nannyfy, Sitly, Topnanny. Multi-service platforms: Yocuido, Cronoshare, Clintu, Care.com, Topayuda, Yooopies	Trabeja.com, Neuvoo, Prontopro, Freelancer.com, Soy Freelancer, Trabajo Freelance, Twago, Fiverr, People per Hour, Upwork, Workana, Malt, Guru, Speedlancer, People per Hour, Greatcontent, Textbroker, Gengo, Jooble
FI	Uber		Wolt (Finnish start-up) and Foodora in food delivery, Budbee in goods delivery	Seure.fi	Amazon Mechanical Turk, Upwork
FR	BlaBlaCar, Chauffeur Privé		Resto-in, Vizeat/Eatwith, Uber Eats, Stuart	AlloVoisins	eYeka
HR	Uber, BlaBlaCar, Bolt		Glovo, Wolt, Pauza, Bolt, Welovelocal.hr	Clintu, Cuvalica.hr, Trebam.hr	ClickWorker, Fiverr, Microworker, Upwork, Toptal, BigTranslation
HU	Bolt, BlaBlaCar		Wolt, Bolt Food, Netpincér	Expatriot.com, Rendi.hu	Freelancer, Upwork
IE	FreeNow, Lynk, Uber		Deliveroo, Just Eat Ireland	Home Care Direct, Mindme, Laundr, Pristine, Helpling.ie, babysits.ie	Fiver, Upwork
IT	Uber, BlaBlaCar		Just eat, Foodinho (Glovo), Uber Eats Italy, Deliveroo, MyMenu, Sgnam, Foodora	Sitly.it	
LT	Bolt, Uber, eTransport, eTaksi, Trans for Forwarders, eTransport		Bolt Food, ZITICITY, LastMile, Wolt, Lėkštė.lt, Bazzarr	GETFIX, PortalPRO, Domio, myHelper, Discontract	Teisės partneris, Cloud marketplace, FDP.lt
LU	Uber		Foodstix, FoodLunch.lu, Goosty, Webfood/Livrando		Crowdwork
LV	Uber, Bolt, Yandex		Bolt Food, Wolt	Expatriot.com, Greataupair.com, baltichousehold.lv	

Country	Platforms facilitating on-location platform work				Platforms facilitating online platform work
	Transport, hailing	ride-	Food/goods delivery	Personal and household services (e.g. gardening, cleaning), care services, teaching, handiwork	Translation, graphic design, software development, legal services, microwork (e.g. transcriptions, tagging)
MT	Bonju, Cool, eCabs, iGo, Ryde		Bolt, Wolt, Bonju Eats	Genie	
NL	Uber, BlaBlaCar, LINDA.com, Temper, ViavanAmsterdam		Thuisbezorgd.nl, Deliveroo, Uber Eats, Bezorgland, Eten.com, Fooddrop, Ishipit, Brenger, Dropper, Just cargo, PAKkaly, Pick This Up, Sjauf, Tring Tring, Uber Freight	Charly Cares, Careibu, Croqqr, Handige helden, Hlprs, Hulp.nl Helping, Tisser, YouBahn, My Flexwork, Flexbook, Inhuren.com, Wurcly, care.com, petbnb LINDA.com, Temper, Jobner, Kolibri next, Now jobs, Ploy, Duobus, Elanza, Kraamzorg1op1, Roamler Care, Bsit, Holiday sitters, Oppasland, Nanny Nina, Sitly, Top sitters, Rapid Workers, Roamler retail, Jellow (Care), Fiverr, PeopleperHour, Planet Interim, Staffyou, Any Jobby, Werkspot, Young Ones, Temper, Randstad Go, Roamler Tech, Casius, Klusup, Zoofy	Upwork, 99designs, AMT, Clickworker, Jellow, YoungOnes Testbirds, Freelance.nl, Freelancer.nl
PL	Uber, Bolt, Free Now (formerly myTaxi), iTaxi, BlaBlaCar		Glovo, Wolt, Uber Eats, Finebite, Bolt Food, Pyszne.pl, otostolik.pl, Stava, Delgoo, knajp.pl, Delidelivery	hojoclean.pl, oferia.pl, niania.pl, favore.pl	uslugi-artystyczne.pl, Designer.pl, useme.com, freelancer.pl, oferia.pl
PT	Uber, BOLT, Freenow, BlaBlaCar		Uber Eats, Glovo, Takeaway, Bolt Food	Dona Rosa, Simplicasa	Zaask, fixando.pt
RO	Uber, Bolt, Clever, Blackcab, Yangoo, Freenow, BlaBlaCar		Glovo, Foodpanda, Takeaway		LiberProfi, Fiverr, upWork, Freelancer, PeoplePerHour, Workaway, Tiptap, Taskrunner
SE	Bolt, Uber, Bzzzt, Clever,		Foodora, Uber Eats, Bolt food, Wolt	Yepstr, Tidy App, Taskrunner, Techhbuddy, nanny.nu	Fiver, Wordapp, Gigger
SI	Uber, Flixbus, GoOpti, Taxi Cammeo		Wolt, E-hrana	beeping	
SK	Bolt (previously Taxify), Uber, Hopin, BlaBlaCar, Liftago		Wolt, Bolt Food, Bistro	Jaspravim, Domelia	Taskit, Mikropraca.eu, Microjob.sk, Wilio

Source: the authors based on own research, expert inputs from the unpublished country articles for this Thematic Review, and Akgüç et al. (2018).

Table 1 is not exhaustive, but allows drawing the following tentative conclusions:

- The share of multinational platforms operating across a number of EU Member States is higher in transportation, food delivery and in microwork. Global platforms are active in the personal transportation and food/parcel delivery sectors in almost all EU Member States, with only very few (and sometimes no) 'local' operators present. The presence of local platforms is strongest in on-location personal and household services, care services, teaching and hospitality services.
- Although the list of platforms in Table 1 is not exhaustive, evidence shows that personal transportation and food/parcel delivery services tend to be covered by a small number of platforms, many of which are multinational and operating on a standardised basis. At the same time, the nature of the services in personal and household services, handiwork and parcel delivery accounts for a higher number of country-specific platforms, some of which operate locally (e.g. only in some cities).
- Leading multinational platforms can be identified both among online and on-location platforms. If platforms are established in one Member State already and country-specific regulatory frameworks allow a simple establishment of the same platform in other Member States, it can be expected that platforms will operate across an increasing number of countries. At the same time, the fact that platforms operate online and can obtain a market share without formal registration in each Member State in which they operate allows the delegation of tax obligations onto workers in a particular Member State. An example of this is the Estonian Bolt platform which, after the regulatory change in Slovakia in 2019, formally left the country and currently operates as an Estonian enterprise that engages in individual contractual relationships with its drivers in Slovakia. All VAT and income tax obligations vis-à-vis the Slovak authorities are delegated onto the drivers registered as self-employed or working as employees of Bolt's partner organisations in Slovakia.
- As multinational platforms operate across several EU Member States, the question arises as to the similarity of their working conditions, remuneration systems and workers' employment statuses across these countries. Global platforms use standard terms of service agreements and mostly consider their people working through platforms as self-employed (freelancers). In several EU Member States court rulings have confirmed the employment status of people working through digital platforms, particularly in the food delivery sector and, to a lesser extent, also in the personal transportation sector.
- The presence of multinational platforms across a number of EU Member States may also generate future debates on whether working conditions, remuneration systems and workers' employment statuses across various EU Member States will undergo a convergence process due to standardised terms of service and working conditions, or whether these multinationals will tend to benefit from varying labour market situations across different EU Member States.
- In EU Member States where platform work is more developed, such as the Netherlands, the recent policy debate on platform work has shifted to the classification of digital labour platforms as temporary work agencies and of people working through platforms to temporary agency workers. This occurs in the context of a highly developed sector of temporary agency work. This suggests that a similar policy debate may emerge in other Member States as temporary agency work in general, and platform work in particular, increase.

- The COVID-19 pandemic has contributed to expanding the food/parcel delivery sector, both for multinational and newly established local platforms.

**In sum, most of these findings are closely related to the nature of the platform economy, which yields large network effects, economies of scale and the use of information technologies and AI.** This finding is not only relevant for further debates on trends in platform work and their convergence across the EU Member States, but also for the profile and employment status of people working through platforms.

### 2.3 Profile of people working through platforms

**The age structure of people working through platforms documents that young people are more likely to take up (on-location) platform work.** This has been confirmed in all country articles. Most country articles indicate the age group of 18-29 years to be the largest group working through platforms; the only outlier to this is Slovakia. Here, the average age of people who work for a platform at least once a year reached 36.4 years, below the average age of workers who tried platform work in the past or those who never worked for a platform. In the Netherlands, on-location people working through platforms are generally very young (68% are between 18-24 years), whereas online platform workers tend to be older (46% are older than 50 years) (Ter Weel et al. 2020).

Huws et al. (2019: 20) find that gender differences between frequent and occasional platform workers are minor, but with a small tendency in some countries (notably France, Estonia and Slovenia) for male dominance to be somewhat larger among frequent platform workers. The greatest differences are found in Estonia with 72.1% of men in the sample engaging in platform work every week, compared to 27.9% of women; 66.4% men and 33.6% women in France and 62.9% men and 37.1% women in Sweden. The only exception is Italy where women (at 52.8%) narrowly outnumber men (at 47.2%) among those doing platform work at least weekly. The country articles **confirm a slightly higher, but not significant, prevalence of male than female platform workers** particularly in the on-location and high-skilled online platform work. For example, in the Netherlands, the gender dimension often depends on the underlying economic services that are intermediated by the digital labour platforms: personal transportation and software development report higher male participation rates as opposed to cleaning and household services.

**Besides the age structure and gender dimension, in Belgium, Czechia, France, Lithuania, Malta and Sweden, non-native/foreign-born workers were mentioned as an important group among on-location people working through platforms (in the personal transportation and food/parcel delivery sectors).** In contrast to other Member States, in Denmark the share of native-born people working through platforms is higher. In Slovenia, while young people dominate platform work, their share is significantly lower in the transportation services compared to other types of platform work.

**The educational and occupational background of people working through platforms differs according to the type of platform work.** In Germany, highly qualified workers aged 26-35 are most strongly represented among people working through platforms<sup>11</sup>. In the Netherlands, people working through platforms also tend to have a middle or higher education, while in Poland people working through platforms more often

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<sup>11</sup> Note that in this context, crowdworking is defined as the completion of paid, short-term tasks conveyed via internet platforms or smartphone apps [and] includes tasks that are completed online (such as translation or

have a lower education. In some countries, e.g. Czechia and Slovenia, platform work is more often performed by students or young people in education.

**The country articles prepared for this Review highlight that platform work is often performed as a secondary job to earn additional income, topping up the earnings received through another main occupation. People working through platforms perform their platform work as self-employed or in another capacity** (see section 3 on employment status). Huws et al. (2019) found that, most frequently, people working through platforms across the studied EU Member States are in full-time employment and are no more likely than other workers to describe themselves as self-employed.<sup>12</sup> However, the employment status of people working through platforms does not necessarily refer only to their labour market status due to their work via a platform but is more likely to refer to their overall status. Therefore, platform work can still remain a source of secondary income. The employment status related to both platform and other forms of work are highlighted by examples from Belgium and Denmark in the box below.

In **Belgium**, 73% of the occasional workers active in the collaborative economy and performing non-professional occasional work as a secondary activity have an employment contract for their main profession, and another 19.8% are retired.<sup>13</sup>

In **Denmark**, 47% of people working through platforms are employed (Ilsøe and Madsen, 2017). Earnings from platform work are more widespread among working people employed in temporary positions. Among temporary employees, 1.6% have made money from platform work within the past year, while this only applies to 0.7% of permanent employees. Likewise, it is mainly new employees and employees in a workplace for a shorter period of time (2-3 years), who have sought additional income via platform work. These groups make up two-thirds of all people working through platforms in Denmark and this characteristic relates to the high share of young people among the providers.

In **the Netherlands**, on average about 30% of on-location people working through platforms and 9% of online people working through platforms confirm that platform work is their main professional occupation. But in sectors such as courier services and online content creation, the share is much higher, even reaching 60%.

Finally, both Huws et al. (2019) and the country articles demonstrate that **most people working through platforms report doing more than one kind of platform work**. Those doing driving or delivery work range from 1.4% (in the Netherlands and Sweden) to 12.3% (Czechia) of the adult population (Huws et al. 2019).

## 2.4 Challenges facing people working through platforms

**Challenges reported by people working through platforms derive from their exposure to precarity, lack of job stability and regular income, irregular work schedules and fragmented employment histories** (Kahancová et al. 2020). People working through platforms often have no written contracts negotiated consensually but are bound by terms and conditions unilaterally determined by the platforms (European

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software programming) and services that are provided offline/on-location (such as delivery or cleaning) (Serfling 2019).

<sup>12</sup> The employment status of people working through platforms can even be unclear to the workers themselves, meaning that self-reporting of status can affect the reliability of aggregate data (Urzi Brancati et al. 2020).

<sup>13</sup> Income from occasional platform work is subject to preferential tax treatment and cannot be combined with the status of self-employment for similar services. This is why most platform workers have the status of employee or 'pensioner' for their main source of income.



Commission, 2020). Irregular income and a significant number of unpaid hours, particularly in online web-based platform work, are a concern for many people working through platforms (ILO, 2021). They have little recourse to out-of-court conflict resolution mechanisms and are subject to (semi-)automated decision-making in the work allocation, organisation and evaluation without any human interference. They often face ambiguous legal and employment status and lack of transparency in their responsibilities vis-à-vis tax authorities. Other challenges relate to lack of interaction with co-workers, lack of on-the-job training regarding health and safety and other issues, occupational stress, low discretion over the work performed, increased workload and time pressure, exposure to algorithmic management and customer rating, and comparatively lower than average net earnings than in the traditional economy (Fidler, 2016, Garben, 2017, Huws et al. 2017, Kahancová et al. 2020). People working through platforms have generally lower access to adequate protection of their working conditions and to social protection, often because of their employment status. Finally, in several countries, people working through platforms are hired via a chain of subcontractors, thus facing the risk of undeclared work and comparably worse working conditions, including access to health and safety regulations, than regular workers.

Some country-specific challenges collected from the country articles for this Thematic Review, included in the box below, highlight broader considerations related to platform work that can be relevant to other Member States or for the EU.

In **Belgium**, the unpredictable and unstable income of people working through platforms is reported as the main challenge, due to pay by transaction and not by hours. Other challenges are identified in the lack of systemic information provision on the essential aspects of the contractual relationship between the platform and the person working through the platform, notification periods in case of changes to the terms and conditions, access to complaint handling and conflict resolution mechanisms, the growing influence of algorithmic management and clients' ratings in work allocation, organisation and evaluation, and the contract interruption and termination provisions.

In **Germany**, trade unions perceive platform work as a potential threat where using self-employed people who work through platforms could circumvent the minimum wages and minimum labour standards. Moreover, challenges for people working through platforms refer to their weak collective bargaining power, low earnings, particularly for those performing micro tasks and certain on-location work, lack of social protection of solo-self-employed platform workers, gender inequalities in work access, and lack of access to continuing training.

In **Malta**, media reports allege that many people working through platforms, particularly in the food/parcel delivery sector, are obliged to share 50% of their earnings with the platform. People working through platforms also work long overtime, up to 60-70 hours weekly, for an income of EUR 1 500.

In **the Netherlands**, a recent court ruling on the employment status of Deliveroo riders uncovered that 67% of riders earn less than 40% of the minimum wage. Noteworthy here is a recently withdrawn government proposal to adopt a minimum hourly pay rate for the self-employed without personnel, at the level of EUR 16, which is higher than the average amount currently paid out to people working through platforms engaged in on-location services.

Low wages in platform work have been identified across a number of EU Member States. In **Poland**, 40% of regular platform workers earn less than EUR 240 per month, a further 26% earn between EUR 240 to 480 per month (Owczarek, 2018).

Income from platform work is mostly a secondary, or additional, income. People working through platforms try to overcome the low wage problem by working longer, often up to 12 hours a day.

In **Slovakia**, a challenge has been reported concerning a high marginal tax rate. Since most people working through platforms earn their stable income outside of the platform economy and use platform work as an additional source of income, this income is facing a higher tax rate than the first source of income from other types of work.

## 2.5 Interest representation and social dialogue initiatives in platform work

**Evidence on interest representation and social dialogue initiatives in the platform economy are rare.** The IRSDACE project found that in most EU Member States, workers are not represented by existing trade unions (Akgüç et al. 2018). Given the diversity of statuses and sectors and potential obstacles around competition law, representation becomes a complex issue. First, trade unions face difficulties in reaching out to people working through platforms. Second, the ambiguous status of people working through platforms challenges their association with trade unions. Third, due to the marginal or modest size of the platform economy and the limited capacity of trade unions in some countries, organising people working through platforms, may not be a priority for trade unions.

Nevertheless, while this is the overall trend reported in the country articles, they also document several initiatives to organise and represent people working through platforms. **Traditional trade unions have recently opened up their membership to self-employed and/or taken initiatives to support people working through platforms.** In several EU Member States, these workers have created associations to better promote their interests.

In **Belgium**, United Freelancers is a service offered by one of the largest trade unions (ACV), aiming to promote the rights of the self-employed without personnel, while another large trade union (ABVV) has opened a specific service for people working through platforms. The KoeriersCollectief/Collectif coursier-e-s is an association of riders in the food delivery sector and has been active in taking collective actions and promoting the rights of food delivery riders, particularly via social media campaigns.

