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**COMMISSION STAFF WORKING DOCUMENT**

**ANALYTICAL DOCUMENT**

*Accompanying the document*

**Consultation document**

**Second phase consultation of social partners under Article 154 TFEU on a possible  
action addressing the challenges related to working conditions in platform work**

{C(2021) 4230 final}

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## Glossary

For the purpose of this document, the terms below have the following meaning:

- **“people working through platforms”** refers to individuals providing services intermediated with a greater or lesser extent of supervision via a digital labour platform, regardless 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 contain such term;
- **“digital labour platform”<sup>1</sup>** refers to a private internet-based company which intermediates with a greater or lesser extent of supervision on-demand services, requested by individual or corporate customers and provided directly or indirectly by individuals, regardless of whether such services are performed on-location or online;
- **“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...)
- **“online labour 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;
- **“platform work”** refers to the services provided on demand and for remuneration by people working through platforms, regardless of the type of digital labour platforms (on-location vs online) or the level of skills required;
- **“algorithmic management”** means the greater or lesser extent of supervision 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 self-employment”** occurs when a person is declared as self-employed while fulfilling the conditions characteristic of an employment relationship. False self-employed people are *de facto* employees of their contracting entity.

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<sup>1</sup> This document uses the term ‘platform’ interchangeably with ‘digital labour platform’.

## 1. INTRODUCTION

EU labour markets have been hit hard by the economic effects of the Covid-19 pandemic. Unemployment and inactivity have increased, bringing a higher risk of precariousness to several socio-demographic segments. Short-time work schemes introduced by Member States, with support through EU instruments such as SURE, have helped mitigate the negative consequences, but **the crisis has exposed the poor working conditions of many non-standard workers<sup>2</sup>, including people working through platforms**, who are unable to rely on a stable source of income, clear rights and adequate access to social protection, and are likely to have less access to public support cushioning the negative employment impact of the crisis.<sup>3</sup>

**The pandemic has also cast light on the paramount importance of new technologies in our daily lives.** When workers left their factories and offices in the Spring of 2020, due to the containment measures, many were able to simply switch on their computer at home and telework with little or no substantial change to their working conditions, health and safety risks and employment protection. Solid IT infrastructures and the digital preparedness of companies kept thousands of businesses afloat and saved millions of jobs.

In order to reap their benefits, however, **new technologies affecting the world of work ought to be framed within clear legal frameworks, lest they challenge established rights and norms.** The European social model, based on a competitive social market economy and strong social dialogue, requires companies to fully comply with labour and internal market regulations, providing them in turn with legal certainty and the world's largest single market allowing for economies of scale and scope.

**In the world of work, the digital transition is offering as many opportunities as challenges.** Platform work is a clear example: as a new, non-standard form of work underpinned by rapidly evolving digital developments, such as widespread use of smartphones and the ever ampler range of Artificial Intelligence (AI) applications, platform work is and has been at the centre of legal disputes and policy debates in the EU, and beyond.

**Some people working through platforms are unclear about their employment status,** their social and labour rights, as well as who is responsible for the surveillance, management and supervision of their work. **Digital labour platforms are spearheading the phenomenon of algorithmic management** (i.e. the digitally-driven automation of managerial functions), which academics reckon is already spreading to more traditional forms of work too.<sup>4</sup>

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<sup>2</sup> Eurofound (2021), COVID-19: Implications for employment and working life, Publications Office of the European Union, Luxembourg. Available [online](#).

<sup>3</sup> Eurofound (2020), Platform economy: Developments in the COVID-19 crisis; available [here](#).

<sup>4</sup> Wood, A., Algorithmic Management: Consequences for Work Organisation and Working Conditions, Seville: European Commission (2021), JRC124874. Available [online](#).

**Algorithmic management arguably conceals the real extent to which digital labour platforms supervise and control the work of people working through them.**<sup>5</sup> Against the background of the innovation, job opportunities and consumer welfare brought by digital labour platforms to the EU, the aforementioned risks and legal conundrums raise questions on the accountability, transparency and sustainability of platform work, and arguably of the platform economy at large.

**As the EU recovers from the Covid-19 crisis, the objectives of promoting socially fair transitions towards climate-neutral and digital economies are more important than ever.** Ensuring that all workers in the EU have decent working conditions, as well as adequate access to social protection, is essential for recovery as well as for building fair and resilient economies. Increased legal clarity and predictability should enhance sustainable growth of digital labour platforms in Europe, allowing them to make most of the opportunities of the single market.

An initiative tackling the risks for work emerging from the platform economy builds precisely on these objectives, in the knowledge that, though still a comparatively limited phenomenon, platform work is growing fast and is shaping Europe's labour markets. **The increasing importance of platform work as a policy topic is reflected in the priorities and engagements of many institutional actors.**

In November 2020, the **European Parliament** released a report on “A Strong Social Europe for just transitions”<sup>6</sup>, calling on the Commission to propose a directive on decent working conditions and rights in the digital economy, also covering non-standard workers, workers on digital labour platforms and the self-employed. In November 2020, the European Parliament's Employment Committee held an exchange of views with the Commission and different stakeholders on platform work and in February 2021 the Committee on Employment and Social Affairs of the European Parliament released a draft report on working conditions in platform work.<sup>7</sup>

The **Council** has called on Member States and the Commission to strengthen efforts and take appropriate action as regards platform work<sup>8</sup>, in line with the ILO's Centenary Declaration for the Future of Work.<sup>9</sup> In December 2020, **EU employment and social affairs ministers** held a debate on platform work. They acknowledged that platform work is an international phenomenon with a strong cross-border dimension, and that therefore there is a role for the EU to address the related challenges.

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<sup>5</sup> Jeremias Adams-Prassl (2019). What if Your Boss Was an Algorithm? The Rise of Artificial Intelligence at Work. [2019] 41(1) Comparative Labor Law & Policy Journal 123. Available online.

<sup>6</sup> Available [online](#).

<sup>7</sup> Draft report on fair working conditions, rights and social protection for platform workers - new forms of employment linked to digital development (2019/2186(INI). Available [online](#).

<sup>8</sup> Council Conclusions “The Future of Work: the European Union promoting the ILO Centenary Declaration”, October 2019; Available [online](#).

<sup>9</sup> Available [online](#).

The **European Economic and Social Committee**<sup>10</sup> and the **Committee of the Regions**<sup>11</sup> have put forward opinions on platform work.

The **ILO** in its Centenary Declaration called upon its members to “promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all through (...) policies and measures that (...) respond to challenges and opportunities in the world of work relating to the digital transformation of work, including platform work”. In February 2021 the ILO launched a flagship report<sup>12</sup> exploring how the platform economy is transforming the way work is organized and analysing the impact of digital labour platforms on enterprises, workers and society as a whole.

**In her Political Guidelines**<sup>13</sup>, **President von der Leyen pledged to address the changes brought by the digital transformation to labour markets**, by looking into ways to improve the working conditions of people working through platforms and supporting the implementation of the European Pillar of Social Rights. The Commission Work Programme for 2021<sup>14</sup> announces a legislative initiative based on Article 153 TFEU in the fourth quarter of the year, subject to consultation of social partners.

Prior to the launch of the formal consultation of the social partners, **the Commission discussed platform work challenges and opportunities with a variety of stakeholders in different formats and at different levels**, to make sure that everyone’s voice is taken into account for the purpose of this initiative. Grassroot associations representing people working through platforms, digital labour platform companies, trade unions, experts from academia, international organisations, and representatives from civil society were among the stakeholders that the Commission reached out to, and continues to engage with. In addition, **the open public consultation for the Digital Services Act**, which ran from 2 June to 8 September 2020, contained a section on challenges of self-employed individuals offering services through platforms.

In line with Article 154 TFEU, **the Commission is now carrying out a two-stage consultation of social partners**. During the first stage of the consultation, which ran from 24 February to 7 April, social partners were consulted on the need and possible direction of EU action. In the course of this first stage of the consultation, the Commission also received a number of position papers from other stakeholders. These are also taken into account in the Commission’s further analysis of the challenges and policy solutions relevant to platform work.

**In the second stage, social partners are consulted on the possible instrument and content of the envisaged proposal.** This analytical document, prepared by the Commission

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<sup>10</sup> EESC opinion: Fair work in the platform economy (Exploratory opinion at the request of the German presidency). Available [online](#).

<sup>11</sup> CoR opinion: Platform work – local and regional regulatory challenges. Available [online](#).

<sup>12</sup> World Employment and Social Outlook 2021: The role of digital labour platforms in transforming the world of work’. Available [online](#).

<sup>13</sup> Available [online](#).

<sup>14</sup> Available [online](#).

services, accompanies the consultation document of the second stage, which contains a summary of the fourteen replies of social partners to the first stage consultation.

After this introduction, the document gives an overview of what is platform work, who are the people working through digital labour platforms, what are digital labour platforms and how work is accessed, organised and performed through them (Section 2). Then, it identifies the problems that need to be addressed to ensure people working through platforms have access to decent and transparent working conditions and adequate social protection (Section 3). It then explains where the EU's competence and action added value to tackle these problems lies (Section 4), presents the objectives of such action (Section 5), the possible policy options (Section 6) and their impacts (Section 7).

## **2. WHAT IS PLATFORM WORK AND WHY DOES IT NEED TO BE ADDRESSED**

### **2.1 What is platform work?**

The term platform work refers to “the matching of supply and demand for paid work through an online platform”.<sup>15</sup>

According to Eurofound, the key characteristics of platform work are that:

- Paid work is organised through an online platform.
- Three parties are involved: the online platform, the client and the worker.
- The aim is to carry out specific tasks or solve specific problems.
- The work is outsourced or contracted out.
- Jobs are broken down into tasks.
- Services are provided on demand.

Despite the attention that platform work has generated over the last years, uncertainty over its exact meaning persists. This is partly due to the various inter-related concepts that are used to describe platform work, such as “collaborative economy” and “collaborative platforms”, or “gig economy” and “gig work”<sup>16</sup>. In addition, the rapid pace at which technology is developing, as well as the variety of business models with which platform work is associated, further complicate efforts to adopt a systematic definition of platform work.

Yet the language used when talking about platform work is of utmost importance, as it can influence the way regulators and society at large think about it. In particular, the lack of uniform terminologies and definitions creates obstacles to the effective documentation and

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<sup>15</sup> Eurofound (2018), Employment and Working Conditions of Selected Types of Platform Work, Eurofound, Luxembourg. Available [online](#).

<sup>16</sup> European Agency for Safety and Health at Work (2017), Protecting Workers in the Online Platform Economy: An overview of regulatory and policy developments in the EU, Luxembourg. Available [here](#). And, European Parliament (2017), The Social Protection of Workers in the Platform Economy, IP/ A/ EMPL/ 2016-11, Brussels. Available [online](#).



analysis of platform work as a phenomenon. This, in turn, can impede constructive policy debate and action in this area.

The concept of platform work as understood in this document is distinct from other income-generating, online activities like renting out one's property through an accommodation platform or selling items on online marketplaces. The reason for this is that platform work involves the provision of labour, which is then mediated and/or transmitted through internet-driven technologies. In other words, the main difference with other activities in the platform economy is that in platform work, the “main traded good is labour rather than capital”<sup>17</sup>.

## **2.2 The ‘triangular relationship’ underpinning platform work**

Platform work is characterised by a so-called “triangular relationship”, a complex set of dynamics involving at least three distinct parties: the digital labour platform, the person working through it and the client (whether private individuals or business entities). Temporary agency work has a similar triangular structure in the employment relationships it entails. The actors involved are the agency, the worker and the user undertaking. In contrast to temporary agency work, however, platform work can involve more than three parties. That is the case, for instance, with food delivery platforms, which are characterised by multilateral contractual relationships between four parties: the platform, the person delivering the food, the individual customer and the restaurant business.

There are also other important differences. Temporary agency work is already regulated at EU level through the Temporary Agency Work Directive, granting specific rights to the workers concerned.<sup>18</sup> Whereas in temporary agency work the contractual relationship between the worker and the agency is clearly defined as an employment relationship, there is for the moment no such clarity in platform work, where platforms predominantly set out in their terms and conditions that people working through them are independent contractors.

Furthermore, unlike temporary agency work, platform work is not only concerned with business-to-business situations (between the agency and the user undertaking), but rather often involves natural persons as customers. This, together with the central role of technology in platform work, the fragmentation of work into individual tasks and the potential international character of the employment relationship, sets it apart from other forms of employment and makes its analysis challenging in terms of traditional labour market concepts and frameworks<sup>19</sup>.

Nevertheless, there have been situations in which people working through platforms have been employed through an intermediary, akin to agency work models. For example, from 2016 to 2018, Deliveroo in Belgium had an agreement with the SMart cooperative, according to which people working through the platform had the option of working as employees of the cooperative, which guaranteed them a minimum wage, among other benefits.<sup>20</sup> In 2018, Portugal introduced a legal framework for ride-hailing platforms whereby only legal persons

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<sup>17</sup> Eurofound (2018), *Employment and Working Conditions of Selected Types of Platform Work*, Eurofound, Luxembourg. Available [online](#).

<sup>18</sup> Directive 2008/104/EC. Available [online](#).

<sup>19</sup> Eurofound (2019), *Mapping the contours of the platform economy*, Dublin. Available [online](#).

<sup>20</sup> Z. Kilhoffer, K. Lenaerts (2017), *What is happening with platform workers' rights? Lessons from Belgium*, CEPS. Available [online](#).

could enter a contractual relationship with the platform.<sup>21</sup> As a result, in order for individual drivers to work through ride-hailing platforms, they had to be employed by a company.

Defining the nature of the contractual relationship between the (at least three) parties involved in platform work is not always straightforward. The classification of the relationship usually requires an assessment of the individual circumstances in each case, as the factual nature of the relationship will determine whether labour law applies. An analysis of platform work in traditional labour law terms forces us to split the triangular relationship that exists between the parties into a series of bilateral contractual relationships, and to attempt determining whether any of them can be classified as one of employment. However, according to certain scholars, in order to comprehend the economic effects of platform work, the contractual relationships between the parties should instead be analysed as an “interdependent net of contracts”.<sup>22</sup>

The classification and regulation of the contractual relationship between the parties involved in platform work is further complicated by the platforms’ business models. Digital labour platforms usually define themselves as intermediaries providing an ICT-based matching service and characterise the relationship between the parties as one of self-employment. At the same time, through their contractual terms and conditions and the algorithmic management tools, they exercise varying levels of supervision and control over the work process. For example, they frequently match the people providing services to clients, set prices, determine the contractual conditions, and reserve the power to deactivate users. This, in turn, makes many types of platform work distinct from traditional situations of self-employment, where there is usually a direct relationship between the self-employed person and the client, and wherein the parties determine the aspects of the work between themselves.

### **2.3 Who are the people working through platforms?**

A study by CEPS notes that 92% of platforms active in the EU (representing 93% of the earnings of people) classify people working through them as self-employed. In the remaining cases various types of work agreements are used, including full-time or part-time employment, temporary agency work agreements and zero-hour contracts. Furthermore, the employment status is only clearly stated by a minority of the digital labour platforms in their contractual terms and conditions.<sup>23</sup>

The same study finds that, for a selection of platforms,<sup>24</sup> the large majority of people working through them are free to choose and change their working time. This means that people can log onto the platform when they would like or choose their hours of availability. The study

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<sup>21</sup> Law 45/ 2018. Available [online](#).

<sup>22</sup> J. Prassl, M. Risak (2016), Uber, Taskrabbit, and Co.: Platforms as Employers? Rethinking the Legal Analysis of Crowdwork, *Comparative Labor Law and Policy Journal* 37, no.3. Available [online](#).

<sup>23</sup> W. de Groen, Z. Kilhoffer, L. Westhoff, D. Postica and F. Shamsfakhr (2021). Digital Labour Platforms in the EU: Mapping and Business Models. Study prepared by CEPS for DG EMPL under service contact VC/2020/0360. Available [online](#).

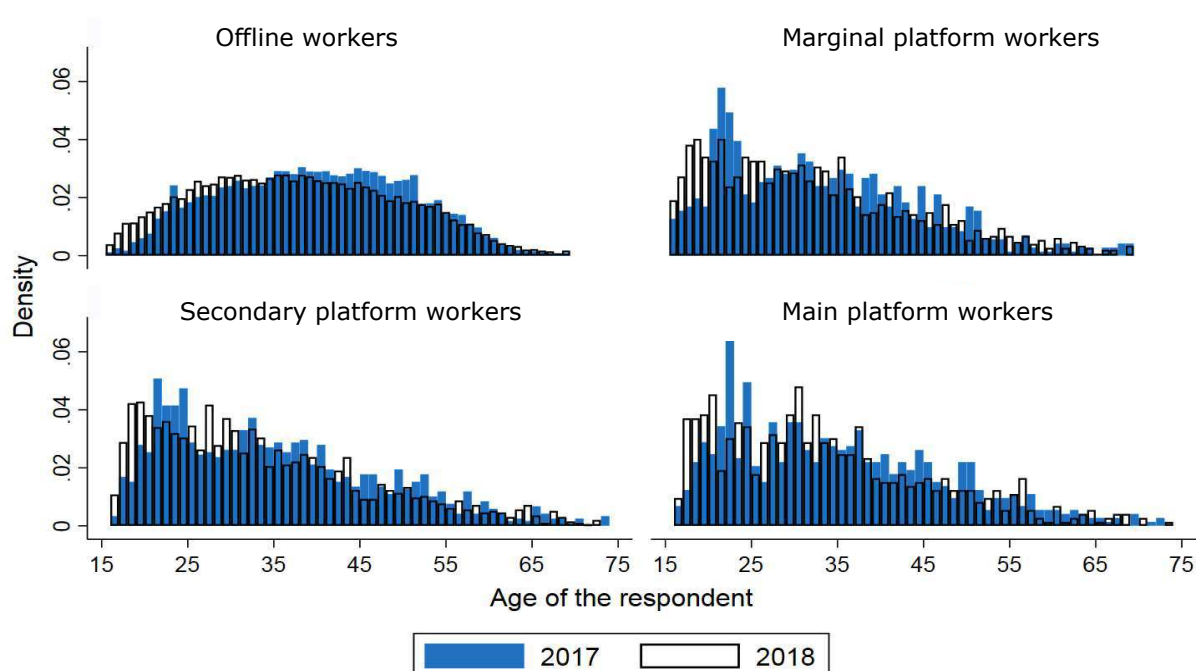
<sup>24</sup> The CEPS study notes that information on the working conditions was the most complex to retrieve. The working conditions information has therefore been collected for a more limited sample of 38 active digital labour platforms, including 8 platforms for which two or more countries were covered. The total number of country-platforms observations is therefore 52. The digital labour platforms and countries have been selected based on the size of the platforms considering the earnings of the people working through platforms. Indeed, all the digital labour platforms with significant activities were selected (potentially 5% or more of the earnings).

notes that, in practice, flexibility over working time may however be more limited. Platforms closely monitor working patterns of people working through platforms and this information feeds into the algorithm that determines work allocation, with more frequent participation often rewarded. None of the platforms surveyed included an exclusivity of services provision in their contractual terms and conditions.<sup>25</sup>

The Commission's Joint Research Centre (JRC) points out, based on the results of the COLLEEM survey that assessing the socio-demographic characteristics of people working through platforms is very important because different demographics may potentially call for different policy responses. Furthermore, the demographic characteristics of the workforce may reveal something about the structure of the platform labour market itself.<sup>26</sup>

The JRC's survey suggests that people working through platforms are younger than 'traditional' workers. The average age in 2018 was 33.9 years in platform work and 42.6 years in 'traditional' businesses. Figure 1 shows how the age distribution changes according to the different categories of people working through platforms.<sup>27</sup>

**Figure 1: Age distribution of the offline and digital labour platform workforce (14 and 16 EU Member States for 2017 and 2018 respectively)**



<sup>25</sup> *Ibidem*.

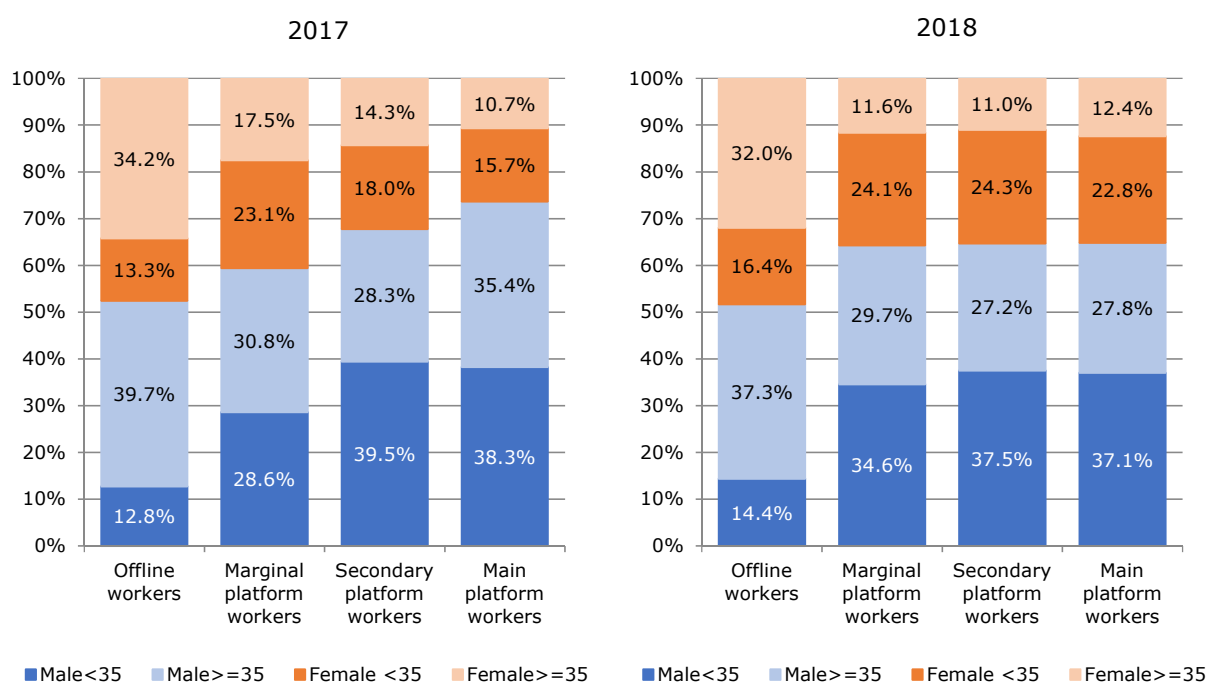
<sup>26</sup> Urzi Brancati, M.C., Pesole, A. and Fernandez Macias, E., New evidence on platform workers in Europe, EUR 29958 EN, Publications Office of the European Union, Luxembourg, 2020. (Available [online](#)).

<sup>27</sup> “Main platform workers”, according to the JRC, are those who claim to work more than 20 hours a week providing services via digital labour platforms or earn at least 50% of their income doing so. “Secondary platform workers are those respondents who provide services via digital labour platforms more than ten hours a week and earn between 25% and 50% of their income from platform work. “Marginal platform workers” work less than 10 hours a week and earn less than 25% of their income providing services via digital labour platforms. “Offline workers” are those respondents to the survey who do not perform work on digital labour platforms.

Source: JRC (2020). Note: data are from a self-administered online panel survey (COLLEEM). Averages for 2017 concern 32 389 respondents from 14 EU Member States whereas 2018 averages concern 38 022 respondents from 16 EU Member States.

Although people working through platforms are still mostly young men, the second COLLEEM survey finds that the platform work gender profile is becoming less male-dominated. This has also been observed by a recent report of the ILO, which estimates that four out of ten people working through online platforms globally are women.<sup>28</sup>

**Figure 2: Composition of the offline and digital labour platform workforce by age and gender combined, (14 and 16 EU Member States for 2017 and 2018 respectively)**



Source: JRC (2020). Note: data are from a self-administered online panel survey (COLLEEM). Averages for 2017 concern 32 389 respondents from 14 EU Member States whereas 2018 averages concern 38 022 respondents from 16 EU Member States.

The European Institute for Gender Equality (EIGE) found through its ‘Online Panel Survey of Platform Workers’<sup>29</sup> that among people working through platforms, women worked through platforms slightly more often than men, even though there are fewer women than men among “regular platform workers”<sup>30</sup> (43% compared to 57 %). Also EIGE’s survey found that the gender difference in the take-up of platform work appears to have been decreasing over the last years. Among regular platform workers who started working on platforms in 2020, half are women.

<sup>28</sup> International Labour Office (2021), *World Employment and Social Outlook 2021: The role of digital labour platforms in transforming the world of work*, Geneva: Switzerland. Available [online](#).

<sup>29</sup> EIGE (2021, forthcoming), *Gender equality prospects in labour markets transformed by artificial intelligence and platform work*. The survey draws on an online panel survey on working conditions, work patterns and work-life balance of close to 5,000 women and men engaged in platform work conducted in ten Member States.

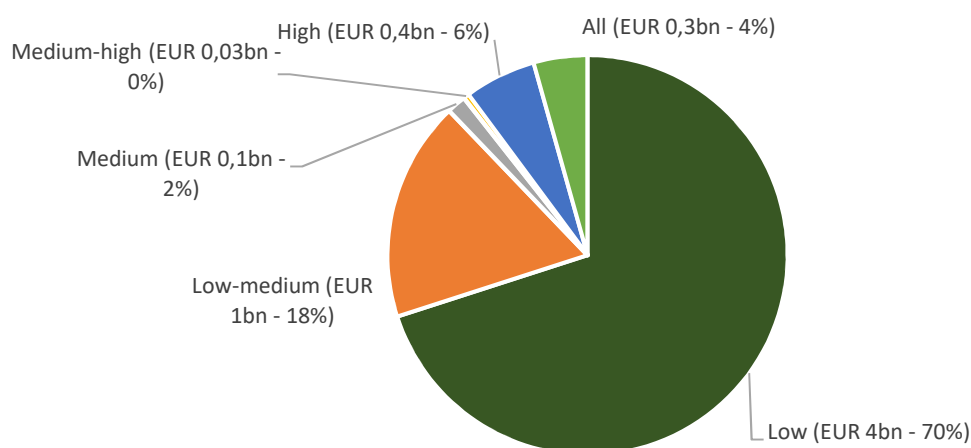
<sup>30</sup> “Regular platform workers” were defined in EIGE’s ‘Online Panel Survey of Platform Workers’ as people working through platforms who did so at least occasionally via online platforms in the previous 6 months.

Nevertheless, despite the noticeable presence of women in digital labour platforms, platform work often reproduces, rather than challenges, gender inequalities from the broader labour market. In fact, some studies have pointed towards a gender pay gap, particularly in online platform work. For example, research on the online labour platform *Amazon Mechanical Turk* highlighted that women earn less per hour on average.<sup>31</sup> However, this wage gap did not stem from differences in task selection or experience, but instead from more fragmented working patterns amongst women owing to domestic responsibilities. Though a recent study by the ILO does not find a significant difference between the hourly earnings (paid and unpaid) of male and female respondents on online freelance platforms, it nevertheless observed significant gender pay gaps in some countries such as Ukraine and China.<sup>32</sup>

EIGE's survey also found that people working through platforms perform a broad range of services, although their type is in general split along well-known gendered lines. In some sectors, the gender differences are smaller than in the general labour market (e.g., among those who provide childcare and elderly care services, 61 % are women and 39 % are men; among those who provide housekeeping and other home services, 54 % are women and 46 % are men). Some traditionally female-dominated sectors show gender balance (e.g., among those who provide teaching and counselling services, 44 % are women and 56 % are men). Men more often than women work in software development, ride-hailing services and construction and repair works, similarly to the developments of the overall labour market.

A 2021 study notes that most of the services require low and (to a lesser extent) medium skills (Figure 3). These combined account for almost 90% of the intermediated work, when measured in terms of the earnings of people working through platforms. High-skilled platform work, in turn, is responsible for about 6% of the intermediated work.<sup>33</sup>

**Figure 3 - Skill level required to perform service  
(2020, earnings of people working through digital labour platforms)**



Source: CEPS (2021).

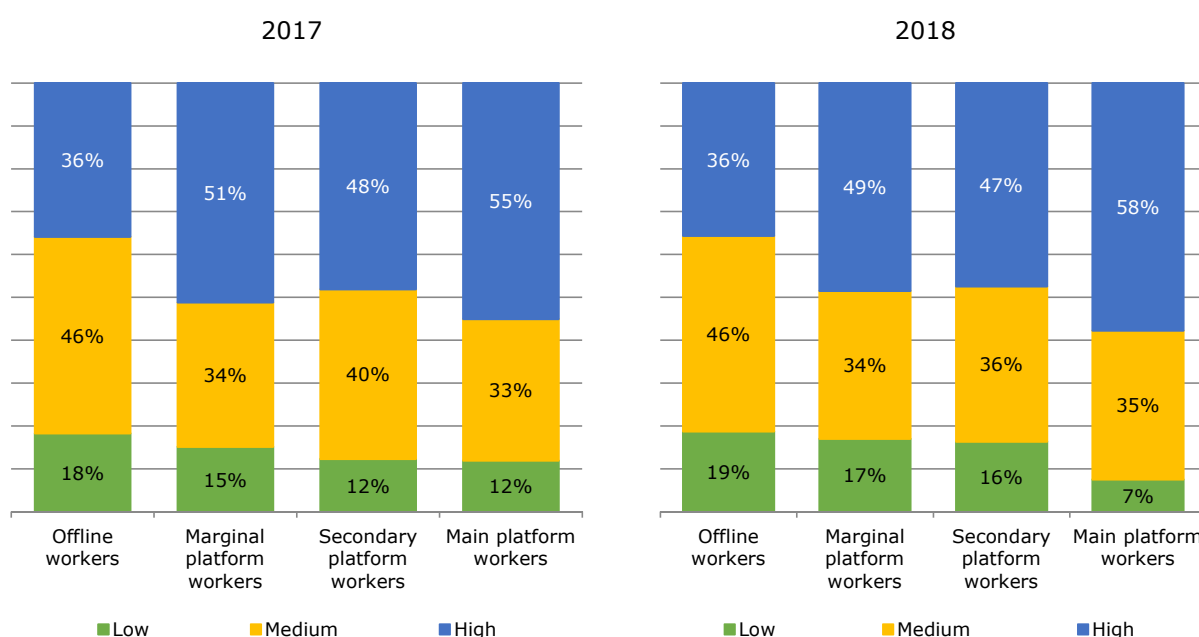
<sup>31</sup> Adams A. (2020). The Gender Wage Gap on an Online Labour Market: The Cost of Interruptions. CEPR Discussion Paper DP14294. Available [online](#).

<sup>32</sup> International Labour Office (2021).

<sup>33</sup> W. de Groen, Z. Kilhoffer, L. Westhoff, D. Postica and F. Shamsfakhr (2021). Available [online](#).

Both rounds of the COLLEEM survey show that people working through platforms are more educated than the average population.<sup>34</sup> Similarly, the ILO report finds that those working on online labour platforms are highly educated, particularly those from developing countries. In addition, in some countries across the globe, the proportion of people providing ride-hailing or delivery services through on-location platforms who are highly educated is greater than that of those providing the same services in traditional sectors<sup>35</sup>.

**Figure 4: Composition of the offline and digital labour platform workforce by level of education attainment (14 and 16 EU Member States for 2017 and 2018 respectively)**



Source: JRC (2020). Note: data are from a self-administered online panel survey (COLLEEM). Averages for 2017 concern 32 389 respondents from 14 EU Member States whereas 2018 averages concern 38 022 respondents from 16 EU Member States. Low education corresponds to ISCED 0-2; medium education to ISCED 3-4; high education to ISCED 5-8.

Furthermore, both the COLLEEM and ILO surveys have discerned a skills-mismatch and a trend towards over-qualification in low-skilled types of platform work, such as microtasking in online labour platforms or ride-hailing and delivery on on-location platforms. For example, the abovementioned ILO report has found a big skills-mismatch among people doing microtasks on online labor platforms, 57% of whom hold a university degree yet undertake tasks that require little to no skills.<sup>36</sup> In addition, the high educational levels observed among those working on on-location ride-hailing and delivery platforms may also be indicative of a skills-mismatch, as the tasks performed through such platforms are generally considered to be low-skilled.