In **Bulgaria**, the Confederation of Independent Trade Unions (CITUB) analysed national legislation and concluded that some work models used by digital platforms might constitute an employment relationship. Based on this argument, CITUB recommends amendments to labour legislation to introduce and define a new status of employment that fits the new type of work relations through platforms.

In **France**, since the 2016 changes to the Labour Code, self-employed people working through platforms can take collective action, such as strikes, and these are not subject to prior periods of notice. Self-employed people working through platforms also have the right to form trade unions and to have their collective interests defended. Many platform workers' associations have been set up such as the 'Collectif des Livreurs Autonomes' de Paris (CLAP) or 'indépendants.co', set up in 2020 to promote the interests of graphic designers and artists.

Also noteworthy in **France** are recent, informal consultation methods such as the 'Roo-café' where Deliveroo riders are invited to meet with platform staff members or the Uber Consultative Appeal Committee, which is composed of some drivers randomly selected to assess cases of possibly unfounded account deactivation.

**German** unions IG Metall and ver.di also represent non-standard workers and attempt to act on behalf of people working through platforms.

In **Ireland**, the Competition (amendment) Act of 2017 explicitly declassified false self-employed and fully dependent self-employed from the concept of 'undertakings' for the purposes of competition law, implying that these categories of self-employed, including people working through platforms, can establish or join trade unions.

In **Lithuania**, people working through platforms acted against the founders of platforms. In July 2020, Bolt Food delivery couriers organised a strike against reduced rates for their work. In November 2020, couriers petitioned the head of Bolt Food demanding higher wages and stability in working conditions. Trade unions actively support people working through platforms. The Couriers Association was established in 2020 as a division of one of the Lithuanian trade unions. This is the first association that specifically unites delivery couriers working through platforms. In December 2020, the largest Lithuanian trade union (LTUC) communicated vis-à-vis the new government that Lithuania needs an adequate regulatory framework to protect digital platform workers and to recognise those working via non-standard employment contracts as employees.

In **Malta**, the unionisation of people working through platforms continues. Two major general trade unions, (the General Workers Union - GWU - and the Union Haddiema Maltin, the Voice of the Workers - UHM) are trying to unionise people working through platforms in a separate section. A main issue facing unions is that the traditional tripartite definitions of different types of work contracts do not reflect the fast-growing phenomenon of the platform economy.

In **the Netherlands**, the FNV and CNV unions have taken several initiatives to raise awareness and to increase the protection of the labour and social rights of people working through platforms. They took collective action in the courts to clarify the employment status of people working through platforms in the people transportation sector, the food/parcel delivery sector and also in the cleaning and hospitality sectors. FNV also created the Deliveroo Riders Unions representing the riders engaged by the platform.

In **Spain**, the UGT union confederation filed a complaint to the labour inspection authorities against Amazon, Deliveroo, Glovo and Uber Eats for employing bogus self-employed workers and for not providing them with regular employment status.

In **Sweden**, some trade unions within the Confederation of Professional Employees and the Swedish Confederation of Professional associations opened their membership to solo-self-employed people. Unionen, the white-collar federation, has 10 000 self-employed members, although the number of self-employed people working through platforms is reportedly very marginal.

On 6 January 2021, the Commission published the **Inception Impact Assessment for a new EU Initiative on 'Collective bargaining agreements for self-employed – scope of application of EU competition rules'**, so launching a public consultation process in line with the Better Regulation guidelines. The objective of the initiative is to 'ensure that EU competition law does not stand in the way of initiatives to improve working conditions through collective agreements for solo self-employed where they choose to conclude such agreements, while guaranteeing that consumers and SMEs continue to benefit from competitive prices and innovative business models, including

in the digital economy'.<sup>14</sup> Different policy options are being considered, each with a different personal scope, targeting platform work and/or also services in the off-line economy.

Besides representing the interests of people working through platforms, several initiatives also emerged on the side of the platforms themselves. These refer to the effort of the platforms to lobby national governments, to influence the legislative framework, or to increase their importance in policymaking and market presence in general. **The most important controversy, which facilitated the joint actions of platforms, refers to national discourse on whether platforms can be perceived in national legislation as employers.** In some Member States, platforms have already joined national employers' associations - in Germany (Deutscher Crowdsourcing Verband), Slovakia (Uber joined the National Union of Employers, RUZ Slovakia) and Spain (the Adigital association, part of the Confederation of Employers and Industries CEOE, in Spain). The Estonian Sharing Economy Association was founded in 2016, organising various platforms from different sectors. The Association discussed with the Ministry of Economic Affairs and Infrastructure how the state can eliminate obstacles to their operations and generate cooperation between the state and the platforms. The aim is to improve the current legislative framework to better reflect the platform economy.

#### **Low representation of platforms in social dialogue mechanisms**

Digital labour platforms are not yet widely represented in social dialogue structures in the EU Member States. The reasons for lack of representation from the platforms' perspective include:

- their operation without registration as a legal entity in the country of operation;
- not considering themselves as employers of people working through platforms;
- presenting themselves as technological businesses not active in the traditional economic sectors.

**Their general position is to avoid the traditional national employer organisations and social dialogue mechanisms.** Platforms instead engage directly with their workers individually and via their apps using standard terms and conditions and online exchange of information and data.

**Some country articles mention the existence of associations of platforms and/or of collective agreements concluded between representative bodies of platform businesses and people working through platforms.**

In **France**, several platforms including Uber, Stuart and Deliveroo set up the 'Association des Plateformes d'Indépendants' in 2018.

In **Denmark**, Hilfr, a Danish digital platform operating in the **cleaning industry** and mediating cleaning jobs in private households, concluded a collective agreement with the United Federation of Danish Workers (3F), which represents workers in the cleaning sector. The collective agreement came into force on 1 August 2018 and allows people working through platforms to choose their employment status, as either employee or self-employed. A self-employed person working through platforms will automatically become an employee once they have performed 100 hours of work. Em-

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<sup>14</sup> Inception Impact Assessment, European Commission, Ares (2021)102652-06.01.2021, available at: <https://ec.europa.eu/info/law/better-regulation/>

ployees are entitled to a minimum hourly wage (EUR 17), accrue pension rights, holiday entitlement and sick pay. Both categories of workers are covered by a private insurance scheme that provides protection for liability and work accidents.

In 2021, the Danish Chamber of Commerce and the trade union 3F Transport reached national agreement for the food/parcel delivery sector, which covers all food delivery employees from 2021 until 2023 and gives couriers who deliver takeaway meals a regulated wage, pension, maternity pay, holiday pay and sick pay. The agreement set an hourly wage of DKK 124.20 (approx. EUR 16.70) from 1 March 2021, which will increase on 1 March 2022 to DKK 127.35 (approx. EUR 17.12). The food delivery platform Just Eat was the first to sign the agreement to cover its approximately 600 couriers.<sup>15</sup>

In **Italy**, a collective agreement allowing social partners to deviate from legislation in certain circumstances, such as that concerning the working conditions of the 'co-coorg', was concluded between Assodelivery (representing platforms in the food/parcel delivery sector) and the trade union UGL. The agreement, which reintroduced piece-rate payments among other matters, was highly contested by the main Italian trade unions CGIL, CISL, UIL.

In **Slovakia**, Uber joined the national employers' association RÚZ SR, a member of the national tripartite committee.

In **Spain**, several food delivery platform businesses such as Glovo, Stuart, Uber Eats and Deliveroo have set up Adigital as their association.

In **Sweden**, two digital labour platforms, Instajob and Just Arrived, are members of the Employer Association Competency Agency of Sweden and signatories of the Temporary Agency Collective agreement, whereas a collective agreement between the Swedish Federation of Transport, the Swedish Transport Workers' Union and Foodora was signed in April 2021. Until 2020 Bzst, a personal transportation platform, was bound by a collective agreement, but since the beginning of 2021 this no longer seems to be the case.

## 2.6 The COVID-19 crisis and government actions to mitigate its impact

**The COVID-19 crisis has influenced the platform economy differently across different types of work.** While most EU Member States report an increase in food/parcel deliveries and online microwork delivered via teleworking, other forms of platform work, particularly those requiring on-location presence such as household work, care services and, to a certain extent, personal transportation, faced a decline.

**Government measures to mitigate the impact of COVID-19 largely focused on income-replacement schemes** for employees and the self-employed. The latter is documented in Belgium, Czechia, Lithuania, Romania, and Slovakia. In some countries, tax claims and payments were postponed, while **certain people working through platforms, e.g. delivering food, were qualified as essential workers** and given access to specific conditions and measures during the COVID-19 pandemic. In Ireland and Italy, these measures also included providing personal protection equipment to people working through platforms, whereas in Poland the upgrading of food delivery workers to essential workers went largely unnoticed.

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<sup>15</sup> Fagbladet 3F (2021) Groundbreaking agreement: Danes can now order takeaways with a clean conscience, available at: <https://fagbladet3f.dk/artikel/danes-can-now-order-takeaways-clean-conscience>

**While no targeted policy responses to platform work were identified in the EU Member States, in most countries people working through platforms benefitted from wider support.** In Greece, the dependent self-employed were eligible for the same income support during lockdown as other own-account workers and small employers. In Malta, a wage supplement applied for by the employer was introduced, leaving it unclear as to whether people working through platforms were eligible. In France, with little access to state aid for people working through platforms, some platforms offered financial compensation to workers affected by COVID-19. Uber provided free insurance to cover medical costs and loss of income due to illness or injury. In Hungary, the government suspended the obligation of companies in selected sectors to pay social security contributions, and the obligation of self-employed contractors in selected sectors, including personal transport services, to pay simplified taxes for part of 2020. Finally, in Croatia and Luxembourg, platform workers could not benefit from governmental measures put in place to support the economy and the labour market. In Croatia, this was due to the fact that often platform workers operate in a grey zone on service contracts or as undeclared workers. Such work is not illegal per se but does not generate pension and social security entitlements and health insurance as regular employment or self-employed status do. In Estonia, a debate emerged on whether platforms should be eligible for state aid provided to companies in the context of the COVID-19 crisis.

### 3 Employment status

#### 3.1 Introduction

**The employment or labour market status of people working through platforms received significant attention in policy debates and in research at international, EU and Member State level** (Eurofound, 2018; European Commission, 2020; European Parliament, 2020).<sup>16</sup> Countless policy papers and academic studies point to the ambiguous employment status of people working through platforms and the consequences for the protection of their labour and social rights. Being employee or self-employed (the two main categories referred to in international and national labour and social protection legislation) implies different degrees and levels of protection in terms of working conditions and (often) different access and entitlement to benefits under national social protection schemes (European Commission, 2020).

**The origin of the challenge around the employment status of people working through platforms lies in the unilateral decision by platform businesses, often via standard terms and conditions published on their websites or apps, which determines that their collaborators are independent contractors, freelancers or ‘partners’ rather than employees.** This unilateral classification may in certain instances contravene national or EU labour legislation and jurisprudence, which have consistently determined that an employment relationship exists when a person provides services to another person in return for payment and does so under *the authority* or *in subordination* of that other person. The assessment, ultimately done before court, is based on the individual circumstances and facts and may lead to a reclassification, even when the contract mentions a freelance or independent status.

**The most determining criterion behind an employment relationship concerns the ‘subordination’ or ‘authority’, which has been specifically challenged by people working through platforms.** They often have great autonomy and flexibility in choosing when and how to work, whereas digital applications, algorithms and (semi-) automated decisions are often used to allocate tasks, organise work and evaluate their performance. This digital ‘steering’ of work processes is in certain circumstances considered by national courts and enforcement agencies as a proxy for exercising the authority which characterises an employment relationship. The specific features of platform work, including extensive use of digital applications and technologies to allocate, organise and evaluate work combined with the (often interpretable) national legal concepts of employees, makes classification difficult and can reveal the existence of bogus self-employment.

**Many EU Member States report bogus self-employment in platform work as a challenge, particularly involving on-location platform work.**<sup>17</sup> Country articles confirm that the phenomenon of bogus self-employment has locally been high on the policy agenda. Bogus self-employment has generally been reported as a challenge in relation to on-location platform work, particularly in the personal transportation and food/parcel delivery sector and not in relation to online platform work or services typically performed by freelancers or self-employed, such as handiwork, graphic design or software development. Importantly, bogus self-employment is not necessarily a challenge specific to platform work through digital labour platforms, but reportedly also

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<sup>16</sup> However, some country articles observe that platform work is not being locally considered as an important policy issue, mainly because of its low prevalence (Cyprus, Hungary, Malta, Romania), or that it has only recently come to the attention of national policymakers (Latvia).

<sup>17</sup> Bogus self-employment was estimated at 0.2% of employment in Sweden based on 2015 data (Anxo and Ericson, 201).

exists in the traditional sectors of industry such as construction, parcel delivery and hospitality. Nordic countries such as Sweden appear to be an exception: they generally observe a very low prevalence of bogus self-employment.

### 3.2 Key findings on prevalence of employment status

**Findings from studies of the European Commission (2020) and the European Parliament (2020) reveal that platform work is often performed without a separately negotiated written contract (employment or service) but on the acceptance of standardised terms and conditions by people working through platforms.** These terms and conditions often unilaterally assign self-employment status to people working through platforms. They also specify the general organisation of allocating, executing and evaluating tasks and the rights and obligations of people working through the platform. The lack of consensual written agreements between a platform business and a worker on respective rights and obligations, together with the acclaimed self-employed status and unilaterally defined terms and conditions, implies that many rights of particular concern to people working through platforms are often insufficiently addressed by legislation.

When the contractual relationship is deemed as an employment contract, many of the aforementioned concerns are covered in the recent Directive on transparent and predictable working conditions<sup>18</sup> that requires essential aspects to be included in written labour agreements. The Directive, however, applies only to people engaging in platform work as employees.<sup>19</sup> In cases of genuine self-employment, the recent P2B Regulation<sup>20</sup> addresses some of the (similar) issues, but its scope is limited to information society services and to platform business that are classified as providers of these services (as opposed to platforms which provide services in a particular economic sector). Only a small group of self-employed people working through platforms are hence protected under the P2B Regulation (European Commission, 2020). As a consequence, most people working through platforms do not fall within the remits of the Directive or Regulation and are thus in practice excluded from adequate protection regarding their conditions of work.

Individuals working through platforms that are not protected by the P2B Regulation lack sufficient protection from written provisions concerning their contractual relationship. These include the right to disconnect, the right to information and explanation on certain (semi-automated) decisions, the right to provide services to different platforms simultaneously, the right to portable work histories, the right of access to internal complaint handling mechanisms, established notification periods in cases of changes to the terms and conditions including pay rates and contract interruption or termination. Nevertheless, people working through platforms not protected by the P2B are able to access in some cases similar protections, such as the right to access their data and not be subject to decisions based solely on automated processing, through the General Data Protection Regulation, which applies irrespective of employment status. Similar to the findings of the European Parliament study (2020), some country articles under this Review (e.g. Belgium and the Netherlands) raise these issues and highlight their critical importance in protecting people working through platforms, regardless of their employment status.

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<sup>18</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 (OJ L186/105 11.07.2019).

<sup>19</sup> 'Workers' in the meaning of the Directive and in accordance with the EU definition of the concept of worker. For an extensive analysis of the concept of 'worker' within EU labour legislation see European Commission (2020), Study to gather evidence on the working conditions of platform workers.

<sup>20</sup> Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ L186/57 11.07.2019).



In Portugal, legislation introduced in 2018 mandated written contracts in the personal transportation sector between the transportation operator and the driver assigned to the work, but left it open to the parties to decide whether it is an employment or a service contract. The main objective was to ensure that only legal persons (TVDE) and not individual drivers may form a business contract with the digital platforms. These legal persons contract the individual drivers via employment or service contracts that must be in writing.

**In line with the findings of several other studies (Eurofound 2018; European Commission 2020; European Parliament 2020) the country articles confirm that platform work is primarily performed as a secondary (professional or not) activity, with only a minority of people working through platforms relying on platform work as their main source of income.** People working through platforms often derive their labour market status (as an employee or self-employed) through their main professional occupation or receive benefits under national social protection schemes. In both instances, income from platform work complements their main source of income. As explained below, in several Member States platform work and the income generated through such work are considered a special category of either work ('occasional work', 'non-professional activities') or income (non-professional income), subject to specific labour, social protection and income tax rules. Some national regulations allow individuals to combine the income from platform work with their main source of income, with the additional income often subject to specific tax and social contribution rates.

A possible misclassification of the labour market status, and subsequent lack of labour and social rights attached to the status of people working through platforms, is critical to workers who depend on platform work for their main income. The largest groups of people working through platforms dependent on platform work as their principal source of income tend to be engaged in on-location platform work.

**Country articles confirm that a very small minority of people working through platforms have an employment contract for this work. They are generally engaged as self-employed and/or through various forms of non-standard employment.** Moreover, when people working through platforms are contracted via employment contracts, these tend to be non-standard contracts such as fixed-term, temporary agency work contracts, zero-hours or on-call employment contracts lacking certainty of allocated work. Several country articles also mention student contracts and various 'civil law contracts' as regularly used in platform work, particularly in food/parcel delivery sector.

**Also relevant to the 'employment status' of people working through platforms is that several Member States permit individuals to perform certain (platform) work outside of their main professional activity as 'secondary', 'occasional' or 'non-professional work'.** These national provisions are generally based on national (income) tax regulations concerning the fiscal status of individuals and co-exist with labour market regulations and related status. These fiscal regulations tend not to affect the employment status or benefit status under national labour and social protection legislation. Instead, they function as alternative mechanisms outside of the labour legislation through which platform work can be organised or commissioned. They are often subject to tax breaks (in terms of VAT application or lower rates of income tax and/or exemptions) and/or to lower or zero rates of social security contribution.