<sup>34</sup> Urzi Brancati, M.C., Pesole, A. and Fernandez Macias, E. (2017), *Platform Workers in Europe Evidence from the COLLEEM Survey*. Available [online](#). And, Urzi Brancati, M.C., Pesole, A. and Fernandez Macias, E. (2020).

<sup>35</sup> International Labour Office (2021).

<sup>36</sup> International Labour Office (2021).



People working through platforms are also more likely to live in households with dependent children, in some cases also being responsible for those children, than the general population. This suggests that their income and employment conditions may have implications that go beyond their own. The COLLEEM II survey also finds evidence of significant “multi-apping” (i.e. being active on different platforms simultaneously). More than half of people working through platforms carry out more than one type of task.<sup>37</sup>

Around 7.7% of the total COLLEEM sample was estimated to consist of people born abroad (either in a different Member State or outside the European Union). The proportion of foreign born respondents is however twice as high among people working through platforms, with the percentage equal to 16.3% for ‘marginal platform work’, 14.4% for ‘secondary platform work’, and 13.3% for ‘main platform work’.<sup>38</sup> The ILO has also observed that migrant workers account for 17% of those providing freelance services through online platforms globally.<sup>39</sup>

People working through online platforms are generally more spread out throughout the national territory, even though they tend to be clustered in and around big cities. By contrast, people performing on-location tasks appear to be located only in bigger cities, with the exception of some Eastern European countries.<sup>40</sup>

In terms of motivation, flexibility and the desire to complement existing income seem to be the main reasons why people engage in platform work. These motivations, however, can vary depending upon the type of platform work and the demographics of the people working through platforms. For instance, the ILO reports that the possibility to work from home is a very important factor for women engaging in platform work, while the lack of alternative employment opportunities seems to be the main motivator for those working through on-location ride-hailing and delivery platforms.<sup>41</sup> Also Eurofound<sup>42</sup> reports that motivations can differ across different types of platform work, whereby low entry barriers, additional income, and flexible working time are important in on-location platform-determined work, while in online contest work use of creativity and new ideas, means to build client and flexibility in work organization are the most important factors.

That being said, however, a major concern among those engaging in platform work seems to be the inability to access a sufficient amount of work. For instance, 86% of people working through online platforms globally and 69% of those engaged through on-location delivery platforms expressed a desire to undertake more work.<sup>43</sup> The problem of a lack of sufficient

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<sup>37</sup> Urzi Brancati, M.C., Pesole, A. and Fernandez Macias, E. (2020).

<sup>38</sup> As per COLLEEM terminology, main platform workers are those who claim to work more than 20 hours a week providing services via digital labour platforms or earn at least 50% of their income doing so. Secondary Platform workers are those respondents who provide services via digital labour platforms more than ten hours a week and earn between 25% and 50% of their income from platform work. Survey respondents who work less than 10 hours a week and earn less than 25% of their income providing services via digital labour platform are called marginal platform workers.

<sup>39</sup> International Labour Office (2021).

<sup>40</sup> Urzi Brancati, M.C., Pesole, A. and Fernandez Macias, E. (2020).

<sup>41</sup> International Labour Office (2021).

<sup>42</sup> Eurofound (2018), Employment and working conditions of selected types of platform work, Publications Office of the European Union, Luxembourg. Available [online](#).

<sup>43</sup> *Ibidem*.

work has been exacerbated by the COVID-19 pandemic, notably for some types of platform work most affected by the pandemic (such as ride-hailing for example).<sup>44</sup>

Another major concern for people working through platforms, is the lack of access to adequate social protection. On a global level, the ILO has observed large gaps to the social security coverage of people working through platforms. In particular, less than 10 per cent of those working through on-location delivery or ride-hailing platforms are covered by unemployment protection or disability insurance, and less than 20 per cent are covered by old-age pensions or retirement<sup>45</sup>. Therefore, despite platform work's potential to encourage participation of marginalised groups in the labour market, the lack of sufficient social security might further contribute to the vulnerability of these groups.

The ILO has also observed that platform work is the main source of income for 84% and 90% of those working through on-location ride-hailing and delivery platforms respectively, the majority of whom earn less than the average in these sectors.<sup>46</sup> Findings from several studies and country reports in Europe suggest that platform work is primarily performed as a secondary activity.<sup>47</sup> For more information on developments, see also section 3.1.2 on growth in platform work.

## **2.4 What types of digital labour platforms operate in the EU?**

Platform work involves a variety of tasks and can be found in various sectors of the economy. Tasks performed on digital labour platforms can vary from high-skilled work or complex tasks such as computer programming and graphic design, to low-skilled work or simple tasks such as driving or image tagging. As a result, the classification of digital labour platforms can be challenging.

**The main types of activities performed through digital labour platforms are professional tasks, ride-hailing, household tasks, and micro tasks.**<sup>48</sup> As the activities may be delivered either online or on-location (i.e. in person), the format of these service provisions is distinguished in on-location and online digital platform work. It is important to note these two categories do not take into account the scale of tasks, the existing heterogeneity in skills levels, forms of matching client to workers, and the degree of work precariousness. This means one can find high- and low- skilled tasks being performed in both on-location and online work, as well as people with different skills, platforms exerting varying degrees of supervision on the performance of work and varying degrees of in-work poverty, unpredictability and different qualities of the working conditions. The on-location / online dichotomy thus merely refers to the place and modalities through which platform work is performed.

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<sup>44</sup> Eurofound (2020), Platform economy: Developments in the COVID-19 crisis. Available [online](#).

<sup>45</sup> International Labour Office (2021).

<sup>46</sup> *Ibidem*.

<sup>47</sup> European Centre of Expertise (ECE) in the field of labour law, employment and labour market policies, (forthcoming), Thematic Review 2021 on Platform Work.

<sup>48</sup> Eurofound (2018).



**On-location labour platforms** only or mostly intermediate services performed in the physical world, i.e. in a specific geographical area. These are typically local, service-oriented tasks such as ride-hailing, deliveries (including food delivery), and domestic work (cleaning, plumbing, and care services).

**Online labour platforms** only or mostly intermediate services delivered in the online world. The tasks are typically not location-dependent, and can be outsourced through an open call to a geographically dispersed crowd (for this reason, it is also sometimes referred to as “crowdwork”). These could be professional tasks such as software development, graphic design, AI training, translation and editing work, or image tagging. In its 2021 report, the ILO further subcategorises online labour platforms between freelance, contest-based, microtask, and competitive programming, and on-location labour platforms between taxi and delivery.<sup>49</sup>

Eurofound distinguishes **10 categories of platform work** based on criteria such as skills levels, on-location or online service provision, scale of tasks (larger or micro), form of matching (offer or contest) and the selector (platform, client or worker). It indicates that most common type of platform work in the EU is the on-location platform-determined routine work (such as ride-hailing or deliveries) with over 31% share both in terms of number of platforms and estimated share of people working through them. On-location client-determined moderately skilled work represents around 11% share of number of platform and number of workers, and online client-determined specialist work is offered by over 5% of platforms, with around 30% share of people working through them.<sup>50</sup>

Providing an alternative categorisation, the COLLEEM I and II surveys identify 11 types of labour services on digital labour platforms on the basis of three criteria: the place of provision, the skill-level required and the scale of the task in question. They further group these services into three categories:

- professional tasks, which typically require high skills and include services such as software development, and writing and translation;
- non-professional tasks, which usually involve repetitive and simple tasks such as micro tasks and clerical and data entry tasks; and
- on-location tasks, which are physically provided and often require little to no skills.

Both rounds of the COLLEEM survey conclude that the most common type of tasks are clerical and data entry tasks (accounting for 43% of the total services in 2017), followed by professional and creative tasks (30%).<sup>51</sup> While the proportion of the people who provide professional tasks has remained stable since 2017, the COLLEEM II survey reports an increase in the number of people providing translation tasks through platforms (40% in 2018 compared to 26% in 2017).<sup>52</sup> Furthermore, the number of people providing on-location services has also increased between 2017 and 2018.<sup>53</sup>

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<sup>49</sup> International Labour Office (2021).

<sup>50</sup> Eurofound (2018), *Employment and working conditions of selected types of platform work*, Publications Office of the European Union, Luxembourg. Available [here](#).

<sup>51</sup> Urzi Brancati, M.C., Pesole, A. and Fernandez Macias, E. (2017). It should be noted that because COLLEEM is an online survey, people carrying out online tasks may be over-represented compared to on-location services.

<sup>52</sup> Urzi Brancati, M.C., Pesole, A. and Fernandez Macias, E. (2020).

<sup>53</sup> *Ibidem*.

A 2021 report suggests that on-location platform work represents over 90% of intermediated services in the EU digital labour platform economy. Most of these come from taxi and delivery services (63% of the earnings of people working through platforms), followed by home services, professional services and domestic work (29% in terms of earnings). The online services such as micro tasks, freelance, contest-based and medical consultations account for the remaining less than one-tenth of the work.<sup>54</sup>

The five biggest digital labour platforms are estimated to be responsible for about half of the total earnings of people working through platforms in the EU, whereas the top 25 platforms account for about four-fifths of the earnings. Most of the largest platforms<sup>55</sup> are either ride-hailing or delivery services - two such platforms<sup>56</sup> account for an estimated 17% of the digital labour platform economy (EUR 2.4 billion out of a total of EUR 14 billion in 2020).<sup>57</sup>

The European platform economy is dominated by digital labour platforms originating in the EU (77% of all active digital labour platforms) (Figure 5). This share drops when weighted for comparison purposes in terms of earnings generated through platforms, as platforms originating in the EU account for about half of the earnings of people working through platforms. Most big platforms, therefore, seem to originate from outside the EU. Platforms originating from the US and the UK account for about 95% of the earnings of people working through platforms founded outside the EU.<sup>58</sup> At the same time, there is a variety of smaller-scale platforms operating in one or a few Member States,<sup>59</sup> while specific regulations in some Member States prevent the major players from entering their markets. Looking at the most prevalent Member State origin of European platforms, German platforms are largest with about EUR 1 billion in earnings for people working through platforms in the EU, followed by France (EUR 0.7 billion), the Netherlands (EUR 0.4 billion), Spain (EUR 0.4 billion) and Estonia (EUR 0.2 billion).<sup>60</sup>

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<sup>54</sup> W. de Groen, Z. Kilhoffer, L. Westhoff, D. Postica and F. Shamsfakhr (2021). Available [online](#).

<sup>55</sup> Measured by earnings of people working through platforms

<sup>56</sup> Uber and Uber Eats.

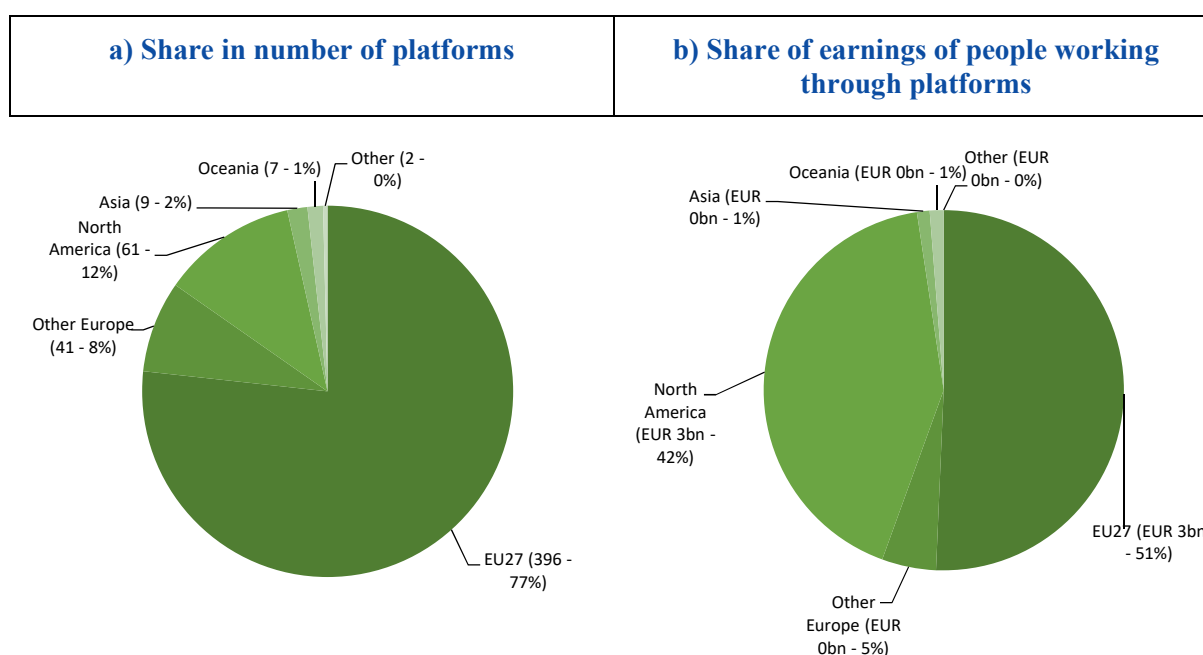
<sup>57</sup> W. de Groen, Z. Kilhoffer, L. Westhoff, D. Postica and F. Shamsfakhr (2021). Available [online](#).

<sup>58</sup> *Ibidem*.

<sup>59</sup> See Annex I for a non-exhaustive list of examples of platform companies active in different Member States.

<sup>60</sup> W. de Groen, Z. Kilhoffer, L. Westhoff, D. Postica and F. Shamsfakhr (2021). Available [online](#).

**Figure 5 Origin of digital labour platforms active in EU27 (2020)**



Source: CEPS (2021).

Most of the non-EU platforms providing on-location services have an established office in the EU, whereas online labour platforms tend not to. In total, 84% of non-EU platforms do not have an office in the EU. This, however, represents less than a tenth of platform work in the EU.<sup>61</sup> This is likely to be affected by recent (proposed) instruments, such as the revised Directive on Administrative Cooperation (DAC7)<sup>62</sup> and the proposal for a Digital Services Act.<sup>63</sup> Both instruments require platforms operating in the EU to have a legal representative in one Member State.

Most of the digital labour platforms active in the EU are for-profit companies, with non-for profit companies representing 6% of active digital labour platforms (and less than 1% in terms of earnings).<sup>64</sup> The primary source of revenue for three-quarters of digital labour platforms active in the EU is commissions.<sup>65</sup> Out of the identified landscape of active digital labour platforms in the EU, most intermediate on-location services, such as delivery services, domestic work or other services provided on-location. For each of these services, there are well over 100 active platforms, out of a non-exhaustive but representative landscape of 516 active platforms examined in the 2021 study. Only on-location ride-hailing services are intermediated by fewer platforms (55 or 11% of active digital labour platforms).<sup>66</sup>

<sup>61</sup> *Ibidem*.

<sup>62</sup> Available [online](#).

<sup>63</sup> Available [online](#).

<sup>64</sup> W. de Groen, Z. Kilhoffer, L. Westhoff, D. Postica and F. Shamsfakhr (2021). Available [online](#).

<sup>65</sup> *Ibidem*.

<sup>66</sup> *Ibidem*.

When it comes to online platform work, the most frequently intermediated services are online writing and translation (97 or 19% of active digital labour platforms) and creative and multimedia work (92 or 18% of active digital labour platforms).<sup>67</sup>

It is important to note that while the majority of platforms focus on a single type of service (328 or 64% of active digital labour platforms), about one-third of them offer multiple types of services.<sup>68</sup>

An alternative classification of services intermediated by digital labour platforms according to economic activity (according to NACE sectors) shows that most digital labour platforms are active in intermediating services in the transportation and storage (200 or 39% of active platforms) and administration and support (167 or 32% of active platforms).<sup>69</sup>

### 3. PROBLEM DEFINITION

**Given the specific features of platform work, people working through platforms often face challenges they face in terms of working conditions and social protection, which are difficult to address within existing legal frameworks.** The following sections describe the problem in more detail, delving into its underlying causes and consequences in the context of a perspective EU initiative on platform work.

Partially, the problem is influenced by **global megatrends affecting labour markets in general**, such as globalisation, digitalisation and ongoing societal shifts and changes. These drivers, while having an impact on the problem the EU initiative aims at tackling, are ‘external’ to its scope and reach. They are described in section 3.1, together with other phenomena that are intrinsic to platform work itself and beyond direct reach of policy action (the sustained growth and expansion of it, and the generalised increase in the use of IT tools and new technologies in the world of work).

Most importantly, the poor working conditions in some types of platform work and the inadequate access to social protection linked to it are driven by multifaceted and complex ‘internal drivers’ which, for analytical purposes, are clustered into four macro-drivers. First, these are the drivers related to the **employment status** (described in section 3.2). Secondly, those stemming from the algorithm-based business models of platforms, such as insufficient access to information and consultation, to redress and to collective dialogue (described in section 3.3). Thirdly, the internal drivers related to the **cross-border nature of platform work** (section 3.4). Finally, those related to **gaps in the coverage of existing and forthcoming legislation** (at both EU and national level, as explained in section 3.5) **with regards to platform work challenges**.

These ‘internal drivers’ are the aspects of the problem that the EU initiative would aim at addressing to prevent negative consequences (described in section 3.6). These concern primarily the **people working through platforms**, who face, among other things, work and

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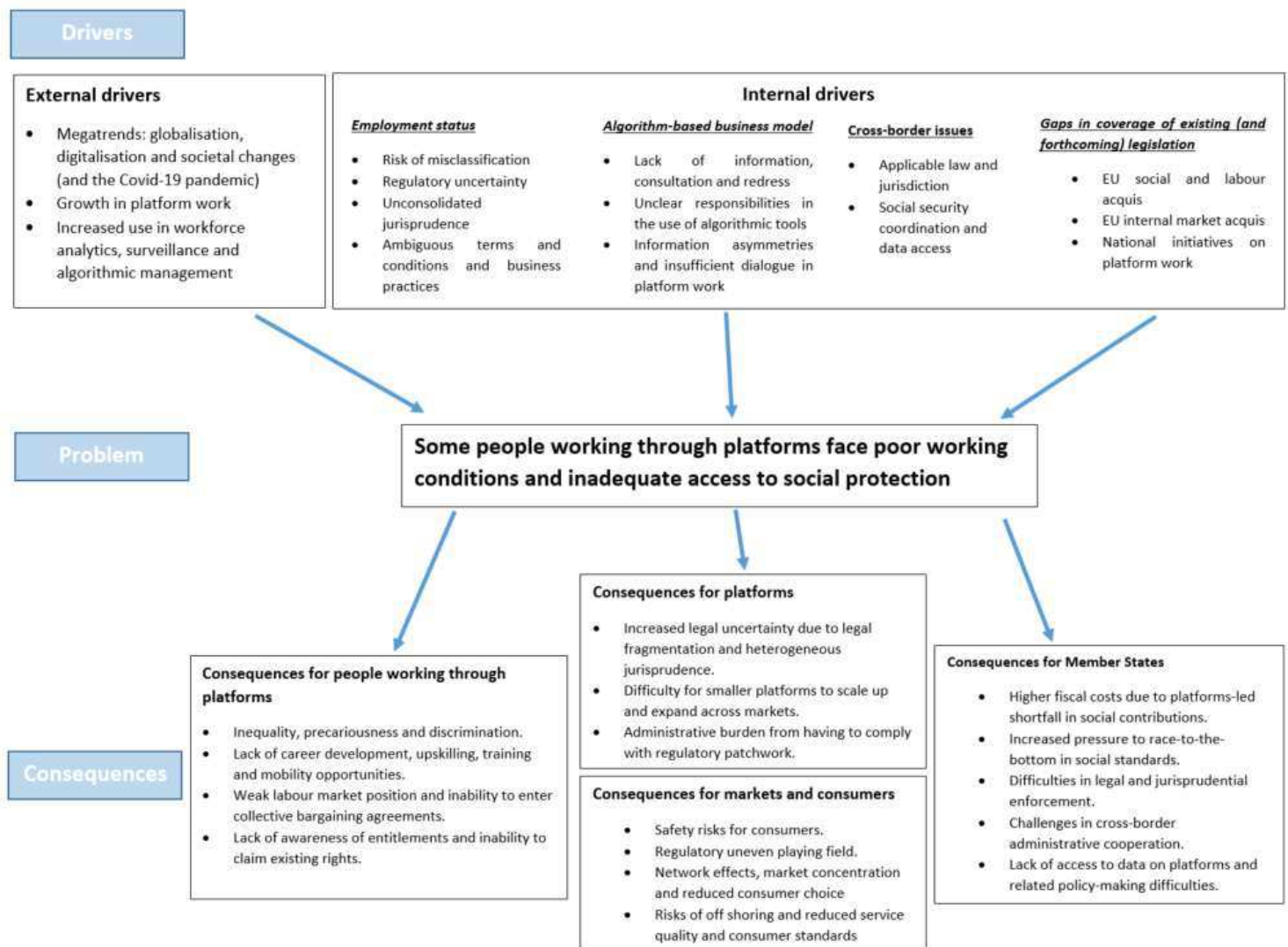
<sup>67</sup> W. de Groen, Z. Kilhoffer, L. Westhoff, D. Postica and F. Shamsfakhr (2021). Available [online](#).

<sup>68</sup> *Ibidem*.

<sup>69</sup> *Ibidem*.

income precariousness, limited career opportunities, weak bargaining power and are often unaware of rights they are entitled to. However, the problem also has **consequences for digital labour platforms**, especially SMEs and startups who seek to scale-up their business from a local to a European level, only to find substantial legal uncertainty, administrative burdens and unfair competition vis-à-vis bigger players. The same section also describes the more general consequences for **markets and consumers** and **Member States**, who lose out on the fiscal revenues that would derive from a correct employment status classification, face enforcement difficulties, do not have enough data for evidence-driven policymaking and risk to experience a race-to-the-bottom in social standards.

The intervention logic is diagrammatically summarised below ('problem tree').



**Problem**

**Some people working through platforms face poor working conditions and inadequate access to social protection**

**Consequences**

**Consequences for people working through platforms**

- Inequality, precariousness and discrimination.
- Lack of career development, upskilling, training and mobility opportunities.
- Weak labour market position and inability to enter collective bargaining agreements.
- Lack of awareness of entitlements and inability to claim existing rights.

**Consequences for platforms**

- Increased legal uncertainty due to legal fragmentation and heterogeneous jurisprudence.
- Difficulty for smaller platforms to scale up and expand across markets.
- Administrative burden from having to comply with regulatory patchwork.

**Consequences for markets and consumers**

- Safety risks for consumers.
- Regulatory uneven playing field.
- Network effects, market concentration and reduced consumer choice
- Risks of off shoring and reduced service quality and consumer standards

**Consequences for Member States**

- Higher fiscal costs due to platforms-led shortfall in social contributions.
- Increased pressure to race-to-the-bottom in social standards.
- Difficulties in legal and jurisprudential enforcement.
- Challenges in cross-border administrative cooperation.
- Lack of access to data on platforms and related policy-making difficulties.

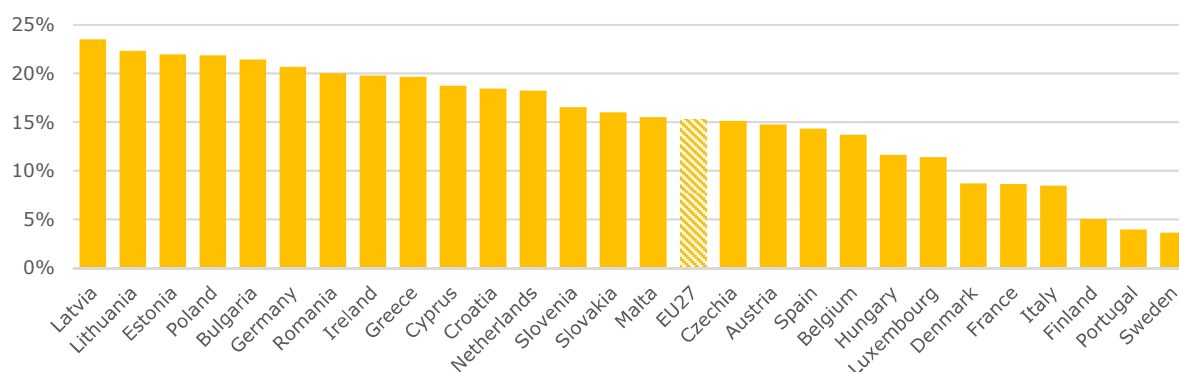
## 3.1 External drivers of the problem

### 3.1.1 Megatrends: globalisation, digitalisation and societal changes

Platform work is a new, technology-enabled, non-standard form of work. Its rise and main characteristics can be indirectly traced back to three megatrends that are affecting the world and having repercussions on a wide array of social and economic phenomena.

The first one is **globalisation**. In the last century, the acceleration in the opening up of borders and lowering of cross-country barriers has resulted in an exponential growth in the global, cross-country flow of goods, capital, ideas and people. This has brought as many opportunities as challenges to the governance of labour markets and its institutions. The globally increased competition between companies has led them to seek ways of reducing costs to make up for decreasing revenues. Amongst other practices, the widespread use of non-standard contracts, coupled with an increasing outsourcing of the workforce, has led to a decrease in overall standard employment, with detrimental effects for the working conditions and social protection of the workers concerned.<sup>70</sup> Long-term corporate cost-cutting and streamlining has also been affecting the wages of workers. As of 2018, low-wage earners<sup>71</sup> in the EU stood at 15.3% of the workforce (cfr. Figure 6). Low-wage earners were strongly represented among workers younger than 30 (25%) and among workers in the accommodation and food services (39%) and in the support services that include temporary work agencies (33.3%).<sup>72</sup>

**Figure 6: Share of low-wage earners in the EU, 2018**



Source: Eurostat (online data code `earn_ses_pub1s`). Note: data exclude apprentices.

<sup>70</sup> Non-standard employment around the world: Understanding challenges, shaping prospects, International Labour Office – Geneva: ILO. 2016. Available [online](#).

<sup>71</sup> Low-wage earners are defined by Eurostat as those employees earning two thirds or less of the national median gross hourly earnings. Hence, the threshold that determines low-wage earners is relative and specific to each Member State. More information available [online](#).

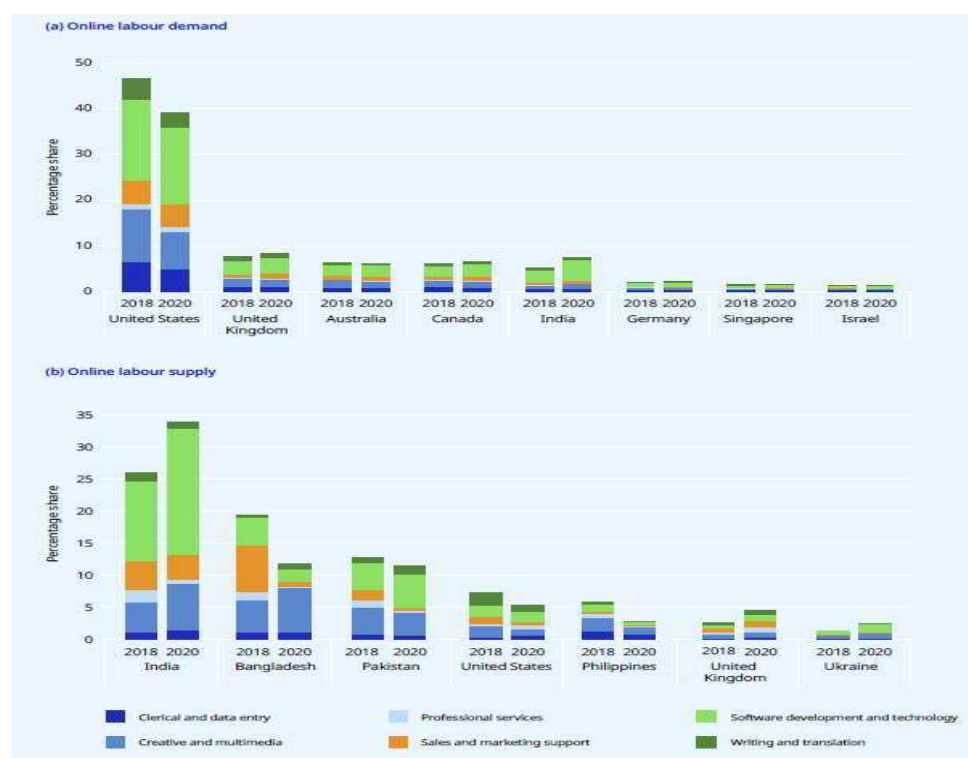
<sup>72</sup> Eurostat data, available [online](#).



A high incidence of low-wage earners is often a reflection of low bargaining power, especially in the context of a generalised decrease in trade union density and collective bargaining coverage.

Although there have been attempts on the side of unions in various EU countries to reach out to people working through platforms<sup>73</sup>, collective bargaining in the platform economy remains very limited<sup>74</sup> and data on trade union density on platforms is scarce or non-existent. Globalisation affects working conditions in platform work by putting the pressure of competition on companies to reduce social standards in order to cut costs and increase revenues. Furthermore, with work on online platforms becoming increasingly available, the incentive is high for companies in high-income countries to purchase labour provided by workers in low-income countries. As of 2020, nearly 40% of online platform work demand came from the United States, whereas over 50% of online platform work came from India, Pakistan and Bangladesh.<sup>75</sup>

**Figure 7: Distribution of global labour supply and demand on major online platforms, by country and occupational category, 2018-2020**



Source: Graphical elaboration of data of the Online Labour Observatory (iLabour Project, Oxford Internet Institute and ILO)

This is made possible by the second megatrend affecting working conditions in platform work: **digitalisation**. Digitalisation has been facilitating communications and international

<sup>73</sup> Institut de Recherches Économiques et Sociales (2019). Don't Gig Up ! State of the Art Report. Document de travail, n° 02.2019. Available [online](#).

<sup>74</sup> Eurofound Platform economy online repository – Collective Bargaining. Available [online](#).

<sup>75</sup> International Labour Office (2021).

cooperation, allows for streamlined management and organisational processes, increased transparency and cross-border exchanges of ideas, work and practices. The ongoing, internet-driven ‘information revolution’ is facilitating the emergence of business models based on the collection, processing, management and monetisation of large amounts of information (‘Big Data’).

Digital labour platforms’ business models are amongst these. They collect and process information on the existing demand and available supply of a given service. They match the demand and supply efficiently and monetise the whole procedure by charging customers, and in some instances the people working through platforms themselves, for the matching service. Digital tools allow them to break jobs down into micro-tasks and thus facilitate outsourcing to a “crowd”. As section 3.3.1 illustrates, digital labour platforms do not always limit themselves to matching demand and supply, but exert a lesser or greater supervision on how the work is performed. Hence, the challenges their business model poses to the world of work.

Digitalisation mainly affects labour markets *quantitatively* in two ways: it has a positive effect on employment growth and a negative one on wage distribution. Regarding the first, numerous studies have found a correlation between digitalisation and a net employment growth, meaning that overall new technologies create more jobs than they replace. This is explained by the fact that digitally-induced automation mostly concerns single tasks rather than whole jobs, and in some instances this complements and boosts the productivity of certain jobs leading to further job-creation.<sup>76</sup> Such findings should nonetheless be interpreted with the caveat that employment growth is higher for jobs at low-risk of automation, i.e. high-skilled jobs.<sup>77</sup>

Digitalisation also affects labour markets *qualitatively*, for instance by changing the way people interact with one another on the workplace and with their employer/contracting entity. By shifting parts or all of these interactions to the digital sphere, new opportunities but also new challenges arise and the working conditions of the people involved are affected.<sup>78</sup> For instance, digitalisation has led to a proliferation of digital technology start-ups providing automated services, such as virtual assistant services or automated legal services. Though these companies advertise their services as AI-enabled, in practice, they are often performed by people working through digital labour platforms to varying degrees<sup>79</sup>. In fact, given the costs involved in automation, AI companies often prefer to outsource tasks to human workers

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<sup>76</sup> C. Frey and M. Osborne (2013), The Future of Employment: How susceptible are jobs to computerization? Working Paper, Oxford Martin School – University of Oxford. Available [online](#).