Because of its lack of regulation and small scale, platform work and/or the income generated through it is considered by several Member States as a separate category of

'work' and/or income which is therefore subject to specific income tax and VAT regulations (tax exemption, lower rates of income tax, etc.). Such mechanisms generally aim to reduce undeclared work by encouraging people to report income from small-scale activities that were previously undeclared.

In **Belgium**, income from occasional work in specific sectors of the regulated collaborative economy<sup>21</sup>, performed by people working through platforms outside their main profession, is subject to lower tax rates as long as the income remains under an annual threshold of EUR 6 340 (fiscal year 2020), and is generally not subject to VAT. The category of 'self-employment as a secondary professional activity' also exists in Belgium for people who are mainly professionally employed as an employee, civil servant or teacher. This additional self-employed income is subject to the same contribution rate of 20.5% that applies to 'self-employment as the main profession'. However, when the annual income is below EUR 1 555, there is no social contribution liability. Any income below EUR 25 000 is also exempt from VAT.

In **Croatia**, an 'additional' employment contract is allowed for up to eight hours per week or 180 hours per year.

In 2019, **Estonia** introduced via the Simplified Business Income Taxation Act a new form of self-employment - the entrepreneur account. The aim was to facilitate 'part-time self-employment' including for people providing services such as transportation, accommodation and food/goods delivery when the services are intermediated via digital platforms. Estonian nationals can sell goods and services to each other (and sell goods but not services to legal persons to avoid abuse) through platforms and earn income subject to a lower rate of tax (20%) up to a maximum annual income of EUR 25 000 (40% of anything above EUR 25 000 received into the entrepreneur account per calendar year). The owner of the entrepreneur account does not have to register as an entrepreneur and must not be VAT liable or working self-employed in the same or a similar area of activity.

In **France**, the status of 'micro-entrepreneur self-employed', as defined in the business code, permits individuals with a main job and also the retired, jobseekers and students to earn additional income subject to a reduced social contribution rate of 22%, up to an annual ceiling of EUR 72 000. Most people working through platforms in France perform their work under the status of micro-entrepreneur self-employed.

In **Czechia**, casual work can be performed under two types of agreements. The 'agreement to complete a job' pertains to work of up to 300 hours per year for one employer with no limit on income, while the 'agreement to perform work' applies when work does not exceed 50% of the determined maximum weekly working hours. The former is exempt from social and health insurance affiliation if the income is below a certain threshold. Both can be combined with other forms of employment.

In **Germany**, people with a main job, students and pensioners can have an additional side job subject to a maximum number of working hours and income. The mini-jobs are regulated through the definition of an income ceiling for monthly net income from work, set at EUR 450 per month since 2013, or EUR 5 400 per annum. Social security contribution levels differ depending on the type of services. The employer and employee contributions are lower for household services than for the commercial sector

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<sup>21</sup> In Belgium, the collaborative economy is regulated by tax law and refers to a public measure allowing individuals to perform occasional 'on-location' work when performed for another natural person and hence not as their main professional occupation. The scope of the Belgian collaborative economy is hence narrower than the scope envisaged under the present thematic review.

and generally social contribution rates are lower for mini-jobs than for standard dependent work. Mini-jobbers are not part of the unemployment insurance scheme and contribute partially to the pension scheme with the right to fully opt out.<sup>22</sup>

In **Greece**, people working through platforms are typically self-employed, even though the law does allow for occasional worker and depended self-employed status. Earnings from occasional work cannot exceed EUR 10 000 per year and are subject to employee contributions (no employer contributions apply). Dependent self-employed workers (with up to three employers, or when one employer accounts for three-quarters of all earnings) pay employee contributions, with employer contributions shared by all employers pro-rata.

**Finally, platform work in certain sectors of the economy is often subject to national sector regulations in EU Member States, involving very specific rules on employment status, labour conditions and income tax.** These include sectors such as domestic cleaning services, home-care services, other domestic services and handiwork.

In **Austria**, 'home workers' have a special status which refers to people who perform manual labour at their home or chosen place, usually craftsmen. They have no trade licence and are not self-employed. They have certain labour rights similar to those of standard employees, such as minimum wage, sick pay and annual leave.

In **Spain**, household workers enjoy special status and cannot be contracted as self-employed. When such services are intermediated by digital platforms, the question arises as to whether household workers are employed by the intermediating platform or by the clients (households).

In **the Netherlands**, domestic work services fall under a special regime and workers can be contracted for a maximum three days a week by the client/household. Special income tax and social contribution rates apply, and domestic workers are not covered by social insurance schemes for employees.

### 3.3 'Third', intermediate or sub-categories of employment status

**Labour and/or social security legislation in several EU Member States has created a separate 'in-between', 'third' or 'sub-' category of employment status aside from the category of employee and self-employed.** This means that the solo self-employed, who have no company or staff and depend on a single or limited number of clients to assign their work, are granted certain labour and social security rights, traditionally applicable to employees.

Whereas Member States have different national concepts of 'employees' (or 'workers') and national courts have interpreted these national concepts extensively (European Commission, 2020), various legal techniques are being used to extend labour and social protection, partially or in full, to the solo self-employed (economically) dependent on a single client or 'employer'. Austria and Germany apply the concept of 'employee-like persons' to some self-employed, whereas Spain and Slovenia apply the concept of economically dependent self-employed. Italy, on the other hand, has two specific sub-categories of self-employed who are 'quasi-subordinated'. In other countries, these sub- or third categories are not explicitly described in legislation, but a distinction is made

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<sup>22</sup> Duell, N. (2018), Case Study: gaps in access to social protection for mini-jobs in Germany, European Commission.

between different types of self-employment. For example, in France and the Netherlands, a distinction is made between the micro-entrepreneur self-employed and the 'genuine' self-employed, and between a self-employed without staff and a self-employed with staff respectively.

In **Austria**, the category of 'employee-like persons' exists based on the economic dependency criterion. Some provisions of the labour code apply to this category such as the competence of Labour courts, agency work but they are not protected by the most important provisions such as unfair dismissal protection, paid holiday and sick leave to which employees are entitled.

In **Germany**, someone self-employed can be considered as a 'person similar to an employee' when they are economically dependent and enjoy limited protection from their labour rights, such as four weeks' holiday per year. But they remain self-employed and cannot participate in the Works Councils, are often excluded from company pension plans and from the scope of collective agreements.

In **Italy**, employer-organised workers ('cocoorg') and employer-coordinated workers ('cococo') are separate categories of self-employed with a 'quasi-subordination'. The former are protected by labour law<sup>23</sup> while the latter enjoy specific procedural protection, have access to social security and are subject to mandatory insurance against work accidents and OSH risks. Food delivery riders are considered by the Supreme Court to belong to the 'cocoorg' category, while a recent ruling by the Palermo Tribunal of First Instance concluded that a food delivery rider had the status of 'employee' because he only worked through one platform.

In **Slovenia**, 'economically dependent people' are self-employed people who work independently via a civil law contract for another person in return for payment for certain periods of time and without employing other people, when at least 80% of their annual income comes from a single contracting party. They enjoy protection against unfair dismissal, minimum notice periods, limited liability for damages caused and comparable payment for similar work performed by employees as determined in collective agreements.

In **Spain**, the 'economically dependent self-employed workers' (TRADE) are those who perform economic activities personally, directly and predominantly for one single client from whom they receive at least 75% of their income and who do not employ staff or subcontract their services to a third party.

In other Member States, the introduction of a third category or employment status (either generally or specifically relating to platform work) has been discussed by the research community and by the government and/or before parliament, but in most cases, did not result in formal legislation.

In **Belgium** the introduction of a third category was subject to several parliamentary debates in 2019, but never reached a majority and was eventually removed from the agenda.

In **France**, there is general consensus among the research community that the introduction of a third category for people working through platforms is not the appropriate solution to certain challenges, particularly those relating to reduced access to social security.

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<sup>23</sup> The extension of labour law to the 'cocoorg' is currently under intensive debate following a Supreme Court ruling in 2020.

Similarly, in **Ireland**, the creation of a third category (similar to the 'worker' employment status in the UK) was discussed at a Joint Committee on Employment Affairs and Social Protection in 2019, but not upheld.

In a meeting of the European Council in December 2020, the Minister of Labour from **Luxembourg** noted that the government was not in favour of introducing a third category but argued for an extension of labour rights to people working through platforms.

In **Finland**, the introduction of a third category is considered a possible option under the 2019 government programme but has not yet generated a concrete proposal for legislative change.

**Regarding on-location platform work, country articles suggest that different 'employment status' and/or forms of contracts exist in parallel:** (1) platforms operating in the same sector use different employment status or contract forms, and (2) a considerable number of platform businesses apply several different mechanisms that allow under national legislation to hire people working through platforms. Few platforms contract people systematically under a single employment status or mechanism. A minority of platform businesses engage people working through platforms via an employment contract and, when they do so, they are often non-standard agreements, such as zero-hour contracts.<sup>24</sup> In some countries, people working through platforms are hired via temporary work agencies and work under a temporary agency work (employment) contract.

In **Belgium**, food delivery riders are active under (1) the specific regime of the collaborative economy, allowed to perform occasional work, the income from which is subject to beneficial tax treatment (Deliveroo and Uber Eats), (2) as temporary agency workers (Takeaway.com) or (3) as self-employed (Deliveroo and Uber Eats). Takeaway.com, one of the main platform operators, only offers temporary work agency contracts.

In **the Netherlands**, 60% of people working through platforms report being self-employed for their platform work, while only 15% have an employment contract.

In **Finland**, while there have been no court cases concerning the employment status of people working through platforms, the Labour Council - an independent body established under the Ministry of Economic Affairs and Employment - stated in October 2020 that the delivery riders of two food delivery companies must be considered as employees of the platforms and not as self-employed.

While not specifically relating to platform work, the High Court in **Ireland** ruled that the relationship between riders of a delivery service operated by a company that held a Domino's Pizza franchise were not self-employed, that there were mutual obligations between the two parties and that the riders should be treated as employees for whom social insurance contributions are due.

In **Spain**, several rulings from local Labour Courts concerning the employment status of food delivery riders in 2018 and 2019 had contradictory outcomes. At least four judgments concluded that there was an employment relationship between the platform and the people working through platforms, whereas another three declared the opposite. In September 2020, the Supreme Court ruled in a case involving Glovo that the rider concerned was an employee. Similarly, a judgment in January 2021 by the

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<sup>24</sup> In some countries such as Ireland zero-hour contracts are prohibited.

Labour Court of Barcelona ruled that 748 riders of Deliveroo were in fact contracted as bogus self-employed and had to be reclassified as employees.

### 3.3.1 Rulings on employment status of drivers in personal transportation

**Many Member States have witnessed court cases involving the personal transportation sector in recent years which, initially, were concerned with access to locally regulated taxi services (European Commission, 2020).** National rulings mostly confirmed the position of the CJEU in a similar case involving Uber<sup>25</sup> with services provided by the (global) platforms classified as transport services, rather than purely information society services intermediating between drivers and clients (see also sub-section 4.1.1.). National court rulings clarified the classification of the ride-hailing platform services as transport services and, in so doing, paved the way for subsequent court proceedings on the employment status of the drivers concerned.

National court cases on access to the local market of personal transportation services have produced varying outcomes. In some Member States such as Denmark, Uber has left the local market. In other Member States, different operation and business models were established, such as in Austria, where Uber now has a trade licence for travel agencies and contractual undertakings that hold a licence for personal transportation services which, in turn, employ drivers via an employment contract.

**Meanwhile, various administrative and judicial proceedings have been initiated across several EU Member States regarding the employment status of drivers of ride-hailing apps.** Decisions by the courts of first instance were subsequently challenged in the local courts of appeal and, in several Member States, court proceedings reached the final stage, resulting in judgments by the highest national courts. Similar to what happened with food delivery riders, drivers of ride-hailing apps are increasingly considered by the national courts as employees rather than self-employed.

In **Belgium**, the Administration Commission on Labour Relations ruled in two separate cases in 2017 and 2020 that the Uber drivers concerned were employees, not self-employed. The Commission considered an actual working relationship between the platform and the driver as critical in establishing that an employment relationship exists, not a service agreement, taking into account the following aspects: the ability to issue instructions to the people who work through platforms; control over compliance with such instructions; and the ability to exclude people who work through platforms from access to the app in cases of non-compliance – all considered to demonstrate a hierarchical level of authority typical of employment contracts. The Commission also observed a series of indicators demonstrating that drivers were employees: the absence of any economic or financial risks to the drivers; the characteristics of the payment process, done by the client directly to the platform rather than to the individual worker; the absence of any direct client relationship between the driver and the client; and the fact that clients cannot choose their drivers and drivers do not know who they will drive and to what destination.

In **France**, the highest Court of Cassation concluded in a case involving a Uber driver that an employment relationship in this instance existed, since the driver was working in an organised service, itineraries were imposed by the platform, the driver could not choose his clients and final destinations were not known beforehand. However, the court refrained from explicitly including the economic dependency criterion within the assessment of the subordination dimension that characterises the status of employee.

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<sup>25</sup> CJEU, 20.12.2017, Case C-434/15, Asociación Profesional Elite Taxi v Uber Systems Spain SL.

As a consequence, further court rulings may occur on the employment status of other platform workers, since there are no clear objective criteria that distinguish between employees and self-employed, which may result in different outcomes.

In **the Netherlands**, new court cases against Uber were launched in late 2020 by the main trade union FNV, with a view to clarifying the employment status of Uber drivers. In another recent case, the court of Den Haag ruled on 2 February 2021 that the income the drivers received could not be classified as profit or income from self-employment but must be regarded as 'other professional income' under Dutch tax legislation, since the drivers have insufficient autonomy from Uber and are insufficiently exposed to business risks.

In **Germany**, the labour court at the regional level of Hessen ruled in 2019 that a bus driver who was engaged through a digital platform should not be considered as an 'employee-like person' because he was retired and therefore not economically dependent on the platform.

### 3.3.2 Rulings on employment status of people working through platforms in other sectors

In **France**, In February 2020, Click and Walk, a platform hiring around 700 000 individuals to perform micro-tasks, such as 'mystery shoppers' to check prices and other information on goods in supermarkets, for payment of between a few cents to a few Euro per task, was fined EUR 50 000 by the Court of Appeal of Douai for disguised employment. The court considered that the detailed instructions given by the platform demonstrated the control it exercised.

In **Germany**, in late 2019, the Munich Regional Labour Court ruled that a 52-year-old worker was not an employee of Roamer, a Dutch crowdsourcing digital labour platform. The person working through a platform claimed that the contract between him and the platform constituted an 'employment contract', which could not be terminated without the correct notification period established in the Dismissal Protection Act. The court, however, denied him the employee status, justifying its decision by finding that there was neither an obligation to accept an order nor, conversely, an obligation by the platform operator to offer orders. However, the court left open the question of whether a fixed-term employment relationship becomes established when a worker accepts a specific order on the platform.

Likewise in **Germany**, the Federal Labour Court ruled in late 2020 that an individual engaged by a platform business to take photographs of products in shops and petrol stations was an employee, not self-employed, since the work was performed following clear instructions and externally determined while evaluations based on ratings were considered. The court argued that whereas the individual was not obliged to accept orders, the structure of the digital platform was designed with the purpose of making the people working through it accept bundles of small-scale, simple jobs.

### 3.3.3 Rulings on employment status of people working through platforms as temporary agency workers

**The employment status of people working through platforms has recently come under increased attention from a different angle in some Member States.** The general debate on employment status of people working through platforms typically focused on the bilateral relationship between the digital platform and the people working through it (the existence of an employment relationship and the status of the platform as an employer) without considering the contractual relationship with the client. This is

because the services such as food/parcel delivery and personal transportation are types of platform work with a multitude of clients or customers. Research and policy papers have recently paid increasing attention to types of platform services in which the triangular relationship is more accentuated because there is only one client or customer to whom the platform services are provided on a regular or recurrent basis or for certain periods of time and through the intermediation of the digital labour platform.

**This raises the question as to whether the platform business should be classified as a temporary work agency, platform work as temporary agency work and the client as a user undertaking or not - an area subject to specific international<sup>26</sup>, EU<sup>27</sup> and national legislation.** Should a digital labour platform be classified as a temporary work agency, which presupposes the existence of a client user undertaking, the contractual relationship between the digital labour platform and the platform worker may be qualified as an employment contract for temporary agency work. The people working through platforms will in such cases enjoy equal treatment in their working conditions as employees who are employed by the client (at the user undertaking) while the platform may not withhold fees for intermediation services from the payment to the platform worker.

**The debate around the classification of digital labour platforms as temporary work agencies is specifically relevant to online platform work when such work involves small-scale tasks and gigs such as clerical click-work or online content review, but also for small gig work on-location.** When these tasks are requested from commissioning agents that are companies and the matching/intermediation is facilitated by the digital labour platform, the former could be considered in certain circumstances as the user-undertaking, whereas the latter as a temporary work agency.

In a November 2020 case<sup>28</sup> in **Austria**, the question was raised on whether an Uber driver (who was technically contracted by a car rental company that provided the taxi service) was an agency worker and hence whether Uber was the user undertaking. The court of first instance followed this line of argument based on the control the platform exercised in the performance of the service; the court of appeal did not discuss this question as such but rejected the claim as the platform had fulfilled all its duties as a user undertaking anyway.

In **the Netherlands**, in 2019, the court of Amsterdam found that the contracts with people working through platforms owned by Helpling, a digital platform offering cleaning services, was not an employment contract or a temporary agency work contract. The court, however, decided that the platform was providing labour intermediation services. In accordance with the international, EU and local legislation on Temporary Agency Work, the court ruled that Helpling could not withhold fees from people working through platforms in return for its intermediation services.