P. Brandes and R. Wattenhofer (2016), Opening the Frey/Osborne Black Box: Which Tasks of a Job are Susceptible to Computerization?, ETHU Zurich, Switzerland. Available [online](#).

Arntz, M., T. Gregory and U. Zierahn (2016), The Risk of Automation for Jobs in OECD Countries: A Comparative Analysis, OECD Social, Employment and Migration Working Papers, No. 189, OECD Publishing, Paris. Available [online](#).

<sup>77</sup> A. Georgieff and A. Milanez (2021), What happened to jobs at high risk of automation?, OECD Social, Employment and Migration Working Papers, No. 255, OECD Publishing, Paris. Available [online](#).

<sup>78</sup> International Labour Office (2021), World Employment and Social Outlook 2021: The role of digital labour platforms in transforming the world of work, Geneva: Switzerland. Available [online](#).

<sup>79</sup> *Idem*, p. 123.



through platforms.<sup>80</sup> Digitalisation can therefore lead to the creation of an invisible workforce, which increases the risk of ‘dehumanisation’ and ‘commodification of labour’, and raises concerns over the quality of jobs that survive automation<sup>81</sup>.

The growth of digitalisation exacerbates platforms’ benefits of so-called “indirect (or cross-side) network effects”.<sup>82</sup> By making centralised service-providers like platforms efficient and convenient for consumers: the more consumers a platform is able to reach, the more services it is able to offer to such consumers, which in turn makes the platform more attractive to other consumers, and so forth. Hence, a successful platform business model is based on quickly establishing, maintaining and further growing network effects, including a self-reinforcing circle of market-share growth, with long-term detrimental effects on the bargaining power of people working through that same company, but also for consumers themselves. As section 3.6.3 explains, consumers in highly concentrated digital labour platform markets face higher prices and fewer alternatives. Finally, digitalisation also has qualitative effects on the accessibility and performability of work. When the assignment and the performance of jobs become available online, the kinds of people being assigned and performing such jobs change. This has demographic repercussions.

In fact, the third megatrend affecting working conditions in platform work comprises an array of ongoing **societal changes**. The number of international migrants has grown robustly over the past two decades. It is estimated that the number of persons living outside of their country of origin reached 281 million in 2020. Between 2000 and 2010, the number of international migrants increased by 48 million globally, with another 60 million added between 2010 and 2020. Much of this increase was due to labour or family migration. In terms of the regional distribution of where migrants live, Europe was home to the largest number of international migrants in the world in 2020: 87 million. Europe also had the largest share of intra-regional migration, with 70 per cent of all migrants born in Europe residing in another European country.<sup>83</sup>

In 2007, the number of people living in cities worldwide surpassed that of rural areas for the first time in history. By 2050, the world population is projected to be 68% urban. In Europe, it will be 74.9 %, compared to 51.4% in 1950.<sup>84</sup> Migration and urbanisation go hand in hand with ongoing changes in workforce participation patterns. Today, people working or actively seeking a job in the European Union are increasingly more likely to have a migrant background and/or to be women than in the past.

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<sup>80</sup> P. Tubaro, A.A. Casilli, and M. Coville (2020), The trainer, the verifier, the imitator: Three ways in which human platform workers support artificial intelligence, 7(1) Big Data & Society. Available [online](#).

<sup>81</sup> V. De Stefano (2018), “Negotiating the algorithm”: Automation, artificial intelligence and labour protection, Employment Working Paper No.246, International Labour Office, Geneva: Switzerland, p. 4.

<sup>82</sup> F. Zhu and M. Iansiti (2019), Why Some Platforms Thrive and Others Don’t, Harvard Business Review – January-February 2019 issue (pp.118-125). Available [online](#).

<sup>83</sup> United Nations Department of Economic and Social Affairs, Population Division (2020). International Migration 2020 Highlights (ST/ESA/SER.A/452). Available [online](#).

<sup>84</sup> United Nations, Department of Economic and Social Affairs, Population Division (2019). World Urbanization Prospects: The 2018 Revision (ST/ESA/SER.A/420). New York: United Nations. Available [online](#).

Urban population growth and the spread of related urban life-styles drive the growing consumption of on-demand services such as food-delivery, ride-hailing and household/cleaning services. Platform work in Europe (and most notably on-location platform work) is concentrated in urban areas and big cities.<sup>85</sup> In this context, the opportunities offered by platforms' easy-to-access jobs with low entry-barriers (especially in terms of formal qualifications, language requirements and legal checks) are becoming increasingly known and attractive for migrants and people who have more difficulty accessing more traditional jobs. 13.3% of people working through platforms have a migrant background.<sup>86</sup> The compound effect of these societal changes, with Europe's population becoming increasingly more concentrated in cities on the one hand, and migrants and women being increasingly more represented in the workforce, impact both the demand and supply of digital labour platforms' services.

The combined effects of globalisation, digitalisation and societal changes, including the ageing of the EU's population, also have budgetary repercussions for countries. The pressure of global competition on cutting corporate costs, digitally-enabled outsourcing processes, a wider section of the population entitled to pension benefits and a much slimmer one supposed to pay for it may end up limiting countries' social policy options when dealing with in-work poverty and precariousness. Member States may have less fiscal leverage to extend labour regulations (because of their intrinsic costs) and existing social security regimes to non-standard workers, including people working through platforms. This has detrimental effects on these people's working conditions, ability to smooth consumption and face unforeseen fluctuations in their income, ultimately affecting the future sustainability of welfare systems.<sup>87</sup>

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<sup>85</sup> Urzi Brancati, M.C., Pesole, A. and Fernandez Macias, E. (2020).

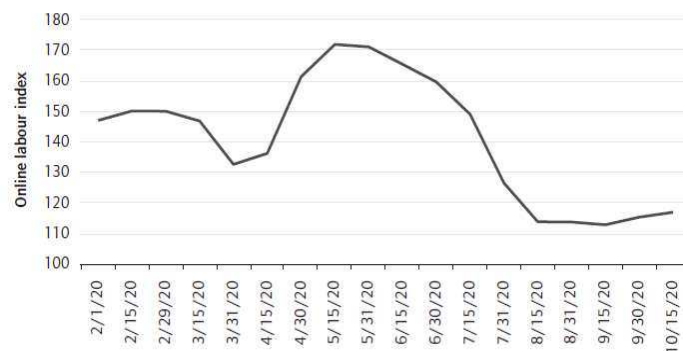
<sup>86</sup> *Ibidem*.

<sup>87</sup> H. Glennerster (2010), The Sustainability of Western Welfare States in *The Oxford Handbook of the Welfare State*, Edited by F. G. Castles et al., Oxford University Press

## The COVID-19 pandemic and its effects on platform work

In the first nine months of the Covid-19 pandemic, demand for some types of platform work services plummeted as a result of the lockdown-induced restrictions (cfr. Figure 9, which reflects developments in online platform work only), although it subsequently picked up again.<sup>1</sup>

Figure 9: Online labour demand on major digital labour platforms, February to mid-October 2020



Source: data retrieved from <http://ilabour.oii.ox.ac.uk/online-labour-index>

However, some types of digital labour platforms have seen the demand for their services balloon, particularly in the food-delivery sector. This has meant increased job opportunities for people working on platforms in this sector, but also additional challenges.

Vulnerabilities regarding, for example, access to social protection, precarious working conditions and income stability have become more visible in this and other types of platform work. The pandemic has also resulted in increased health and safety risks for some people working through platforms, notably the on-location labour platforms.

Some platform companies have provided people working through them with personal protective equipment (PPE) and, in some cases, forms of income-support and insurance. Additionally, some Member States' governments have included people working through platforms in their short-time work and income-support schemes<sup>2</sup>. Nevertheless, evidence on the effects of the pandemic-led crisis on platform work employment and working conditions ought to be assessed further in the future, when data allows for more comprehensive analyses.

<sup>1</sup>: Cfr: The Online Labour Index. Available [online](#).

<sup>2</sup>: International Labour Office (2021). The data are taken from 5 online platforms: freelancer.com, guru.com, mturk.com, peopleperhour.com, and upwork.com.

### **3.1.2 Growth in platform work**

Estimating the number of people working through platforms is challenging. As the ILO points out, platforms often do not disclose such data. Where such data is available, it can overestimate the number of people working through the platform, as it often reflects all registered people, which are not necessarily all active on the platform. In addition, people might also be registered on multiple platforms and possibly counted twice.<sup>88</sup>

Most available data is therefore survey-based. This brings about certain challenges, as methodological and definitional differences in different surveys result in large variations in the estimated number of people working through platforms. Definitional differences include for example broad or narrow definitions of the types of platform covered and the reference period in question. Methodological differences, in turn, are reflected in the use of different approaches (i.e. income-based or job-based) in surveys.<sup>89</sup> Such methodological and definitional differences hamper comparison of results across surveys and, more broadly, efforts to understand and address platform work challenges.

An online panel survey by the Commission's Joint Research Centre<sup>90</sup> in two waves estimated the number of people working through platforms in 2017 and 2018. It combined frequency, hours and income generated from platform work to generate different categories of people working through platforms.

Overall, the survey finds that the prevalence of platform work increased between 2017 and 2018, which for the EU as a whole goes from 9.5% to around 11% (or 24 million people) of the EU's workforce. The increase is observed in all included Member States but two. COLLEEM also looks into how the different categories of people working through platforms evolve.

Main platform workers are those who claim to work more than 20 hours a week or earn at least 50% of their income doing so. This group is estimated to represent on average 1.4% (3 million of the EU's workforce) of the respondents in the surveyed countries in 2018, and has decreased by 0.9 percentage points compared to 2017. JRC notes, however, that this seeming decline in the number of platform workers could be influenced by methodological differences between the first and second COLLEEM wave.<sup>91</sup>

Secondary platform workers provide services via digital labour platforms more than ten hours a week and earn between 25% and 50% of their income from platform work. They are estimated to represent on average 4.1% (9 million of the EU's workforce) in 2018, and have increased by 0.5 percentage points from 2017.<sup>92</sup>

People who work less than 10 hours a week and earn less than 25% of their income providing services via digital labour platforms (marginal platform workers) represent 3.1% (6.8 million

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<sup>88</sup> International Labour Office (2021).

<sup>89</sup> *Ibidem*.

<sup>90</sup> Urzi Brancati, M.C., Pesole, A. and Fernandez Macias, E. (2017). And Urzi Brancati, M.C., Pesole, A. and Fernandez Macias, E. (2020).

<sup>91</sup> *Ibidem*.

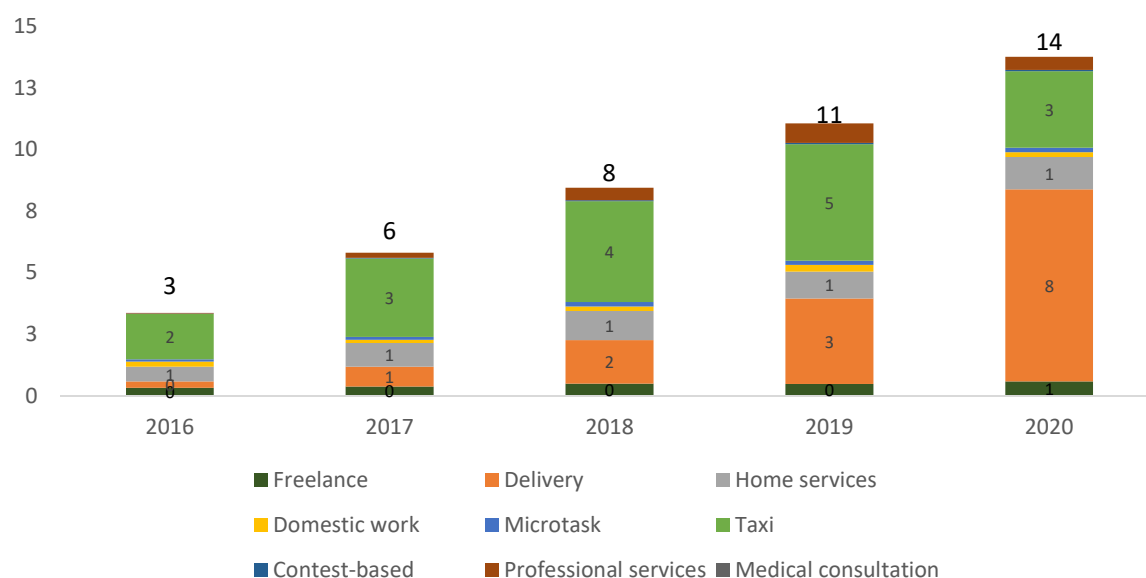
<sup>92</sup> *Ibidem*.

of the EU's workforce) of respondents in 2018, increasing by 1.5 percentage points from 2017.<sup>93</sup>

When also considering national data, and acknowledging the above-mentioned non-comparability of the different data sources due to the variety of definitions, methodologies and timing, it is interesting to note that most available information hints to a dimension of 1–2% of the workforce being engaged in platform work as a main job, and around 10% doing it occasionally<sup>94</sup>. That said, substantial differences regarding the spread of platform work across countries are observable, pointing into the direction that the labour market and employment situation is among the decisive factors for the uptake and growth of platform work.

**The size of the digital labour platform economy in the EU in terms of revenue has grown almost five-fold from an estimated EUR 3 billion in 2016 to about EUR 14 billion in 2020 (Figure 10).** This reflects consolidated revenues of involved parties (platforms, people working through platforms and fourth parties). Around three-quarters of these revenues originates from ride-hailing and delivery platforms. COVID-19 has played a role in recent developments in the platform landscape in the EU, with ride-hailing services (which until 2019 dominated the platform economy) decreasing 35% in 2020, while food delivery growing by 125% in the same year.<sup>95</sup>

**Figure 10: Size of the European digital labour platforms economy, in EUR billion**



Source: CEPS (2021).

**Globally, the total revenue of digital labour platforms was estimated to be around USD 52 billion in 2019, the biggest share of which was generated by on-location ride-hailing platforms (and one platform in particular),<sup>96</sup> which in 2019 generated a revenue of USD 10.7**

<sup>93</sup> *Ibidem*.

<sup>94</sup> Eurofound (2020).

<sup>95</sup> Willem Pieter de Groen, Zachary Kilhoffer, Leonie Westhoff, Doina Postica and Farzaneh Shamsfakhr (2021). Available [online](#).

<sup>96</sup> Uber

billion.<sup>97</sup> A reason for this may be because on-location ride-hailing platforms have received a much larger share of venture capital funds, which in turn has significantly contributed to their diffusion and has allowed them to operate even at a loss.<sup>98</sup>

**A forthcoming study, based on a non-exhaustive but representative sample, notes that the number of digital labour platforms active in the EU has increased from around 463 in 2016 to around 516 in early 2021.**<sup>99</sup> Most of these platforms provide freelance, delivery or home services tasks. This growth trend has also been observed globally, with the total number of active platforms having increased fivefold between 2010 and 2020. The majority of these were delivery platforms, followed by those intermediating freelance services and those providing ride-hailing services.<sup>100</sup> The biggest share of these platforms globally is concentrated in the United States, followed by India and the United Kingdom.<sup>101</sup> It should be noted that the total landscape of digital labour platforms examined in the study is non-exhaustive but representative of the platform work ecosystem in the EU.

In recent years, the net growth in digital labour platforms' numbers in Europe seems to have slowed down significantly. Identified trends show that the number of newly launched platforms decreased, while the number of those taken offline due to limited longer-term viability, as well as merger and acquisition activity, increased.<sup>102</sup>

**The earnings of people working through platforms active in the EU have grown two and a half times in the same period** from an estimated EUR 2.6 billion in 2016 to EUR 6.3 billion in 2020 (Figure 11). Five digital labour platforms, involving predominantly food delivery and ride-hailing services, accounted for about half of these earnings. The pandemic has also played a role in these dynamics, as the total earnings of people working through platforms is estimated to have decreased somewhat due to COVID-19.<sup>103</sup>

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<sup>97</sup> International Labour Office (2021).

<sup>98</sup> *Ibidem.*

<sup>99</sup> Willem Pieter de Groen, Zachary Kilhoffer, Leonie Westhoff, Doina Postica and Farzaneh Shamsfakhr (2021). Available [online](#).

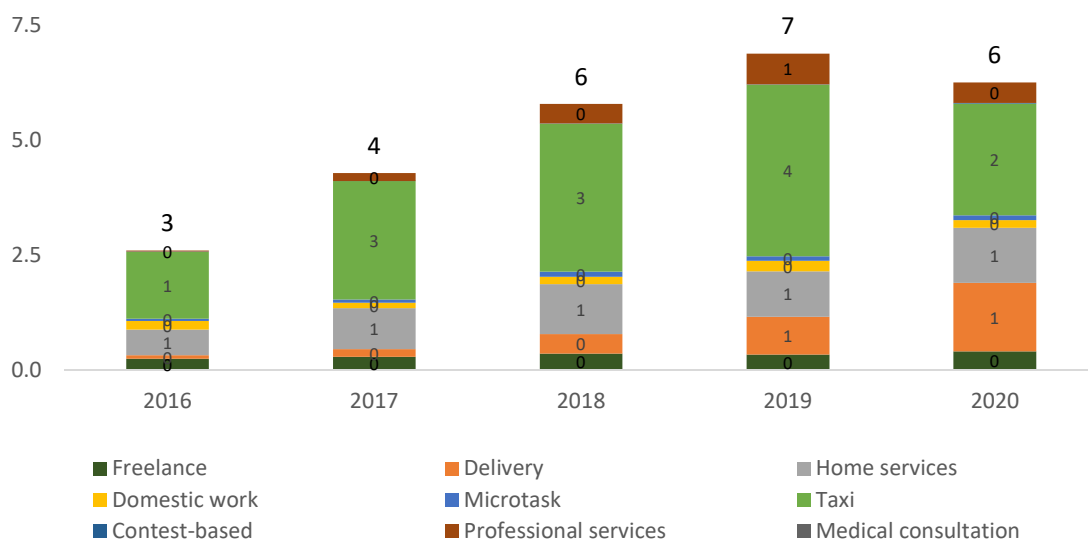
<sup>100</sup> International Labour Office (2021).

<sup>101</sup> *Ibidem.*

<sup>102</sup> Willem Pieter de Groen, Zachary Kilhoffer, Leonie Westhoff, Doina Postica and Farzaneh Shamsfakhr (2021). Available [online](#).

<sup>103</sup> *Ibidem.*

**Figure 11 – Estimated earnings of people working through platforms in the EU27 by type**



Source: CEPS (2021).

Globally, the ILO has also observed a drop in the earnings of people working through platforms following the outbreak of COVID-19. In a rapid assessment survey carried out in 2020 in Chile, India, Mexico and Kenya, nine out of ten people providing ride-hailing services through on-location platforms and seven out of ten people providing delivery services reported a decline in their earnings.<sup>104</sup>

### **3.1.3. Increased use of workforce analytics, surveillance and algorithmic management**

Artificial Intelligence (AI) is being applied extensively in our everyday lives, for example in online shopping and advertising, web search, digital personal assistants, machine translations, or autonomous driving.<sup>105</sup> The EU Fundamental Rights Agency (EU FRA) notes that 42% of companies report using AI-related technologies, while further 18% plan to do so in the future.<sup>106</sup>

In the world of work, while the use of automated systems first gained prominence through its applications in the platform economy, algorithmic management tools are spreading to “traditional” workplaces as well. According to the European Survey of Enterprises on New and Emerging Risks, in 2019 machines were used for employee management or surveillance in 12 % of EU companies. 3.7% of enterprises reported using robots that interact with workers, 11.8% of enterprises used machines determining the content or pace of work, 8.2% used machines monitoring workers’ performance, while 4.8% used wearable devices. Only 24.5% of enterprises that reported using digital technologies for work, discussed the possible impacts of the use of such technologies on the health and safety of employees. Increased

<sup>104</sup> International Labour Office (2021).

<sup>105</sup> See also this report by the European Parliament. Available [online](#).

<sup>106</sup> EU Fundamental Rights Agency (EU FRA) (2020). Getting the Future Right. Artificial Intelligence and Fundamental Rights. December 2020. Available [online](#).

work intensity or time pressure was highlighted by respondents reporting the use of workers' performance monitoring technologies.<sup>107</sup>

Beyond the discussion of how to quantify the impact of AI on labour markets and what to do about the ensuing labour market transitions at a macro-level,<sup>108</sup> some authors<sup>109</sup> have started to look into the qualitative aspects connected to the digitisation of work. These are mostly focused on platform work and include the quality of the transformed jobs or the implications from the growing interactions between humans and automated digital tools used to manage businesses or production processes.

Algorithms can create efficiencies, by effectively managing a vast pool of data and by proposing user-friendly solutions. In the world of work, AI is used for the following broad purposes: *recruitment, surveillance, management, supervision and control, termination of work-related contractual relationships*. These notions are to be interpreted exclusively in the framework of labour law. The analysis presented hereunder leaves unaffected the rights and classification of digital platforms under other pieces of EU law.

AI can be used for surveillance – to monitor work performance and behaviour. This includes for example screening emails or internal communications for the purposes of worker productivity measurement or informing/influencing management decisions on worker career progression. If combined with personal data (such as from activity trackers regarding sleep and exercise patterns, food and drink intake), algorithms could help build profiles that reflect a worker's propensity to take extended periods of sick leave, the impact of personal life on productivity levels, or the likelihood of getting pregnant (and hence taking maternity leave and be potentially less available due to care responsibilities), to name a few.

Algorithms can also be used for management and control - to make decisions on promotion and termination of work-related contractual relationships, or manage work performance and behaviour. For example, automated systems in the platform economy are applied for algorithmic management. This includes situations in which algorithms take decisions for task allocation (which can affect for example pay levels) or give work instructions (which route should drivers or riders take, etc.) based on internal metrics and/or worker ratings.

A study by CEPS finds out that, for a selection of digital labour platforms,<sup>110</sup> many of these seek to supervise the behaviour of people working via them through detailed monitoring of their activities. Surveillance is especially common on location-based ride-hailing and delivery

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<sup>107</sup> EU-OSHA (2020). European Survey of Enterprises on New and Emerging Risks (ESENER) 2019. Available [online](#).

<sup>108</sup> For an overview of such discussions and the implications from an EU perspective, see for example Michel Servoz (2019). The future of work? Work of the future! On how artificial intelligence, robotics and automation are transforming jobs and the economy in Europe. Available [online](#).

<sup>109</sup> See for example Valerio De Stefano (2019) or Jeremias Adams-Prassl (2019).

<sup>110</sup> It is important to note that, while for the CEPS study platform landscape, a non-exhaustive but representative list of 516 digital labour platforms were examined, the analytical framework connecting business models and their impact on working conditions is based on 52 country-platform observations.



services, as well as freelance services. In contrast, customers tend to monitor people working through platforms in home services, professional services and domestic work.<sup>111</sup>

Surveillance in the platform economy plays an important part in guiding the algorithmic management of people working through platforms through its impact on internal metrics and ratings. Examples of types of surveillance include the use of GPS data to monitor worker location on on-location platforms, or using monitoring systems that automatically take screenshots of people's screens when work is carried out online.<sup>112</sup> Such 'performance' information can potentially be gathered even while off-duty and be incorporated in internal metrics used by the platform company to judge the actual or potential performance of people working through it (e.g. how safe one is driving or likely to drive, etc.). When combined with customer ratings, therefore, surveillance can impact the access to work opportunities.

The abovementioned CEPS study notes that, for a selection of digital labour platforms, algorithms often take the decisions regarding account suspension and termination. The majority of reviewed platforms seem not to offer any dispute resolution for people working through platforms. Of platforms that offer such a mechanism, half provide a human contact point to review and reconsider decisions, while the other half provide a dispute resolution process arbitrated by a third party. Human review tends to be available on platforms intermediating location-based taxi services.<sup>113</sup>

Algorithms can also be used to determine a person's eligibility for a potential task (e.g. vehicle age as one of the criteria for ride-hailing platforms), track their movements (via their phone's GPS), make conclusions about work performance (tapping into smartphones' gyroscope to note a vehicle's sudden acceleration or braking), or assign work. Algorithms are also used to influence the supply of labour by 'nudging' and enticing workers to areas of high demand by using for example 'surge pricing'.<sup>114</sup>

The breadth of AI use-cases in the world of work suggests that **algorithms are increasingly used to execute decisions that were previously part of the responsibilities of managers and human resources personnel.**

**On digital labour platforms, algorithms match clients with workers, evaluate work performance, and even manage and organise the delivery process of each task.** Such practices are very relevant for **worker classification discussions** in the platform economy, as platforms usually classify people working through platforms as self-employed while at the same time **exerting supervision and control over them through algorithms.**

Employers have been found to often use three related supervision and control mechanisms: direction, evaluation, and discipline in order to achieve a desired behaviour from workers. Direction entails for example specifying what needs to be performed, in what order and time

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<sup>111</sup> Willem Pieter de Groen, Zachary Kilhoffer, Leonie Westhoff, Doina Postica and Farzaneh Shamsfakhr (2021). Available [online](#).

<sup>112</sup> International Labour Office (2021).

<sup>113</sup> Willem Pieter de Groen, Zachary Kilhoffer, Leonie Westhoff, Doina Postica and Farzaneh Shamsfakhr (2021). Available [online](#).

<sup>114</sup> Available [online](#).

period, and how accurately. Evaluation entails reviewing workers to address mistakes, assess performance, and identify inadequate performance. Discipline entails punishing and rewarding workers to prompt cooperation and enforce compliance with the employer's direction.<sup>115</sup>

A central aspect of algorithmic management in the platform economy is the use of automated systems for task allocation. It has important implications for access to work opportunities and hence the income of people working through platforms. Related to task allocation is the issue of **algorithmic ratings in the platform economy**. Many platforms apply user-generated rating systems. Algorithmic ratings have been found<sup>116</sup> to raise important concerns about discriminatory outcomes, as it can be subject to gender and racial stereotyping.

Research<sup>117</sup> further suggests that platform companies have used algorithms to **restrict access to jobs for people working through platforms with low ratings**. In addition, algorithmic ratings can be volatile because they often dynamically draw from multiple data sources, update frequently, and automatically deny access even based on small variations in ratings.

### **Court rulings and algorithmic management**

The implications of using algorithms to manage people working through platforms were the subject of a court ruling from January 2021<sup>118</sup> in Italy, in which the **court ruled that an algorithm** used by a food delivery platform to rank and offer shifts to riders **was discriminatory**. According to the court, the algorithm's failure to take into account the reasons behind a cancellation amounts to discrimination and unjustly penalizes riders with legally legitimate reasons for not working (for instance due to family emergencies or ill health).

The particular algorithm examined by the court was used to determine the "reliability" of a rider. According to the ordinance, if a rider failed to cancel a shift pre-booked through the app at least 24 hours before its start, their "reliability index" would be negatively affected.

Since riders deemed more reliable by the algorithm were the first ones to be offered shifts in busier time blocks, this effectively meant that riders who could not make their shifts—even if due to a serious emergency or illness—would have had fewer job opportunities in the future.

In March 2021 a Dutch court ruled that the use of an algorithmically-assisted process by a ride-hailing platform to support decisions on account termination did not breach provisions in the General Data Protection Regulation – namely Article 22, which provides the right to have a 'human in the loop', i.e. not to be subject to fully automated decisions. The decision was taken after Uber provided proof of its internal Risk Operations team assessing fraud risks initially signalled by automatic means.<sup>119</sup> The proof was not disputed by the applicants. Hence, the court concluded that there was significant human intervention in the account deactivation assessment and decision procedure.

<sup>115</sup> Katherine C. Kellog et al. (2020). Algorithms at work: the new contested terrain of control. *Academic of Management Annals* 2020, Vol. 14, No. 1, 366–410. Available [online](#).

<sup>116</sup> *Ibidem*.

<sup>117</sup> *Ibidem*.

<sup>118</sup> Available [online](#).

<sup>119</sup> Available [online](#) (in Dutch).

In a different ruling from April 2021, a Dutch court ordered<sup>120</sup> Uber to compensate and re-hire drivers, who were judged to have been unlawfully dismissed by algorithmic means.

Having outlined the different ways in which AI is applied in the world of work and notably in platform work, it should be noted that AI is not a static concept and there are different approaches to its development.<sup>121</sup> For the purpose of this analytical document, it is important to mention two particular types of algorithmic systems which have different impacts on capabilities and related challenges (notably regarding machine learning algorithms as ‘black boxes’).

**Rules-based AI** produces pre-defined outcomes that are based on a set of certain rules coded by humans (if A happens then do B). In practice, this means that AI programmers need to make up a large number of rules ahead of time to try to handle all possible scenarios. Rules-based AI systems have been the basis of earlier periods of AI advances, such as during the 1980s. These systems’ limitations contributed to other factors that led to reduced funding and interest in AI systems (it was the so-called ‘AI winter’) in the 1990s.<sup>122</sup> Nevertheless, rules based AI systems continue to be heavily used across all industries, for instance for simulation and planning tasks, which might also be relevant for workers.

More recently, **machine learning** techniques have contributed to the extensive application of AI in numerous sectors of economy. Machine learning techniques use artificial neural networks,<sup>123</sup> which mimic how the human brain operates. A human programmer sets the objective of machine learning systems, which then define their own set of rules that are largely based on data used to train the system. For example, an image recognition algorithm could be told its objective is to recognise cats in images. The system is then fed pre-labelled data with cat images, upon which it is trained to recognise cats. Once it sets its own rules, the machine learning system can start recognising cats in unlabelled images as well.

It is important to note that machine learning brings distinctive challenges due to the lack of clarity as to how the system develops its rules (or what they really are). Such information is often times unknown even to the developers of the system, hence the depiction of **AI as ‘a black box.’** This also brings challenges from the perspective of responsibility. With machine learning, responsibility becomes diffuse – it becomes increasingly hard to answer who is responsible when something goes wrong, whether it is the programmer, the provider of the software, or the user.

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<sup>120</sup> Available [online](#) (in Dutch).

<sup>121</sup> For example i). Machine learning approaches, including supervised, unsupervised and reinforcement learning, using a wide variety of methods including deep learning; ii). Logic- and knowledge-based approaches, including knowledge representation, inductive (logic) programming, knowledge bases, inference/deductive engines, (symbolic) reasoning and expert systems; and iii). Statistical approaches, Bayesian estimation, search and optimization methods.

<sup>122</sup> Joint Research Centre (2020). Historical Evolution of Artificial Intelligence. Available [online](#).

<sup>123</sup> A computational learning system that uses a network of functions to understand and translate a data input of one form into a desired output, usually in another form. The concept of the artificial neural network was inspired by human biology and the way neurons of the human brain function together to understand inputs from human senses. Source available [online](#).

The use of algorithms in platform work and the general labour market therefore has important implications for the working conditions of an increasing number of people. It also brings distinct challenges, which are examined in depth in section 3.3.1.

## 3.2 Internal drivers related to the employment status

**The key challenge in platform work is the risk of misclassification of the employment status.** Such misclassification negatively affects the access of people working through platforms to existing labour rights and protection.

With most people working through platforms combining features of subordination and autonomy, it is not always clear whether they should be **considered as workers or self-employed**, and what obligations would fall on the platforms as employers or as contracting entities. Only people who are considered as workers have **access to the full set of labour rights**, such as on working time, paid annual leave, maternity, paternity and parental leave, and in general occupational health and safety. Workers also have easier **access to social protection** (although gaps remain for workers in non-standard employment) and are better protected in cross-border situations, in case of disputes on jurisdiction or applicable law (see also Section 3.4).

A common feature of digital labour platforms' business models is the characterisation of the work relationship as other than one of employment. Platforms often rely on “independent contractors”, “third-party service providers” and “freelancers” to offer services. Platforms define themselves as **intermediaries** connecting service providers to clients and therefore describe the service providers' status as **independent contractors** in their standard contracts. Contractual terms and conditions for service providers often explicitly exclude any status of employment and deny any responsibility of the platform as an employer.<sup>124</sup>

### The risk of false self-employment

Various aspects of how services are provided through these platforms may often resemble working conditions in an employment relationship. Hence, there is a high **risk of misclassification**, by which people working through platforms are classified as self-employed despite not necessarily enjoying the full autonomy that comes with such status. Although in most cases people working through platforms have the freedom to decide whether to log in and thus when to work, as illustrated in sections 2.1 and 2.2, the actual organisation of work may be determined by the platforms themselves. For example, through their terms of service agreements, platforms may unilaterally regulate conditions pertaining to pay, working time, dispute resolution, customer service etiquette, and more, while simultaneously using technological means to monitor and evaluate the work.<sup>125</sup> This can lead to what is commonly referred to as **false self-employment**, depriving the people concerned of basic workers' protection and often also limiting their access to social security schemes.

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<sup>124</sup> Z. Kilhoffer *et al.* (2020), Study to gather evidence on the working conditions of platform workers. Final report prepared for the European Commission, Brussels. Available [online](#). ILO (2021).

<sup>125</sup> International Labour Office (2021), particularly section 5.1.1.

In platform work, the contractual relationship between the person providing work and the platform will in most cases come into being when the person in question accepts the platform's **terms and conditions** online. Such contractual terms and conditions, though, are often expressed in opaque and unintelligible ways, thereby compromising the person's ability to fully understand what they are signing up for, in particular where the Platform-to-Business Regulation<sup>126</sup> does not apply.<sup>127</sup>

### **The role of algorithms in concealing the employment status**

The contractual terms and conditions presented to people on platforms may not correctly reflect the actual treatment and relationship that will follow. This is due to the fact that many of the management operations on platforms are automated through the use of AI, particularly in instances where existing regulations, such as the Platforms-to-Business Regulation, do not apply.

Available evidence of this is often based on anecdotal accounts, mostly due to a **lack of transparency of 'black box' decisions**. For example, in 2020, some of the couriers and drivers of one of the biggest food delivery platforms<sup>128</sup> blamed unexplained changes to the algorithm for affecting their jobs and incomes. When they asked for reasons about their plummeting income, the company told them it had no human supervision over how many deliveries they received.<sup>129</sup> One should note that forthcoming internal market *acquis* may address issues related to transparency and responsibility in the development, deployment and use of AI systems used in the world of work.<sup>130</sup>

The impossibility to explain certain algorithmically-driven decisions and the lack of responsibility resulting from the use of certain algorithms may also contribute to the potential misclassification of people on platforms, since their factual relationship with the platforms may not be that described in the contractual terms and conditions they signed up for. Therefore, the lack of transparency inherent in the technology further allows for concealment of factual evidence needed to establish a correct employment status classification.

### **Flexibility and bargaining power**

Most digital labour platforms' business models rely on contracting self-employed people rather than employing them under labour law conditions. **The reliance on contractors provides platforms with more flexibility** than traditional service providers that rely on dependent employees, as it possibly allows them to adjust the supply of service providers to fluctuations in demand.<sup>131</sup> The administrative steps involved in recruitment and workforce management, as well as the resulting costs in terms of social security contributions and taxation, possibly to be provided across borders, can be seen by platforms as a burden on their competitiveness and agility on the market.

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<sup>126</sup> Regulation (EU) 2019/1150. Available [online](#).

<sup>127</sup> J. Venturini *et al.* (2016), Terms of Service and Human Rights: An Analysis of Online Platform Contracts. Council of Europe and FGV Direito, Rio de Janeiro. Available [online](#). ILO (2021).

<sup>128</sup> Uber Eats

<sup>129</sup> Available [online](#).

<sup>130</sup> AI Act proposal.

<sup>131</sup> OECD (2019), Gig economy platforms: boon or bane? Economics department working papers No. 1550. Available [online](#).

The persons working through platforms, on the other hand, may not have a choice but to accept the standard contracts on offer, also in reason of the fact that they **lack any significant bargaining power in the pre-contractual stage**. In practice, the employment status and the resulting rights of people working through platforms will therefore often be determined unilaterally by the platforms' terms and conditions rather than by the outcome of a genuine contractual negotiation, which would be typical for genuine self-employed activity.

There are a few examples of platforms offering all or some of its workers an employment contract. In many of these cases, however, platforms use subcontracting business models with work providers in a position similar to temporary agency workers.<sup>132</sup> Also, in some countries, workers can be classified under a third employment status – this is a hybrid classification sitting somewhere between that of employee and self-employed in terms of rights and obligations. Nevertheless, the **predominant employment model remains the self-employed status**.<sup>133</sup>

### **Uncertainty concerning the employment status**

Existing regulation on platform work at national level remains patchy and often limited to specific sectors. This means that many people working through platforms often fall between the cracks of labour and social protection, which also leads to a lack of equal treatment between them and traditional workers. A blurred distinction between employers and clients, as well as grey zones between workers and self-employed people, lead to **regulatory uncertainty over applicable rules**, thereby affecting the working conditions of people on platforms and their access to social protection.

Platform work is usually not legally recognised as a stand-alone form of work. Member States' labour regulations typically do not specify the **employment status** of people working on platforms.<sup>134</sup> Whether a person engaged in platform work is deemed to be an employee and thus falls under the remit and protection of labour law depends on the general rules on employment status in each Member State.

These rules are not harmonised and, despite there being **CJEU case-law** on the concept of “worker”, there is no EU-wide definition used throughout the EU's social and labour *acquis*. The CJEU's approach to deciding who is a worker is to a large extent determined by whether an EU legal instrument refers to national definitions or not.<sup>135</sup>

### **CJEU case-law on the platform economy**

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<sup>132</sup> Eurofound (2018).

<sup>133</sup> Eurofound (2018). Kilhoffer *et al.* (2020). International Labour Office (2021).

<sup>134</sup> Eurofound (2018), p. 43.

<sup>135</sup> Risak/Dullinger (2018), The concept of worker in EU law: Status quo and potential for change, ETUI, Brussels. Available [online](#); Kontouris (2018), The concept of ‘worker’ in European Labour Law – Fragmentation, Autonomy, and Scope, 47(2) Industrial Law Journal 192. Available [online](#); see, for instance, CJEU, C-658/18, *UX*, 16.7.2020. Available [online](#).



The Court of Justice of the European Union has had several occasions to pronounce itself on the legal qualification of digital labour platforms. In a first series of rulings which do not directly touch on the labour law dimension of the platform economy but might have indirect consequences on the responsibilities of platforms under labour law, the Court took a position on the classification of services provided by platform operators and its regulatory implications.<sup>136</sup> In relation to the ride-hailing platform Uber, the Court ruled that, in view of the high degree of control which the company exercises over the driver, the service delivered and its remuneration, the platform's business model does not merely constitute an online intermediation service, but must be classified as a service in the field of transport and therefore must comply with sectoral rules in that area. By contrast, a platform such as Star Taxi App which is limited to licensed taxi drivers for whom this intermediary service is only one of several means of acquiring customers, which they are by no means obliged to use, and which does not organise the general functioning of the ride-hailing service by selecting the drivers, setting or collecting the fares or controlling vehicles or the behaviour of drivers, remains a company offering an information society service and is not classified as a ride-hailing service. It remains to be seen whether the Court will extend this reasoning to the obligations that digital labour platforms carry for the people working for them.

While the Court did not yet deal with the employment status in platform work directly, it was seized in a similar case of a neighbourhood courier providing services exclusively for a parcel delivery company as a “self-employed independent contractor”. The case concerned the application of the Working Time Directive.<sup>137</sup> In that instance, the Court did not exclude the classification of such a person as self-employed and indicated that the person's independence is based on a number of indicators, including: the possibility to use subcontractors or substitutes; the discretion to accept or not to accept the tasks offered by the company; the freedom to provide services to any third party, including direct competitors of the company; and the discretion to fix his hours of work to suit their personal convenience.

The Court also made clear that such classification can only hold provided that the referring court ascertains that the person's independence from the company is not fictitious and that it is not possible to establish a relationship of subordination, which the referring court must do, taking into account all the relevant factors relating to that person and to the economic activity they perform.

While in most Member States, and at EU level, labour law is based on a **binary** distinction between worker and self-employed, some Member States (e.g. Germany, France, Italy, Spain and Portugal) have created a **third/intermediate category** of employment, usually for self-employed individuals depicting a degree of economic dependency towards a quasi-employer.<sup>138</sup> This, as well as other contractual statuses used in platform work in Member States, may add to the enforcement complexity of laws and jurisprudence.<sup>139</sup>

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<sup>136</sup> CJEU, cases C-434/15, *Asociación Profesional Elite Taxi (Uber Spain)*, C-320/16, *Uber France*, and C-62/19, *Star Taxi App*. Available online, respectively, [here](#), [here](#) and [here](#).

<sup>137</sup> CJEU, case C-692/19, *Yodel Delivery Network*. Available [online](#).

<sup>138</sup> Eurofound (2018).

<sup>139</sup> A detailed overview can be found in annex IV.

In situations of legal ambiguity, Member States either approach these with **statutory definitions** of the employment relationship (e.g. Germany) or rely on criteria developed by case-law (e.g. Ireland, Sweden). Some Member States have laid down **legal presumptions** in their labour regulations to make it easier for individuals considering themselves as false self-employed to claim their rights, either in specific sectors (e.g. Belgium), for certain professions (e.g. France) or where a number of criteria are met (e.g. Spain, Netherlands, Malta).

Some Member States (e.g. Belgium, Italy, Malta) provide for an **administrative procedure** involving an administrative or other independent body which allows a party to a contract to ascertain the employment status involved. However, such instruments are far from universally available in all Member States. **Labour inspectorates** in some Member States (e.g. Bulgaria, Latvia, Poland) can play a role in reviewing and assessing contractual relationships and reclassifying them, but their resources are often limited and, in the absence of physical work premises, as is often the case in platform work, they are not always fully aware of platforms' activities.

### **Challenging misclassification in court**

In many cases, a person who considers herself to be false self-employed does not have a choice but to challenge the alleged misclassification through **legal action in court**. People working on platforms can seize a judge to challenge their employment status as determined by the platforms' terms and conditions to demand re-classification as a worker or, typically after the contractual relationship has been terminated, to claim rights resulting from the employee status.

**Trade unions** can support workers in their legal actions. However, due to the nature of platform work, which does not entail fixed job premises and is often being performed on wheels, from home or in other people's homes, trade unions can face difficulties in identifying and getting in touch with people working through platforms.

According to the general rules in Member States' procedural law on the **burden of proof**, it is for the person claiming the violation of a right to establish and prove the necessary facts before the court. This means that the onus lies with the worker claiming rights from the employee status. However, one of the crucial elements of an employee status – legal subordination – often cannot be inferred from the terms of the contract, but derives from the actual organisation of work. It is often difficult for people working on platforms to establish such facts, as they have only **limited insights into the organisation of work**, its allocation and control and the underlying mechanisms<sup>140</sup>, in particular where they are determined by algorithms (see section 3.3.1).

Despite such practical and procedural obstacles to redress, **litigation** on the classification of platform work relationships has been **increasing** in recent years in the absence of a specific legal framework. A significant number of court and administrative cases dealing with the employment status of people working through platforms has been observed in nine Member

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<sup>140</sup> M. Risak (2017), Fair working conditions for platform workers: Possible regulatory approaches at the EU level, Friedrich-Ebert Stiftung. Available [online](#).



States.<sup>141</sup> The majority of those cases dealt with on-location platform work in the passenger transport and food delivery sectors. However, several cases also concerned other forms of on-location platform work, such as digital labour platforms for on-location micro-tasks<sup>142</sup> and platforms intermediating cleaning or similar services. No cases for online platform work were identified. The fact that no case-law on alleged misclassification in platform work was found in other Member States might be explained by the introduction of specific regulation on the matter<sup>143</sup>. Alternatively, this may be explained by structural factors in those countries such as less litigation on the employment status and on labour law matters in general, and the absence or weakness of workers' organisations which typically support workers in bringing legal action to courts.

### **Existing jurisprudence on the employment status**

This case-law has an important impact, as courts have decided **in favour of reclassification** in a significant number of the cases observed. Where cases have reached the highest court in a Member State, the courts have generally ruled in favour of employment status (France, Germany, and Spain).<sup>144</sup> The only exception is Italy, where the Supreme Court applied the legal regime of the third category status (*lavoro eteroorganizzato*) to food delivery couriers.<sup>145</sup> In other countries, such as Belgium or the Netherlands, litigation on misclassification in platform work have not reached the highest courts yet, but might do so in the near future.

There where **highest courts** have decided on landmark cases, this case-law has often not settled the issue, as **lower-instance courts** have not always followed that jurisprudence in subsequent rulings. For instance, the Lyon Appeals Court found drivers working for a ride-hailing platform to be self-employed despite an earlier French Supreme Court ruling to the contrary. In Italy, the Palermo Civil Court went beyond the Supreme Court ruling by reclassifying food delivery riders as workers, while the Florence Civil Court rejected that classification. Spain is the only Member State where case-law seems to have consolidated in favour of reclassification as workers as a result of a high number of lawsuits.

Drawing general **conclusions from the national case law** can be challenging given the diversity of approaches taken. Nevertheless, some common patterns can be observed. In general, courts have not been constrained by contractual stipulations, focusing instead on the individual circumstances of work organisation in each case.<sup>146</sup> Also, **legal presumptions** for

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<sup>141</sup> These are Belgium, Denmark, France, Germany, Ireland, Italy, the Netherlands, Spain and Sweden. This section draws heavily on an analysis of more than 100 court decisions and 15 administrative decisions on cases of alleged misclassification of platform workers in these Member States, as well as Switzerland and the United Kingdom, carried out by the European Centre of Expertise in the field of labour law, employment and labour market policies (ECE). "Case Law on the Classification of Platform Workers: Cross-European Comparative Analysis and Tentative Conclusions", May 2021. Available [online](#). For all other Member States, the absence of relevant case law has been confirmed by the respective national experts in the ECE network.

<sup>142</sup> An example of this is the *Click and Walk* platform in France which assigns on-location micro tasks such as mystery shopping to its users.

<sup>143</sup> For instance, Law 45/2018 in Portugal requires ride-hailing platforms to conclude commercial contracts with a transport company that employs the drivers.

<sup>144</sup> A detailed overview of all the cases considered in this section can be found in annex IV.

<sup>145</sup> It is to be noted, however, that as the Supreme Court was seized by the platform which sought a qualification of its workers as self-employed, it did not scrutinize the part of the appeal court's assessment which denied a qualification as regular employees.

<sup>146</sup> Commonly referred to as the "primacy of facts" principle – see article 9 of the ILO Employment Relationship Recommendation, 2006 (No. 198). Available [online](#).

an employment status in case some criteria are fulfilled have played a crucial role in national case-law determining the status of people working through platforms, such as in Spain or in Belgium. On the contrary, the French presumption of self-employed activity in case of entry in a business register appears to have significantly contributed to the initial reluctance of lower courts to reclassify people engaged in platform work as workers.

The existence of **third statuses** between employment and self-employed activity has had different effects in Member States, owing also to the variation in rights attached to these statuses. As mentioned above, in Italy the existence of a third status has facilitated the reclassification of people working through platforms, without however closing the debate on a full worker status. In Spain, courts are now regularly “upgrading” people working through platforms from the intermediate status (“TRADE”) to regular worker status, whereas the French Supreme Court has ruled in favour of the worker status even after the introduction of special rights for self-employed people working through platforms.

### **Criteria for judicial assessment of the employment status**

The criteria for assessing the employment status and the importance attributed to specific features of the contractual relationship are gradually shifting. Although the **freedom of people working through platforms to decide if and when to work** has frequently been relied upon as a reason to deny worker status by earlier judgments in particular, courts are increasingly discarding such reasoning by focusing instead on those people’s **lack of genuine independence**. In the majority of judgments ruling in favour of reclassification, the unilateral imposition of terms and conditions by platforms, especially with regards to assignment and payment, has been relied upon as an indicator of the platforms’ control over the organisation of work. In the view of judges, sanctions (or less favourable conditions for future assignments) in case of non-acceptance of tasks or incentives to work longer hours compensate for the lack of a contractual obligation to work.

The traditional labour law criterion of subordination, in the sense of **direction and control** of the workers’ activity by the employer, has gradually taken on a different meaning due to the peculiarities of the role of algorithms in managing platform work. In the absence of a superior on the place of work, the judicial assessment focuses instead on the presence of **concrete instructions** given by platforms’ algorithms through a smartphone app on how to perform services, and their **degree of detail**. Even if no specific instructions are given for individual tasks, the courts give more weight to the fact that the platforms frequently determine and dominate all aspects of the service performed. In particular, rulings issued by courts of last instance refer to the constant localisation of people working on platforms through GPS technology, as well as to the platforms’ rating systems and measures of performance and (mis)conduct, which can lead to sanctions and eventually to deregistration, as **tools of control** that indicate subordination.

Similarly, courts have increasingly come to consider elements of **organisational integration** into the platform’s business model and the **absence of genuine entrepreneurial independence** of the people working through platforms as key factors in assessing the employment status (in addition to the more traditional elements of direction and control). This includes considerations on whether the people working through platforms appear, in the customers’ view, as independent entrepreneurs, whether they bear the economic risk of the enterprise in question and have opportunities to further develop their business, or if, on the other hand, they may be structurally and organisationally dependent on the platform. It also includes the issue of ownership of equipment and infrastructure necessary for the service

provision. In Spain especially, the courts have acknowledged that the platform app and thus the digital infrastructure are the main means of production, rather than the smartphone or the means of transport. The courts' focus on the organisational dependence of the people working through platforms – rather than on the lack of an explicit obligation to work – is also in line with established jurisprudence of the Court of Justice of the European Union (CJEU), according to which a person cannot be self-employed if they cannot independently determine their own conduct on the market.<sup>147</sup>

Overall, a clear trend can be observed that many courts have developed a **better understanding of the organisation of platform work**, of the role of algorithms to manage and control delivery of services and the functioning of the market, and have shifted their attention to these factors in order to reclassify the contractual relationship as one of employment. However, this trend is not followed by all courts, as the jurisprudence is far from being settled. It is yet unclear whether courts in other Member States which have not yet had any cases will follow.

Most of the rulings reclassifying service providers as employees concerned **ride-hailing and food delivery platforms**, but the two decisions by higher courts in Germany and France which examined **digital labour platforms intermediating on-location micro-tasks** have also followed this direction. So far, courts have been reluctant to reclassify people offering their services as **cleaners** through platforms, taking into account that the remuneration and the service delivery were agreed upon mutually between the person working through platforms and the client, with limited intervention by the platform. However, the low number of cases and the fact that they were decided by first-instance courts (in Denmark and the Netherlands) does not allow for a general conclusion.

### **The ambiguity of platforms' business practices**

The diversity of approaches taken by national courts, both within and between Member States, and the absence of case-law in many others, create **legal uncertainty** for platforms and people working through them. However, legal uncertainty does not always stem from a lack of regulation or diverging court rulings. It is often the result of **platforms' business practices**. By defining their business model as the provision of intermediation services with service providers as independent contractors, platforms determine various conditions related to remuneration, working time, dispute resolution, and more.<sup>148</sup> Strategies used by some platforms to avoid obligations as employers and reclassification claims include complex legal set-ups between subsidiary and parent companies, mandatory arbitration clauses and making disputes subject to foreign law.<sup>149</sup> In some cases, following newly introduced legislation or court decisions, platforms have made **changes to their business model or their contractual terms and conditions**. However the extent of these changes are difficult to verify, also due to the lack of information, consultation and redress mechanisms vis-à-vis the organisational changes in question.<sup>150</sup>

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<sup>147</sup> Case C-413/13, FNV Kunsten Informatie en Media. Available [online](#).

<sup>148</sup> Courts, however, have been challenging platforms' classifications. For example, in Case C-434/15 *Asociación Profesional Elite Taxi v Uber Systems Spain SL*. [2017], the Court of Justice of the European Union held that Uber is not a mere technological intermediary, rather it provides services in the field of transport. Available [online](#).

<sup>149</sup> International Lawyers Assisting Workers Network (ILAW), "Taken for a ride: Litigating the digital platform model", Issue Brief, March 2021. Available [online](#).

<sup>150</sup> For example, in France and Spain some platform companies did not change the employment status of their contractors even after rulings by the highest-instance courts.

### Changes to platforms' business models following regulatory changes or court rulings in non-EU countries

Following the passage of the AB5 law in the State of California in 2019, which extended the worker status to some people working in non-standard arrangements, including platforms, some digital labour platforms first argued that it did not apply to them. Following this, Uber made changes to its business model, allowing for drivers in California to see the “pickup, trip time, distance, destination and fare upfront”.<sup>151</sup> Finally, several ride-hailing companies funded a ballot initiative, Proposition 22, to exempt both ride-hailing and delivery platforms from the AB5 requirements, while also granting drivers some new protections. Proposition 22 passed in November 2020 with 59% of the vote.<sup>152</sup>

Similarly, Uber implemented the UK Supreme Court ruling of 19 February 2021 by re-classifying its drivers as “workers” under UK law (a status more akin to the third category introduced by some EU Member States), but did not apply the ruling’s passage according to which the time spent by drivers logged into the Uber app waiting for assignments was to be counted as working time. Uber argued that the ruling based its decision on key features in the app from 2016 that are now defunct and that its definition of working time was consistent with the court ruling. Furthermore, the company argued it stopped penalising drivers for refusing trips in 2017, removing their obligation to work.<sup>153</sup>

Digital labour platforms can, and often have, updated their terms of use in order to comply with the law. For example, in 2018, when the General Data Protection Regulation became applicable, many platforms updated their privacy policies to signal their commitment to it.<sup>154</sup>

The variety of judicial responses to platform work, as well as the constant changes to platforms’ business practices, create **legal uncertainty** at all levels, including for digital labour platforms, but in particular for the people working through them. The uncertainty over their employment status has a direct impact on the labour and social rights they can access, since the existence of an employment relationship is a key factor in cross-border situations and for benefiting from the EU labour and social *acquis*.

### 3.3 Internal drivers related to platforms’ algorithm-based business model

**Platform work is by definition IT-driven, and some types of platform work can be easily delivered cross-border.** This brings about certain challenges that have an impact on the working conditions of people working through platforms. Existing EU labour law does not tackle algorithmic management challenges. Currently, the internal market *acquis* is developing in this area, but without focusing specifically on the perspective of people providing services via platforms. Such challenges are driven by the lack of transparency and

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<sup>151</sup> The change in Uber’s policy was signaled in a blog post on the website of the company. Available [online](#).

<sup>152</sup> Proposition 22 vote results available [online](#).

<sup>153</sup> Article in the Financial Times, *Uber agrees to classify UK drivers as workers entitled to benefits*, 16 March 2021. Available [online](#).

<sup>154</sup> See for example, Uber’s Privacy Policy dated 25 May 2018: Available [online](#). See also the privacy policy for Upwork which has introduced a separate Data Processing Agreement in order to streamline its compliance with the GDPR. Available [online](#).

clear responsibility associated with the use of algorithms, the information asymmetries and insufficient dialogue prevalent in platform work, as well as unclear and complicated relationships between platforms and authorities.

### **3.3.1 Lack of information, consultation and redress and unclear responsibilities in the use of algorithmic tools**

Lack of sufficient information, consultation and redress underpins algorithmic management in platform work. Some academics note that algorithmic management may enable forms of oversight and control that alter the traditional role of managers in workplaces (and human supervision in general) or remove them further from the scene of work.<sup>155</sup>

The particularities of how automated systems are designed and (“trained” to) operate result in three main challenges when applied in the world of work. At the same time, the extent to which these challenges translate into specific regulatory failures should be assessed both from the perspective of EU labour law as well as in the context of the overall internal market *acquis*. Some issues may be addressed by existing and proposed horizontal legislation.

- **Bias that could lead to discrimination.** There are two ways, in which bias towards certain groups of people could ‘creep’ in algorithms. Data bias could result when an algorithm finds a certain pattern in the data on which it is trained. This could for example be a correlation between certain personal characteristic (gender, age, ethnic origin etc.) and expected work performance. This could then introduce or reinforce discriminatory practices vis-à-vis the affected people, for example by not allocating tasks to certain individuals based on some personal traits, or excluding certain individuals from using the platforms services all together.

The EU Fundamental Rights Agency notes that discrimination a crucial topic when it comes to the use of AI, because the very purpose of machine learning algorithms is to categorise, classify and separate. Even if information about protected attributes (gender, age, ethnic origin) is removed from the data, it can still be inferred via proxies (postal code, educational institution, etc.).<sup>156</sup> This makes addressing potential discrimination more difficult.

A Eurobarometer survey<sup>157</sup> found that only around 40% of EU citizens are concerned that using AI could lead to discrimination in terms of age, gender, race or nationality – for example, in taking decisions on recruitment or credit worthiness.<sup>158</sup> The possibility that this reflects a lack of general awareness on how automated systems could affect one’s rights (rather than a widespread trust in the technology) should not be discounted.

Algorithms can also be discriminatory due to a bias in their programming. This could be the result of conscious or unconscious bias held by the human developing the algorithm and

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<sup>155</sup> Katherine C. Kellog et al. (2020).

<sup>156</sup> EU Fundamental Rights Agency (EU FRA) (2020).

<sup>157</sup> Eurobarometer 92.3 (2019). Available [online](#).

<sup>158</sup> EU Fundamental Rights Agency (EU FRA) (2020).

could lead to prejudiced decisions based on programming rules. This potential for bias is best exemplified by the fact that about 85% of AI developers are men.<sup>159</sup>

Despite most of the focus being on negative outcomes of algorithmic bias, it should be noted that the use of algorithms can also lead to socially important outcomes, such as serving as a behavioural diagnostic and helping society understand the nature of human error. If implemented well, algorithms might also have the potential to reduce bias.<sup>160</sup>

- **Lack of transparency.** Machine-learning-based algorithms have been labelled as ‘black boxes’ due to a lack of clarity on how the system has been programmed to develop the rules, based upon which it fulfils its primary objective.

This lack of transparency affects the understanding of how algorithms work, what the implications for workers are, or even how their working conditions are affected. Most workers currently do not fully grasp what kind of data is being collected about them, how it is being used, or how to contest it.<sup>161</sup> In the platform economy, such lack of transparency can also reinforce power imbalances, leaving the people working through platforms unable to challenge unfavourable decisions, while at the same time not having access to certain rights and protections granted under labour law.<sup>162</sup>

The EU Fundamental Rights Agency has noted the necessity to ensure that people can seek remedies when something goes wrong. To do so, they need to know that AI is being used. It also means that organisations using AI need to be able to explain AI systems in use and how they deliver decisions based on them.<sup>163</sup>

The lack of information about essential aspects of the working relationship is further negatively affected by a limited knowledge about relevant rights under existing EU instruments, such as the GDPR. For example, a Eurobarometer survey carried out in 2019 shows that only 40% of Europeans are aware that they have the right to have a say when decisions are automated. .<sup>164</sup>

It is also worth noting that developers often make the claim that there is a trade-off between the transparency and the effectiveness of algorithms – the more understandable the system is, the worse it performs.

- **A responsibility gap.** Algorithmic systems allow the tracking, disciplining and setting of expectations for workers without any human supervision and control. This

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<sup>159</sup> Michel Servoz (2019).

<sup>160</sup> Kleinberg et al. (2018) Human decisions and machine predictions. *Quarterly Journal of Economics*, 133(1): 237-293. Available [online](#).

<sup>161</sup> Katherine C. Kellog et al. (2020).

<sup>162</sup> To give a practical example, people working through platforms have blamed unexplained changes to the algorithm for having an impact on their access to tasks (and hence income). When the couriers asked for reasons about their plummeting income, responses from the platform company advised them “we have no manual control over how many deliveries you receive.” Available [online](#).

<sup>163</sup> EU Fundamental Rights Agency (EU FRA) (2020).

<sup>164</sup> *Ibidem*.

could undermine existing fundamental rights and allow companies to distance themselves from decisions taken via algorithms by making it more difficult to identify the responsible entity, thereby preventing the attribution of (potential) obligations. This can **create a responsibility gap** due to the lack of a human ‘in the loop’ of an algorithmic decision. It might also prevent the effective exercise of the right of workers and their representatives to be informed about working conditions and procedures. The proposed AI Act and the General Data Protection Regulation introduce provisions for the human oversight of automated-decisions. Still, specificities of employment relations might necessitate further action best tackled through the Treaty social chapter.

The EU Fundamental Rights Agency points out that without improved transparency of algorithmic decisions, individuals may not be able to defend themselves, assign responsibility for the decisions affecting them, or appeal any decision negatively affecting them. In this regard, opportunities to successfully complain against the use of AI and challenge decisions based on it are essential. This challenge is exacerbated by the complexity of algorithmic decision-making systems. Furthermore, a particular challenge to filing successful complaints against automated decisions or the use of AI in general relates to the need to explain decisions based on complex systems.<sup>165</sup>

Algorithms can bring added value in managing efficiently the plethora of data and the matching of supply and demand, thereby creating new business models. However, speeds of data processing can ramp up the pressure to rubber-stamp what automated systems output, due for instance to information asymmetries between the human validator and the system itself.<sup>166</sup> Humans responsible for overseeing and controlling algorithms used for work monitoring and supervision and control might lack protection against undue repercussions in case they ignore automated decisions affecting workers.

The general challenges described in this section and inherent in the nature of the technology enabling algorithmic management **will not be subject to a possible initiative** improving the working conditions in platform work, **as they are dealt with through separate instruments**<sup>167</sup>. When applied in the world of work, however, the use of algorithms results in specific labour-related challenges, such as lack of information, consultation and redress and unclear responsibilities in the use of algorithmic tools, which the potential initiative may aim to tackle. Section 3.2.1 of the consultation document presents in further detail these specific challenges. Possible avenues for EU action to address them are described in Section 6.2.2 of the analytical document.

### **3.3.2 Information asymmetries and insufficient dialogue in platform work**

While work or services provided via digital labour platforms have opened up new opportunities, there is growing uncertainty on a number of issues relating to earnings,

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<sup>165</sup> EU Fundamental Rights Agency (EU FRA) (2020).

<sup>166</sup> The risk of automation bias is reflected in the proposed AI Act.

<sup>167</sup> Most notably the proposed AI Act.



working conditions and social protection. To a significant extent, these challenges appear to link to **information asymmetries and insufficient dialogue between platforms and the people working through platforms**. These challenges exist in other non-standard forms of work outside of the digital labour platform economy, yet the opaqueness allowed for by new digital technologies seem to be exacerbating them.

Despite the limited research on this aspect of the digital labour platform economy, scholars have pointed to the **need for attention to the disruptive role of digital labour platforms in shaping power relations and communications**.<sup>168</sup> In this context, the information and power asymmetries produced by platforms are arguably fundamental to the platforms' ability to exert supervision and control over the people working through them, even if these are classified as self-employed.

Indeed, **unclear information and consultation rights can affect the working conditions of people working through platforms**. From their perspective, it can be difficult to maintain an overview of existing rights and regulations, given their complexity, scarce publicity and difficult intelligibility in the platforms' terms and conditions. People working through platforms often accept terms and conditions without a clear overview of the corresponding advantages and disadvantages, despite provisions in existing instruments, such as the GDPR<sup>169</sup> and the Platforms to Business Regulation<sup>170</sup>.

To some extent, the unbalanced power relationship due to the information asymmetries between platforms and the people working through them is a defining feature of many digital labour platforms. Scholars argue that **the work being performed on digital labour platforms in some cases is shaped by the algorithmic deployment of a variety of business model decisions that generate information asymmetries**. Hence, platforms exert "soft supervision" over the behaviour of people working through them.<sup>171</sup>

In this way, the information asymmetries arise, as the rules made by the platforms may have the effect of weakening the position in the negotiation process of people working through them. Thus, due to the existence of information asymmetries, people voluntarily bind themselves to the protocol of the platform without having the ability to question the advantages and disadvantages associated with the protocol. At the same time, the lack of social dialogue and collective representation amplifies the drawbacks, as these would otherwise be a tool to intervene and reduce the information asymmetries by bringing together the interests of people working through platforms vis-à-vis digital labour platforms themselves.