In October 2020, the largest Dutch trade unions FNV and CNV initiated court proceedings against Temper, a platform originally enabling individual services in the hospitality sector but expanding into other business sectors such as cleaning and logistics, arguing that the contracts with the people working through platforms are not service contracts with the self-employed but must be classified as temporary agency work contracts subject to the equal treatment provisions around working conditions.

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<sup>26</sup> ILO, Private Employment Agencies Convention, 1997 (No. 181).

<sup>27</sup> Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9–14).

<sup>28</sup> The case has not been published as only decisions of the Supreme Court are published as part of the official database.



### 3.3.4 Consequences of the employment status of people working through platforms

**The lack of a unified approach across EU Member States towards the employment status of people working through platforms is particularly relevant since it determines the applicability of labour legislation on the affected people.** EU and national labour legislation typically regulate the employment relationship in areas such as the obligatory information provision of employers on essential aspects of the employment relationship, working time including rest and break periods, wages, paid annual leave, occupational health and safety protection, fair dismissal, continuing education and representation. Apart from individual labour rights, employees can also rely on a series of collective labour rights such as the right to form trade unions, the right to take collective action including the right to strike, the right to negotiate wages and working conditions, and the right to participate in information and consultation mechanisms established at company or sectoral level. Social dialogue mechanisms and structures and collective agreements concluded between the social partners are crucial to the local labour market regulatory framework in some Member States and, in some instances, are replacing traditional legislative approaches.

The self-employed, on the other hand, usually operate under civil/contract law and, from a competition law perspective, are considered as undertakings providing services to consumers or other businesses. The self-employed are typically not bound by labour legislation. Prevailing EU and national antitrust legislation may also impede the right of the self-employed to collectively bargain when this leads to unfair competition (European Commission, 2020).

Access to and the scope of national social protection schemes providing income replacement benefits in cases of work accidents and professional diseases, short periods of sickness, unemployment, maternity and paternity leave, long-term care needs, invalidity and old age and cost-covering benefits such as family benefits, are different in EU Member States depending on the employment status (European Commission, 2020). The self-employed are often required to finance their social insurance entirely from their own means or do so on a voluntary basis.

### 3.4 National legislative responses related to the employment status

**Very few EU Member States have addressed the challenge of the ambiguous employment status of people working through platforms, directly tackling it through legislation on platform work.**

In **France**, the labour code was adjusted in 2016, addressing the **rights of self-employed people working through platforms** who have recourse to one or more platforms on the condition that they are not entrepreneurs (setting the prices and conditions and terms of the service provision). A rebuttable legal presumption of the self-employment status for people working through platforms was installed. Labour rights were assigned to these self-employed such as the right to be protected against work accidents, the right to form trade unions and to take collective actions including strikes, and the right to continuing education.

**Italy** adjusted its labour legislation in 2019 with the particular aim of **clarifying the labour market status of people working through platforms in the food delivery sector who often are working under the specific labour market status as**

**'cocoorg'**<sup>29</sup>: the organisation of working time and place of work, both previously considered as essential to establishing the existence of the 'cocoorg' status, were removed, while it was established that work organisation could also be performed through a technological platform. Also the law now explicitly allows for a reclassification of food riders from self-employed to the status of either employee or 'cocoorg'.

In **Spain**, a Royal Decree Law (the Riders' Law) was passed on 11 May 2021<sup>30</sup> introducing a presumption of employment status in the food/parcel delivery sector, with a deadline of three months to implement the legislation (i.e. by August 2021).

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<sup>29</sup> In Italy, two separate categories of 'quasi-subordinated workers' exist alongside the employee and the self-employed: the employer-organised worker (cocoorg) and the employer-coordinated workers (cococo). Cococo workers are covered by a set of similar rights as employees such as procedural protection, insurance against work accidents and professional diseases and social security, whereas cocoorg workers fall under labour legislation. However, the latter has recently come into question following a ruling of the Italian Supreme Court (Cass, n. 1663/2020).

<sup>30</sup> While the Thematic Review covers developments up to March 2021, this development was announced while finalising this document.

Table 2. Overview of the employment status of people working through platforms in the EU Member States

Member State	Employment status used in platform work		Is bogus self-employment an issue of concern in the MS?	In-between or third category (apart from employee and self-employed)?	Legal presumption of employment status? Reversal of burden of proof?
	On-location	Online			
AT	<ul style="list-style-type: none"> <li>-Self-employed</li> <li>-Employee-like service provider</li> <li>-Temporary agency worker</li> <li>-Home-worker<sup>31</sup></li> <li>-Employee (<i>minority</i>)</li> </ul>	-Self-employed	Yes	<p>Yes: employee-like persons and employee-like service provider (freelancer)</p> <p>Special status of a 'home worker' (craftsmen)</p>	Yes, but only for temporary agency work, not for general employee status and not for employment status of platform workers
BE	<ul style="list-style-type: none"> <li>-Occasional worker in the collaborative economy<sup>32</sup></li> <li>-Self-employed (as main or as secondary professional activity)</li> <li>-Temporary agency worker</li> <li>-Employee (on-location platforms typically offer standard employment contracts (to drivers, house cleaners, etc)</li> </ul>	-Self-employed	Somewhat: see court cases and rulings in personal transport and food delivery (Deliveroo and Uber). On the other hand, in BG the self-employment status does not give preferential treatment in terms of taxation and social security so there is no incentive for BSE	No	Yes, for general employee status, not for employment status of platform worker
BG	<ul style="list-style-type: none"> <li>-Self-employed</li> <li>-Civil law contracts (contract of mandate and contracts of manufacture)</li> <li>-Employee (<i>minority</i>)</li> </ul>	-Self-employed	Yes	No	No
CY	<ul style="list-style-type: none"> <li>-Self-employed</li> <li>-Employees</li> </ul>	-Self-employed	Yes	No	No
CZ	-Self-employed	-Self-employed	Yes	No (but existence of two special 'employment' contracts)	No

<sup>31</sup> Home worker is a special status referring to those persons who perform manual labour from their home or a place of their choosing and who have no trade licence (usually concerning craftsmen). They have some labour rights similar to the labour rights of employees, such as a special minimum wage, sick pay, annual leave etc.

<sup>32</sup> Under the Belgian income taxation legislation individuals can perform occasional platform work for other natural persons in several sectors, the income of which is taxed at lower rates when below an annual threshold of EUR 6 340 (fiscal year 2020).

Member State	Employment status used in platform work		Is bogus self-employment an issue of concern in the MS?	In-between or third category (apart from employee and self-employed)?	Legal presumption of employment status? Reversal of burden of proof?
	On-location	Online			
	-Workers under an Agreement to complete a job or Agreement to perform work				
DE	-Self-employed -Temporary agency work -Employee	-Self-employed	Yes	Yes: employee-like persons (they are self-employed)	No
DK	-Self-employed -Employee	-Self-employed	Yes	No	No
EE	-Self-employed (self-employed non-traders, self-employed sole proprietors and companies) -Entrepreneur account -Employee	-Self-employed (self-employed non-traders, self-employed sole proprietors and companies) -Entrepreneur account	Yes	No	No
EL	-Self-employed -Occasional workers -Dependent self-employed -Employee	-Self-employed -Occasional workers -Dependent self-employed	Yes	No	No
ES	-Self-employed -Economically dependent self-employed (TRADE) <sup>33</sup> (minority) -Special employment status for workers in domestic services (cleaning and care)	-Economically dependent self-employed (TRADE) -Self-employed	Yes: see court cases and rulings in food delivery sector (Glovo and Deliveroo)	Yes: the economically dependent self-employed (TRADE)	Yes, for general employee status including reversal of burden of proof and for <u>the employee status</u> of people working through platforms involved

<sup>33</sup> Self-employed are considered as economically dependent if they perform professional or economic activity personally, directly and predominantly for a single client from whom they receive at least 75% of their income.

Member State	Employment status used in platform work		Is bogus self-employment an issue of concern in the MS?	In-between or third category (apart from employee and self-employed)?	Legal presumption of employment status? Reversal of burden of proof?
	On-location	Online			
	-Employee				in <u>parcel/food delivery</u> services <sup>34</sup>
FI	-Self-employed (business or sole traders) -Employee ( <i>minority</i> )	-Self-employed	Yes	No	No
FR	-Self-employed (standard self-employed and micro-entrepreneur self-employed <sup>35</sup> ) -Employee ( <i>minority</i> )	-Self-employed (standard self-employed and micro-entrepreneur self-employed)	Yes: see court cases and rulings in personal transport and food delivery (Take Eat Easy and Uber)	No (but legal rebuttable presumption of the self-employment status of platform workers!)	Rebuttable presumption of the <u>self-employed status</u> of people working through platforms <sup>36</sup>
HR	-Freelancer under contract for services -Self-employed -Employee -‘Digital nomads’ <sup>37</sup>	-Freelancer under contract for services -Self-employed	Yes	No	Yes, for general employee status but no reversal of burden of proof, not for employment status of platform worker
HU	-Self-employed -Employee	-Self-employed	Yes	No	No
IR	-Self-employed -Employee	-Self-employed	Yes	No	No

<sup>34</sup> On 9 March 2021, the Spanish government and social partners reached agreement to introduce a legal presumption of employee status for those engaged in the delivery and distribution of any consumer product or merchandise through digital platforms. This will be done through amendments to the current Workers’ Statute incorporating an additional provision, recognising ‘riders’ as employees and thereby entitling them to full employees’ rights - including access to the social protection.

<sup>35</sup> A special subcategory of self-employed, originally created in 2008 to enable workers to exercise secondary professional activities alongside the main professional occupation and/or to earn small additional income for other groups such as students, pensioners or jobseekers. A lower social contribution rate of 22% applies and income and an annual maximum threshold applies of EUR 72 000. Above that level, the income is subject to VAT and a 45% social contribution rate applies under the standard regime for self-employed.

<sup>36</sup> Self-employed platform workers who, for the purpose of their professional activity, have recourse to one or more electronic intermediation platforms.

<sup>37</sup> In 2021, the Croatian Immigration legislation was changed and allowed ‘digital nomads’ working through digital platforms for businesses not established in Croatia to pay income tax in their country of residence.

Member State	Employment status used in platform work		Is bogus self-employment an issue of concern in the MS?	In-between or third category (apart from employee and self-employed)?	Legal presumption of employment status? Reversal of burden of proof?
	On-location	Online			
IT	<ul style="list-style-type: none"> <li>-Self-employed (self-employed platform workers in food delivery have special protection under Labour Code)</li> <li>-‘Employer-coordinated workers’ (‘co-coco’)</li> <li>-‘Employer-organised workers’ (‘co-coorg’)</li> <li>-Employees (<i>minority</i>)</li> <li>-(Temporary agency worker)</li> </ul>	-Self-employed	Yes: see court cases on food delivery riders (Foodora, Glovo)	<ul style="list-style-type: none"> <li>Yes: quasi-subordinated work</li> <li>-‘employer-organised workers’ (‘cocoorg’)</li> <li>-‘employer-coordinated workers’ (‘cococo’)</li> </ul>	No
LT	<ul style="list-style-type: none"> <li>-Self-employed (with an individual activity certificate)</li> <li>-Temporary agency worker</li> <li>-Employee (<i>minority</i>)</li> </ul>	-Self-employed	Yes	No	Yes, presumption that drivers in the <u>personal transportation services</u> have the status of <u>self-employed</u>
LU	<ul style="list-style-type: none"> <li>-Self-employed</li> <li>-Employee</li> </ul>	-Self-employed	Yes	No	No
LV	<ul style="list-style-type: none"> <li>-Self-employed (individual entrepreneurs or microenterprises)</li> <li>-Employee</li> </ul>	-Self-employed (individual entrepreneurs or microenterprises)	Yes	No	No
MT	<ul style="list-style-type: none"> <li>-Self-employed (including self-occupied persons<sup>38</sup>)</li> <li>-Employee (<i>minority</i>)</li> </ul>	-Self-employed (including self-occupied persons)	Yes	No	Yes, for general employee status (if five of the eight criteria determining employee status are met) but no reversal of burden of proof and not for employment status of platform worker

<sup>38</sup> Self-occupied workers is a concept enshrined in social security law and refers to those who perform services as opposed to the self-employed who earn income via other means such as renting accommodation or through investments.

Member State	Employment status used in platform work		Is bogus self-employment an issue of concern in the MS?	In-between or third category (apart from employee and self-employed)?	Legal presumption of employment status? Reversal of burden of proof?
	On-location	Online			
NL	<ul style="list-style-type: none"> <li>-Self-employed (self-employed without personnel and self-employed with employees)</li> <li>-Special regime for domestic services<sup>39</sup></li> <li>-Non-professional income</li> <li>-Employees (including temporary agency work)</li> </ul>	-Self-employed (self-employed without personnel and self-employed with employees)	Yes: see court cases and rulings in personal transport and food delivery (Deliveroo and Uber)	No	Yes, for general employee status including reversal of burden of proof but not for employment status of platform worker
PL	<ul style="list-style-type: none"> <li>-Civil law contracts (contract of mandate or contract for specific task)</li> <li>-Self-employed</li> </ul>	-Self-employed	Yes	No	No
PT	<ul style="list-style-type: none"> <li>-Self-employed</li> <li>-Employee (<i>minority</i>)</li> </ul>	-Self-employed	Yes	No	Yes, for general employee status (if two of the five criteria determining employee status are met) including reversal of burden of proof but not for employment status of platform worker
RO	<ul style="list-style-type: none"> <li>-Self-employed (including certified authorized private persons, individual undertakings and family undertakings)</li> <li>-Liberal professions</li> <li>-Employee</li> </ul>	Self-employed	Yes	No	No
SE	-Self-employed with a Business Tax Certificate (a sole trader or a company)	-Self-employed with a Business Tax Certificate (a sole trader or a company)	Yes (but very low)	No (but system of occasional work and practice of umbrella organisations)	No

<sup>39</sup> Under the regime 'concerning personal services provided at home' individuals can be employed by the client for a maximum of three days per week while the income is exempt from some income taxation and from employer social contributions and the worker does not fall within the scope of social insurance schemes for employees.

Member State	Employment status used in platform work		Is bogus self-employment an issue of concern in the MS?	In-between or third category (apart from employee and self-employed)?	Legal presumption of employment status? Reversal of burden of proof?
	On-location	Online			
	<ul style="list-style-type: none"> <li>-Private persons performing occasional work</li> <li>-Private persons 'employed' by umbrella organisations<sup>40</sup></li> <li>-Employee</li> </ul>	<ul style="list-style-type: none"> <li>-Private persons performing occasional work</li> <li>-Private persons 'employed' by umbrella organisations</li> </ul>			
SI	<ul style="list-style-type: none"> <li>-Self-employed</li> <li>-Civil contract for services</li> <li>-Student</li> <li>-Employee</li> </ul>	<ul style="list-style-type: none"> <li>-Self-employed</li> <li>-Work from home (which includes telework) agreements</li> </ul>	Yes	Yes: economically dependent persons are self-employed who earn at least 80% of their annual income from one single contracting partner <sup>41</sup>	Yes, for general employee status, but no reversal of the burden of proof and not for employment status of people working through platforms
SK	<ul style="list-style-type: none"> <li>-Self-employed</li> <li>-Civil law contracts</li> <li>-Work performance agreements, agreement of work activity or student agreements<sup>42</sup></li> <li>-Employee (<i>minority</i>)</li> <li>-Undeclared work common (for personal and household services, e.g. care services and cleaning)</li> </ul>	<ul style="list-style-type: none"> <li>-Self-employed</li> </ul>	Yes	No	No

<sup>40</sup> Umbrella organisations act as an intermediary and pay the taxes and social contributions for the individual workers receiving a wage, while the umbrella organisation charges a commission and issues invoices to the clients.

<sup>41</sup> Economically dependent people enjoy protection against unfair dismissal, minimum notification periods for dismissals, protection of their income in return for their services, which should be comparable to the wages paid to employees based on collective agreements, and limited liability for damages.

<sup>42</sup> Work performed outside regular employment.



## 4 Rights and obligations of platforms and people working through platforms

### 4.1 The rights and obligations of platform businesses

#### 4.1.1 Classification of platform businesses in ‘traditional’ sectors of industry

**In most EU Member States, digital labour platforms are generally not considered as belonging to a separate economic sector of industry.** This is mainly because of the large heterogeneity between the types of (on-location and online) platforms and the diversity of the ‘underlying’ services they provide. Since digital labour platforms combine online intermediation services and (potentially) ‘underlying services’, classifying them within traditional sectors of industry is difficult. Whereas the former services are similar to those provided by temporary work agencies, the latter are often part of the traditional sectors of the economy (e.g. transportation, cleaning services, translation services). More digital labour platforms are diversifying their businesses and entering additional markets and economic sectors, which makes straightforward classification even more complex. On the other hand, traditional companies (e.g. temporary work agencies, taxi companies) also increasingly use similar technologies and online apps as those operated by digital platform businesses.

The use of information society services and online technologies that help allocate and organise the work performed by people working through platforms (who themselves deliver individual services which, in traditional economies, are classified as belonging to a specific sector of industry) has been central to the debate at EU level and in some Member States. The core question is whether the platform businesses are pure technological undertakings matching supply and demand or belong to the economic sector of the ‘underlying services’.