Even if the collective representation and bargaining power of people working through platforms were to be improved, this would not necessarily guarantee an improvement of the

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<sup>168</sup> A. Rosenblat and L. Stark (2016) Algorithmic Labour and Information Asymmetries: A Case Study of Uber's Drivers in International Journal of Communication 10(2016), 3758-3784. Available [online](#).

<sup>169</sup> GDPR aims to address information asymmetries by providing in Article 12 that the "controller shall take appropriate measures to provide any information referred to in Articles 13 and 14 and any communication under Articles 15 to 22 and 34 relating to processing to the data subject in a concise, transparent, intelligible and easily accessible form, using clear and plain language" In addition, the controller is obliged to facilitate the exercise of data subject rights under Articles 15 to 22.

<sup>170</sup> The P2B Regulation only covers self-employed 'business users' engaged in direct transactions with customers.

<sup>171</sup> A. Rosenblat and L. Stark (2016).

conditions, especially in case of people performing low-skilled, repetitive and easily replaceable tasks. While collective bargaining can be an effective tool to reducing existing information asymmetries, it is important to stress that **the issue of information asymmetries and insufficient dialogue goes beyond strictly looking at the legal employment status of the people working through platforms**. Indeed, information and consultations rights, social dialogue, and collective organisation are also challenging due to the specificities of platform work.

For example, platform work often involves no physical shared workplace, even for on-location platforms, which means that **people working through platforms rarely interact with each other**, and that they may often not know who their peers on a given platform are or even how to contact them. Consequently, collective organisation and representation become difficult and fragmented, regardless of the employment relationship. For instance, although strikes have been organised through social media platforms, the success of these is dependent on whether the people are active on the social media platform in question and/or whether they become aware of the forthcoming strike in due time.

**Platforms' business models, for instance those relying on a ranking system, may generate competition between people working through platforms rather than cooperation with the aim of better social protection and working conditions.** This appears to be the case for several platforms, where couriers are ranked according to a number of factors, including for example their ability to work during high-demand hours, the amount of completed orders, their average number of deliveries per hour as compared to the fastest courier, customer ratings and order history.<sup>172</sup>

**The issue of information asymmetries dovetails with the opaqueness in algorithmic management,** and thus the challenges are to some extent rooted in a general lack of transparency. People working through platforms **have been seeking various unionised responses to the challenges of platform work, including strike actions over poor wages and working conditions.** For example, the city-based 'Riders Union Bologna' was established with the aim of setting a minimum level of job security, full accident insurance and proper and free equipment, guaranteed working hours, decent payment and compensation in case of smog, rain and holiday work.<sup>173</sup> Similarly, the 'Wolt Workers Group' is a Copenhagen-based worker organisation that consists of a group of riders doing deliveries through Finnish platform 'Wolt' who are campaigning for better pay and working conditions, offering general advice to the riders.<sup>174</sup> This is done through petitions and protests, the latest having taken place in February 2021, where riders protested against changes to the payment model. In 2018, one group of couriers in Spain launched its own delivery platform, 'La Pajara',<sup>175</sup> with the aim to establish a more autonomous business model, giving the small team of bicycle couriers a fixed salary, health benefits and parental leave.

**Various initiatives by social partners across EU Member States are also arising.** One example is the Framework Agreement on Digitalisation adopted by the European Social Partners on 23 June 2020, which aims at laying out an inclusive approach to the digital

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<sup>172</sup> Pierre Bérastégui (2021) Available [online](#)

<sup>173</sup> Marco Marrone (2019) Rights against the machines! Food delivery, piattaforme digitali e sindacalismo informale in Labour&Law Issues, volume 5. No. 1. Available [online](#).

<sup>174</sup> Eurofound (2021).

<sup>175</sup> La Pajara. Available [online](#).

transformation. The framework agreement analyses the impact of digitalisation on the workplace and covers all workers and employers in the public and private sectors and in all economic activities, including digital labour platforms.<sup>176</sup> While this only covers the instances where an employment relationship exists, the challenges identified, such as the impact of Artificial Intelligence and ICTs on skills, work-life balance, work environment, and health and safety may indeed still be relevant for all people working through digital labour platforms.

Additionally, new models of collective negotiations have been developed, for instance in the case of Deliveroo in Belgium who employed workers through the intermediary ‘SMart’ (see section 2.2). A survey suggests that the arrangement was primarily motivated by the specifics of the Belgian tax system, but that it nevertheless provided workers with protections, including income security.<sup>177</sup> ‘SMart coops’ operate in some EU Member States<sup>178</sup>. In return for a fee, SMart helps the self-employed with administration, accounting and financial management tasks.

Finally, it is important to note that **some collective agreements have already been achieved within traditional trade union frameworks**. For instance, ‘3F’ (the United Federation of Danish Workers) was able to conclude a temporary collective agreement with the cleaning platform ‘Hilfr’ in 2018.<sup>179</sup> In 2019, the ‘Fellesforbundet’ union and ‘Foodora’ reached a collective bargaining agreement that includes an annual pay hike for full-time riders in Norway.<sup>180</sup> In addition, in January 2021, 3F and the employers’ organisation ‘Dansk Erhverv’ reached a national sectoral agreement for delivery riders, which covers riders working through the food delivery platform ‘Just Eat’ in Denmark.<sup>181</sup> Similarly, in Austria social partners have concluded a sectoral collective agreements for bicycle couriers working under an employment relationship, who from January 1<sup>st</sup>, 2020 could benefit from a minimum wage and paid leave.<sup>182</sup> Although these collective agreements may be limited in either sectoral scope or timeframe, they are important in that they display social dialogue and collective representation as viable means to improve the working conditions in platform work.

**Digital labour platforms are also starting to establish standalone business associations.** For instance, ‘AssoDelivery’ is an Italian association in the food delivery industry to which Deliveroo, Glovo, SocialFood and Uber Eats adhere<sup>183</sup>, and which aims to ensure that food

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<sup>176</sup> The European Social Partners Framework Agreement on Digitalisation was signed by BusinessEurope, ETUC, CEEP and SMEunited to support the successful digital transformation of Europe’s economy and to manage its large implications for labour markets, the world of work and society at large. The agreement supports the successful integration of digital technologies at the workplace, investment in digital skills, skills updating and the continuous employability of the workforce. The agreement enables employers and unions to introduce digital transformation strategies in partnership in a human oriented approach at national, sectoral, company and workplace levels, including on the modalities of connecting and disconnecting and respect of working time rules and appropriate measures to ensure compliance. Available [online](#)

<sup>177</sup> Jan Drahokopil and Agnieszka Piasna (2019) Work in the platform economy. Deliveroo riders in Belgium and the SMart arrangement. Working paper 2019.01. Available [online](#).

<sup>178</sup> Smart (2021) Available [online](#).

<sup>179</sup> Kristin Jesnes, Anna Ilsoe, and Marianne J. Hotvedt (2019) Collective agreements for platform workers? Examples from the Nordic countries. Fafo. Available [online](#).

<sup>180</sup> Eurofound (2021).

<sup>181</sup> Asger Havstein Eriksen (2021) Groundbreaking agreement: Danes can now order takeaways with a clean conscience in Fagbladet 3F. Available [online](#).

<sup>182</sup> Eurofound (2021), Collective agreement for bicycle couriers in Austria. Available [online](#).

<sup>183</sup> Associazione Italiana de categoria. Available [online](#).

delivery platforms have a unitary representative organisation. The platforms are also increasingly publishing collective statement of principles, charters, and codes of conduct, which can be a first step in the direction of more transparency to close the gap in information imbalances between platforms and their associated workers. The fact that platforms are entering into collective associations may also create renewed pressure for people working through platforms to not only enter collective representation within the framework of a single platform, but also to seek broader unionisation. This would help addressing the question of workers working through different platforms simultaneously and thus having to prioritise their loyalties, although it would perhaps add to the challenge of identifying fellow people working through platforms.

### **Platforms' initiatives to improve working conditions and access to social protection**

Aside from initiatives directly linked to the COVID pandemic (see the box on the impact of COVID in section 3.1.1), some platform companies have proposed measures to improve working conditions of self-employed people that provide services through them.

These include for example:

- Different types of private insurance schemes, such as Uber's partnership with AXA or cooperation of Wolt, Deliveroo or Glovo with Qover;
- Provision of training: either directly relevant for platform work (e.g. Frizbiz and Heetch in cooperation with a home improvement and gardening retailer, Leroy Merlin) or for further career development (Uber's cooperation with the Open University in the UK);
- Tools for more control and transparency over earnings (e.g. Uber's earnings estimator in France);
- Tools for recording rankings (Glovo Pro to download a certificate containing information on the metrics and evaluations).

Some platforms have also committed to greater transparency and improvement in working conditions through codes of conducts such as the Crowdsourcing Code of Conduct<sup>184</sup> in Germany or declarations such as the Charter of Principles for Good Platform Work<sup>185</sup> or Statement of Principles of EU technology platforms.<sup>186</sup>

## **3.4 Internal drivers related to the cross-border nature of platform work**

Platform work across borders can create **difficulties for determining the law applicable to the contractual obligations** between the platform and the person working through it, as well

<sup>184</sup> Available [online](#).

<sup>185</sup> Available [online](#).

<sup>186</sup> Available [online](#).

as for **determining which courts have jurisdiction over disputes** relating to such obligations, in particular in situations where the employment status is not clear.

The **Brussels Ia**<sup>187</sup> and **Rome I**<sup>188</sup> regulations set out, respectively, rules on determining the responsible jurisdiction and the applicable law in cross-border disputes. In such disputes between the employer and the worker these provisions derogate from the general rules concerning contracts, and providing certain safeguards, with the aim of protecting workers as the weaker party to a contract. **Brussels Ia, in particular, stipulates that a worker may only be sued in the Member State of his/her domicile** and that s/he may choose between several jurisdictions when bringing a claim against the employer. **Rome I stipulates that while the parties to the employment contract can determine the law applicable to it, they cannot contractually opt out from the mandatory legal provisions of the country whose law would be applicable in the absence of the choice, which in principle is the law of the country “where or from where the employee habitually carries out his work”**. As a result, a worker is entitled to protections under the more favourable mandatory employment law of these Member States. These provisions protecting workers do not apply to self-employed whose transactions are governed by the general rules. Hence, legal uncertainty on the employment status generates further doubts on whether contractual clauses of digital labour platforms regarding the choice of law and jurisdiction are valid or not.

The unclear status of people working through platforms can also give rise to questions about their **social security coverage in cross-border situations**. The classification of these people in national law bears consequences for social security coordination law.<sup>189</sup> For instance, if a person working through a platform is classified as a worker in Member State A (where s/he performs a significant activity of more than 25% and also resides) and as a worker in Member State B, Member State A will be competent for social security. However, if, under the same conditions, Member State A classifies such person as self-employed, Member State B may be competent due to the priority of the Member State of employment over the Member State of self-employment. False self-employment or unclear employment status in platform work therefore further complicates the social security coverage of people moving to another Member State or working across borders.

A 2021 study by CEPS notes that, based on a selection of digital labour platforms, only a minority of terms and conditions (19% of selected digital labour platforms) clearly spell out the contractual relations between the platform and the person working through it.<sup>190</sup>

**National authorities do not have easy access to data on platform work and people working through them, which is especially relevant where platforms operate in several**

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<sup>187</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20.12.2012, p. 1. Available [online](#).

<sup>188</sup> Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 4.7.2008, p. 6. Available [online](#).

<sup>189</sup> Strban et al (2020), Social security coordination and non-standard forms of employment and self-employment: Interrelation, challenges and prospects, July 2020. Available [online](#).

<sup>190</sup> Willem Pieter de Groen, Zachary Kilhoffer, Leonie Westhoff, Doina Postica and Farzaneh Shamsfakhr (2021). Available [online](#).

**Member States.** Data gaps regarding the latest terms and conditions of platforms, and the number and employment status classification of people working through them, affect the ability of relevant national authorities and stakeholders to bring about positive change, for instance through accurate and evidence-driven policymaking. It is not always clear where platform work is performed, which can lead to difficulties tracing and addressing cross-border challenges.

The high-level expert group on the impact of the digital transformation on EU labour markets,<sup>191</sup> which was set up to provide analysis and advice to the Commission, noted in its final report and recommendations the need to create a Digital Single Window for employment contributions and taxes **for self-employed** people working on platforms. The high-level group further suggested that through a digital interface, automated reports from platform companies could allow collecting earnings data in a standardized digital format to reduce the cost of compliance.<sup>192</sup>

A subsequent study<sup>193</sup> assesses the viability and feasibility of the concept of an EU-level “Digital Single Window.” It underlines that income reporting for **social contribution purposes presents unique challenges** due to the complex national social contribution rules. Some Member States have social contribution rules that are designed in accordance with assumptions about regular employment. Such design could therefore make it exceedingly difficult to square with the current reality of platform work. A **focus on income reporting for tax purposes could be considered as an alternative**

The study notes that, in principle, an EU Digital Single Window could serve two functions: a disclosure function and an enforcement function. Disclosure function refers to a system that facilitates **income data reporting at EU level**, in order to facilitate collection at Member State level. Enforcement function refers to a system that would facilitate actual tax collection and distribution to Member States. The study notes limitations to ensuring an enforcement function at EU level and looks only into the disclosure function instead.

The Digital Single Window study examines a centralized (‘hub and spoke’) approach, in which member states would nominate an (EU level) central agency (the “hub”) to receive income data from all the platforms with users in the Member States and forward it to national tax and social security agencies (the “spokes”), in whatever form they require (Figure 12 below). **There is currently no precedent at EU level for such a model.**

**Figure 12: Hub-and-spoke model of cross-EU platform income data reporting**

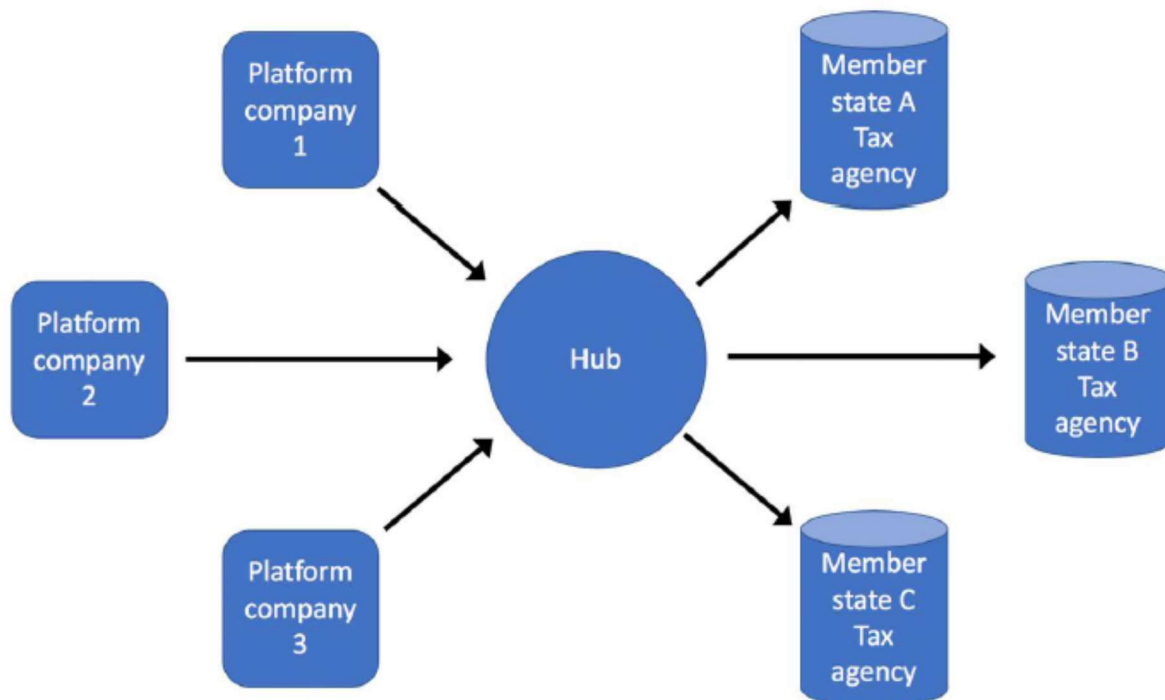
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<sup>191</sup> Available [online](#).

<sup>192</sup> *Ibidem*.

<sup>193</sup> Vili Lehdonvirta and Daisy Ogembo (2019). A Digital Single Window for Income Data from Platform Work. Available [online](#).





There are numerous challenges with such a centralized approach, in addition to the issue of having to first identify all the platforms that operate within the European Union. As **income taxation is a national competence**, there are legal constraints to establishing such a data collection effort at EU level. Data protection rules stemming from the GDPR should also be complied with. More generally, such a centralized model also raises concerns over data protection and cybersecurity, with the concentration of taxpayers' data in a single hub particularly problematic in this regard. National tax agencies would also not be collecting data directly from their local platforms, whereas the actual tax and social security rules applicable to platforms and people working through platforms would be national.<sup>194</sup> Beyond these considerations, there are also the significant administrative costs to be taken into account.

The study also looks into a decentralized model of income reporting, with tax agencies in the Member States collecting data from the platforms registered in their jurisdiction and reporting the data regarding tax residents of other member states to the tax agencies in those Member States.<sup>195</sup> It should be noted here that the **Council has recently adopted a revision of the Directive on Administrative Cooperation in Tax Matters (DAC7 revision)**, which in essence represents such an approach. The DAC7 revision is further described in section 3.5.2

Beyond putting forward models for the operationalizing of a "Digital Single Window," the study notes also that insufficient data has repercussions for taxing and extending the social security coverage to people working through platforms. This is further complicated by their

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<sup>194</sup> *Ibidem.*

<sup>195</sup> *Ibidem.*



involvement in multiple, simultaneous engagements, possibly on different terms and under different employment statuses even within the same country.<sup>196</sup>

The DAC7 revision addresses the need for income-related data collection in the digital labour platform economy, when it comes to the self-employed people working through platforms. As section 3.5.3 b on existing national measures in this area shows, however, there are still considerable gaps when it comes to collecting data on the working conditions in platform work. Further efforts might therefore be necessary in this regard.

### 3.5 Internal drivers related to the gaps of existing and forthcoming legislation

#### 3.5.1 EU labour and social acquis

In order to prevent unfair competition to the detriment of workers and a race to the bottom in employment practices and social standards, the EU has created a minimum floor of labour rights that apply to workers across all Member States. The EU labour and social *acquis* has grown throughout the years and sets minimum standards through a number of key instruments. These include:

- The **Directive on transparent and predictable working conditions**<sup>197</sup> provides for measures to protect working conditions of people who work in non-standard and new working relationships. This includes rules on transparency, the right to information, probationary periods, parallel employment, minimum predictability of work and measures for on-demand contracts. These minimum standards are particularly relevant for people working through platforms, given their atypical work organisation and patterns. It is important to note that the Directive permits Member States to exclude from its scope workers with a very low number of monthly working hours. Zero-hour work contracts, however, cannot be excluded.
- The **Directive on work-life balance for parents and carers**<sup>198</sup> lays down minimum requirements related to parental, paternity and carers' leave and flexible work arrangements for parents or carers. It complements the **Directive on safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding**<sup>199</sup>, which provides for a minimum period of maternity leave, alongside other measures.
- The **Working Time Directive** lays down minimum requirements for the organisation of working time and defines concepts such as 'working time' and 'rest periods'. While the CJEU has traditionally interpreted the concept of 'working time' as requiring the worker to be physically present at a place determined by the employer, in recent cases the Court has extended this concept in particular when a 'stand-by' time system is in place (i.e. where a worker is not required to remain at his or her

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<sup>196</sup> *Ibidem*.

<sup>197</sup> Directive (EU) 2019/1152. Available [online](#). Member States have until 1 August 2022 to transpose it.

<sup>198</sup> *Ibidem*.

<sup>199</sup> Directive 92/85/EEC. Available [online](#).

workplace but shall remain available to work if called by the employer). In the 2018 Matzak case, the Court made clear that ‘stand-by’ time, during which the worker's opportunities to carry out other activities are significantly restricted, shall be regarded as working time.<sup>200</sup> This interpretation may be relevant to people working through platforms.<sup>201</sup>

- The **Directive on temporary agency work**<sup>202</sup> defines a general framework applicable to the working conditions of temporary agency workers. It lays down the principle of non-discrimination, regarding the essential conditions of work and of employment, between temporary agency workers and workers who are recruited by the user company. Due to the typically triangular contractual relationship of platform work, this Directive can be of relevance. Depending on the business model of the platform and on whether its customers are private consumers or businesses, it might qualify as a temporary-work agency assigning its workers to user companies. In some cases, the platform might be the user company making use of the services of workers assigned by temporary-work agencies.<sup>203</sup>
- The Directives on **part-time work**<sup>204</sup> and on **fixed-term work**<sup>205</sup> stipulate equal treatment in working conditions between workers employed under a part-time or fixed-term contract and comparable workers engaged under a ‘standard’ employment contract.
- The **Occupational Health and Safety (OSH) Framework Directive**<sup>206</sup> lays down the main principles for encouraging improvements in the health and safety of workers at work. It guarantees minimum health and safety requirements throughout the European Union, with Member States allowed to maintain or establish more stringent measures.
- The three directives on **anti-discrimination** and **equal treatment** lay down a general framework for combating discrimination in the area of employment and occupation on the grounds of sex<sup>207</sup>, racial or ethnic origin<sup>208</sup>, religion or belief, disability, age or sexual orientation,<sup>209</sup> with a view to putting into effect in the Member States the principle of equal treatment.

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<sup>200</sup> Judgment of the Court (Fifth Chamber) of 21 February 2018 in *Ville de Nivelles v Rudy Matzak*, C-518/15, ECLI: EU:C:2018:82. This line of reasoning was confirmed and elaborated in two 2021 judgments (Judgment of the Court (Grand Chamber) of 9 March 2021 in *RJ v Stadt Offenbach am Main*, C-580/19, ECLI:EU:C:2021:183; Judgment of the Court (Grand Chamber) of 9 March 2021 in *-D.J. v Radiotelevizija Slovenija*, C-344/19, ECLI:EU:C:2021:182).

<sup>201</sup> The UK Supreme Court in its judgment in case *Uber BV v Aslam* ([2021] UKSC 5) of 19 February 2021 makes reference to this CJEU case-law. Available [online](#).

<sup>202</sup> Directive 2008/104/EC. Available [online](#).

<sup>203</sup> See for instance the case of JustEat: Article in *The Guardian* (April 2021), Just Eat to offer 1,500 Liverpool couriers minimum hourly rate and sick pay. Available [online](#).

<sup>204</sup> Directive 97/81/EC. Available [online](#).

<sup>205</sup> Directive 1999/70/EC. Available [online](#).

<sup>206</sup> Directive 89/391/EEC. Available [online](#).

<sup>207</sup> Directive 2006/54/EC. Available [online](#).

<sup>208</sup> Directive 2000/43/EC. Available [online](#).

<sup>209</sup> Directive 2000/78/EC. Available [online](#).

However, **only workers who fall under the personal scope of these legal instruments will benefit from the protection they afford.**<sup>210</sup> Self-employed people, including those working through platforms, fall outside the scope and typically do not enjoy these rights, making the employment status a gateway to the EU labour and social *acquis*. (The only exception are the equal treatment directives which also cover access to self-employment, due to broader legal bases.<sup>211</sup>)

**Other, non-legally binding instruments are broader in scope and also cover self-employed people, but they do not confer any rights directly.**

The **Council Recommendation on improving the protection of the health and safety at work of the self-employed**<sup>212</sup> promotes the prevention of occupational accidents and diseases among the self-employed, measures for promoting health and safety and surveillance, including access to training in the area of health and safety. The **Council Recommendation on access to social protection for workers and the self-employed**<sup>213</sup> encourages Member States to ensure that both workers irrespective of the type of employment contract and the self-employed have access to effective and adequate social protection. Both instruments provide guidance to Member States on measures that are particularly relevant for people working through platforms that do not have an employment relationship (or have a non-standard employment relationship, in the case of the latter Recommendation), but do not confer any rights on those people directly. However, as countries implement these Recommendations, provisions at national level may give rights to those concerned.

**While the EU labour and social *acquis* thus provides a minimum floor of labour rights and protection to workers, it usually only contains general provisions on enforcing those rights, the latter being primarily the role and prerogative of national authorities.** Furthermore, the question of whether people working through platforms whose employment status is uncertain or who might have been falsely classified as self-employed can benefit from this *acquis* remains to be decided by courts in individual cases.

Genuine self-employed people are only covered to a limited extent by EU measures in the social realm. However, in their capacity as business actors, they may benefit from other EU instruments (outlined in the next chapter) that have been adopted with the objective of ensuring the correct functioning of the EU's internal market.

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<sup>210</sup> Some instruments define the personal scope by reference to national definitions of 'worker' or 'employee' while others do not include such reference. The CJEU has developed a comprehensive case-law to defining the personal scope of these instruments.

<sup>211</sup> Articles 19 and 157 TFEU respectively. The latter covers "equal treatment of men and women in matters of employment and occupation".

<sup>212</sup> Council Recommendation of 18 February 2003 (2003/134/EC). Available [online](#).

<sup>213</sup> Council Recommendation of 8 November 2019 (2019/C 387/01). Available [online](#). The Recommendation covers unemployment, sickness and health care, maternity and paternity, invalidity, old-age and survivors' benefits and benefits in respect of accidents at work and occupational diseases.

### 3.5.2 EU internal market *acquis*

Companies operating in the EU have access to the world's largest internal market, of approximately 450 million consumers. To ensure equal business opportunities and fair treatment to all consumers, the EU has developed an extensive regulatory *acquis* for the governance of its internal market, ranging from product liability to anti-merger rules.

Elements of this internal market *acquis* are particularly relevant for digital labour platforms:

- The **Regulation on promoting fairness and transparency for business users of online intermediation services** (the so-called 'Platform-to-Business' or 'P2B' regulation)<sup>214</sup> aims to ensure that self-employed 'business users' of an online platform's intermediation services are treated in a transparent and fair way and that they have access to effective redress in the event of disputes. It has a review clause concerning the potential misclassification of 'business users' as self-employed. The P2B Regulation's relevant provisions include, among others:
  - Subject to certain conditions, the **right to prior notice before termination of a business users' account** at least 30 days in advance;
  - The **right to terms and conditions written in clear and intelligible language**, including enhanced transparency, including on the main parameters determining the ranking;
  - **Transparency on differentiated treatment between business users** affiliated to the platform and those unaffiliated;
  - A **prohibition of retroactive changes** to a platform's terms and conditions except where they are required to respect a legal or regulatory obligation or when the changes are beneficial for the business users;
  - **The right for representative organisations and associations to have legal standing** to stop or prohibit non-compliance with the Regulation before courts at the national level.
- The **General Data Protection Regulation**<sup>215</sup> lays down rules for the protection of natural persons with regards to the processing of their personal data. It grants people working through platforms a range of rights regarding their personal data, regardless of their employment status. Such rights include, among others:
  - the **right of access to personal data**, including the right to obtain a copy of one's personal data undergoing processing;
  - the **right to rectification, including the right to have one's data corrected** if it is inaccurate;
  - the **right to obtain from a data controller a restriction of the processing** of one's data under certain conditions;
  - the **right to data portability**, including right to receive and transmit one's personal data from a controller to another without hindrance, where technically feasible.

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<sup>214</sup> Regulation (EU) 2019/1150. Available [online](#).

<sup>215</sup> Regulation (EU) 2016/679. Available [online](#).

- The **Late Payment Directive**<sup>216</sup> regulates payment terms in commercial transactions, lays down penalties in case of delayed or non-payment and addresses unfair payment provisions and practices. The Directive applies to any commercial transaction, intended as the supply of goods and/or provision of services in exchange of payment, either between public authorities and businesses (G2B) or between businesses (B2B), including self-employed people working through platforms.

In addition to these existing laws, the European Commission has recently put forward legislative proposals that may be of relevance to people working through platforms:

- The **Digital Services Act package**, which includes the **Digital Services Act (DSA)** and the **Digital Markets Act (DMA)**. The proposals were adopted by the European Commission in December 2020 and are now undergoing the ordinary legislative procedure.
  - The DSA primarily concerns providers of intermediary services, and many of its provisions focus on digital platforms. For example, online marketplaces, social networks, content-sharing platforms, app stores as well as online travel and accommodation platforms could fall within the scope of the DSA. It sets out due diligence obligations for digital services as regards the fight of illegal content online, including potentially illegal listings on digital labour platforms, while preserving the fundamental rights of their users and ensuring the competitiveness and innovation of digital services. The proposed regulation sets out information obligations for online intermediaries related to their terms and conditions as regards the use of information provided by the recipients of the service, including algorithmic decision-making and human review, transparency reporting obligations, risk assessment obligations and risk mitigation measures for very large online platforms as regards the dissemination of illegal content and the negative effects for the prohibition of discrimination, as enshrined in the Charter. The DSA also provides that national authorities can order, on the basis of national or EU laws, intermediaries to provide them information about the recipients of their services so that authorities can assess compliance by such recipients of services with national or EU laws.
  - The DMA includes rules that govern so-called ‘gatekeeper online platforms’. According to the proposal, gatekeepers are providers of core platform services (e.g. online intermediation services) with an important impact in the internal market that act as gateways between businesses and consumers. It can-not be excluded that the Digital Markets Act may also be relevant for digital labour platforms should such platforms constitute core platform services within the meaning of the Digital Markets Act and providers of these platforms would be designated as gatekeepers.

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<sup>216</sup> Directive (EU) 2011/7. Available [online](#).

- **When adopted, the proposed AI Act<sup>217</sup> will address risks linked to the use of certain AI systems.** The proposed regulation tackles issues related to development, deployment and use of AI systems. It lists certain AI systems used in employment, worker management and access to self-employment that are to be considered as high risk. It puts forward mandatory requirements that AI systems must comply with, as well as obligations for providers and users of such systems. Among other things, the proposal for an AI Act imposes requirements to enable human oversight and extensive documentation on high-risk AI systems and requires improved transparency of information to users (e.g. platform companies) of high-risk AI systems. The proposed AI Act foresees specific requirements on documentation, logging and transparency, and will ensure that platforms as users of high-risk AI systems will have access to the necessary information. In addition, the proposed AI Act addresses inherent challenges in the development of AI, such as bias, notably by setting requirements for high-quality datasets, helping to tackle the risk of bias and discrimination.<sup>218</sup>

**Nonetheless, specificities of employment relations might necessitate further action beyond what is achievable with an internal market instrument.** For example, provisions and procedures for improved information could also benefit people in the labour market affected by automated decisions when they are not the users of the system, or be useful to their representatives. Such people could also benefit from the possibility to ask for substantiated grounds for significant decisions or challenge them once they have been taken, and also from the promotion of social dialogue and reinforced collective information and consultation rights. Addressing specificities of employment relations when it comes to algorithmic management might therefore be best tackled through the Treaty social chapter. **Any potential actions in the area of algorithmic management should be without prejudice to the proposed AI Act.**

- The proposal for a **Machinery Regulation**, which was adopted<sup>219</sup> by the European Commission in April 2021, has implications for machinery with embedded AI systems. It is currently undergoing the ordinary legislative procedure.
- The **amended Directive on Administrative Cooperation (DAC7)**<sup>220</sup> was formally adopted on 22 March 2021. It sets out new tax transparency rules for digital platforms ensuring that Member States automatically exchange information on the revenues generated by sellers on digital platforms, whether the platform is located in the EU or

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<sup>217</sup> COM(2021). Available [online](#).

<sup>218</sup> The recently proposed Digital Services Act (COM/2020/825 final) also sets out information obligations for online intermediaries related to their terms and conditions as regards the use of information provided by the recipients of the service, including algorithmic decision-making and human review, transparency reporting obligations, risk assessment obligations and risk mitigation measures for very large online platforms as regards the dissemination of illegal content and the negative effects for the prohibition of discrimination, as enshrined in the Charter and secondary EU law. Available [online](#).

<sup>219</sup> COM (2021). Available [online](#).

<sup>220</sup> Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation ST/12908/2020/INIT, OJ L 104, 25.3.2021, p. 1–26. Available [online](#).



not. It could have an indirect effect on (self-employed) people working through platforms by giving more legal clarity to digital labour platforms, and thus scope for growth with the additional job opportunities this would bring. Importantly, the Directive only concerns reporting and consequent exchange of information regarding self-employed business users.

The existing and forthcoming elements of the EU's internal market *acquis* have important implications for digital labour platforms, most notably by establishing certain obligations they have to comply with vis-à-vis people working through them.

However, from the point of view of platform work, **a number of challenges remain**. Under the General Data Protection Regulation (GDPR)<sup>221</sup>, people working through platforms are entitled to specific rights as data subjects irrespective of their employment status. Such rights include the right of access to personal data, the right to rectification, the right to data portability and the right not to be subject to a decision based solely on automated processing. Many people remain unaware of such rights. Some rights are available under the EU internal market *acquis*<sup>222</sup>, with the overall goal of ensuring the correct functioning of the EU's internal market. The Platform-to-business regulation provides, among others, the right to terms and conditions written and clear and intelligible language. Importantly, the Regulation only covers genuinely self-employed 'business users' engaged in direct transactions with customers. When it comes to algorithmic management, the proposed AI Act, foresees specific requirements on documentation, logging, transparency and the possibility of human oversight, and will ensure that platforms as users of high-risk AI systems will have access to the necessary information. It might be necessary to establish internal procedures to ensure that this information is shared as appropriate with people working through platforms who are subject to algorithmic management, or with their representatives.

Finally, it should be noted that **the existing jurisprudence on the applicability of the EU's internal market *acquis* to digital labour platforms is not conclusive**, mostly due to their constantly evolving business models that make laws and rulings difficult to future-proof. For instance, the CJEU ruled in 2017 that UberPop, one of the services offered by Uber connecting non-professional drivers to customers, was only partially an information society service, as an integral part of an overall transport service which was thus subject to national transport regulations and did not benefit from certain protections under the EU internal market laws.<sup>223</sup> Uber subsequently ceased to offer its UberPop service, defining itself since then as falling under the scope of information society services' regulations, such as the P2B Regulation and the forthcoming DSA, rather than national transport regulations.

### 3.5.3 National responses to the challenges of platform work

#### a) National initiatives related to employment status and working conditions

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<sup>221</sup> Regulation (EU) 2016/679. Available [online](#).

<sup>222</sup> See a detailed overview of internal market *acquis* and its application to platform work in Section 3.5.2 of the accompanying analytical document.

<sup>223</sup> CJEU, cases C-434/15, *Asociación Profesional Elite Taxi (Uber Spain)*. Available [online](#).



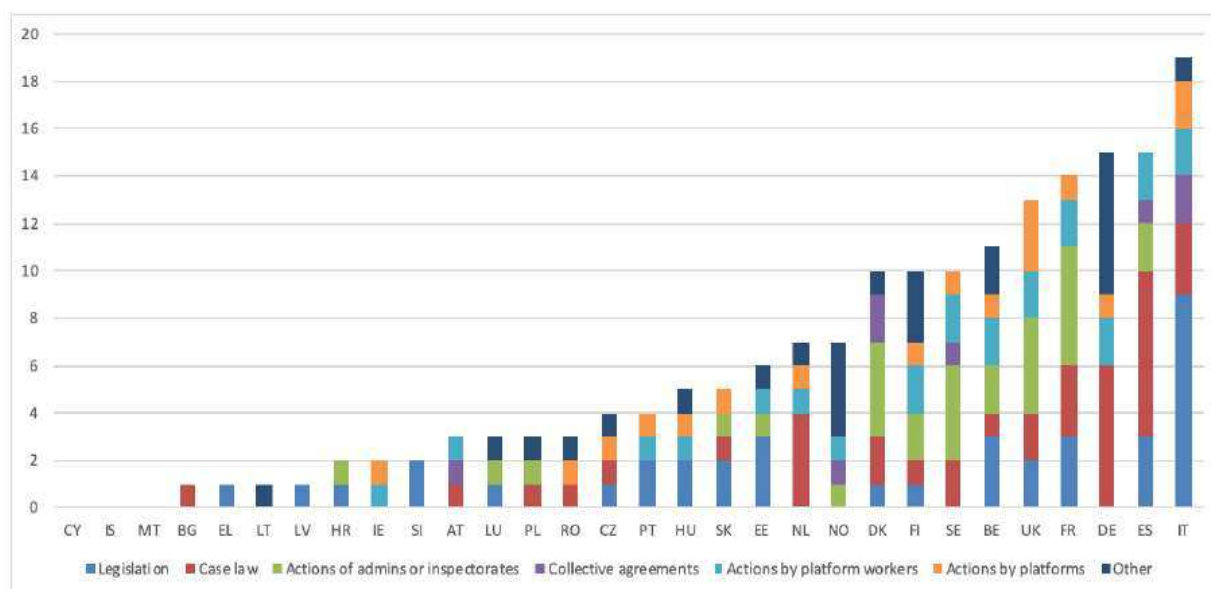
National responses to platform work are diverse and are developing unevenly across Europe. **Very few** EU Member States adopted national legislation specifically targeting improvement of **working conditions and/or access to social protection in platform work**. In other Member States people working through platforms may be impacted by legislative initiatives not specifically targeting platform work. In some Member States platform work and a possibility to introduce legislative changes is currently debated.

Recent national legislation which has directly or indirectly impacted working conditions and social protection of people working through platforms vary in terms of adopted approaches:

- defining their **employment status**; and/or
- extending the personal scope of application of national labour and social protection law traditionally applicable to **workers**; and/or
- regulating the working conditions and social protection for persons in **non-standard employment**; and/or
- strengthening the rights and protection of the **self-employed** and/or
- introducing a third category status with ad hoc rights and provisions.<sup>224</sup>

In addition, national legislation has been mostly adopted in specific sectors, notably in the sectors of ride-hailing **services** and/or in **food delivery services**. In total, national experts catalogued 177 responses across the EU27, the UK, Norway and Iceland, excluding tools considered very general, for example general labour law (cfr. Figure 13).<sup>225</sup> These include civil-society actions, such as collective bargaining agreements and platform-driven responses, that are discussed in more detail in section 3.3.2.

**Figure 13: National initiatives related to platform work, including civil society actions**



Source: own elaboration from data gathered in national surveys

<sup>224</sup> Study to gather evidence on the working conditions of platform workers (CEPS, 2020), p. 102-103. Available online: <https://www.ceps.be/sites/default/files/2020-09/Working%20conditions%20of%20platform%20workers.pdf>

<sup>225</sup> Note, this graphic only shows the count of significant identified responses. It is mostly indicative of the relative amount of 'activity' of various stakeholders regarding working conditions and social protection of platform workers across countries. It does not indicate the intensity or effectiveness of the responses. This number should be understood very cautiously, as it is not always easy to decide when a tool is relevant enough to include. Moreover, it often proved difficult to find and verify responses that were initiated but abandoned, or simply pending.

**France** is the only EU Member State which has adopted **specific legislation providing some labour and social rights to people working through platforms** irrespective of the sector of economic activity, through a revision of the Labour Code in 2016.<sup>226</sup> The law specifically targets technologically and economically dependent self-employed by granting them access to a voluntary insurance against work accidents. Platforms have to pay the premiums unless they are providing a collective insurance for people working for them. People working through platforms are also granted the right to form a trade union, to take collective actions and to continuing education and validation of the acquired experience.

**France** has also recently adopted a transportation law (2019)<sup>227</sup> which, amongst other things, addresses platform work. It introduces **voluntary charters** in which platforms can offer **rights and obligations to riders** while classifying them as **independent contractors**.

While the above mentioned Labour Code provisions apply to platform work as self-employed activity, following two Court de cassation rulings recognising employee status of people working through platforms<sup>228</sup> as employees there are ongoing discussions in France on the employment status of people working through platforms. Different possibilities are being considered, including a recourse to a third operator to provide platform self-employed workers with the status of employee ('portage salarial' or the use of existing legal status of 'employed partner of a cooperative society').<sup>229</sup>

In **Italy**, regional legislation in Piedmont and Lazio (2019)<sup>230</sup> directly addresses the **working conditions and social protection of people working through platforms** by improving the labour and social rights of all platform workers irrespective of their employment status. This includes minimum protection for all 'digital workers' including protection in the event of accidents at work, safety training, liability and accident insurance, and certain social protections. The law also reiterates regional prohibition of compensation per task.

In 2019, Italy also adopted national, specific legislation<sup>231</sup> with a view to increase the protection of the **working conditions of self-employed food delivery riders**.

The law provides:

- the right to have written and transparent working conditions;
- the right to information;
- prohibition of piece-rate payments while hourly pay-rates have to be determined in accordance with the minimum wages that are paid on the basis of collective agreements applied to employees in a similar sector;

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<sup>226</sup> LOI n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels (1), also known as Loi El Khomri. Available [online](#).

<sup>227</sup> Loi d'orientation de mobilité, LOM, 24.12.2019. Available [online](#).

<sup>228</sup> Take Eat Easy (18 November 2018, case 17-20.079) and Uber (4 March 2020, case 19-13.316)

<sup>229</sup> J-Y Frouin (2020) Available [online](#)

<sup>230</sup> Regione Lazio, Legge Regionale 12 aprile 2019, n.4. Available [online](#).

<sup>231</sup> L. 2 novembre 2019, n. 128, Conversione in legge, con modificazioni, del decreto-legge 3 settembre 2019, n. 101. Available [online](#).

- the right to supplementary payments for night work, work on public holidays and work performed in other exceptional circumstances.

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

In **Portugal**, legislation was adopted in 2018<sup>232</sup> on **digital labour platforms** in the passenger transport sector. The law aims at regulating the activity of individual paid transport of passengers by ordinary vehicles (TVDE). By stipulating that only legal persons can be contracted by ride-hailing digital labour platforms, the law is addressing some of the challenges faced by drivers when they are directly engaged by a (most often local) company. The law also ensures working time limitations of drivers by clarifying which existing provisions apply depending on whether the driver is a worker or a self-employed. In addition, it forbids the driver from working longer than 10 hours in a period of 24 hours. This rule applies regardless of the number of TVDE platforms with which the drivers have a contract.

In **Spain**, a new law was adopted on 11 May 2021, which introduces a legal presumption that delivery platform riders and drivers in the food and parcel delivery sector are workers, placing the burden on the platform to show that they are not<sup>233</sup>. The law gives delivery platforms a mid-August deadline to hire the workers currently freelancing for them, granting the workers with rights as well as access to social security contributions<sup>234</sup>. The new law also requires the companies to provide trade unions with details on how, amongst other things, their algorithms and AI systems assign jobs and judge workers' performance. In addition to the aforementioned laws, several legislative proposals aiming at increasing protections of people working through platforms are currently being **discussed** by national administrations.

In **Germany**, the Federal Ministry of Labour has published a Green and White Paper on the future of work, in which platform work has a prominent place. Among the proposed plans are the inclusion of self-employed people working through platforms into the statutory pension insurance scheme and the improvement of their work accidents insurance. The Ministry furthermore proposes to establish transparency and reporting obligations for all platform operators and the right to portability of work reviews for people working through platforms. In November 2020, the Federal Ministry of Labour and Social Affairs issued a paper on 'Fair Work in the Platform Economy'<sup>235</sup>, laying out key issues it intends to look into to improve the working conditions of people working through platforms. Among the proposals it will be considering is a reversal of the burden of proof to facilitate court proceedings regarding the potential misclassification of the employment status of people working through platforms.

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<sup>232</sup> Lei n°45/2018 Regime jurídico da atividade de transporte individual e remunerado de passageiros em veículos descaracterizados a partir de plataforma eletrónica. Available [online](#).

<sup>233</sup> Available [online](#).

<sup>234</sup> Available [online](#).

<sup>235</sup> Available [online](#).

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

In the **Netherlands**, the debate on the employment status of people working through platforms is part of a wider debate on the growing diversification of non-standard forms of work and flexible work arrangements and the lack of coherence between labour, taxation and social security legislation between the different employment statuses.<sup>236</sup> The Netherlands already uses a legal rebuttable presumption of employment status which states that when a person performs work for more than twenty hours per month against remuneration for three consecutive months they are presumed to perform this work under a contract of employment. The burden of proof about the opposite is shifted to the party that is engaging the worker.<sup>237</sup> However, people working through platforms less than 20 hours per week in practice cannot rely on this legal presumption. In October 2020, the Dutch government announced it will further examine whether a **legal presumption of employment status as a worker could be installed specifically for platform work**.<sup>238</sup>

In **Portugal**, the Green Book on the future of work was presented in November 2020 to the social partners. It addresses several challenges related to platform work and includes proposals such as:

- the creation of a legal presumption on the status of employee for people working through platforms;
- improved social protection for the self-employed;
- the collective representation of people working through platforms.

Several countries have taken legislative action related to platform work in other dimensions than working conditions or social protection of people working through platforms. For example, Estonia<sup>239</sup>, Denmark, Czechia, Hungary, Poland, Greece<sup>240</sup> and others enacted legislation aiming at **creating a level playing field in the sector of ride-hailing services** between the digital platforms and the traditional taxi businesses. These measures have indirectly impacted on the position of platform workers who are engaged as drivers.

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<sup>236</sup> Commissie Regularing van Werk, (2020), In wat voor land willen wij werken?: naar een nieuw ontwerp voor regularing van werk

<sup>237</sup> an Voss, H (2017), “The Concept of ‘ Employee’: The Position in the Netherlands”. Available [online](#).

<sup>238</sup> Letter of the Minister and the Secretary of State of Social Affairs and Employment. Available [online](#).

<sup>239</sup> Estonia was the first country to amend its Public Transport Act. In 2011 it created a common licensing and quality vetting for ride-sharing platform businesses and traditional taxi companies. (CEPS, 2020)

<sup>240</sup> In the course of 2019, a law was adopted which banned ride-hailing platforms from competing with traditional taxis by setting their own fare policy, or by contracting with non-taxi drivers, or by setting higher quality standards than those sanctioned by law. (ECE, forthcoming)

## **b) National initiatives related to registration and reporting obligations**

In most Member States, digital labour platforms fall under the main national regulations applicable to businesses. **No specific registration or licensing regime is applied**, unless it concerns temporary work agencies, which are usually subject to specific local registration or licensing legislation.

Generally, platforms **do not currently report on the payments** that they have made to individual people working through platforms. This may lead to various situations of un(der)declared work and un(der)reported income, especially given the transnational settings in which platform work is organised. However, several Member States have already adopted legislation on **revenues or income** generated by platforms or by people working through platforms.

In **France**, since 2019, digital labour platforms are obliged to report to the tax authorities when payments to people working through them exceed EUR 3 000 per year.

In **Belgium**, licensed digital labour platforms have to report annually to the Belgian tax authorities on the income that was paid to people working through them.

In **Estonia**, in 2015, the government and ride-hailing platforms Taxify and Uber started to collaborate on the creation of an information system to simplify the income and tax declarations of the drivers. These have the option to declare their income through a pre-filled form provided by the Tax and Customs Board.

In **Lithuania**, since 2020, ride-hailing digital labour platforms are obliged to report to the tax authorities the data of the drivers that have made use of the app, as well as the income they have generated. Based on the data received, the tax authorities prepare preliminary tax returns for people working through ride-hailing digital labour platforms.

## **c) National initiatives related to the use of algorithms in the workplace**

Without prejudice to the internal market acquis (see Section 3.5.2), existing measures address more generally algorithmic management at the workplace. A number of EU Member States have policies building on personal data protection laws or anti-discrimination legislation. This is the case in **Austria, Belgium, Czechia, Estonia, France, Ireland, Luxembourg** and the **Netherlands**. Reference to privacy policies is made in **Czechia** and **Luxembourg**, while antidiscrimination legislation is built upon for the use of algorithmic management and AI in **Germany** and **Italy**. In **Estonia**, legislation on responsibility has been highlighted as a relevant one for application also in the domain of AI and algorithmic management. In **Italy**, relevant AI policies build on information rights and are based on the Charter of Bologna, as well as on regulation concerning remote monitoring.

Most Member States have also adopted or are in the process of adopting **national strategies on Artificial Intelligence**, in line with the EU Coordinated Plan on Artificial Intelligence, which also refer to the impact of AI on the workplace.

**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, based on a Resolution of the Council of Ministers. This document seeks to regulate the use of AI in various aspects of public life, including work and education, while acknowledging the risks connected with the use of digital technologies.

**Portugal** adopted a Green Book on the future of work, which also includes provisions for stipulating AI at workplaces. In addition, Portugal has also adopted the Charter for Fundamental Rights in the Digital Era, which calls for transparency in using AI.

No EU Member State has adopted legislation specifically addressing **algorithmic management in platform work** with the exception of Spain where the law passed in May 2021 (see section 3.5.3/a) includes a provision regarding transparency of algorithms and the use of AI to manage workforces. According to this, the worker needs to be informed of the parameters and rules on which algorithmic management is based, affecting decision-making and impacting working conditions and access to work.

## **3.6 Consequences of the problem**

### **3.6.1 For people working through platforms**

**Platform work offers many opportunities for flexible work arrangements and additional income.** It can help people complement their revenue from other jobs, expand their entrepreneurial activity and acquire new clients. The flexibility in working hours that platform work often brings enables many people to combine work with family or other care responsibilities or studies. New skills can be acquired and applied in practice. Platform work also often represents an entry point for groups who otherwise have difficulties accessing the labour market, such as migrants or people with disabilities.<sup>241</sup> People engaged in online platform work can develop new business ideas and thus contribute to job creation in other areas.

**Nevertheless, platform work often presents certain challenges which relate to precarious working conditions.** Depending upon the type of digital labour platform in question, platform work can affect working conditions to varying degrees. Despite a classification as self-employed, people often lack the autonomy and ability to shape their own working conditions traditionally associated with a self-employed status. Rights and protections normally available under labour law in cases of subordination are also unavailable to them as self-employed.

#### **Lack of awareness of entitlements and inability to claim existing rights**

**The existence of an employment relationship remains a gateway to labour and social protection, both at Member State and EU level.** The uncertainty over the employment status of people working through platforms often means they are unable to claim key labour and social rights, which significantly adds to their precariousness. (see also Section 3.5.1).

In practice, **the only available option for people working through platforms who wish to clarify their employment status, is to bring a legal action in courts or to rely on the jurisdiction of the labour inspectorates in their respective Member States.** Given that

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<sup>241</sup> International Labour Office (2021), particularly section 4.1.4.



courts decide on a person's employment status on a case-by-case basis and in light of labour inspectorates' often limited resources and powers<sup>242</sup>, these courses of action may not always bring about legal clarity and often require long time before they reach a conclusion. What is more, people working through platforms may be discouraged from bringing a claim in the first place, either because of financial difficulties or because of practical challenges, such as when platforms require claims to be brought in a particular jurisdiction.

Furthermore, **people working through platforms may often be unaware of their rights under EU and national law**. For instance, though people working through platforms are entitled to rights over their personal data under the General Data Protection Regulation (GDPR) irrespective of their employment status, the extent of such protection is not always well-understood.<sup>243</sup>

### **Weak bargaining power and inability to enter collective bargaining agreements**

Digital labour platforms defining their business model as intermediaries, may at the same time be exercising tight organisational control over the work process. **Platforms may unilaterally set contractual terms and conditions related to pay, working time, dispute resolution, customer service, and more**, usually in the absence of negotiation with the people working through them. This, coupled with the **power of certain platforms to deactivate users with little to no justification**, gives people working through them weak bargaining power. In addition, the fact that various aspects of these contractual terms and conditions often resemble those in a subordinate employment relationship can lead to a **lack of equal treatment between people working through platforms and workers in similar industries**. These challenges are particularly relevant for people who are “false self-employed”.

Moreover, the complex language in which terms of service agreements are often framed, together with the fact that many of the contractual **terms and conditions are in practice algorithmically implemented**, limits access to information regarding work organisation. This, in turn, can lead to imbalances of power and create obstacles to the reclassification of false self-employed people, who may struggle to prove subordination.

Through their terms of service agreements and privacy policies, **digital labour platforms also reserve the right to collect and process extensive data on the people working through them. Such data is then transformed by platforms into data intelligence**<sup>244</sup> which is used, among other things, to determine and supervise various aspects of the work process. **Though the GDPR grants individuals the right to access their personal data,**

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<sup>242</sup> ECE (forthcoming).

<sup>243</sup> In a 2020 case from the Netherlands against Uber (a transcript of the case is available [here](#)), a group of drivers brought a case against the platform alleging that their deactivations contravened article 22 of the GDPR, which establishes the right not to be subject to a decision based solely on automated processing. The court in that particular case did not find a violation, namely because the deactivation decisions in question were taken by a dedicated team of Uber and hence were not deemed to be solely based on automated processing. However, this does not rule out the possibility that a case against another platform might produce a different outcome, seeing as case law has not yet clarified when an automated decision will count as being based solely on automated processing for the purposes of article 22.

<sup>244</sup> P.J. Singh (2020), Economic Rights in a Data-Based Society - Collective Data Ownership, Workers' Rights, and the Role of the Public Sector, Friedrich-Ebert-Stiftung. Available [online](#).



**people working through platforms do not always possess the legal awareness and knowledge necessary to effectively manage their data**

At the same time, people working through platforms have **limited access to collective bargaining**. For genuinely self-employed people this is linked with existing obstacles related to competition law. For false self-employed and those people working through platforms who are classified as workers there are no such formal obstacles. However, the **physical dispersion of people working through platforms** as well as the **absence of a fixed physical workplace** complicates efforts to organise.<sup>245</sup>

### **Lack of career development, upskilling, training and mobility opportunities**

Tasks on digital labour platforms can vary from high-skilled to low-skilled ones. However, the nature of many low-skilled tasks such as food delivery or data cleaning, often means that platform work does not offer many on-the-job learning opportunities. Even on high-skilled tasks on online labour platforms, such as computer programming, upskilling might also be limited as people prefer to undertake tasks they are familiar with to maximise their performance on the platform.<sup>246</sup>

The preference for platform-specific reputation systems as opposed to traditional skills metrics such as work portfolios or education histories, can also affect the mobility of people working through platforms. In particular, **the different metrics and indicators that digital labour platforms use to rate users can have the effect of locking people in the platforms, as the costs of switching to another platform and building one's reputation from scratch are high**. Lack of transparency, on the other hand, might also shut off access to work or professional mobility opportunities for people working through platforms, often without a clear reason. This is reinforced by the fact that people working through platforms often do not have any opportunities to contest unfair rating outcomes.<sup>247</sup>

That being said, however, platform-specific reputation systems like client reviews or ratings, can also have positive effects. They can act as equalizers of opportunity for people who have not pursued higher education and they can increase anonymity, both of which can potentially reduce risks of discrimination. Nevertheless, rating systems do not completely eliminate the potential for discrimination. In fact, either as a matter of platform design or because of clients' own biases, discrimination can still occur. For instance, there are online labour platforms that permit clients to restrict tasks to people from specific geographical areas.<sup>248</sup> Therefore, unless designed to be accessible to all, digital labour platforms may reproduce rather than combat discrimination.

Although people working through platforms are in theory free to work for multiple platforms at once, in practice they are discouraged from doing so. A recent study by CEDEFOP revealed that the **majority of people working through platforms, do not feel they can**

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<sup>245</sup> H.Johston and C.Land-Kazlauskas (2019), Organizing on-demand: Representation, voice, and collective bargaining in the gig economy, International Labour Office, Geneva: Switzerland. Available [online](#).

<sup>246</sup> Eurofound (2020), Platform work: Skills use and skills development. Available [here](#).

<sup>247</sup> Katherine C. Kellog et al. (2020)..

<sup>248</sup> V. De Stefano (2016), "The rise of the «just-in-time workforce»: On-demand work, crowdwork and labour protection in the «gig-economy»", Conditions of Work and Employment Series No.71, International Labour Office, Geneva: Switzerland.

**switch platforms without this affecting their income.**<sup>249</sup> This dependence on one platform jeopardises the mobility of those working on digital labour platforms and can have a freezing effect on their career development. This is a challenge for all people working through platforms, regardless of whether they are genuinely self-employed or misclassified as such.

### **Precariousness and discrimination**

- ***Earnings***

**Earnings on digital labour platforms are often unpredictable, particularly in online platform work and when low skilled tasks are concerned, given the potentially large competition for this type of tasks.** Payments are usually made on a per-task basis and platforms retain a percentage of the earnings made through them as commission. Being an “on-demand” economy, workers engaging in platform work are confronted with insecurity about future work assignments as there is no obligation of clients or platforms to continuously provide them with work which is a general characteristic of a traditional employer-employee relationship.

**Earning vary depending upon the business model in question.** For instance, on certain online digital labour platforms, freelancers can negotiate the rate of their services directly with their respective clients. This is particularly important for self-employed persons working through platforms, since it allows them to test and expand their entrepreneurial skills. Nevertheless, platforms may also reserve the right to refuse payment where the work in question does not meet the standards of the platform or those of the client, or may prohibit payments or communication outside of the platform, thereby de facto limiting the freedom of self-employed persons to organise their work.<sup>250</sup>

Meanwhile, other platforms such as those in the passenger transport sector or those mediating micro-tasks, often **determine prices algorithmically**, with no input from or without the knowledge of the parties involved. In addition, in certain online contest-based platforms, people working through platforms are required to provide the work requested by the client, who then decides which of the workers to reward. This results in a situation of only one or few of the workers being paid, while a larger number provided labour services, and it is difficult, if not impossible, for the worker to assess their likelihood of being paid in advance.<sup>251</sup>

This unpredictability of earnings can create considerable income insecurity for false self-employed persons who are unable to benefit from minimum wage or to bargain collectively to improve their financial circumstances. Furthermore, an ILO report has observed that on certain online digital labour platforms, labour supply exceeds labour demand, which, in turn, can have the effect of putting downward pressure on earnings<sup>252</sup>.

- ***Working time***

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<sup>249</sup> CEDEFOP (2020), *Developing and matching skills in the online platform economy - Findings on new forms of digital work and learning from Cedefop's CrowdLearn study*, Luxembourg. Available [online](#).

<sup>250</sup> International Labour Office (2021).

<sup>251</sup> Eurofound (2018).

**Issues related to earnings are also closely connected to the question of working time.** For example, the same ILO report<sup>253</sup> notes that people working through online digital labour platforms spend **about one third of their time doing unpaid work, a problem that is also observed on certain on-location platforms.** This issue is of particular importance for false self-employed, who because of the misclassification are not protected through the working time legislation.

In theory, people working through platforms are free to determine when to log in to platforms and thus when to work. However, **a closer look into the actual working conditions in platform work reveals that the business model of digital labour platforms affects working time in various ways.** For instance, the use of algorithms to allocate tasks could also lead to increased pressure to perform tasks as quickly as possible, and/or force people working through certain types of platforms (particularly online ones) to be hyper vigilant, spending many hours sifting through tasks and being on call day and night, as most micro-task platforms only allow people to pick up jobs on a first-come, first-served basis.<sup>254</sup> This can be particularly problematic for women, who still carry a disproportionate burden of care responsibilities, and who therefore may not be able to pursue tasks with the same intensity as their male counterparts.

Another issue related to working time – particularly in some forms of on-location platform work - refers to the potential of having to work unsocial hours (e.g. at night, weekends, public holidays) or on short notice (particularly as regards low skilled platform work), which tends to negatively influence work-life balance.<sup>255</sup>

- ***Occupational safety and health***

The unpredictability of earnings mentioned above can also add to the pressure of working at a rapid pace, which can compromise the **occupational safety and health (OSH)** of those engaged in platform work. For example, it can increase the risk of road traffic accidents among those working on food delivery platforms, or it may induce visual fatigue and musculoskeletal problems for those working on online digital labour platforms.<sup>256</sup> **Work-related stress is also frequently reported as one of the main challenges facing people working through platforms, which can be traced back to other challenges such as income insecurity and the pressure to work at a rapid pace.**<sup>257</sup>

In addition, the demographic characteristics of people working through platforms can potentially aggravate their OSH risks. Being generally young and at least partly belonging to groups in a disadvantaged situation such as migrants, platform workers might not be well familiar with OSH standards and practices, and/or not in a position to follow them.<sup>258</sup>

- ***Social security and social protection***

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<sup>255</sup> Eurofound (2018).

<sup>256</sup> P. Berastegui (2021), *Exposure to psychosocial risk factors in the gig economy: a systematic review*. ETUI Publications, Report 01.2021. Available [online](#).

<sup>257</sup> *Ibidem*.

<sup>258</sup> Eurofound (2018).

Self-employed persons and non-standard employees working through platforms generally have lower access and coverage under the national social protection schemes than traditional employees.<sup>259</sup> For example, though in some Member States, certain social security benefits are universal<sup>260</sup>, other benefits such as unemployment schemes are limited to workers<sup>261</sup> while effective access to benefits such as pensions can be restricted in practice<sup>262</sup>. Moreover, inadequate access to social protection can also be an issue for workers who engage in platform work as a secondary activity, who do not often meet the necessary eligibility thresholds. As a result, people working through platforms, irrespective of their employment status classification, are often unable to access adequate social protection. This can have implications for access to family leaves which can particularly affect women who, as already mentioned, carry a disproportionate burden of care responsibilities. In the longer term, limited access to old-age pensions for an increasingly important share of the work force can jeopardise future adequacy of pensions and puts an additional burden on the welfare state/society.

Limited social protection coverage becomes even more problematic in light of the OSH-related risks to people working through platforms, which have only intensified since the outbreak of the COVID 19 pandemic. On a global level, a recent ILO study observes that people working through platforms often face violence and harassment.<sup>263</sup> In particular, the report notes that women are more likely to report concerns about physical safety than men, which in some cases concerning on-location platforms, can affect their willingness to work during night hours. This, in turn, can have implications on women's ability to access work.

- *Access to justice*

In case of a platform based in one Member State and operating in another questions may arise about the applicable law to the working arrangement. Where people working through platforms are workers, EU legislation is clear about the applicable law being that of the place where the “employee habitually carries out his work in performance of the contract”.<sup>264</sup> However, **for people working through platforms who are classified as self-employed, platforms' terms of service can deter them from having recourse to the local system of justice.** This is particularly problematic as courts are usually the only venue through which people working through platforms can challenge their classification.

- *Algorithmic management*

**The use of algorithms to give direction and exert supervision and control could lead people working through platforms, as well as others subject to algorithmic management, to experience frustration, discrimination and/or thwarted participation.** Algorithmic and data bias can lead to instructions that are not intelligible, reinforce

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<sup>259</sup> ECE (forthcoming). See also European Social Policy Network (ESPN) thematic report (2017), Access to social protection for people working on non-standard contracts and as self-employed in Europe - A study of national policies. Available [online](#).

<sup>260</sup> For example, Austria has a mandatory social security system that covers all forms of employment when it comes to health insurance, old age and invalidity pension insurance, and workplace accident insurance. However, gaps exist for self-employed workers with regards to sick leave and unemployment insurance.

<sup>261</sup> ECE (forthcoming).

<sup>262</sup> ESPN (2017)

<sup>263</sup> International Labour Office (2021).

<sup>264</sup> Article 8 of the Rome I Regulation.

inequalities, or negatively affect the welfare of those being nudged.<sup>265</sup> **The central role that ratings play in platforms' business models could reinforce the potential for discrimination**, given that algorithms and ratings can be subject to gender and race stereotyping.

While these challenges inherent to algorithms may be addressed in a general manner through forthcoming EU internal market *acquis*, specific issues related to labour law rights and obligations in the world of platform work arise irrespective of a person's employment status. People working through platforms often have limited opportunities for redress against unfavourable algorithmic decisions, and in most cases the only available option is to bring a case before a court. In addition, **the lack of information for and involvement in (changes to) the way algorithms are used could reinforce power asymmetries and negatively affect working conditions.**

### 3.6.2 For digital labour platforms

As illustrated in Section 3.1.2, many digital labour platforms are growing fast, constantly developing and updating their business models and expanding across borders. As they enter different national markets, they need to comply with different regulatory regimes or lack thereof, facing mounting legal uncertainty and economic unpredictability.