**The classification of digital platform businesses into economic sectors is particularly important from a labour law perspective, since it has repercussions on the potential employer status of the platform vis-à-vis the people working through platforms.** Pure information society services that match supply and demand presuppose a business-to-business or business-to-consumer relationship rather than an employment relationship (European Parliament, 2020). Providing the underlying services, which are also provided by incumbents in traditional sectors of industry, may, on the other hand, signal the existence of an employment relationship. The classification also has repercussions on a possible affiliation of the platform business with existing employers’ organisations, on incorporation of the digital platform business into existing social dialogue mechanisms and on the application of the sectoral collective agreements.

In the **Netherlands**, 2020 research shows that digital platforms use very different NACE codes when determining their business activities and many consider themselves as technological companies providing information (society) or management services.

In **Sweden**, where no register of digital labour platforms exists, of the 20 digital labour platforms currently active, 17 present themselves as digital intermediaries and only three as employers.

**In what regards the sectors of personal transportation and food/parcel delivery in which global digital platforms challenged traditional incumbents, it appears that over the years a more or less consistent approach has been adopted across Member States.** Following the Court of Justice of the European Union (CJEU)

ruling in the Uber case in 2017<sup>43</sup>, in which the digital platform business was judged to be a service in the field of transport rather than a pure information society service, many Member States have adopted a similar approach concerning the ride-hailing apps operating in their territories by residents wanting to work as drivers. In cases involving Uber, Belgian, Danish, Dutch, Finnish, Slovak and Swedish courts ruled that the platform provided personal transportation services (European Commission, 2020).<sup>44</sup> The personal transportation sector is traditionally an economic sector subject to specific regulation in all Member States (e.g. concerning market access, licensing and professional training of the drivers and/or technical standards and requirements for the vehicles).

Many Member States adjusted their regulations of the personal transportation sector in view of an even playing field between the traditional companies and the new digital entrants (European Commission, 2020). However, different approaches have been applied, from liberalising the market and lowering the requirements for all companies including digital platforms, to maintaining licence requirements but allowing the digital apps to access the market, often on the condition that a third, intermediate party (legal person) is involved with whom the digital business can form a business contract. In such cases, drivers are then directly contracted by the third party as employees or as self-employed. Interestingly, in several Member States (Austria, Poland, Portugal), intermediary third parties exist who are operating as the main counterpart to the platform businesses and contract the drivers directly. Other Member States, such as Denmark, maintained their legislation preventing the global platform ride-hailing apps to enter the local market for personal transportation, while others have only very recently considered new regulations, such as in Slovenia.

#### **4.1.2 Classification of platform businesses as temporary work agencies**

**Subsection 3.5.4 reported that policymakers and the research community are increasingly scrutinising the classification of digital labour platforms as temporary work agencies or as private employment agencies. This is the case not only for online microwork performed for clients that have a legal personality.** Temporary work agencies are bound by specific international, EU<sup>45</sup> and national legislation and are subject to national registration and licensing requirements. Temporary work agencies usually have employment contracts with people working on-site, people placed at user undertakings (although in some Member States self-employed contracts are also used in accordance with national legislation). Where work is performed through temporary agencies, equal treatment provisions around working conditions, including wages, have to be applied in accordance with the provisions of Directive 2008/104/EC. The reference for comparison is the permanent employee at the user undertaking.<sup>46</sup> Temporary work agencies are not allowed to ask or withhold part of a worker's wages in

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<sup>43</sup> CJEU, 20.12.2017, Case C-434/15, *Asociacion Profesional Elite Taxi v Uber Systems Spain SL*. The case was primarily concerned with the question as to whether the Uber service would fall under the scope of Article 56 TFEU (freedom of services), Directive 2006/23 and Directive 2000/31. The judgment ruled that Uber provided more than just intermediation services and noted that 'Uber exercises decisive influence over the conditions under which the drivers provide their services'.

<sup>44</sup> European Commission (2020) *ibid*, p.112-116.

<sup>45</sup> Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9–14), Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship, and Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services are the most important EU legal instruments concerning temporary agency work.

<sup>46</sup> Art 5(1) of Directive 2008/104/EC determines that the basic working and employment conditions of the temporary agency worker must be those that apply if the temporary agency worker would have been directly recruited by the user undertaking to occupy the same job.

return for intermediation services, but can take payment or commission from the client companies.

**Classifying digital labour platforms as temporary work agencies is also under scrutiny because many of the traditional temporary work agencies are increasingly using digital apps to match supply and demand and for mediation and follow-up services.** Particularly relevant are the platforms enabling crowd work, where the final client is an undertaking and has some authority or control over the work organisation and performance of the people working through platforms. A separate situation (unrelated to temporary agency work) involves recruitment agencies or an online job marketplace that only match job vacancies and applicants and are not involved in labour mediation and follow-up.

The growing variety of services within the labour intermediation arena offered by different businesses using digital applications and multi-party settings typical of digital platform work means that classification as a temporary work agency or as a pure online job matching marketplace or recruitment agency will become increasingly difficult over the next few years.

In **Lithuania**, the 'Workis online' platform helps match companies posting jobs online with job-seekers. Once a suitable candidate is found, the platform produces an employment contract with the person working through the platform, and a business contract is concluded between the platform and the final client company, which pays a fee to the platform for its services. 'Workis online' functions locally as a temporary work agency regulated by the Lithuanian Labour Code and subject to registration and licensing.

In **the Netherlands**, the market for temporary agency work is increasingly shared between the traditional players and the new digital companies, operating exclusively online. Traditional temporary work agencies (TWA) often change their business models or launch new dedicated subsidiaries operating digital labour mediation services (e.g. Randstad Go). TWAs typically employ their agency workers and their 'platforms' or digital 'portals' were usually closed marketplaces where enrolment was required. Currently, TWAs increasingly facilitate freelance work and implement 'open' digital marketplaces on which job vacancies are posted and candidates selected, identified and/or accompanied during the later stages of their work placement. Several online platforms comply with TWA legislation, including YouBahn, My Flexwork, Flexbook, Inhuren.com and Wurcly (De Groen, 2019). The platforms focus on a combination of student work, hospitality, retail and care, also sectors in which temporary work agencies are traditionally active. The main differences between the traditional TWAs and the TWA platforms are lower transactions costs, the use of ratings instead of assessments and more flexible prices.<sup>47</sup>

#### **4.1.3 Third or intermediate parties as employers of people working through platforms**

In **Sweden**, umbrella organisations act as employing companies for individuals who are not formally self-employed (they have no business tax certificate) but mostly perform temporary assignments for clients. The umbrella organisations are not involved in the job search or selection. They perform administrative tasks, such as invoicing and paying social contributions and taxes in return for a commission. Since 2012, 35 of roughly 40

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<sup>47</sup> ING (2018), 'Algoritmes versus de flexbranche: Bestaat het uitzendbureau straks nog?' [Algorithms vs the flex industry: Will the temporary agency industry remain?], available at [https://www.ing.nl/media/ING\\_EBZ\\_algoritmes-versus-de-flexbranche\\_tcm162-146079.pdf](https://www.ing.nl/media/ING_EBZ_algoritmes-versus-de-flexbranche_tcm162-146079.pdf)

umbrella organisations have been part of a representative business association which requires its members to commit and assume responsibilities such as taking on sickness and accident insurance, occupational injury insurance and compliance with labour legislation. Umbrella organisations are not established specifically to meet the needs of people working through platforms, but they serve as a valuable solution for gig workers who are not formally self-employed or have no employment contract.

Several digital platforms in Sweden such as Uber Eats, Wolt, Budbee, Bzzt, Yepstr and Gigger collaborate with these umbrella organisations. Uber and Bolt do not contract their platform workers via the umbrella organisations but directly as 'self-employed with a company' and Freelancer and Tiptapp engage their platform workers as solo self-employed. A similar system exists in **France** where commercial companies act as third parties and apply 'the collaborative portable wage system'. The goal of the 'portage salarial' scheme is to provide the status of employee to a worker who, in practice, acts as self-employed. This scheme is based on a triangular relationship similar to the multi-party setting characterising platform work. The workers search for job vacancies themselves and, once they find one, a 'portage salarial' company concludes a business contract with a client company (found by the worker) and an employment contract with the person concerned. The worker then provides a service to the client, the client pays the invoice to the 'portage salarial' company, which in turn pays the worker and handles all administrative duties. The worker receives a minimum salary, the amount being set by sectoral collective agreements.

The involvement of third parties acting as go-betweens or employers of people working through platforms and who have a business contract directly with the platform businesses exists in **some Member States**, and frequently in the personal transportation sector, as reported above (AT, PL, PT). In **France** and **Belgium**, the system of third-party employer exists via the SMart cooperative, a not-for-profit organisation that concludes business contracts with companies (including digital platforms) in sectors with a high prevalence of non-standard work (artists, creative industry, gig workers) and enables people who work through platforms to have a permanent (full- or part-time) employment contract when they are full members (shareholders) of the cooperative. SMart provides members and non-members with advisory services and administrative support.

#### **4.1.4 Obligation to register and/or to obtain a licence**

**In most Member States, platform businesses fall within the main national regulations applicable to businesses and no registration or licensing regime specifically for digital labour platforms is applied.** The exception are digital labour platforms functioning as temporary work agencies, which are subject to specific local registration or licensing legislation.

Platforms may be established in the Member State where they provide their online intermediation services, or they may have created a local subsidiary while their main seat is based in another Member State or in a third country. Many platform businesses operate purely online with no legal presence in the Member State where their services are accessed. For example, upon stricter legislative regulations for platform operation and registration in Slovakia, the Estonian platform Bolt gave up its legal presence in Slovakia and continues to operate in the Slovak market exclusively as a business established in Estonia, while hiring drivers locally as self-employed or as employees within the fleet of a local partner company. This change shifted all tax obligations vis-à-vis Slovak tax authorities from the platform onto the self-employed drivers and local partner organisations.

**This may soon change, however, following the recent EU initiative and proposal for an addendum to the Directive on the administrative cooperation in the field of taxation<sup>48</sup>, which makes registration in at least one Member State mandatory for platforms, including those based in third countries, when they operate within the EU.**

**Belgium** introduced specific legislation in 2016 governing the 'collaborative economy' (covering only part of the scope envisaged under the present Review), which was introduced to boost the sharing economy and tackle undeclared work. The income from occasional work performed by individuals in a non-professional capacity, and which is intermediated by digital labour platforms in sectors defined by the government, generates a tax break. Digital platform businesses, which aim to be active in this collaborative economy, must register and obtain a licence. Apart from many local commercial and not-for-profit digital labour platforms, some global commercial platforms such as Uber Eats and Deliveroo are licensed under this system. Platforms that offer intermediate services not permitted under the collaborative economy (such as those facilitating online platform work or crowd work) and platforms which prefer not to take advantage of tax benefits for their collaborators are not subject to such registration requirements.

#### **4.1.5 Obligation to report on income**

**Digital labour platforms that have an establishment in Member States report their income and business results to the national tax authorities similar to other companies and in accordance with national tax legislation.** For example, ListMinut, a Belgian-based digital labour platform, reports its annual business results to the Belgian tax authorities. Takeaway.com and Deliveroo are foreign digital business that have set up a subsidiary in Belgium and these subsidiaries, being Belgian businesses, similarly report their business results annually to the Belgian authorities. However, a significant number of platforms (particularly those intermediating online web-based platform work) provide their services without being established in the Member State where their services are accessible to local residents or in another Member State. They maintain their business seats in third countries.

**Some country articles highlight the problem of tax base erosion and profit-shifting of global platform businesses which are not permanently established in the Member States where they offer their services and where people working through platforms are engaged.**

In **the Netherlands**, the government is considering national complementary measures to support the work undertaken by the OECD and the EU, which adopted a proposal to amend the Directive on administrative cooperation in the field of taxation.<sup>49</sup> The latter proposal establishes the mandatory single registration for platform businesses in at least one EU member State, also for non-EU platform businesses and the principle of automatic exchange of information between the tax administrations of the Member States on data related to the income paid by platforms to individual

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<sup>48</sup> Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation of 15.07.2020 COM (2020) 314 Final. The overall objective of the Directive is to increase tax fairness by preventing tax fraud and tax evasion to take account of the challenges posed by the digital platform economy and the difficulties in detecting and tracing taxable events and transactions. The proposal aims, amongst other things, to expand the scope of the information exchange and administrative cooperation between tax authorities in EU Member States.

<sup>49</sup> Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation of 15.07.2020 COM (2020) 314 Final.

workers. Self-employed people working through platforms can be classified as sellers of personal services under the definition used in the proposal for the Directive, whereas workers directly employed by the platform operators are explicitly excluded.

**Generally, platforms do not currently report on payments made to individual people working through platforms, which may lead to instances of un(der)-declared work and un(der)reported income, particularly given the transnational settings in which platform work is organised.** In a few EU Member States, however, governments have taken steps to require platforms to report income they have transferred to individual people working through platforms. But this may be difficult to implement if platforms are established as legal persons in one Member State but also operate in other Member States. In such cases, an overview of income from platforms may be collected via an (automated) reporting obligation of people working through digital platforms rather than the platform itself.

In **France**, since 2019, platform businesses have been obliged to notify the tax authorities when payments to people working through platforms exceed EUR 3 000 per year.

In **Belgium**, licensed digital labour platforms operating in the regulated collaborative economy have to report annually to the Belgian tax authorities on income paid to the people working through platforms who used their services. The reporting obligations concern the identity and national number of the individuals, the start and end dates of the platform work activities, the type of services provided, the gross earnings paid to the individuals and any deductions (such as tax levied at source, commissions, administrative costs, etc.). Reporting for the years 2018 and 2019 exists, revealing data on the overall turnover of platform businesses in the collaborative economy and on the numbers of people and income per person working through platforms. Noteworthy is that platform businesses which operate outside of the regulated 'collaborative economy' are not subject to similar reporting obligations. They only have to report on payments when they are subject to tax relief for occasional work and not when income is paid to people working through platforms outside of the collaborative economy, such as the self-employed.<sup>50</sup>

In **Estonia**, in 2015, the government and ride-sharing platforms Taxify and Uber began to collaborate on developing an information system to simplify the income and tax declarations of the drivers who can declare their income through a pre-filled form provided by the Tax and Customs Board.

In **Finland**, platform work is most often commissioned from the self-employed (being a trade company or an individual) and withholding taxes should in principle apply when the requested tasks are substantial (IT, cleaning, translation services), implying that the commissioning company should transfer the withheld tax to the tax authorities unless the person working through platforms is registered in the withholding registry. Hence platforms often require people working through platforms to be registered. There are signs, however, that many small-scale tasks commissioned through platforms are not reported.

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<sup>50</sup> Belgium's collaborative economy concerns secondary occasional activities performed outside of the main professional occupation and cannot be combined with similar activities as a self-employed professional.

In **Lithuania**, since the beginning of 2020, ride-hailing platforms are obliged to return data to the tax authorities concerning drivers who have utilised the app on their income. Based on the data received, the tax authorities prepare preliminary tax returns for the individuals engaged in ride-hailing activities.

#### 4.1.6 National measures addressing the personal transport sector

**Different national measures have been undertaken to create a level playing field in the personal transport services sector between digital platforms and traditional taxi businesses.** Almost all EU Member States have encountered similar challenges and have adopted various positions, as reported in the European Commission study (2020). Whereas regulating a specific economic sector is not the focus here and has not therefore been systematically covered by the country articles, some country experts have mentioned recent national regulatory changes that have impacted on the personal transportation sector and also indirectly on the position of people working through platforms who are engaged as drivers.

In **Estonia**, the Public Transportation Act was amended in 2017 to incorporate the ride-sharing apps within its scope. The requirements for drivers to have professional training and for the cars to have a taximeter were abolished. Price limits set by local governments for taxi services do not apply to online platforms when the price of a journey is displayed before the passenger gets into the car, while over-priced drivers can be rejected.

In **Finland**, the 2018 Act on Transportation Services loosened some of the restrictions on taxi services, allowing ride-hailing apps to enter the Finnish market under strict conditions such as requiring drivers to operate under a company and to have a taxi licence.

In **Poland**, the Road Transport act was amended in 2020 and new provisions came into force, creating a level playing field for traditional companies and the digital ride-hailing apps (Uber, Bolt). The role of intermediary third parties in passenger transport is regulated and unlicensed ride-hailing is impossible since the drivers must have the same licence as taxi drivers in traditional companies. Cars must have a taxi sign and a taximeter. Furthermore, third-party intermediaries, a common practice that emerged locally in the absence of a proper regulatory framework between 2014 and 2021, must obtain a licence for intermediation services in passenger transport and must be registered in Poland. As a consequence, many former Uber drivers who must now obtain a taxi licence, will likely drop out.

Similarly, in **Greece**, in March 2018, a law was adopted banning ride-hailing platforms from competing with traditional taxis by setting their own fare policy, or by contracting non-taxi drivers. In July 2020, TaxiBeat (renamed Beat) appealed against the law before the Hellenic Competition Committee, the independent market regulation authority, which admitted the case for consideration in November 2020. A ruling is expected during the course of 2021. Currently, transportation services, including those offered via platforms, are undertaken by genuinely self-employed licenced taxi drivers, working independently or as partners of a taxi company, while fares are strictly regulated by the government following consultation with the taxi drivers' union.

In **Luxembourg**, talks between the government and digital platforms in the personal transportation services are currently under way and may generate new legislative proposals on regulating the taxi sector in the course of 2021.

In **Latvia**, such digital platforms must abide by the rules governing the taxi sector including the licence requirements whereas individuals cannot provide transportation services without a licence, but new proposals for legislation are currently being considered.

#### 4.1.7 Specific obligations of platforms

Some countries foresee specific obligations that platforms have to comply with, as illustrated in the examples from France and Greece below.

In **France**, platforms in the personal transport and food/goods delivery services are encouraged to draft charters determining the rights and obligations of their self-employed people working through platforms.<sup>51</sup> To be valid, the charter must include elements such as the regulation of the number of simultaneous workers connected to the platform, the right to work for other platforms, the right to connect/disconnect, measures ensuring that people working through platforms receive decent pay, plus measures aimed at improving their professional skills. The charter should also include measures aimed at improving working conditions and preventing occupational risk, define a framework for information-sharing and social dialogue and define the conditions under which the business contract can be terminated. Whereas the charter is unilaterally drafted by the platform, people working through platforms need to be consulted and it should be submitted for approval on compliance to the Labour Inspection prior to publication on the platform's website.

In **Greece**, new 2019 legislation makes employers in the transport services sector responsible for ensuring that the vehicles are properly maintained and that the riders receive helmets and personal protective equipment. Where the vehicle is owned by the rider, as is most often the case, the employing platform business has to pay an allowance equal to 15% of the statutory minimum wage for maintenance costs. As of November 2020, platforms employing people working through platforms using a scooter for deliveries must complete an online form. However, questions over compliance by the platforms have been raised. The labour union (Assembly of Scooter-driving workers) observed that as a consequence of the new legislation, platforms that previously contracted people with employment contracts have changed their approach: efood now applies temporary agency work contracts while Wolt hires its workers as independent contractors.

## 4.2 The rights and obligations of people working through platforms

### 4.2.1 Employment status and its consequences

Over the years, research and policy papers at EU and national level have systematically highlighted the precarious contractual situation of people working through platforms, the inadequate working conditions, low levels of representation and collective labour rights, lack of access to continuing training and inadequate access to and coverage by social protection schemes, often as a consequence of the employment status assigned to them by platforms (Eurofound, 2018; European Commission, 2020; European Parliament, 2020). The country articles for this Review confirm these findings.

**The practice of contracting people working through platforms on a self-employed status or other category of non-standard work implies that such people often provide their services under the least protection in terms of working conditions and social rights.** People working through platforms are therefore often forced to assume liabilities and risks against which they must take out insurance. The costs of

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<sup>51</sup> Law 2019-1428 of 24 December 2019 (codified in Article L7342-9 of the labour code).



hiring self-employed platform workers is lower, while risks and liabilities concerning the delivery of platform work services are outsourced to the self-employed working through platforms. Cost considerations and outsourcing of risks are also prevalent when people working through platforms are not engaged as self-employed but via alternative mechanisms that exist in EU Member States such as occasional work schemes, zero-hour contracts or student contracts.

In **the Netherlands**, only 15% of the people working through platforms report having an employment contract for their platform work, out of whom 72% have a contract with flexible working time regime such as zero-hour contracts, and another 8% are working under temporary agency work contracts. Only 12% have a fixed-term contract with predetermined working hours.

In **Ireland**, the Employment (Miscellaneous Provisions) Act 2018 explicitly prohibits zero-hours contracts under certain circumstances and obliges employers to provide employees with certain terms of employment within a set period after the start of employment.

**However, in some EU Member States there appear to be fewer concerns with possibly precarious working conditions for people working through platforms.** This includes Sweden, which has strong social dialogue mechanisms and relatively low gaps in social protection access and coverage between employees and the self-employed. Even in these countries, the fragmented and versatile nature of platform work may lead, as in other non-standard types of work, to greater difficulties in meeting the (minimum) eligibility conditions and qualifying periods characterising social protection schemes.

#### **4.2.2 Terms and conditions of the contract**

**Country articles observe the standard practice of platforms to use terms and conditions published online or in apps. These terms and conditions, often drafted in technical language, serve as the contract terms and are unilaterally determined by the platforms without prior consultation with the people working through platforms.** By accepting the terms and conditions, the person working through platforms enters into a contractual or business agreement with the platform business, often as self-employed or other category. Changes to the terms are often also unilaterally decided without prior notification. The terms often lack information on complaint-handling mechanisms and on procedures for contract interruption or termination. The terms lack satisfactory explanation on the use of client-rating systems, on the collection and processing of (personal) data of the person working through platforms and on the use of algorithmic management and automated decision-making. Other rights of people working through platforms, such as the right to refuse a job, to disconnect, to career references and client evaluations, and being allowed to work for several platforms are often also omitted. The terms and conditions often omit to mention occupational safety and health (OSH) risks and OSH prevention and management.

#### **4.2.3 National policy measures addressing labour and social rights in platform work**

**France is the only EU Member State that has adopted specific legislation targeting the labour and social rights of all people working through platforms via a revision of the Labour Code in 2016.** The changes apply to the **self-employed** working through platforms (established as a legal presumption) under the condition that they are not genuine self-employed who independently determine the prices and the terms and conditions under which they provide their services. The rights apply to the

self-employed who, for the purpose of their professional activity, have recourse to one or more electronic intermediation platform. The objective of the legislative changes was to grant people working through platforms additional rights usually attached to the status of employees. The labour code established a legal presumption that when somebody has registered as self-employed, they are actually self-employed (including e.g. micro-entrepreneur).<sup>52</sup> Self-employed people working through platforms are granted access to voluntary insurance against work accidents and platforms must pay the premiums if annual income is above EUR 5 100, unless they have taken out a collective insurance for their workers.

Since the end of 2017, certain platforms in the bike and food delivery sector (Uber, Deliveroo, Brigade) have provided collective insurance as described above. They also have the right to form a trade union and to take collective action (including the right to strike). Collective action cannot be a reason for breaching the contractual relationship, nor the reason behind penalties. Collective actions are not subject to any prior period of notice. Finally, self-employed people working through platforms are also granted access to continuing education and validation of the acquired experience. 'Upon request' they can take advantage of the 'validation of acquired experience' scheme that allows people working through platforms (similar to other workers) to earn a degree on the sole grounds of the professional experience. Costs incurred by the recourse to this process are at the expense of the platform(s) (with a maximum of circa EUR 1 176 per worker). Financial compensation for the loss of income due to the involvement of the person working through platforms in the process of the validation of the acquired experience is provided by the law.

**Several country articles highlight that national legislators have taken steps to address the challenges of people working through platforms in specific economic sectors such as the personal transportation and food/parcel delivery sectors.** These legislative initiatives do not touch on the employment status as such of the people working through platforms but do aim to improve the contractual rights, working conditions, collective rights and social protection of self-employed people working through platforms.

In **France**, new legislation was adopted in 2019 that aimed at regulating the taxi services sector and tackling many of the challenges self-employed people working through platforms in the personal transportation services are confronted with. Platform businesses are subject to transparency rules in terms of the ride distance and the minimum price that drivers receive, while no penalty can be enforced when a ride is refused by the driver. A refusal to accept a ride cannot be a reason for termination of the service contract. Drivers can freely decide their working hours and have the right to disconnect. The law also introduces the potential for platform businesses including those providing food/good delivery services that engage self-employed people working through platforms to adopt charters. The self-employed working through platforms must be consulted during the adoption process while the Labour Inspection Services must issue their administrative agreement prior to final adoption.

In **Greece**, the Ministry of Labour published for consultation a new labour law bill in April 2021 proposing more transparency in treating people in food delivery and other types of platform work either as dependent employees or as independent contractors. The main objective is to protect the eight-hour working day, to help workers reconcile work and family responsibilities, to help firms plan their operations and create quality

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<sup>52</sup> However, according to established French case law, a reclassification into the employee status is still possible before courts regardless of how the parties have named their contractual relationship.

jobs, and to fight sexual harassment at work. The Greek government also stressed its intention to provide all people working through platforms, irrespective of status, the right to unionise and access to 'protective measures' in social security, health and safety. The labour law bill offers employers the option of treating people working through platforms either as dependent employees or as independent contractors.

In **Italy**, specific targeted legislation was adopted in 2019 to increase the protection of the working conditions of self-employed food delivery riders: the right to written and transparent working conditions; the right to information; prohibition of piece-rate payments while hourly pay-rates must be determined in accordance with the minimum wages paid based on collective agreements applied to employees in a similar sector; and the right to supplementary payments for night work, work on public holidays and work in bad weather. The law also extends the anti-discrimination provisions applicable to employees to food delivery riders while guaranteeing their freedom of expression at the workplace. The prerogative of employers to control the activities of their workers including by means of technological tools have been limited and employers are explicitly prohibited to demand personal information and data unrelated to the work performed. Self-employed food delivery riders are subject to mandatory insurance coverage against work accidents and occupational diseases while the Italian OSH legislation now explicitly applies to self-employed food delivery riders.

In **Lithuania**, changes to the Road Transport Code introduced on 1 January 2020 apply stricter rules to ride-hailing services and stipulate that the personal transportation services are to be provided by the self-employed and based on a contract between the latter and the passenger transport operator or the platform.

In **Portugal**, legislation was adopted in 2018 for ride-hailing apps in the personal transportation sector aimed at regulating the activity of individual paid transport of passengers by ordinary vehicles (TVDE). The law regulates mainly the activity of the platform and some basic rights of people working through platforms. Only legal people can be contracted by digital ride-hailing apps, individual drivers cannot offer their services directly through the platform. The TVDE is hence a third-party which signs a contract with the platform business for the personal transportation services and engages the drivers as either employees or self-employed.

The labour code established a joint liability between the platform and the TVDE. The 2018 law ensures a maximum limitation of working time of the drivers by extending the scope of existing legislation in the road traffic transportation sector (60 hours per week, with a limit of 48 hours in a period of four months). In addition, the law establishes a maximum working time of 10 hours in a 24-hour period and obliges the platform to apply instruments to ensure that the working time limitations are complied with. By introducing the third party between the platform and the individual driver, some of the challenges facing people in the personal transportation sector who work through global platforms may have been addressed, since they are directly engaged by another, most often local, company.

#### **4.2.4 Low social protection and protection against accidents at work**

**All country articles mention that people working through platforms generally have lower access to the national social protection schemes than standard workers because of their employment status and/or because of the applied eligibility conditions and qualifying periods in the national social protection schemes.** Reference is often made to the situation of the solo self-employed who have

no personnel and who are economically dependent on a single platform for their assignments and income. As reported previously, people working through platforms for whom platform work is their main source of income are particularly affected.

From the perspective of people working through platforms, income protection and insurance against work accidents and professional diseases and against short-term risks such as sickness and unemployment are most critical.

People working through platforms facilitating on-location platform work, such as drivers in the personal transportation and food/parcel delivery sectors, are particularly vulnerable to higher risks of work accidents. Since the outbreak of the COVID-19 pandemic, work accidents and inadequate protection of people working through platforms has generated media attention in several Member States.

In **France**, the 2016 changes to the Labour code require that self-employed people working through platforms are mandatorily insured against work accidents either via collective insurance taken out by the platform business, a private voluntary insurance or participation in a voluntary social security scheme. The premiums must be paid by the platform if the income of the worker is above EUR 5 100 per year. Alternatively, platforms can take a collective insurance guaranteeing minimally the same rights as under the voluntary insurance. Since 2017 some platforms in the food/parcel delivery services and personal transportation sector (Uber, Brigand, Deliveroo) have undertaken collective insurance policies.

#### **4.2.5 New policy plans concerned with platform work**

**Several country articles highlight the ongoing debate and new policy initiatives aimed at improving the working conditions and social rights of people working through platforms.**

In **France** many proposals have been formulated and discussed in the research community and among policymakers: the creation of a body in charge of platform regulation, the establishment of a prior administrative agreement for platforms to operate, the introduction of a platform rating system on the basis of social and ethics criteria such as compliance with working time and OSH regulations and transparency on the use of algorithms, the entrustment of various administrative duties of people working through platforms (such as the payment and reporting of social contributions) to the platforms or third parties. Other proposals include extending labour and social security related rights of employees to self-employed people working through platforms such as provisions related to minimum income, maximum working time, right to rest breaks and annual leave, protection against OSH risks, mandatory supplementary health care insurance to be paid by the platforms for self-employed persons working through them, lowering of the social contribution rate for micro-entrepreneurs and the guaranteed access to universal unemployment benefits.

In **Germany**, the Federal Ministry of Labour published a Green and White book on the future of work in which platform work took prominence. Among the proposed plans is the inclusion of self-employed people working through platforms in the statutory pension insurance scheme and the improvement of work accidents insurance for the self-employed working through platforms. The Ministry also proposes to establish transparency and reporting obligations for all platform operators and the right of people working through platforms of portability and transferability of their work reviews. The plan also considers reversing the burden of proof on employment status implying that it will be platform operators that will need to demonstrate that there is no employment relationship with the individual concerned.

In **Finland**, the 2019 Programme of the Prime Minister mentions platform work as one of the issues that needs to be tackled and indicates that labour legislation may need to be changed.

In **Luxembourg**, the Workers Chamber (trade union) tabled a legislative proposal which Parliament may, but is not obliged to, consider emphasising intermediation services provided by platforms and taking a private international law approach. The initiative proposes to adapt the national implementation of Directive 96/71/EC (as amended by Directive 2018/957/EU) by introducing the concept of 'virtual posting'. The effect of such a new concept would be to allow the application of domestic legislation, provided that the 'habitual place of work' is Luxembourg. The proposal also introduces changes to the Labour Code applicable to the employment relationship of people providing services/work through a platform who will qualify as employees when their usual place of work or their virtual place of work is located in the territory of Luxembourg. The proposal introduces a legislative presumption of the employment status as an employee which can be rebutted by the platform when certain predefined criteria are met simultaneously. The proposal also introduces a list of contract provisions that are prohibited and cannot be included in the contracts between the platforms and the people working through them, such as (1) clauses aimed at preventing employees to be in contact directly with the client, (2) possibilities to de-activate the account, with the exception of serious misconduct, (3) clauses that prevent the employee to contact other employees or people willing to provide services through the platform, (4) provisions that refuse to provide the individual working through platforms access to performance ratings and client evaluations. The proposal also establishes minimum hourly payment rates.

In **Lithuania**, a draft proposal for amendment to the Civil Code is currently being debated, introducing the obligation that the contracts between the platforms and the people working through them (self-employed) should be in writing and contain provisions on the price, methods or payment, the procedures to change the contract terms and the prices.

In **Portugal**, the Green Book on the future of work was presented in November 2020 to the social partners, which contains several challenges related to platform work. The green book contains proposals such as the creation of a legal presumption on the status of employees for people working through platforms, improved social protection for the self-employed and the collective representation of people working through platforms.

In **Spain**, the government, trade unions and employers concluded an agreement in March 2021 on 'the labour rights of those devoted to delivery through digital platforms'. This agreement was adopted by the Council of Ministers as a Royal Decree Law on 11 May 2021 (while this report was being finalised). Based on press releases by Spain's Ministry for Labour<sup>53</sup>, the agreement applies only to delivery platforms of any product, excluding household services and transportation platforms.

Other country articles highlight that policy debates on platform work seem to have faltered (Denmark) or that there are currently no specific policy plans to address related challenges (Austria, Slovakia). In other EU Member States, platform work is reportedly not on the policy agenda (Hungary, Romania).

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<sup>53</sup> See <https://prensa.mites.gob.es/WebPrensa/noticias/laboral/detalle/3958> and <https://prensa.mites.gob.es/WebPrensa/noticias/ministro/detalle/3959>

## 5 Specific regulation concerning algorithmic management or application of AI in the workplace

The spread of digital technologies at work yields new questions and gradually creates space for new regulations on AI in the labour market. One of the key issues, also relevant to work in the platform economy, is algorithmic management matching workers with customers and evaluating workers' performance.

**Algorithmic matching may produce ratings of workers without their knowledge, which further influences the allocation of their work tasks and thus their job security** (c.f. ILO, 2021). Algorithmic management may also be perceived as **insufficiently transparent to humans**, thus exposing people working through platforms to inaccurate evaluations and ratings, which can then impact on job stability, income and the quality of working conditions. This challenge is even more important in the context of lack of access to external mediation or dispute settlement procedures in case of disputing a decision taken by the algorithm, the platform or the customer (Silberman and Johnston, 2020).

At EU-level, regulations supporting national responses to regulation of algorithmic management in the workplace draw on the following key documents.

**The Artificial Intelligence Act**<sup>54</sup> adopted by the European Commission in April 2021. The Act is the first ever legal framework on Artificial Intelligence, uses a risk-based approach and sets up a series of escalating legal and technical obligations depending on whether the AI product or service is classed as low, medium or high-risk. It also provides important rights concerning algorithmic management in the world of work, however, does not focus on the specificities of employment relations, e.g. the importance of social dialogue in the world of work. The Act was preceded by the **White Paper on Artificial Intelligence**<sup>55</sup>, launched by the European Commission in February 2020 outlining the EU plans to regulate the Artificial Intelligence sector, in line with the objective to better prepare Europe for the digital age.

**Ethics Guidelines for Trustworthy Artificial Intelligence**, prepared by a High-Level Expert Group on AI, which outlines seven key requirements for confidence in AI systems.

**Proposals to regulate AI via recent initiatives in the European Parliament**, including ethics guidelines, liability for AI-caused damages, and intellectual property rights<sup>56</sup>.

**General Data Protection Regulation (GDPR)** (Article 14), which forbids secret ratings unless required for compliance with European or national law or legal obligations established by public bodies (Silberman and Johnston, 2020).

EU Member States, including Belgium, Denmark, France, Portugal and Slovakia, see future EU-level regulation on AI as a key benchmark for their national policies in this area. In addition to the perceived importance of EU level regulation, no EU Member States currently possess dedicated legislation on AI and algorithmic management, which would clearly regulate platform work. The diverse approaches across EU Member States are presented below, ranging from country cases of adaptation of existing policies through new policy initiatives to others where the current interest in addressing AI and algorithmic management via regulation or policy debates is marginal.