Section 3.5 sheds light on the existing patchwork of laws regulating the digital labour platform economy. Digital labour platforms have to comply with the EU's social and labour *acquis* in Member States where a national law classifies the people working through them as workers. In other Member States, digital labour platforms have to comply with existing rules for contracting self-employed people, unless they voluntarily decide to hire the people working through them.

At the same time, digital labour platforms have to comply with the EU's internal market *acquis* in all Member States where they operate. The heterogeneity of both the personal and material scope of the platform-relevant internal market *acquis* means companies still face regulatory uncertainty and compliance costs and that, de facto, there are different incentives and disincentives when choosing which Member States to operate in. This contributes to a regulatory uneven playing field with negative spill over effects, including a race-to-the-bottom competition between platforms.

Furthermore, a growing number of court rulings at various administrative levels within Member States is contributing to the legal and jurisprudential fragmentation faced by digital labour platforms in Europe. As illustrated in Section 3.2, most of the court cases which have reached a final verdict concern the employment status of people working through platforms and/or their working conditions. A smaller number of court cases and rulings concern the business classification of digital labour platforms.

These judicial outcomes and the lack of an even regulatory response to the challenges they highlight contribute to a generalised, negative perception of the digital labour platform economy from a social viewpoint, with negative effects on the public's trust vis-à-vis these platforms and investors' willingness to support them financially, also in view of their

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<sup>265</sup> Katherine C. Kellog et al. (2020).

uncertain growth perspectives.<sup>266</sup> The legal uncertainty surrounding platforms' liability vis-à-vis people working through them may have substantial long-term costs, which risk advantaging the big players who have the financial capacity to plan for unforeseen adversities<sup>267</sup> or pay penalties.<sup>268</sup>

These elements play into the fragmentation of the EU's single market which, coupled with the compliance costs of having to operate in different national markets according to different rules, prevent platform SMEs and startups from fully benefitting from the single market's economies of scale and scope. This makes it challenging for them to scale-up from a local or national to a European level, where they would be able to bolster the EU's competitiveness on the global stage.

### 3.6.3 For markets and consumers

The lack of EU regulation addressing the working conditions in platform work has repercussions on the functioning of markets and on consumers who purchase services through digital labour platforms. The regulatory fragmentation across the EU, while posing administrative hurdles and costs to all market players, is a serious challenge to the scaling-up of platform SMEs and start-ups. This weakening of challengers' growth opportunities entrenches the market position of incumbents, who are able to acquire a dominant or semi-dominant role in their sector of activity.

Market concentration is particularly strong in the digital economy, thanks to the economies of scale and scope, data-driven 'network effects' and platforms' control over data.<sup>269</sup> These create high barriers to entry for new and growing platforms in comparison to well established ones.<sup>270</sup>

Incumbent digital labour platforms also gain market power by entering 'adjacent markets' (i.e. markets that share some but not all features of a company's market of origin) and leveraging their initial pool of data to acquire even more data, leading to growth and market entrenchment.<sup>271</sup> For example, a ride-hailing platform may decide to leverage the data on road traffic collected through its drivers to enter the more profitable market of self-driving vehicles, which in turn may give it the revenues necessary to boost its position in the passenger transport sector.<sup>272</sup>

The loop of growth and market concentration observable, amongst others, in digital labour platforms active in various sectors, has detrimental effects for the competitiveness of the

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<sup>266</sup> See for example the negative outcomes of [Deliveroo](#) and [Uber](#)'s IPOs.

<sup>267</sup> Article in *The Guardian* (2021), Deliveroo sets aside £112m to cover legal costs of delivery rider cases. Available [online](#).

<sup>268</sup> Article in *Politico EUROPE* (2021), Italy demands €733M in fines from food delivery platforms. Available [online](#).

<sup>269</sup> Song, P. et al. (2018), The Ecosystem of Software Platform: A Study of Asymmetric Cross-Side Network Effects and Platform Governance, *MIS Quarterly* (42:1), pp. 121–142. Available [online](#).

<sup>270</sup> Parker, G. et al. (2017), Platform Ecosystems: How Developers Invert the Firm, *MIS Quarterly* (41:1), pp. 255–266. Available [online](#).

<sup>271</sup> R. Picker (2018), Platforms and Adjacent Market Competition: a Look at Recent History, in *Digital Platforms and Concentration*, in University of Chicago Booth School of Business. Available [online](#).

<sup>272</sup> S. Davies (2019), Power On: Accelerating Uber's Self-Driving Vehicle Development with Data, in *Uber Engineering blog*, Available [online](#).



economic sectors concerned, the companies operating with ‘traditional’ business models in those sectors, as well as for consumers, who face reduced choice and increased prices. Consumers may also face problems arising from the informal production of services and the insufficient transparency of liability rules and resolution or redress mechanisms. Given the uncertainty surrounding the employment status of people working through platforms, it is also difficult for consumers to establish who is responsible if the quality of a service is not up to standard or if a good is not delivered in the shape or form promised by the seller.<sup>273</sup>

Furthermore, the business model underpinning online labour platforms may increase the risk of off-shoring to low-income countries. As illustrated in Section 3.1.1, the bulk of online labour supply comes from low-income countries, whereas the majority of online labour demand comes from high-income countries.

This off-shoring of online platform work has negative spill-over effects for consumers, who may purchase lower-quality services than paid for, since the consumer protection and product quality rules of such countries may be less stringent than the EU’s. The off-shoring may also have negative effects for the people offering those same services in high-income countries, since they may not be able to compete with the low fees paid to their low-income countries’ counterparts.

### 3.6.4 For Member States

Member States face similar challenges with regards to defining the status of workers and companies in the digital labour platform economy, enabling social dialogue, responding to different protection needs for the diverse types of platforms and for a variety of work arrangements (part-time, hybrid income, etc.), mitigating the risks of undeclared work, social dumping and gatekeeping by platform companies.<sup>274</sup>

Member States’ public finances are negatively affected by the legal uncertainty surrounding the employment status of people working through platforms. Self-employed people and non-standard workers often do not pay or only pay low income taxes or social contributions. Misclassifying those working on platforms exacerbates this challenge, thereby leading to higher net fiscal costs for governments<sup>275</sup>, unequal social protection coverage for the people concerned and unfair competition vis-à-vis ‘traditional’ companies, which may only outsource non-core tasks of their business.<sup>276</sup>

As explained in Section 3.2, the legal uncertainty surrounding the employment status of people working through platforms, as well as the constantly evolving business model of digital labour platforms, complicates the enforcement of existing laws and court rulings.

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<sup>273</sup> Eurofound’s repository on the platform economy: consumer protection. Available [online](#).

<sup>274</sup> Key messages of the Mutual Learning Programme (MLP) organised by the German Presidency with Member States’ experts in October 2020.

<sup>275</sup> A. Thörnquist (2015), False Self-Employment and Other Precarious Forms of Employment in the ‘Grey Area’ of the Labour Market, *International Journal of Comparative Labour Law and Industrial Relations*, 31(4), 411-429. Available [online](#). Sectoral evidence is also available, see for example: M. Faioli and E. Ales (2010), Self-Employment and Bogus Self-Employment in the European Construction Industry. Available [online](#).

<sup>276</sup> International Labour Office (2017), *Dependent self-employment: Trends, challenges and policy responses in the EU*, Employment Policy Department – Working Paper No. 228. Available [online](#).



These legal and jurisprudential challenges add to the already complex dynamics of cross-border cooperation between authorities described in Section 3.4.

Inspection in platform work poses challenges to national labour inspectorates by making them increasingly more difficult, primarily due to the opaqueness of platforms' complex business models. Furthermore, platforms' workforce is dispersed and rarely engaged in a traditional, onsite, employer-worker relationship, with the cross border character of some types of platform work further adding to the complexity.<sup>277</sup>

Enforcement difficulties by Member States' governments and courts are also exacerbated by the lack of clear rules on digital labour platforms' data reporting, which also has negative implications for future policy-making endeavours. This results in an overall underperformance of Member States' administrations and economies.

## 4. EU COMPETENCE AND ADDED VALUE

### 4.1 Possible legal bases

In accordance with Article 3 of the Treaty on European Union (TEU), the Union aims at promoting the **well-being of its people** and shall work in particular for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full **employment and social progress**.

Title X of the Treaty on the Functioning of the European Union (TFEU) contains the legal bases at the disposal of the Union for pursuing these objectives in the area of '**Social Policy**'. In this title, **Article 153(1) TFEU** provides the legal basis for the Union to support and complement the activities of the Member States with the objective to improve working conditions, social security and social protection, workers' health and safety, and the information and consultation of workers, among others. In those areas, Article 153(2)(b) TFEU empowers the European Parliament and the Council to adopt – in accordance with the ordinary legislative procedure – directives setting **minimum requirements** for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States.

This legal basis would enable the Union to set minimum standards regarding the **working conditions of people working through platforms**, where they are in an employment relationship and thus considered as workers. The Court of Justice of the European Union (CJEU) has ruled that "the classification of a 'self-employed person' under national law does not prevent that person being classified as a worker within the meaning of EU law if his independence is merely notional, thereby disguising an employment relationship".<sup>278</sup> **False self-employed people** would thus also be covered by EU labour legislation.

Should possible Union action address the situation of **genuine self-employed** people working through platforms as business actors, it could possibly be based on an internal market legal basis. Possible provisions in the TFEU include Article 53(1) – which empowers the Union to

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<sup>277</sup> Senior Labour Inspectors Committee (2020), Opinion on future EU OSH Enforcement priorities contributing to a renewed EU OSH Strategy, adopted on 21 October 2020, available [online](#)

<sup>278</sup> CJEU, cases C-256/01, Allonby, and C-413/13, FNV Kunsten Informatie en Media. Available online, respectively, [here](#) and [here](#).

issue directives coordinating national provisions concerning the taking-up and pursuit of activities as self-employed persons in cross-border situations – or Article 114 allowing for the approximation of laws with regard to the establishment and functioning of the internal market, which requires demonstrating that the aim and content of the intended initiative directly affects the establishment or functioning of the internal market within the Union<sup>279</sup>.

Finally, if an internal market legal basis is not available, possible Union action on the working conditions of self-employed people engaged in platform work could also be based on Article 352 TFEU, which allows the Union to act in order to attain one of its Treaty objectives in the absence of a more specific legal basis. The adoption of such a proposal would require unanimity in the Council, after obtaining the consent of the European Parliament.

## 4.2 Necessity and EU added value

Member States' labour markets are confronted with common challenges, linked to the structural trends triggered by globalisation, digitalisation and societal changes. These include an increasing share of non-standard and precarious work driven by the growing weight of the service sector in the economy, as well as the emergence of new forms of work organisation and business models, such as platform work. **While these new forms of work bring opportunities for businesses and individuals, in many cases the workers concerned may earn lower hourly wages than full-time permanent employees and face difficulty accessing social protection.** This results in an increased risk of in-work poverty. Traditional collective bargaining structures, which contributed to a more equal wage distribution in the past, are also eroding, in part due to the economic shift from manufacturing industries towards services and non-standard workers' lack of trade union coverage.

As shown in the sections above, **these problems are particularly acute in the case of people working through platforms.** Their unclear employment status fragilises their access to labour rights and social security coverage. While an employment relationship guarantees a basic set of rights and social protection standards, only few people working through platforms have undisputed access to this safety net; often litigation is necessary to attain it. The lack of transparency and responsibility inherent in work organisation managed by algorithms and the risk of algorithmic bias compounds these people's weak standing in the labour market.

As pointed out above, **Member States take different approaches on whether or not to regulate platform work, and in what direction.** National courts have repeatedly reclassified falsely self-employed people working through platforms as workers, but this trend is built on individual cases and is not developing consistently throughout the entire EU. As the legal protection and rights that these people enjoy often hinges on their employment status classification, their position in the labour market differs from one Member State to the other, even where labour law minimum standards set by Directives would apply to all workers in the EU. Rights of vulnerable self-employed people working through platforms are equally fragmented.

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<sup>279</sup> CJEU, case C-376/98, *Germany v Parliament and Council (Tobacco Advertising)*. Available [online](#).

Moreover, action by Member States alone would not address the above described challenges. **One third of EU-based platform work is estimated to be performed across borders**<sup>280</sup>, for instance with the platform operation or the client or both being established in another country than the person offering work through it. This adds complexity to contractual relationships, in particular where platforms' terms and conditions make legal disputes subject to the law and/or jurisdiction of the country where the platform is established or of yet another country.<sup>281</sup> Choice-of-law and choice-of-jurisdiction clauses as well as mandatory arbitration clauses are common in platforms' terms of contract.<sup>282</sup> **The social security coverage of people performing cross-border platform work is equally uncertain and depends strongly on their employment status.** Risks of non-compliance and obstacles to tackling undeclared work are higher in cross-border situations, in particular when it concerns online platform work.<sup>283</sup>

In the absence of EU minimum standards on platform work, platforms operate in different Member States under different jurisdictions – with case law developing in potentially different directions. While working through a platform established in a Member State under different national law compared to where the work is performed, people may encounter difficulties to ascertain their employment status and to enjoy the protection afforded to workers under the Brussels Ia and Rome I Regulations. **Due to the flexibility and the enhanced mobility of the digital labour platform economy whose primary means of production are algorithms, data and clouds and which is not tied to any fixed premises, Member States on their own will face difficulty in maintaining a level playing field among themselves as well as between platforms and traditional businesses.**

Consequently, EU action is needed to ensure that the highly mobile and fast-moving nature of the digital labour platform economy develops together with sufficient labour standards and for people working through platforms. Such action would not unduly increase the possible administrative burden for platforms, and would take into particular account the impact on SMEs and start-ups. By acting at EU level there is a possibility to take advantage of and build on Member States' recognised good practices and to create a momentum for Member States to advance together towards better outcomes. Consequently, the EU could further encourage Member States to focus on the long-term bigger picture and the major socio-economic challenges related to platform work.

**Only an EU initiative can set common minimum standards that apply to all platforms operating in the EU.** Joint action can work as a catalyst for a wider scale improvement of the working conditions in platform work: for EU labour markets and platform operators, creating a level playing field; for people working through platforms, reducing the uncertainty by providing more clarity on their employment status or the means to ascertain it and certain minimum rights addressing algorithmic management challenges for example. This in turn would contribute to less precariousness and better working conditions.

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<sup>280</sup> Urzi Brancati, M.C., Pesole, A. and Fernandez Macias, E. (2017).

<sup>281</sup> Kilhoffer *et al.* (2020).

<sup>282</sup> ILAW (2021).

<sup>283</sup> Kilhoffer *et al.* (2020).

Economies and labour markets of Member States are increasingly interlinked: **minimum harmonisation in the social field, in other words upward social convergence, is required**, if the ambition for the EU is to go beyond free movement of workers. **The specific EU added value lies and results in the establishment of minimum standards, below which Member States cannot compete, and the fostering of upwards convergence in employment and social outcomes between Member States.** This is clearly reflected in the wording of the Treaty itself, which provides that only "minimum requirements" can be enacted at EU level in social policy (Article 153 (2) (b) TFEU).

## 5. POLICY OBJECTIVES

In November 2017, the European Parliament, the Council and the Commission proclaimed the **European Pillar of Social Rights**<sup>284</sup>, comprising twenty rights and principles. The Pillar is aimed at guiding social developments in the EU and to support convergence of living and working conditions. On 4 March 2021, the Commission put forward the **European Pillar of Social Rights Action Plan**<sup>285</sup> to turn the principles into concrete actions, which was endorsed during the Porto Social Summit of 7 May 2021 as the guidance for the implementation of the Pillar<sup>286</sup>.

The initiative "Improving the working conditions in platform work" is intended to address challenges, through EU-level action, directly related to several principles set out in the European Pillar of the Social Rights, most importantly:

**Principle 5 on ‘Secure and adaptable employment’**, which foresees that *‘regardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment regarding working conditions, access to social protection and training...Innovative forms of work that ensure quality working conditions shall be fostered. Entrepreneurship and self-employment shall be encouraged. Occupational mobility shall be facilitated...Employment relationships that lead to precarious working conditions shall be prevented, including by prohibiting abuse of atypical contracts...’*

**Principle 7 on ‘Information about employment conditions and protection in case of dismissals’**, which proclaims that *‘Workers have the right to be informed in writing at the start of employment about their rights and obligations resulting from the employment relationship, including on probation period’*, that they have *‘the right to be informed of the reasons and be granted a reasonable period of notice’* as well as *‘the right to access to effective and impartial dispute resolution and, in case of unjustified dismissal, a right to redress, including adequate compensation’*.

**Principle 10 on ‘Healthy, safe and well-adapted work environment and data protection’**, which provides that *‘workers have the right to a high level of protection of their health and safety at work [and] ...a working environment adapted to their professional needs and which*

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<sup>284</sup> COM(2017). Available [online](#).

<sup>285</sup> COM(2021). Available [online](#).

<sup>286</sup> Action Plan available [online here](#) and Porto Declaration [here](#).

*enables them to prolong their participation in the labour market. Workers have the right to have their personal data protected in the employment context.'*

**Principle 12 on 'Social Protection'**, which states that '*regardless of the type and duration of their employment relationship, workers, and, under comparable conditions, the self-employed, have the right to adequate social protection.*'

On 9 March 2021, the Commission presented a vision and avenues for Europe's digital transformation by 2030: **the Europe's Digital Decade**<sup>287</sup>. Building on the Commission's Communication on **Shaping Europe's Digital Future**<sup>288</sup> of February 2020, the Communication sets a framework of digital rights and principles that will help promote and uphold EU values in the digital space.

**The EU's ambition is to be digitally sovereign in an open and interconnected world**, and to pursue digital policies that empower people and businesses to seize a human centred, sustainable and more prosperous digital future. The initiative "Improving the working conditions in platform work" aims at being one of the answers to this call.

The **general objectives** of the initiative are to:

- (1) Ensure that people working through platforms have decent working conditions and social rights.
- (2) Ensure conditions for sustainable growth of digital labour platforms in the EU.

The **specific objectives** through which the general objectives will be addressed are to:

- (1) Ensure that people working through platforms have – or can obtain – the correct legal employment status in light of their relationship with the platform and gain access to labour and social protection rights thereof.
- (2) Ensure fairness, transparency and responsibility in algorithmic management.
- (3) Enhance knowledge of developments in platform work and provide clarity on the applicable rules for all people working through platforms operating across borders.

## **6. POLICY OPTIONS**

### **6.1 Baseline scenario against which the options are assessed**

The assessment of relevant and feasible options for intervention at the EU level in ensuring proper working conditions for people working through digital labour platforms highly depends on the overall potential development pathways of the digital labour platform economy. Based on the rapid increase in technological progress and prevalence of digital labour platforms in recent years, it seems likely that either – at least in the shorter run – this trend would continue in moderate levels of progress or more expansively. The latter may especially be the case depending on the extent to which labour market actors, including national governments, view and use work through digital labour platforms actively as an

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<sup>287</sup> COM(2021). Available [online](#).

<sup>288</sup> COM (2020). Available [online](#).

opportunity for young or low-skilled people affected by the crisis following the Covid-19 pandemic to (re)enter the labour market.

**In a baseline scenario, policies surrounding the working conditions of people working through platforms would therefore evolve nationally without a common policy framework at the EU level.** This is particularly the case considering the pace of development of the digital labour platform economy, and the increasing number of people who are (partly) relying on income from work performed through digital labour platforms. In some Member States, an increasing number of strikes and calls for action has already resulted in regulations at national level, including attempts to reach agreements through collective bargaining. The varying court judgements add to divergent approaches across the EU.

**In the baseline scenario, the absence of EU action entails a high risk of regulatory fragmentation across Member States.**

Divergent approaches across the EU may also make it more difficult for digital labour platforms to work across borders using the same business model, making their expansion challenging. This could lead to markets dominated by large non-EU digital labour platforms, with detrimental effects for competitiveness and innovation.<sup>289</sup> Such a situation would also challenge national regulations and enforcement practices.

At the same time, and if the digital labour platform economy continues to expand, national governments may also feel inclined to establish their own regulations of the digital labour platform economy. This would be aimed at preventing the ‘traditional’ economy from becoming ‘platformised’ and facing a deterioration of working conditions, services’ quality and consumer protection standards.

This may be a particular concern in urban areas, where the supply of services provided through digital labour platforms is higher. In a worst-case scenario<sup>290</sup>, labour supply may begin to exceed labour demand in these areas, thus leading to a severe worsening of the general working conditions for people working through digital labour platforms who would have very little bargaining power vis-à-vis platforms.

Against the baseline scenario, the next sections consider different policy options that may be put forward to positively impact the working conditions in platform work.

## **6.2 Avenues for EU action**

**A possible EU initiative would be designed in full respect of national competencies, the diversity of Member States’ labour market traditions and social partners’ autonomy.** This section presents possible options for an EU initiative on platform work, providing an overview of the measures under consideration for addressing the problem and meeting the objectives outlined above. All options should be complementary to existing (or proposed) EU legislation, which is not focused *per se* on platform work but partly covers the challenges set out above *vis-à-vis* digital labour platforms.

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<sup>289</sup> Eurofound (2020).

<sup>290</sup> *Ibidem*.

**Several options could be envisaged for the personal scope of the EU initiative.** Depending on their design and objective, the measures could target all people working through digital labour platforms, regardless of employment status, or be limited to workers (including those people with a misclassified employment status). **An EU initiative could cover all digital labour platforms active in the EU, or focus on certain types of platform work or certain types of platform business models.**

**These measures can form part of a package of binding and non-binding instruments.** They address different challenges in platform work and can be combined in various ways as they are not mutually exclusive.

Any initiative on platform should respect national concepts of employment status. Social partners agree in their responses to the first phase consultation that they do not wish to open a discussion on an EU concept of “worker”. Member States have different approaches to the delimitation between the worker and the self-employed status, and some have introduced an intermediate category for dependent or “employee-like” self-employed who enjoy better access to social protection. Any EU-level initiative on platform work should thus rely on definitions of the employment relationship as laid down by national law, collective agreements or practice, while taking into account the case law of the Court of Justice of the EU. For this reason also there is no intention to create a ‘third’ employment status at EU level, while respecting the choice made by some Member States to introduce it in their national legislation.

### **6.2.1 Addressing misclassification in the employment status**

Facilitating the correct classification would address many of the identified challenges related to access to decent working conditions and to social protection.

The establishment of an employment relationship remains a gateway to many existing rights and protections, both at Member State and EU level. Only people who are classified as workers have access to the full set of labour rights, such as on working time, paid annual leave, maternity, paternity and parental leave, and occupational health and safety. Workers have easier access to social protection, although gaps remain for non-standard workers. For example, when it comes to coverage by insurance for accidents at work and occupational diseases in 10 Member States there is no accidents at work scheme for the self-employed, and in further six self-employed have only access to voluntary or partial schemes.<sup>291</sup> Workers are also better protected in cross-border situations than the self-employed, in case of disputes on jurisdiction or applicable law (see Section 3.3).

The initiative could include tools helping people working through platforms to clarify the classification of their employment status in line with national definitions, taking into account the imbalance of power between the platforms and the people working through them.

One option would be a **rebuttable presumption of an employment relationship** to the effect that the underlying contract between the platform and the person working through it is deemed to be an employment relationship. To counter that presumption, platforms would have to establish in a legal procedure before a court that the person is in fact self-employed.

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<sup>291</sup> Avlijas (2020): Social Situation Monitor - Comparing Social Protection Schemes for the Self-employed across EU-27. Available [online](#).



Such legal presumption could have the advantage of providing a clear rule and strengthen the work of labour authorities or social security institutions to reclassify them as workers. In order to ensure that genuine self-employed remain so, the scope of application of such rebuttable presumption could be narrowed by accompanying it by a number of criteria that would need to be met in order to trigger the presumption, or be limited to situations where the work relationship has certain stability.

Another option would be a **shift in the burden of proof** or lowering the standard of proof for people engaged in platform work or their representatives in legal proceedings. The person working through the platform would not automatically be considered to be in an employment relationship, but would have to establish very few basic facts from which it can be presumed that an employment relationship exists (*prima facie* evidence), in which case it would be for the platform operator to prove that the person is in fact self-employed. The *prima facie* evidence could, for instance, consist in the fact that the level of remuneration is determined by the platform, the fact that the platform controls or restricts the communication between the person and the customer or that it requires the worker to respect specific rules with regard to appearance, conduct towards the customer or performance of the work. Since people working through platforms often do not have full access to information on how the work is organised and therefore might be in a difficult position to prove all elements of an employment relationship, this option would help them challenge more easily their contractual status if they would so wish. It would, however, still require individuals to start court proceedings, with the associated costs and risks.

An **administrative procedure** to examine the employment status could spare people working through platforms the cost and risk involved in legal proceedings and thus lower the burden of reclassification action. It could be open to both parties of the contractual relationship, and possibly other actors such as worker representatives, and would result in an administrative ruling.<sup>292</sup> Decisions would have precedent value for similar cases, without being legally binding (except for the administration itself). Such administrative procedures would have the advantage of being less costly and lengthy than court proceedings, and thereby more easily accessible for individuals. They are, however, still open to a challenge in court. If one of the parties refuses to comply with the administrative ruling, subsequent litigation might still be necessary.

Another “out-of-court” option would be the **certification of work-related contracts** carried out at the request of either party by labour authorities or by independent bodies. This means that persons engaged in platform work could, on their own or represented by worker representatives, have their employment status ascertained by an impartial institution. The same possibility would be open to platforms. The certification would produce the presumption of a correct classification of the employment relationship (as either worker, self-employed or a third status, in line with national law) for labour, social protection and tax authorities, which only a court could reverse.<sup>293</sup> While the certification has a signalling effect and does not entail high costs or risks, it cannot be directly enforced. In case of non-compliance by the platform, a misclassification claim would need to be introduced before a court.

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<sup>292</sup> This possibility exists in Belgium since 2006 through the Administrative Commission for the regulation of the employment relationship established by the federal government as part of the social security service.

<sup>293</sup> Such a certification procedure of work-related contracts was introduced in Italy in 2003.

These different tools would pursue the same objective, but would produce different effects and different degrees of efficacy not only in terms of legal certainty and speed of procedures, in balancing the asymmetry of bargaining power between the worker and the platform, but also in terms of level playing field within the internal market. Different options **could also be combined** in different ways. Depending on the level of ambition and the stringency of the tool envisaged, they could apply either to **all digital labour platforms or only to specific categories**. For instance, an administrative or certification procedure for all digital labour platforms could be combined with a rule on the burden of proof for legal procedures and/or a rebuttable presumption of employment status. It would also be possible to combine a rebuttable presumption for those sectors where misclassification is more prevalent, such as platforms intermediating certain forms of on-location platform work, with a rule on the burden of proof for all other digital labour platforms.

**Criteria or indicators** to clarify the employment status and assist in the correct classification could further reinforce these procedural tools. They could narrow down the scope of a legal presumption or define what kind of evidence could be sufficient to shift the burden of proof. Such criteria or indicators should be specific to platform work and not interfere with national definitions of general labour law. They could be either binding or indicative, exhaustive or non-exhaustive. They can also promote a level playing field across the single market not only between platforms but also between platforms and other businesses.

### 6.2.2 Introducing new rights related to algorithmic management

Algorithmic management brings about distinct challenges in platform work, and is also becoming more prevalent beyond the platform economy. It is a new phenomenon not yet fully tackled in labour law at EU and national level. The initiative could therefore propose new rights in this area, building upon and in full consistency with existing instruments (labour law, GDPR, P2B) and proposed ones (AI Act, DSA). These could include:

- improved information for the people affected by algorithmic management and their representatives on the way algorithms manage work;
- establishing internal procedures to guarantee **timely and justified** human oversight, control and responsibility of decisions with significant implications for affected people;
- ensuring appropriate channels for redress (e.g. by setting up internal procedures or mediation structures within companies);
- reinforcing information and consultation rights on algorithmic management systems, ensuring full involvement of social partners;
- ensuring the right to privacy while off duty<sup>294</sup>, as well as the effective application of other relevant GDPR principles and requirements in the workplace;
- promoting ratings portability, in particular by increasing the effective use of the right to data portability; and
- excluding automatic termination of work-related contractual relationships or practices with equivalent effect.

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<sup>294</sup> Platforms often tap into the service provider's smartphone gyroscope to detect driving patterns – sudden braking, acceleration, etc.

An EU initiative introducing new rights and reinforcing the implementation of the existing rights could be specific to platform work and apply to workers only or also the self-employed, to the extent that such rights are not already attributed to them through other existing, or proposed, EU laws. It could also look at the world of work in general. If tailored to algorithmic management challenges in platform work, the initiative could pave the way for a broader approach to the use of artificial intelligence in the labour market in the near future.

### 6.2.3 Addressing the cross-border dimension

National authorities face challenges when it comes to cross-border platform work. With platform companies often operating in several Member States and offering services across borders, verification of compliance with existing laws and their enforcement may be challenging for national administrations, in particular those responsible for labour inspection, social security and taxation.

The initiative could consider either a **register of, or transparency obligations for, platforms**, which could provide key information such as the active contractual terms and conditions, the number of people working through them and their employment status.

To facilitate authorities' tasks, **platforms could be required to report certain data** regarding transactions they facilitate (i.e. task duration, pay per task, assignment of the task to the workers, contacts between the workers and the platform, etc.). Member States could ensure access to the reported information for relevant national authorities for the purposes of enforcing the rights and obligations and to build statistical information on the digital labour market, needed for informed policies. Information could also be exchanged between Member States when the provision of services has taken place in a different Member State than the (potential) place of registration of the platform company.

To support the **portability of social security rights** and address challenges in the **identification of people working through platforms** across borders or in two or more Member States for social security coordination purposes, the specificities of platform work could be taken into account in the design of use cases piloted of the **European Social Security Pass** announced in the European Pillar of Social Rights Action Plan which was endorsed at the Porto Summit.

The initiative should keep any new reporting obligations to a minimum in order not to create excessive administrative burdens on platform companies, in particular small and medium-sized businesses, or national administrations, also in view of the fact that there are several reporting and data sharing obligations for online platforms scattered in the internal market acquis and taxation legislation.

People working through platforms in a cross-border context are also in need of accurate information on rules and obligations. The initiative could provide **interpretation or guidance** regarding the application of existing EU legislation to people working through platforms, including for instance rules on applicable law and jurisdiction or social security coordination.

### 6.2.4 Strengthening enforcement, collective representation and social dialogue

Enforcement of rules and collective action are key given the imbalance of power between platforms and people working through them. This is particularly true for workers who often face obstacles or risks to claim their rights without any support from trade unions or other

organisations. It is also true for certain self-employed who are sometimes in a weak position to defend their rights and interests.

The initiative could introduce measures to **ensure compliance** with the new material and procedural rights and obligations in platform work that the initiative will confer. Such rules should be in line with national traditions and could take inspiration from other instruments in labour and equal treatment law. They could encompass access to effective and impartial dispute resolution, procedures on behalf of or in support of workers (e.g. by trade unions), the right to compensation, protection against adverse treatment or consequences for claiming rights, access to evidence and penalties. Another avenue to be considered is the promotion of ombudspersons at national level for resolving disputes between platforms and people working through them.

Social partners have an important role to play in the management of platform work. To support the representation of people working through platforms and the platforms themselves in Member States' existing social dialogue practices, the EU could also encourage Member States and social partners to stimulate social dialogue in platform work and to support capacity building in this context. Trade unions face difficulties in identifying and contacting people working through platforms due to the absence of a common place of work. Communication channels embedded in the digital infrastructure of platforms allowing worker representatives to provide people working through the platforms with information could strengthen their ability to effectively defend their rights.