<sup>54</sup> Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0206>

<sup>55</sup> Source: [https://ec.europa.eu/info/sites/default/files/commission-white-paper-artificial-intelligence-feb2020\\_en.pdf](https://ec.europa.eu/info/sites/default/files/commission-white-paper-artificial-intelligence-feb2020_en.pdf)

<sup>56</sup> Source: <https://www.europarl.europa.eu/news/en/press-room/20201016IPR89544/parliament-leads-the-way-on-first-set-of-eu-rules-for-artificial-intelligence>

### **EU Member States that lack extensive regulatory frameworks or policy debates related to AI and algorithmic management**

Most EU Member States have yet to adopt a dedicated set of legislation for regulating platform work, while some EU Member States (e.g. Greece, Slovenia) appear to pay marginal policy attention to the issue of AI.

### **EU Member States that use existing national policies/regulations to address AI and algorithmic management in the workplace**

Several EU Member States employ existing policies to address the regulation of AI and algorithmic management in the workplace. The most common policy reference is made to regulations on GDPR and personal data protection, as is the case in Austria, Belgium, Czechia, Estonia, France, Ireland, Luxembourg and the Netherlands. In France, the 2019 transportation law (Loi No. 2019-1428), which applies to self-employed people working through transportation platforms, stipulates that these people enjoy the right to access all platform data concerning their own activities that enable them to be identified, the right to receive these data in a structured format and the right to transmit it. Reference to privacy policies is also highlighted in Czechia and Luxembourg, while anti-discrimination legislation is important for the use of algorithmic management and AI in Italy. In Estonia, legislation on personal data protection acknowledges full responsibility of the platform for decisions made by algorithmic management. In Italy, the use of existing policies for AI refers to the right for information, based on the Charter of Bologna, as well as to regulation concerning remote monitoring. In Germany, there are no specific regulations concerning algorithmic management or the application of AI in the workplace, but general anti-discrimination legislation would apply if a person working through a platform was considered an employee. A recent study by the Hans-Böckler Foundation names examples of problems that occurred with ratings and practices of gamification, and also cases of controlling (tracking) have been reported (Schneider-Dörr, 2019). In two EU Member States, policies related to employee protection and the role of trade unions and works councils are also mentioned as relevant for regulating the use of algorithmic management in the workplace: the employee protection legislation in Luxembourg, and the Act on co-determination in Sweden.

### **EU Member States with national policy proposals have emerged that may lead to regulatory improvements addressing AI and algorithmic management**

In 10 EU Member States, policy proposals have emerged that may lead to regulatory improvements addressing AI and algorithmic management. In **Belgium**, information is being gathered on fostering a digital smart society, while the AI4Belgium initiative encourages public debate on this issue. In **Austria, Croatia, France** and **Poland**, recent policy initiatives signpost the relevance of anti-discrimination in relation to algorithmic management, but also the role of human agency and transparency in algorithmic decision-making. **Slovakia** faces a policy debate related to liabilities and responsibility for the operation of algorithms, while in **Finland** policy debates emerged on the use of technology for increasing productivity. **Germany** and **Latvia** saw policy debates on ethical issues related to AI, while in France a policy debate emerged on the possibility to audit work-related algorithms and exercise labour inspections thereon. In several EU Member States, policy debates refer to the role of social partners and collective bargaining: In **Spain**, a new agreement between the government and the social partners on 10 March 2021, adopted as Royal Decree Law on 11 May 2021, stipulates access of representatives of workers to the part of the algorithms used by digital platforms that could impact on labour conditions, including access to and maintenance in employment and the elaboration of labour profiles. This legislation introduces the right of labour unions to information on algorithms, where the platforms must provide their algorithm

parameters and a mathematical formula that affects the relationship with the people working through these platforms. In **Poland**, the OPZZ trade union filed a proposal on anti-discrimination and control mechanisms necessary for algorithmic management, while in **Sweden** policy proposals refer to expanding the Act on co-determination to also cover competences in the area of AI regulation. **Lithuania** saw the regulatory policy of algorithmic management discussed in national tripartism.

### **EU Member States with regulatory benchmarks for AI and algorithmic management emerging from various stakeholders and from case law**

In five EU Member States, attempts to set regulatory benchmarks by non-state actors or by case law/court cases are perceived as an opportunity to create regulatory benchmarks. Countries establishing benchmarks for the regulation of AI based on **case law** include **Denmark, France, Italy and the Netherlands**, as described in the box below. While in Denmark case law is generally viewed as a relevant opportunity for establishing regulatory benchmarks for AI and algorithmic management, France and Italy already have specific rulings related to algorithmic management.

In **France**, the Constitutional Court established two principles:

- 1) The person in charge of the algorithm management must control this tool and its evolutions and must be able to clearly explain its functioning to persons concerned;
- 2) An administrative decision concerning one individual may never be exclusively founded on an algorithm (Decision 2018-765 DC, 12 June 2018).

In **Italy**, the Charter of Bologna establishes that people working through platforms are entitled to the right to be informed on the functioning of the rating systems and to the right to contest the rating through a transparent and impartial procedure (article 3). The Charter also establishes that the lack of availability of the worker cannot be considered in order to provide less work opportunities on the platform (article 5). Article 7 provides specific regulation of data protection, including the prohibition of workers' monitoring and the investigation of personal beliefs and other aspects of workers' lives not directly relevant for their work.

Also in **Italy**, the most relevant regulation impacting on algorithmic management derives from anti-discrimination law. The legitimacy of the system of algorithmic management has been questioned by Italian trade unions (Filt Cgil Bologna, Filcams Cgil Bologna and idil Cgil Bologna) in court (case n. 2949/2020 Tribunal Bologna, 31 December 2020). The Tribunal of Bologna found the system of algorithmic management of a platform to be discriminatory because it treated different situations in the same way, thus producing a disparate impact on workers with protected conditions (such as illnesses and disabilities). The platform was also found to be indirectly discriminating against workers by offering them shifts based on a reliability index. The court ruled that riders are covered by anti-discrimination law irrespective of their classification, since such regulation applies to both employees and the self-employed (see Legislative Decree n. 216/2003).

In **the Netherlands** four court proceedings during 2021 concerned the application of the GDPR in the context of platform work. In a first case initiated by six UK-based drivers against Uber BV (registered in the Netherlands<sup>57</sup>), a judgment was rendered in absentia in February 2021 by the court of first instance<sup>58</sup>. The court found that the decision to deactivate the driver accounts by Uber and the underlying claims of fraudulent practices were to be considered as solely based on automated data processing, including profiling, and that these decisions effectively produced legal effects on the

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<sup>57</sup> UBER BV is a subsidiary of Uber Technologies Inc. with headquarters in the US.

<sup>58</sup> Judgment of the Court of First Instance of Amsterdam of 24/2/2021, Case C/13/696010/ HA ZA 21-81.



drivers in the meaning of article 22 (1) of the GDPR. The court annulled the automated decisions and Uber was sentenced to pay a penalty and to reactivate the accounts.

In a second case against Uber BV which was initiated by three UK- and one Portugal-based drivers, the same court of first instance ruled in March 2021 that the deactivation by Uber was justified in the particular circumstances of the case and that it was not solely based on automated decision making in the meaning of article 22 para 1 of the GDPR because (1) the first deactivation decision, which was based on automated processing, did not produce legal effects for the drivers concerned due to its temporary nature, and (2) the final decision to stop the co-operation was based on human intervention as two staff members of Uber's Risk team had been involved in the process and the decision was properly communicated to the drivers concerned<sup>59</sup>. However, the court ruled that for two of the four plaintiffs concerned, Uber still had to provide access to the personal data which were at the basis of the decision to deactivate their accounts in order to be able to control the correctness and legality of processing of their personal data on the basis of article 15 of the GDPR.

In a third case against Uber BV, which was launched by 10 UK-based drivers, the court found that most requests from the plaintiffs concerning access to personal data were too broadly formulated and lacked substance<sup>60</sup>. The court however ruled that (1) there is no right to receive feedback on personal data and data processing in the requester's required format, but that (2) Uber still had to provide the anonymous individual client ratings to the individual drivers.

A fourth judgment of the same court concerned OLA Netherlands BV<sup>61</sup>, which operates an app connecting drivers and passengers in personal transportation.<sup>62</sup> OLA was held to provide insight in the personal data and algorithms that were used for the risk-profiling of the drivers (as defined under article 4 para 4 GDPR) and in the way that the personal data were used as the basis to grant a bonus payment, to give a fraud probability score to the drivers, to monitor their whereabouts and behaviour and to apply deductions and penalties. OLA was furthermore required to share the individual client ratings with the drivers. The court however did not find evidence that the contested decisions made by the platform were a violation of Art. 22 para 1 of GDPR.

In **Slovakia**, the establishment of the Slovak.AI agency came with the expectation of developing research and policy recommendations setting benchmarks for future regulation of AI and digital technologies. In **Sweden**, given its specific industrial relations system, benchmarks for regulating AI are expected to emerge from social dialogue and collective bargaining processes. The **Netherlands** saw the Personal Data Protection Authority, an independent body in charge of supervising personal data protection, focusing its agenda in the coming years on the use of AI and algorithms by organisations and companies and compliance with GDPR, raising questions on information obligation, transparency, 'explainability' and human intervention. The Code of Conduct of the Dutch Association of Personnel management and organisational development introduced a specific article 3.4 devoted to the use of AI and algorithms in digital recruitment and selection processes. The use of AI and algorithms needs to be validated and transparent, while applicants have the right to ask for a motivated decision once recruitment is completed. It is still unclear, however, which body is entrusted with validating these digital recruitment processes based on AI.

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<sup>59</sup> Judgment of the Court of First Instance of Amsterdam of 11/3/201, Case C/13/692003/HA RK 20-302.

<sup>60</sup> Judgment of the Court of First Instance of Amsterdam of 11/3/2021, Case C/13/687315/ HA RK 20-207.

<sup>61</sup> OLA NETHERLANDS BV is a subsidiary of OLA with headquarters in India.

<sup>62</sup> Judgment of the Court of First Instance of Amsterdam of 11/3/2021, Case C/13/689705/ HA RK 20-258.

## EU Member States with an existing or proposed encompassing national strategy for regulating AI and algorithmic management

In contrast to EU Member States lacking regulatory initiatives and policy debates, some EU Member States are more advanced in having already adopted or being in the process of adopting a national strategy for the use of AI, as per the examples in the box below.

**Belgium** has adopted a guidebook on AI, which also stipulates recruitment processes via algorithmic management.

In January 2021, **Poland** saw the establishment of the Policy for the Development of Artificial Intelligence in Poland based on the Resolution of the Council of Ministers. This document aims to regulate the use of AI in various economic areas and public life and education in Poland, while acknowledging the risks associated with the use of digital technologies.

**Portugal** adopted a Green Book on the future of work, which also includes provision for stipulating AI in the workplace. Portugal also adopted the Charter for Fundamental Rights in the Digital Era, which calls for transparency in using AI.

**Slovakia** adopted a strategic approach to the use of AI, namely, the Strategy of digital transformation of Slovakia 2030 and the Action plan of digital transformation of Slovakia for 2019-2022. The Slovakian government declares to approach the use of AI from an ethical point of view and for the sake of general societal benefits of innovative technologies and sustainable development.

In **Ireland** and **Latvia**, national strategies are currently in development. In Ireland, consultations are currently setting regulatory benchmarks on the use of AI from the perspective of ethics, inclusion and diversity. In Latvia, guidelines for digital transformation are under discussion and in development with the aim of adopting a national strategy in the future.

### Regional initiatives

In addition to national regulation and policy initiatives in the area of AI and algorithmic management, two regional initiatives emerged. First, in February 2020, 18 trade and business associations and AI Platforms from 10 Central and Eastern European EU Member States, including Bulgaria, Croatia, Czechia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia, presented their **joint support to the European Commission's approach to regulating AI**<sup>63</sup>. The aim is to develop a European common approach towards the opportunities and challenges deriving from the use of AI.

Second, an initiative in the Nordic-Baltic region emerged in 2018 from governments signing a joint declaration - '**AI in the Nordic-Baltic Region**'. Via this declaration, national governments of Denmark, Estonia, Finland, the Faroe Islands, Iceland, Latvia, Lithuania, Norway, and Sweden agreed to reinforce their co-operation on AI, while maintaining their position as Europe's leading region in the area of digital development (Nordic Council of Ministers, 2018). The declaration identified seven focus areas for promoting and developing AI, including opportunities for skills development and the use of AI in the workplace and by business and public authorities, development of ethical and transparent guidelines for using AI. This declaration also promotes a prominent place for AI in the European discussion and implementation of initiatives within the framework of the Digital Single Market.

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<sup>63</sup> Source: [http://konfederacijalewiatan.pl/aktualnosci/2020/1/wspolne\\_stanowisko\\_biznesu\\_w\\_sprawie\\_sztucznej\\_inteligencji](http://konfederacijalewiatan.pl/aktualnosci/2020/1/wspolne_stanowisko_biznesu_w_sprawie_sztucznej_inteligencji)

## 6 Inspection and enforcement

### 6.1 Classification actions open to people working through platforms to challenge their employment status.

Key to making employment rights effective in platform work is the question of false or bogus self-employment or the misclassification of employment status in general. **If a person working through a platform wants to challenge their employment classification, they can take recourse to the labour courts.**

In **Ireland**, rather than legislate for workers to be able to formally contest their worker classification, a campaign was used to make workers aware of their rights and of the options available to them. However, it was argued in parliament (Oireachtas) that this put the onus on the workers, who may not feel comfortable dealing with their employers in this way and that more thorough legislation of what exactly constitutes an employee is necessary.

In **Denmark**, the steps to be taken if people working through platforms want to challenge their employment classification or other aspects of the regulations of their working conditions will depend on the specific circumstances of each case. For one, the Danish Working Environment Authority (WEA) monitors and inspects working conditions in workplaces in Denmark. There are no specific regulations with respect to platforms but, in principle, a person working through a platform can complain to the Working Environment Agency concerning their working conditions. However, such complaints are not registered separately and, as a result, no specific statistics for platforms or people working through platforms are available.

In **Belgium**, the Labour Relations Act implemented an administrative procedure ('social ruling') before the Administrative Commission of Labour Relations, established under the Federal Services for Social Security, allowing individuals to obtain a preliminary ruling on their correct employment status. The decisions are binding for government agencies dealing with social security and labour law issues, but not for the courts handling employment classification cases. Several people working through platforms in the food delivery and personal transportation sectors have initiated proceedings before the Administrative Commission recently, which resulted in decisions on their (re-) classification as employees (see in Subsection 3.5).

The role of labour inspectorates in the re-classification of people working through platforms in **Estonia** and **Portugal** are described in the box below.

In **Estonia**, addressing the misclassification of employment is the focus of two institutions, the Labour Inspectorate and the Tax and Customs Board. The former focuses on making the employment rights effective, including tackling fraudulent or bogus forms of employment and undeclared work. The latter is responsible for collecting tax revenues from correctly classified tax-subjects and income. The administrators of social and unemployment insurance could also play a role in identifying and tackling undeclared work or bogus self-employment. The eligibility criteria of these benefits relate the factual declared employment (in employment relationships) and the payment of taxes. Thus, during the application, cases of misclassified forms of employment or undeclared work could emerge, and information could be used by the Labour Inspectorate or the Tax and Customs Board to enforce current legislation.

In **Portugal**, the system of presumptions has a double aim: to protect workers and the sustainability of the national social security system. Labour inspectors can check the correct application of employment status and, in case of alleged misclassification,

demand a correction. In 2016, a new procedure improved this action.<sup>64</sup> If a case of bogus self-employment is detected at a workplace, **the labour inspectorate can ask the employer to change to an employment contract.** If the employer refuses, the case must be sent to the Public Prosecutor's office which will generate legal proceedings in court to obtain the reclassification. The judiciary process continues even against the worker's wish. This is an urgent process that can result in a ruling within a few months. Despite the recognition of employment status by the employer, administrative offences can be alleged against the employer, making this a matter of public interest.

## 6.2 Labour inspection and platform work

**In EU Member States such as Austria and France, labour inspectorates do not play a significant role in ensuring fair employment conditions for people working through platforms, since they are only competent for compliance with workplace safety and working time legislation.** Similarly, in **Belgium, Slovakia and Slovenia**, labour inspectorates do not have specific competencies with regard to platform work. In **Lithuania**, the State Labour Inspectorate only has competence to supervise labour relations in compliance with the Labour Code. Given that relationships between people working through platforms and platform founders are governed by the Civil Code, the State Labour Inspectorate is in principle not in a position to help resolve disputes between them.

In **Luxembourg**, the country article finds that the labour inspectorate (ITM) very rarely detects platform work in labour inspections, partly due to the fairness of the local labour market, which appears to discourage precarious and unregulated working arrangements, and partly due to the lack of individual complaints.

In **Czechia and Estonia**, bogus self-employment is not mentioned as a priority for labour inspectorates. **In contrast, combating bogus self-employment is mentioned as a priority for labour inspections in Spain, Hungary, the Netherlands and Portugal.** In **Portugal**, the system of presumptions helps labour inspectors, judges, lawyers and the wider public identify bogus self-employment.

**EU Member States such as Italy, the Netherlands and Poland, are increasingly emphasising the inspection of platform work.** In **Italy**, the 2020 annual programme document released by the labour inspectorate (INL) (Documento di programmazione della vigilanza per il 2020) identifies platform work as a priority area of intervention. A first inspection campaign by INL in the Milan area was launched during one of the pandemic peaks (early May 2020). The first national inspection campaign in the food/parcel delivery sector was also implemented in the days immediately following the decision of the Tribunal of Milan on the Uber Eats case. **This campaign has recently generated its first output.** On 24 February 2021, the Inspectorate gave notice that the inspection found that 60 000 riders working through food delivery platforms (Just eat, Foodinho (Glovo), Uber Eats Italy and Deliveroo) should be considered employer-organised workers and consequently deserve the application of labour law as if they were employees (except for the provisions deemed not compatible with the nature of the relationship). This has led to the request to the platforms to regularise the relationships with these riders, both in terms of contract and of social security and raised compensation issues for unpaid contributions and wages. Since the application of labour law extends the whole corpus of the OSH Act to riders, the conclusions of the Inspectorate have been passed to the prosecutor

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<sup>64</sup> With the addition of Article 186-O of Labour Procedure Code.

persecuting criminal offences connected to the violation of the OSH Act. As a consequence, the prosecutor fined the platforms EUR 733 million in total.

In **the Netherlands**, the 'Inspection Social Affairs and Employment' is the main inspection service. In its multi-annual plan 2019-2022, the Inspection observes the high competition, low profitability and the relatively high labour costs in the overall costing structures of platform businesses. The service reported on its ongoing inspections of the platform economy in late 2019. Inspections had focused on undeclared/illegal work and underpayment, compliance with equal treatment legislation concerning pay applicable to temporary agency work in the sectors of food delivery, cleaning and hospitality, the growing use of contracts of services instead of employment contracts and the deployment of child labour by platforms disregarding night work and working hours legislation.<sup>65 66</sup> In its annual plan for 2021<sup>67</sup>, the inspection service announced additional quantitative research in the cleaning and temporary agency work sectors and specific investigations in the food/parcel delivery sectors and distribution centres focusing on compliance with working-hours regulation, fair payment and legislation on working conditions.

In **Poland**, in 2019, the National Labour Inspectorate conducted two inspections of Uber Poland SP Z O O, and 27 inspections in the entities cooperating with Uber group and in other companies active in the personal transport and food delivery sectors via an electronic service platform. These inspections were performed by labour inspectors from 11 Regional Labour Inspectorates.

### 6.3 Enforcement actions conducted by other authorities

Aside from labour inspectorates, the country articles list enforcement actions performed by other authorities such as social security institutions and tax authorities, as per the examples below.

In **Germany**, other institutions regulating bogus self-employment are the statutory pension insurance<sup>68</sup>, the labour court, and tax offices. In general controls are conducted following a tip-off<sup>69</sup>.

In **Spain**, the Plan for Decent Work 2018-2019-2020 includes specific measures to combat bogus self-employment in digital platforms and e-commerce and the Labour and Social Security Inspectorate and the Social Security Office are working closely to identify and reclassify bogus self-employed in digital platforms. In 2019 and 2020, nearly 30 000 workers from Uber Eats, Glovo, Amazon and Deliveroo have unilaterally been reclassified as employees and the corresponding adjustments demanded to social security contributions paid by both employers and workers. The tax authority is aligned with these measures and plans to regularise VAT and income tax in the cases of reclassified people who work through platforms.

In **Hungary**, the National Tax and Customs Authority is responsible for the inspection of taxation of self-employed workers, local regulations are enforced by local bodies, and healthcare service providers are entitled to inspect patients' social insurance status. In 2019, the government announced plans to intensify the inspection of sole entrepreneurs and small businesses using the simplified tax KATA<sup>70</sup>. However, the

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<sup>65</sup> Inspectie SZW, (2019), Staat van eerlijk werk 2019: 'risico's aan de onderkant van de arbeidsmarkt p.26.

<sup>66</sup> New legislation ensures that from 1 July 2020, food delivery riders must be at least 16 years of age.

<sup>67</sup> Inspectie SZW, (2020), *Jaarplan 2021*, p 24.

<sup>68</sup> <http://clearingstelle.de/clearingstelle/drv.html>

<sup>69</sup> [https://www.gewerbeanmeldung.com/gewerbe-anmelden/kleingewerbe/scheinselbststaendigkeit/#Wie\\_wird\\_die\\_Scheinselbststaendigkeit\\_geprueft\\_-\\_Scheinselbststaendigkeit\\_pruefen](https://www.gewerbeanmeldung.com/gewerbe-anmelden/kleingewerbe/scheinselbststaendigkeit/#Wie_wird_die_Scheinselbststaendigkeit_geprueft_-_Scheinselbststaendigkeit_pruefen)

<sup>70</sup> [https://index.hu/gazdasag/2019/12/16/kata\\_adozas\\_ellenorzes\\_szigoritas\\_adocsalas/](https://index.hu/gazdasag/2019/12/16/kata_adozas_ellenorzes_szigoritas_adocsalas/)

aim of this move was to identify bogus self-employment and there are no specific guidelines for the inspection of platform work.

In **Italy**, the Data Protection Authority has identified platform work - particularly in the food delivery sector – as a field of specific investigation. With a deliberation issued on 1 October 2020 containing the programmatic guidelines for its inspection activity, the Authority specified that data processing in the food delivery sector would be a priority area for inspectors. It is worth mentioning that, distinct from INL action, the Data Protection Authority investigation will not be limited to processing pertaining to workers but will also encompass the subjective position of clients of the platforms.

In **Sweden**, there have been targeted responses to the challenges faced by people working through platforms. In June 2018, the government commissioned the Swedish Work Environment Authority (Arbetsmiljöverket) to implement a pilot project aimed at analysing the work environment risks associated with new forms of work, particularly digital platform work.

#### **6.4 Cross-border provision of platform work**

**Very few EU Member States touch upon the issue of platform work provided across borders, as there is generally no data available.**

In **Ireland**, with its land border between Ireland and Northern Ireland, it is very possible that some cross-border on-location platform work exists. However, there is no estimate of the prevalence of such work, given the lack of literature on platform work generally. It is estimated that there are between 23 000 and 29 000 cross-border workers across Ireland (Department for the Economy, 2018).

The issue has attracted research interest in **Croatia**. While there are no data on cases of online platform work provided cross-border, a recent academic article concludes that, when combined with cross-border elements, platform work becomes more complex and raises several challenges in the application of the EU acquis on free movement of workers and social security coordination (2020, 504). Therefore, the article proposes to extend the personal scope of Regulation 492/2011 and Directive 2014/54/EU to the solo and dependent self-employed. To avoid different standards of protection, it is also proposed that the personal scope of Directive 2014/50 is extended to the self-employed.

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## 8 Data Annex

The most important surveys and/or evidence with an EU-wide approach, or a regional approach covering selected EU Member States, as of April 2021, are listed in the table below.

Table A.1. Main EU-wide or multi-country surveys and databases on platform work

Database name	Reference/ Collected by	Year implemented, years covered	EU Member States covered	Number of respondents covered	Description, limitations and comments
The Collaborative Economy and Employment Survey (COLLEEM I survey)	EC, Joint Research Centre (Urzi Brancati et al. 2020)	2017	14	38 878 responses in 16 participating countries among internet users aged 16-74	Commissioned by DG EMPL and coordinated by the Joint Research Centre of the European Commission and is to date the most extensive survey on platform work in a comparative perspective (Urzi Brancati et al. 2020). The survey was implemented in 2 phases COLLEEM I and COLLEEM II and the questionnaire administered online used a non-probability quota sampling approach. The database and analysis attempted to facilitate an understanding of platform work and provide initial estimates on its prevalence and extent. The COLLEEM II survey was implemented in 2018 after methodological improvement and extending the country coverage to Czechia and Ireland. While the COLLEEM survey is the most comprehensive international database on platform work in the EU, its methodological shortcoming lies in the form of data collection via an online survey. This may account for a possible bias in the types of platform work towards online (as opposed to on-location) platform work.
The Collaborative Economy and Employment Survey (COLLEEM II survey)	EC, Joint Research Centre (Urzi Brancati et al. 2020)	2018	16		
ETUI Internet and Platform Work Survey	European Trade Union Institute (ETUI), Piasna and Drahoukoupil (2019)	2018 – 2019	5 Member States in Central and Eastern Europe (Bulgaria, Hungary, Latvia, Poland and Slovakia)		The survey mapped the extent of digital labour in Central and Eastern EU Member States based on the analysis of two types of online sources for generating income: internet work; and its subset, platform work. The ETUI survey claims to have overcome a number of methodological shortcomings of the COLLEEM survey. In particular, the ETUI survey is not based on a paid random internet sample but attempted to collect data from a representative sample of labour market participants via offline interviews following a common

Database name	Reference/ Collected by	Year implemented, years covered	EU Member States covered	Number of respondents covered	Description, limitations and comments
					methodology across several EU Member States (Drahokoupil and Piasna 2019).
CEPS, Eftheia and HIVA-Leuven Survey	Commissioned by the European Commission (Project No. VT/2018/032)		28 EU MS  Focus groups in 6 EU MS, Iceland and Norway (Denmark, Estonia, Spain, France, the Netherlands and Slovenia).	60 expert responses	Provides evidence-based analysis of challenges faced by platform workers regarding their working conditions and social protection. In addition to quantitative data collection, semi-structured interviews were held with stakeholders, including policymakers, academic and legal experts, platform representatives and social partners, national administrators, labour inspectorates, occupational safety and health authorities, and business sector associations (European Commission, 2020). The aim of these focus groups was collecting evidence about particularly interesting policy developments and trends. Each focus group consisted of 6-12 participants, including at least one policymaker, academic or legal expert, social partner, platform representative, and platform worker.
Online Labour Index	Oxford Internet Institute	2016 – 2021	Global (EU-27 and non-EU countries)	n/a	<b>The OLI is an economic indicator that provides an online gig economy equivalent of conventional labour market statistics. It measures the supply and demand of online freelance labour across countries and occupations by tracking the number of projects and tasks facilitated by major online platforms in real time</b> (Kässi and Lehdonvirta 2016). The database is updated in real time and data are provided for the period 2016–2021.
<b>European Foundation for Progressive Studies survey (FEPS)</b>	European Foundation for Progressive Studies, im-	2016 - 2019	14 surveys in 13 EU Member States + Switzerland (Austria,	Different size of respondents in each of the 14 surveys, e.g. 2 159 in France,	<b>The European Foundation for Progressive Studies (FEPS)</b> <sup>71</sup> carried out 14 surveys across 13 EU Member States between 2016 – 2019, which explored the extent and characteristics of

<sup>71</sup> FEPS survey data available at: <https://uhra.herts.ac.uk/handle/2299/21600>

Database name	Reference/ Collected by	Year implemented, years covered	EU Member States covered	Number of respondents covered	Description, limitations and comments
	plemented by the University of Hertfordshire and IPSOS MORI		Germany, Netherlands, Sweden and the UK in 2019, Italy and Switzerland in 2017, Estonia, Finland and Spain in 2018 and in Czechia, France, Slovenia and the UK in 2019.	2 000 in Czechia, 2 001 in Slovenia, 2 182 in Spain, 2 000 in Finland, 2 000 in Estonia, 2 199 in Italy, 2 001 in Switzerland, 1 969 in Austria, 2 180 in Germany, 2 125 in the Netherlands, 2 146 in Sweden and 2 235 in the UK 2019 survey, 2 238 in the UK 2016 survey	platform work (Huws et al. 2019). The surveys were implemented by IPSOS MORI and its national affiliates in the respective countries. In-depth qualitative interviews, carried out by the University of Hertfordshire in the UK, Germany and Estonia, supplemented the surveys in order to explain the results of the quantitative research.
<a href="#">IRSDACE survey</a>	Centre for European Policy Studies (CEPS)	2017 - 2018	7 EU Member States (Belgium, Denmark, France, Germany, Hungary, Slovakia and Spain)	n/a	The <b>IRSDACE project</b> (Industrial Relations and Social Dialogue in the Age of Collaborative Economy, project no. VS/2016/0359) included a non-representative <b>online survey and face-to-face interviews with platform workers and other relevant stakeholders</b> across 7 EU Member States. Outcomes identify how traditional players in the labour market, including trade unions, employers' associations, and national governments across EU Member States, experience and respond to platform work and challenges emerging in the working conditions of platform workers. IRSDACE analysed the discourses on platform economy among established industrial relations actors, assessed implications of workers' experience with the platform economy for industrial relations and social dialogue, and delivered a comparative analysis of national experiences as well as the analysis of the impact of EU-level employment policy (Akgüç et al. 2018).

Database name	Reference/ Collected by	Year implemented, years covered	EU Member States covered	Number of respondents covered	Description, limitations and comments
Eurobarometer survey	European Commission and GESIS - Leibniz Institute for the Social Sciences	2016 Special Eurobarometer	28 EU Member States	14 050	A special edition of Eurobarometer in 2016 responded to the rising phenomenon of the platform economy. A survey was implemented across 14 500 respondents in 28 EU Member states in cooperation with GESIS. Questions were structured similarly to COLLEEM, e.g. asking for the frequency of engagement in platform work. The disadvantage was the lack of continuity of this battery of questions in following Eurobarometers. The findings show that a majority of respondents had either used or were aware of collaborative platforms. Almost one third of respondents who have used the services of collaborative platforms also provided a service on this kind of platform at least once. This signals that users are also likely to act as service providers.
ILO – INWRK survey	ILO	2015 and 2017	75 countries	3 500 respondents	The ILO’s Research Department in collaboration with the Inclusive Labour Markets, Labour Relations and Working Conditions Branch (INWORK) implemented a survey on micro-workers in 2015 and 2017, covering 3 500 workers in 75 countries (Berg et al. 2018). This survey explored the profiles of platform workers, their motivations and working conditions in five major platforms in microwork operating globally.

## 8.1 Data gaps

The following conclusions can be formulated based on the above overview of available comparative datasets on platform work, pointing to the need for more systematic data collection on platform work and the platform economy:

- Variation in the surveys from the point of view of **platform work definitions**. While some surveys apply to 'collaborative economy', others consider platform work in general, covering various branches of it, e.g. on-site and online services. The definitions of these particular subtypes of the platform economy also differ. Furthermore, differences emerge in the definition of platform work from the perspective of frequency of engagement. The COLLEEM surveys acknowledge the difference between persons working through digital labour platforms that have provided services through a platform at least once, more frequently, or this type of activity refers to their main work/source of income. Other surveys are not fully consistent with this definition – each has its own definition and classification of workers and the frequency of their involvement in platform work.
- Variation in the **scope of surveys** – different surveys cover different EU Member States, which makes the findings difficult to compare. Often the findings are contradictory.
- **Bias in the samples** – some surveys were implemented online (COLLEEM, IRSDACE), which may possibly lead to the over-representation of people in microwork/online provision of platform work. Other surveys, e.g. the ETUI survey, attempted to address the shortcoming of online surveys by developing representative sampling strategies among the studied population. This type of survey is more costly and more difficult to implement, due to off-line data collection and the need to approach individuals with particular characteristics in order to reach a representative sample. This approach prevents a larger, more systematic country coverage. Finally, some surveys draw on expert interviews rather than direct responses from people working through digital platforms, which offers yet another perspective on the current state and challenges of the platform economy.
- **Lack of continuity** – some surveys, e.g. the special Eurobarometer 2016, were a one-occasion initiative, without continuity in data collection that would allow the development of panel data. Other surveys were implemented in several rounds, but through different Member States (FEPS), or with methodological improvements/changes (COLLEEM I and II). While such improvements are generally appreciated for analysis, it does not secure a strict continuity and comparability with previous rounds and/or other surveys.
- These shortcomings point to the need for engaging into systematic data collection on platform work and the platform economy, which is expanding in importance in the labour markets of the EU Member States. The identification of specific data gaps is a relevant topic for future discussion between experts and policy makers at EU-level (e.g. including the European Commission, Eurostat, the JRC and social partners such as the ETUI).

## 9 Glossary

- **'People working through platforms'** refers to natural persons providing services intermediated with a greater or lesser extent of control via a digital labour platform in return for payment, irrespective of these people's legal employment status (worker, self-employed or any third-category status). The term 'platform worker' is only used as an equivalent when quoting official documents which contained such a term.
- **'Digital labour platform'** refers to a private internet-based company which intermediates with a greater or lesser extent of control on-demand services, requested by individual or corporate consumers and provided directly or indirectly by natural persons, irrespective of whether such services are performed in the physical or online world.
- **'On-location labour platform'** refers to a digital labour platform which only or mostly intermediates services performed in the physical world, e.g. ride-hailing, food-delivery, household tasks (cleaning, plumbing, caring). This definition is irrespective of the level of skills required to perform such services or held by those people performing such services.
- **'Online labour platform or online work provided through a digital platform'** refers to a digital labour platform which only or mostly intermediates services performed in the online world, e.g. AI-training, image tagging, design projects, translations and editing work, software development. This definition is irrespective of the level of skills required to perform such services or held by those people performing such services.
- **'Platform work'** refers to the services provided on demand and for remuneration by people working through platforms, irrespective of the type of platforms (on-location vs online) or of the level of skills required to perform such services or held by those people performing such services.
- **'Working conditions'** refers to the conditions in and under which work is performed. A working condition is a characteristic or a combination of characteristics of work that can be modified and improved. This covers such matters as: the organisation of work and work activities; pay; training and skills' development; health, safety and wellbeing; and working time and work-life balance.
- **'Algorithmic management'** means the greater or lesser extent of control exerted by digital labour platforms through automated means over the assignment, performance, evaluation, ranking, review of, and other actions concerning, the services provided by people working through platforms.
- **'False (or bogus) self-employment'** means an employment relationship that is formally classified as one between a contracting entity and a self-employed person, but which in fact is a subordination relationship in disguise. False self-employed people are de facto employees of their contracting entity.

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