Removing obstacles for collective bargaining might be necessary. Under competition law, self-employed people are considered “undertakings” and any agreement between them risks being prohibited as anticompetitive under Article 101 TFEU. A forthcoming separate initiative aims to ensure that EU competition law does not stand in the way of collective bargaining for self-employed who need it (while other aspects of competition law would remain applicable to self-employed and platforms).<sup>295</sup>

Finally, clarity on rules and a broader data basis can contribute to better enforcement and compliance. The initiative could encourage Member States to provide advice and guidance to people on rights and obligations resulting from their platform activity in relation to tax and social security matters. Data collection and exchange of best practices on platform work and algorithmic management could also be a way forward.

## Overview of policy options

Policy field	Policy options
Employment status; working conditions and access to social protection for workers	<ul style="list-style-type: none"> <li>• <i>ensure correct employment classification in platform work</i>, based on national definitions of worker, taking into consideration the jurisprudence of the CJEU and in full respect of national competence and the diversity of Member States' labour market traditions;</li> <li>• introduce a <i>rebuttable presumption</i> of the existence of an employment relationship, possibly only for certain types of platform work or based on quantitative and/or qualitative thresholds;</li> </ul>

<sup>295</sup> See more details [here](#).

	<ul style="list-style-type: none"> <li>• introduce a <i>rule on shifting of the burden of proof</i>, to the effect that the person would only have to establish basic facts from which it can be presumed that an employment relationship exists (<i>prima facie</i> evidence), in which case it would be for the platform operator to prove that the person is in fact self-employed;</li> <li>• introduce an <i>administrative procedure to examine the employment status</i>;</li> <li>• introduce <i>certification of work-related contracts</i> carried out at the request of either party by labour authorities or by independent bodies;</li> <li>• provide guidance on <i>indicators</i> that could be used to assess and establish the employment status and/or the self-employment status in platform work;</li> <li>• ensure that people recognised as workers have <i>access to rights established in EU and national labour law and in social protection frameworks</i>.</li> </ul>
Algorithmic management rights	<ul style="list-style-type: none"> <li>• <i>improved information</i> for the people affected by algorithmic management and their representatives on the way algorithms manage work;</li> <li>• <i>establish internal procedures to guarantee timely and justified human oversight, control and responsibility</i> of decisions with significant implications for affected people;</li> <li>• <i>ensure appropriate channels for redress</i>, e.g. through the setting up of internal procedures or mediation structures within companies to look into complaints;</li> <li>• <i>reinforce information and consultation rights</i> on algorithmic management systems, e.g. by requiring involvement of workers and their representatives in decisions leading to application of algorithmic management systems in the company;</li> <li>• <i>ensure the right to privacy</i> while off duty, as well as the effective application of other relevant GDPR principles and requirements in the workplace;</li> <li>• <i>promote portability of ratings</i>, in particular by increasing the effective use of the right to data portability;</li> <li>• <i>exclude automatic termination of work-related contractual relationships</i> or practices with equivalent result (e.g. permanent exclusion from task allocation).</li> </ul>
Cross-border dimension	<ul style="list-style-type: none"> <li>• ensure that platforms registered on their territory are required to <i>publish</i> for EU Member States where they operate their active contractual terms and conditions, information on how many people are working through them (and possibly under what status);</li> <li>• introduce a (voluntary or mandatory) <i>register of all platforms</i> active in the respective Member State which could include the active contractual terms and conditions and the number of people working through them (and possibly under what status);</li> <li>• require platforms to <i>report certain data regarding transactions</i> they facilitate (i.e. task duration, pay per task, etc.) to national social security and tax authorities;</li> <li>• take into account the relevance of platform work in the pilot under the <i>European Social Security Pass</i> announced in the European Pillar of Social Rights Action Plan;</li> </ul>

	<ul style="list-style-type: none"> <li>• provide <i>interpretation and guidance</i> regarding existing EU legislation (labour law, social security coordination, rules regarding jurisdiction and applicable law) and its implications for <i>cross-border platform work</i>.</li> </ul>
Enforcement, collective representation and social dialogue	<ul style="list-style-type: none"> <li>• establish <i>enforcement provisions</i> such as the right to redress, procedures on behalf or in support of workers (e.g. by trade unions), the right to compensation, protection from dismissal for claiming rights, access to evidence and penalties;</li> <li>• promote <i>ombudspersons</i> at national level for resolving disputes between platforms and people working through them;</li> <li>• <i>stimulate social dialogue</i> in platform work;</li> <li>• <i>capacity building for social partners</i> in the area of platform work;</li> <li>• encure <i>communication channels</i> allowing worker representatives to provide people working through the platforms with information.</li> <li>• provide <i>advice and guidance</i> to people providing services through platforms on the tax, social security and/or labour law obligations of their platform activity via information websites and hotlines;</li> <li>• improve <i>data collection</i> on platform work and algorithmic management.</li> </ul>

### 6.3 EU instruments

The initiative on working conditions in platform work could take the form of a Directive, a Council Recommendation, or a combination of the two. A policy Communication could also possibly introduce any non-legislative elements of the initiative.

#### Directive

A Directive would provide certainty about the mandatory requirements to be applied by Member States. To this end, it could contain a set of minimum standards and procedural obligations to be necessarily complied with.

Article 153 (2) TFEU provides the possibility of adopting a Directive in the area of ‘working conditions’ involving minimum requirements for implementation by Member States.<sup>296</sup> This legal basis would enable the Union to set minimum standards regarding the working conditions of people working through platforms, where they are in an employment relationship and thus considered as workers (including false self-employed people), in line with national traditions and practices.

A Directive addressing the situation of genuine self-employed people working through platforms as business actors could be based on an internal market legal basis. Possible provisions in the TFEU include Article 53(1) – which empowers the Union to issue directives coordinating national provisions concerning the uptake and pursuit of activities as self-

<sup>296</sup> Art 153(2) (b) also states that “Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings”.

employed persons – or Article 114 allowing for the approximation of laws with regard to the establishment and functioning of the internal market.

Article 352 TFEU allows the EU to act in order to attain one of its Treaty objectives in the absence of a more specific legal basis. This legal basis could be used for a directive on the working conditions of self-employed people engaged in platform work. This legal basis would require unanimity in the Council.

#### Council recommendation

A recommendation could provide for policy guidance and a common policy framework at EU level, while not setting specific mandatory requirements. Envisaged tools for monitoring implementation of such a non-binding instrument might include the use of benchmarking integrated in the European Semester, the exchange of good practices, and joint work with Member States and social partners on the development of appropriate monitoring tools.

#### Non-legislative measures

The initiative could also entail non-legislative measures at EU level that would contribute to the objectives formulated above. The Commission could, for instance, facilitate a dialogue with platform operators aiming at developing principles for good quality platform work by way of a code of conduct or a charter possibly accompanied by a voluntary label. Such a self-regulatory tool could cover social benefits and training on digital labour platforms as well as complementary aspects in relation to working conditions and algorithmic management.

As possible EU legislative action can only set minimum standards in the labour and social affairs field and cannot ensure full harmonisation in the internal market, further action could be taken to improve coordination and avoid fragmentation, such as organising exchanges of experience and mutual learning among Member States on the issue of clarifying the employment status of people working through platforms.

Other possible measures include: guidance regarding the application of existing legislation in cross-border platform work, including for labour inspectorates; promoting social dialogue and other social partner initiatives; and/or further monitoring and data collection by setting up an EU-level observatory on platform work and algorithmic management. Such actions could be promoted by means of funding, organisation of meetings and other forms of support.

## **7. POLICY IMPACTS**

The following sections illustrate the impacts that the policy options outlined in Section 6 would have on the social and economic spheres, as well as on other domains such as fundamental rights, the environment and technological sovereignty.

A table at the end of the section summarises these impacts in terms of costs and benefits.

### **7.1 Social impacts**

**Policy options tackling the main problems faced by people working through platforms would improve their working conditions and access to social protection.** Measures aimed at clarifying their employment status would bring legal clarity to both them and the platforms through which they work, with positive spill over effects in the social sphere. Such measures



would facilitate their access to courts and legal disputes to challenge their potential misclassification as self-employed.

**Those who are correctly classified as workers as a result of such measures would benefit from the EU and national labour and social acquis**, thereby falling under the scope of employment protection legislation, better access to social security schemes, protection against health and safety risks, collective bargaining rights, mobility and skills opportunities, and minimum wages frameworks. On the other hand, the newly classified workers may then face lower remuneration if social contributions are partially or entirely passed on to them by platforms, whereas those people who are confirmed to be self-employed may have reduced access to self-employed job opportunities in platform work, despite expected sustained growth in demand for platform work services. Clarification on what constitutes an employment relationship in platform work could however have a spill-over effect on the way that platforms facilitate and organise their working relationship with self-employed service providers and thus impact positively their level of autonomy and control at work. They could also contribute to legal security for platforms that want to provide additional benefits to the self-employed who work through them.

**Workers on digital labour platforms would not have to lose the flexibility in organising their own schedule and work they currently access.** Both the EU and most Member States' labour *acquis* a plethora of flexible employment contracts for workers (including temporary agency work, fixed-term contracts, part-time contracts) that would allow both platforms and the workers to maintain existing flexible arrangements, while adding benefits and social protection on a *pro rata* basis. Flexible employment contracts for workers (including temporary agency work, fixed-term contracts, part-time contracts) would allow both platforms and the workers to maintain existing flexible arrangements, while adding benefits and social protection on a *pro rata* basis.

**Measures tackling the challenges posed by algorithmic management would make the platform work environment more transparent**, predictable and decent. Such measures may also have positive effects on working conditions and social dialogue, by enhancing the responsibility of platforms and opening their algorithms up to external scrutiny. The positive spill over effects would also be on earnings, as increased transparency on pay, performance evaluation and client-ratings would grant workers firmer control over their own work schedule and organisation.

**Measures on reporting and enforcement would improve working conditions** by strengthening the role of labour inspectorates and allowing better public policymaking through better access to data and information on digital labour platforms and people working through them. Clarity on rights and obligations would diminish the risk of non-compliance (e.g. with taxation obligations).

## **7.2 Economic impacts**

**Policy options clarifying the employment status of people working through platforms would have substantial impacts on the digital labour platform economy and the economy at large.** Digital labour platforms which misclassify workers would face potentially substantial costs to reclassify their contractors as workers. Furthermore, those who do not

correct the employment status classification following introduction of such policy options would face further litigation costs, stemming from the legal disputes brought before courts by people wanting to challenge their employment status classification or proceedings launched by relevant national administrations. In the case where misclassification is confirmed, platforms would then have to factor in operating costs of the social protection and contributions they would have to pay for their employees.

If on the one hand **this may lead some platforms to change their business model to adapt to the new costs of having to hire service providers**, they would also find themselves operating within a much clearer legal framework, with greater possibilities of long-term adaptation, planning and scale-up investments. This would have positive spill over effects on investors' and users' trust, fostering a new, positive outlook for the digital labour platform economy. Such benefits would arguably be especially important for platforms SMEs and startups, which would benefit from a newly levelled playing-field, fairer competition and more incentives to expand their business across the EU.

**'Traditional' companies would see their competitive disadvantage vis-à-vis platforms reduced**, although some may also have their opportunity to outsource tasks to platforms or to use platforms to reach a broader client base curtailed, due to higher costs and reduced labour supply. This could be the case for example for restaurants using delivery platforms.

**Consumers would access services which are of better quality and with clearer liability attached to them.** Such benefits may, however, come with higher prices and reduced product supply, due to more costly quality controls and increased legal accountability.

**Measures improving the information, consultation and redress in the use of algorithmic management would face digital labour platforms with administrative costs** to ensure full compliance with requirements and embedding responsibility mechanisms within their IT tools and automated procedures. **Such costs, however, would arguably be more than offset by the benefits that would derive from a renewed platform ecosystem based on trust.** This would lead to greater consumer and investor confidence, increased worker involvement and participation and ultimately greater incentives to innovation thanks to a clearer, future-proof legal framework.

**Measures on reporting and enforcement would have limited costs for platforms**, demanding they make public some (already available) information concerning their business activities. The benefits of such measures would come in the form of heightened public trust in the digital labour platform economy, thanks to greater transparency and better, data-driven public policymaking. These measures would also make services more reliable vis-à-vis consumers and would contribute to ensuring a level playing field in the digital labour platform economy, fostering competition and allowing new, smaller players to challenge incumbents.

### **7.3 Impacts on public authorities**

Policy options tackling the challenges of platform work may also have direct or indirect effects on Member States' public authorities. **Measures aimed at clarifying the**

**employment status of people working through platforms could impose administrative costs on Member States' courts**, although, given the current trend of increasing legal challenges against platforms' employment contracts they would have to deal with such procedures in any case. Furthermore, these measures would facilitate legal proceedings, leading to shorter times and clearer legal outcomes.

**The courts' administrative costs would arguably be outweighed by substantial financial benefits for Member States' governments**, deriving from the increased tax and social security contributions paid by digital labour platforms on behalf of their employees. Furthermore, **the proceedings thus imposed on courts could be greatly facilitated by the measures improving information, consultation and redress on algorithmic management**. Bringing more transparency to the internal workings of the platforms, the work of courts would be facilitated in cases of potential employment status misclassification.

Similarly, **measures on reporting and enforcement would generate a one-in, one-out virtuous cycle**, by which the operating costs demanded to authorities to change, shift and strengthen their inspection procedures would be offset by the benefits deriving from more thorough controls on platforms, fewer cases of employment status misclassification and greater legal clarity for workers and businesses alike.

Bringing people working through platforms effectively into the scope of social protection would significantly broaden the tax and contribution base of the social protection systems and help **adjust social protection systems to the changing economy and the world of work, improving their adequacy, sustainability and resilience in the long term**.

#### **7.4 Other impacts**

An EU initiative on platform work may have impacts on other societal domains, directly or indirectly related to the issues tackled by the policy options described in Section 6.

##### **Technological sovereignty**

**By clarifying the obligations of digital labour platforms in the EU, these policy options contribute to fostering a transparent, rules-based digital single market**, underpinned by a level playing field for all businesses and strong social rights for the people working in it. This has implications for the EU's international partners, as it strengthens the Union's values-based approach to the digital transition.

These policy options would demand that all digital labour platforms active in the EU, regardless of where they are based or originate from, comply with European principles. Hence, **the EU would be pursuing its technological sovereignty by setting global digital standards** on algorithmic management and the digitalisation of the world of work.

##### **Fundamental rights**

This initiative aims at strengthening the right to fair and just working conditions recognised in the Charter of Fundamental Rights of the EU (the Charter). Under the Article 31 (1) every worker has the right to fair and just working conditions, which respect his or her health, safety and dignity.

Furthermore, the initiative will support the freedom to choose an occupation, and right to engage in work, recognised in Article 15. Different avenues for policy actions presented

above provide different impact on these rights, with a positive impact on the right to fair and just working conditions expected to be ranging from medium to high.

In order to ensure that the freedom to conduct a business (Article 16) is fully upheld, possible avenues for action will be tested to ensure the proportionality principle is respected, and that the final proposal will aim at maximising the fundamental rights impact.

In addition to Article 31 and Article 15, other rights protected in the Charter could potentially be positively impacted by action aimed at an improvement of working conditions in platform work. It can support dignity in the workplace (Art 1), the fight against coerced work (Art 5), respect for family life (Art. 7), equality before the law of workers (Article 20), non-discrimination (Article 21), as well as workers' right to information and consultation (Article 27).

	IMPACTS					
	<b>Social</b> - Employment (mobility, transitions, skills, labour market segmentation) - Working conditions - Social protection (income insecurity, poverty, precariousness, inequality) - Health - Fundamental rights		<b>Economic</b> - Impact on business (SME included) - Operating (labour costs) and conduct of business, including administrative burdens - Competitiveness and unfair competition		<b>Public authorities</b> - Budgetary consequences - Public authorities organisation	
	<b>Costs</b>	<b>Benefits</b>	<b>Costs</b>	<b>Benefits</b>	<b>Costs</b>	<b>Benefits</b>
<i>Baseline scenario</i>	<u>For people working through platforms:</u> *lack of access to labour law protections (including e.g. paid holidays, health and safety protections; minimum wage protections) * time pressure and inter-worker competition in some platforms may impact safety *costs of social protection which should be shared with the employer * high barriers to claim rights through courts	<u>For people working through platforms:</u> *access to a variety of job opportunities through platforms *flexibility of self-employed status	<u>For platforms</u> *Increasing legal costs related to litigation and following compliance costs *Decrease in investors' confidence *Costs of coping with legal fragmentation and legal unpredictability  <u>For other companies:</u> *unfair competitive advantage based on lower labour costs, relying on more flexible regulations as well as network effects  <u>For consumers</u> *platforms' lack of liability	<u>For platforms</u> *Competitive advantage for platforms, resulting in a possible growth of platform companies  <u>For other companies:</u> *Increasing opportunities to outsource parts of operations to platforms *Platform intermediation allows for broadening markets  <u>For consumers</u> *access to variety of services at low cost and with some quality controls set up by platforms	*False self-employment or undeclared self-employment results in potential lower tax incomes and increased net public spending to cover for missed social security contributions  * Costs of inspections by tax authorities and/or labour inspections to detect and pursue cases of false self-employment	*Potential legalisation of work that could otherwise remain in grey economy

			for services provided by self-employed service providers may impact availability and quality of service			
Tackling employment status, working conditions and access to social protection for workers	<u>Labour markets</u> *Decrease in the number of self-employed job opportunities, including those with low barriers  <u>For people working through platforms:</u> *potentially higher taxes and costs of social contributions *potentially losing some of the flexibility related to self-employment	<u>Labour markets</u> *Creation of better quality jobs (with access to labour rights and social protection)  <u>For people working through platforms:</u> *facilitation of access to courts to correct employment status qualification *improved working conditions (including e.g. paid holidays, health and safety protections, access to minimum wage protections), *fuller access to social protection	<u>For platforms</u> *Increase in operating costs (labour and social protection costs) *Increased administrative costs *Potential need to change business models that rely on the availability of high numbers of service providers  <u>For other companies:</u> *Potential loss of opportunities to outsource or seek new customers via platforms  <u>For consumers</u> *potential increase of prices and/or lower availability of services	<u>For platforms</u> *increased legal predictability, resulting in the longer term in lower legal costs *increased investors' confidence *increased user trust  <u>For other companies:</u> *more equal level playing field in competition between platforms and other companies  <u>For consumers</u> *more reliable service thanks to fuller accountability of platforms	*Potentially administrative costs to introduce new administrative procedures or to adapt the procedures related to court proceedings	*Correct employment classification (as worker and as self-employed) would result in increased tax and social security contributions  *Facilitation for tax authorities and/or labour inspections to detect and pursue cases of false self-employment
Tackling algorithmic management	<u>For people affected by algorithmic management</u> *no direct or indirect costs	<u>For people affected by algorithmic management</u> *more predictable working environment *positive effects on earnings *positive effects on work satisfaction *possibility to request a review of an unfavourable decision	<u>For companies</u> *one-off and running administrative costs to ensure improved information, consultation and redress regarding the use of algorithmic management tools	<u>For companies</u> *improved trust and retention of workers *involvement of workers in setting up algorithmic management system can help to make the tools more	*No direct or indirect costs	*Improved information, consultation and redress on the use of algorithmic management will facilitate correct employment classification.

			<p><u>For consumers</u> No direct or indirect impacts</p>	<p>effective *positive impact on innovation through adaptation of algorithmic management systems</p> <p><u>For consumers:</u> No direct or indirect impacts</p>		
Cross-border dimension	<p><u>For people working through platforms:</u> *No direct or indirect costs</p>	<p><u>For people working through platforms:</u> *Improved working conditions thanks to enhanced inspection of platform work *Greater transparency in working conditions.</p>	<p><u>For platforms:</u> *Limited administrative costs to publish information (anyhow available) on their website or in a register *Possible higher administrative costs for reporting of transactions</p> <p><u>For other companies:</u> *No direct or indirect impacts</p> <p><u>For consumers</u> *No direct or indirect impacts</p>	<p><u>For platforms:</u> *increased public trust thanks to the transparency</p> <p><u>For other companies:</u> *No direct or indirect benefits</p> <p><u>For consumers</u> *improved reliability of services available through platforms</p>	<p>*One-off and running administrative costs of creating a register of platforms or a system for reporting transactions</p>	<p>*Availability of information reported by platforms would facilitate inspection and enforcement of obligations, including as regards payment of social security contributions and taxes</p>
Enforcement, collective representation and social dialogue	<p><u>For people working through platforms:</u> *No direct or indirect costs</p>	<p><u>For people working through platforms:</u> *Improved working conditions thanks to better enforcement of rights and stimulated collective action and social dialogue</p>	<p><u>For platforms:</u> *possible costs in case of non-compliance related to penalties and sanctions</p> <p><u>For other companies:</u> *No direct or indirect impacts</p> <p><u>For consumers</u></p>	<p><u>For platforms:</u> *increased public trust thanks to better compliance and collective representation</p> <p><u>For other companies:</u> *improved compliance of platforms with</p>	<p>*Administrative costs of adjusting national enforcement provisions and building capacity for social dialogue</p> <p>*Operating costs or shift in resources to enhance inspection and</p>	<p>*Improved enforcement of obligations would result in increased tax revenues and social security contributions</p>

			<p><i>*No direct or indirect impacts</i></p>	<p><i>existing obligations would have a positive impact on level playing field</i></p> <p><i><u>For consumers</u></i></p> <p><i>*improved reliability of services available through platforms</i></p>	<i>enforcement</i>	
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## Annex I: Examples of platform companies operating in different Member States

Country	On-location platforms			Online platforms
	Transport, ride-hailing	Food and goods delivery	Personal and household services (e.g. care, gardening, cooking, cleaning, shopping)	Microwork (e.g. transcriptions, translations, web search, IT tasks, etc.)
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	Deliveroo, Eats, Takeaway.com, Izl, Shopopop	Uber Helper, Bringer Nanny Nina, B-homecare.be, Handyfriend, Harry Butler	Jellow, ListMinut, Teacheronline, Bijleshhoek
BG		Foodpanda.bg, takeaway.com, ebag.bg	Housecare.bg, phcare.bg, bavachki.bg, maistorplus.com, domestina.bg	Upwork, fiverr, freelancer.com, gigsbg.com, freelance.bg, dibla.com,
CY	Uber, Beat, Taxiplon	Wolt, efood, Foody Cyprus, Bolt Food, Food Cyprus, BOX, deliveryman	Douleftaras.com .cy	
CZ	Uber, Bolt	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	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	betreut.de, or haushelden.de, Gewerbeschein, Helpling, Expat.com	Clickworkers, MyLittleJob, Streetspotr

	Transportation and Daimler AG).	Durstexpress (subsidiary of Dr. Oetker KG);		
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, in addition each large supermarket (about 5-6 larger companies) have their own delivery platform created by now	UpSteam, Care Mate	GoWorkAbit, H2H, Upwork, Handy, Toitla
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, BlaBla Car, Cabify, MyTaxi, Blackcabs.es, Enmercedes.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, Depencare, Nannyfy, Sitly, Topnanny . Multi-service platforms: Yocuido, Cronoshare, Clintu, Care.com, Topayuda, Yoopies	Trabeja.com, Neuvo, 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	Foodora, Wolt (both Finnish start-ups in food delivery), Budbee in goods delivery	Seure.fi	Amazon Mechanical Turk, Upwork
FR	BlaBla Car, Chauffeur Privé,	Resto-in, Vizeat/Eatwith, Uber Eats, Stuart	AlloVoisins	eYeka,

HR	Uber, BlaBlaCar	Glovo, Wolt, Pauza, Bolt, Welovelocal.hr	Clintu, Cuvalica.hr, Trebam.hr	ClickWorker, Fiverr, Microworker, Upwork, Toptal, BigTranslation
HU	Bolt, Uber	Wolt, Bolt Food, Netpincér	Expatriot.com, Rendi.hu	Freelancer
IE	FreeNow, Lynk, Uber	Deliveroo, Just Eat Ireland	Home Care Direct, Mindme, Laundr, Pristine, Helpling.ie, babysits.ie	Fiver, Upwork
IT	Uber	Just eat, Foodinho (Glovo), Uber Eats Italy, Deliveroo, MyMenu, Snam, 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	Foostix, FoodLunch.lu, Goosty, Webfood/Livrando		Crowdwork
LV	Uber, Bolt, Yandex	Bolt Food, Wolt	Expatriot.com, Greataupair.com, baltichousehold.lv	
MT	Bonju, Cool, eCabs, iGo, Ryde	Bolt, Wolt, Bonju Eats	Genie	
NL	Uber, LINDA.com, Temper	Thuisbezorgd.nl, Deliveroo, Uber Eats, Eat Takeaway, ishipit	Brenger, Helpling, YouBahn, My Flexwork, Flexbook, Inhuren.com, Wurcly, care.com, petbnb	Temper Works, handiwork (Werkspot), Upwork, 99designs, AMT, Clickworker, Freelance.nl, Jellow, YoungOnes
PL	Uber, Bolt, Free Now (formerly myTaxi), iTaxi	Glovo, Wolt, Uber Eats, Finebite, Bolt Food, Pyszne.pl, otostolik.pl, Stava, Delgoo, knajp.pl, Delidelivery	hojoclean.pl, oferta.pl, niania.pl, favore.pl	uslugi-artystyczne.pl, Designer.pl, useme.com, freelancer.pl, oferta.pl
PT	Uber, BOLT, Freenow	Uber Eats, Glovo, Takeaway, Bolt Food	Dona Rosa, Simplicasa	Zaask, fixando.pt
RO	Uber, Bolt, Clever,	Glovo, Foodpanda, Takeaway		LiberProfi, Fiverr, upWork, Freelancer, PeoplePerHour, Workaway, Taskrunner

	Blackcab, Yangoo, Freenow			
SE	Bolt, Uber, Bzzzt, Clever,	Foodora, Uber Eats, Bolt food, Wolt,	Yepstr, Tidy App, Taskrunner, Techhbuddy, nanny.nu, Tiptapp	Fiver, Wordapp, Gigger,
SI	Uber, Flixbus, GoOpti, Taxi Cammeo	Wolt, E-hrana	beeping	
SK	Bolt (previously Taxify), Uber, Hopin, Bla Bla Car, Liftago	Wolt, Bolt Food, Bistro	Jaspravim, Domelia	Taskit, Mikropraca.eu, Microjob.sk, Wilio

Source: ECE Thematic Review (forthcoming).

## Annex II: Overview of the employment status of platform workers in the EU Member States

Member State	Employment status used in platform work		In-between or third category (apart from employee and self-employed)?
	On-location	Online	
Austria	-Self-employed -Employee-like service provider -Temporary agency worker -Home-worker <sup>297</sup> -Employee ( <i>minority</i> )	-Self-employed	Yes: employee-like persons and employee-like service provider (freelancer)  Special status of a 'home worker' (craftsmen)
Belgium	-Occasional worker in the collaborative economy <sup>298</sup> -Self-employed (as main or as secondary professional activity) -Temporary agency worker -Employee ( <i>minority</i> )	-Self-employed	No
Bulgaria	-Self-employed -Civil law contracts (contract of mandate and contracts of manufacture) -Employee ( <i>minority</i> )	-Self-employed	No
Cyprus	-Self-employed -Employees	-Self-employed	No
Czechia	-Self-employed -Workers under an Agreement to complete a job or Agreement to perform work	-Self-employed	No (but existence of two special 'employment' contracts)
Germany	-Self-employed -Temporary agency work -Employee	-Self-employed	Yes: employee-like persons (they are self-employed)

<sup>297</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 license (usually it concerns 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>298</sup> Under the Belgian income taxation legislation individuals can carry out occasional platform work for other natural persons in a number of sectors the income of which is taxed at lower rates when below an annual threshold of EUR 6 340 (fiscal year 2020).

Denmark	-Self-employed -Employee	-Self-employed	No
Estonia	-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	No
Greece	-Self-employed -Occasional workers -Dependent self-employed -Employee	-Self-employed -Occasional workers -Dependent self-employed	No
Spain	-Economically dependent self-employed (TRADE) <sup>299</sup> -Self-employed -Special employment status for workers in domestic services (cleaning and care) -Employee	-Economically dependent self-employed (TRADE) -Self-employed	Yes: the economically dependent self-employed (TRADE)
Finland	-Self-employed (business or sole traders) -Employee ( <i>minority</i> )	-Self-employed	No
France	-Self-employed (standard self-employed and micro-entrepreneur self-employed <sup>300</sup> ) -Employee ( <i>minority</i> )	-self-employed (standard self-employed and micro-entrepreneur self-employed)	No
Croatia	-Freelancer under contract for services -Self-employed	-Freelancer under contract for services -Self-employed	No

<sup>299</sup> Self-employed are considered as economically dependent if they carry out a professional or economic activity personally, directly and predominantly for a single client from whom they receive at least 75% of their income.

<sup>300</sup> A special subcategory of self-employed, which was originally created in 2008 to facilitate workers to exercise secondary professional activities next to 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 becomes subject to VAT and a 45% social contribution rate applies under the standard regime for self-employed.

	-Employee -‘Digital nomads’ <sup>301</sup>		
Hungary	-Self-employed -Employee	-Self-employed	No
Ireland	-Self-employed -Employee	-Self-employed	No
Italy	-Self-employed (self-employed platform workers in food delivery have special protection under Labour Code) -‘Employer-coordinated workers’ (‘cococo’) -‘Employer-organised workers’ (‘cocoorg’) -Employees ( <i>minority</i> ) -(Temporary agency worker)	-Self-employed	Yes: quasi-subordinated work -‘employer-organised workers’ (‘cocoorg’) -‘employer-coordinated workers’ (‘cococo’)
Lithuania	-Self-employed (with an individual activity certificate) -Temporary agency worker -Employee ( <i>minority</i> )	-Self-employed	No
Luxembourg	-Self-employed -Employee	-Self-employed	No
Latvia	-Self-employed (individual entrepreneurs or microenterprises) -Employee	-Self-employed (individual entrepreneurs or microenterprises)	No
Malta	-Self-employed (including self-occupied persons <sup>302</sup> ) -Employee ( <i>minority</i> )	-Self-employed (including self-occupied persons)	No
The Netherlands	-Self-employed (self-employed without personnel and self-employed)	-Self-employed (self-employed without personnel and self-employed with employees)	No

<sup>301</sup> Since 2021 the Croatian Immigration legislation was changed and allowed ‘digital nomads’ who are working through digital platforms for businesses not established in Croatia to pay income tax in their country of residence.

<sup>302</sup> Self-occupied workers is a concept enshrined in social security law and referring to those who perform services as opposed to other self-employed who gain income through other means such as renting of accommodation or through investments.



	with employees -Special regime for domestic services <sup>303</sup> -Non-professional income -Employees (including temporary agency work)		
Poland	-Civil law contracts (contract of mandate or contract for specific task) -Self-employed	-Self-employed	No
Portugal	-Self-employed -Employee ( <i>minority</i> )	-Self-employed	No
Romania	-Self-employed (including certified authorized private persons, individual undertakings and family undertakings) -Liberal professions -Employee	Self-employed	No
Sweden	-Self-employed with a Business Tax Certificate (a sole trader or a company) -Private persons performing occasional work -Private persons 'employed' by umbrella organisations <sup>304</sup> -Employee	-Self-employed with a Business Tax Certificate (a sole trader or a company) -Private persons performing occasional work -Private persons 'employed' by umbrella organisations	No (but system of occasional work and practice of umbrella organisations)
Slovia	-Self-employed -Civil contract	-Self-employed -Work from home (which	Yes: economically dependent persons are self-employed who earn at least 80% of

<sup>303</sup> Under the regime 'concerning personal services provided at home' individuals can be employed by the client for a maximum number of three days per week while the income is exempted from some income taxation and from employer's social contributions and the worker is not falling under the scope of the social insurance schemes for employees.

<sup>304</sup> Umbrella organizations act as a sort of intermediary and pay the taxes and social contributions for the individual workers who are receiving a wage, while the umbrella organization charges a commission and issues invoices to the clients.

	for services -Student -Employee	includes telework) agreements	their annual income from one single contracting partners <sup>305</sup>
Slovakia	-Self-employed -Civil law contracts -Work performance agreements, agreement of work activity or student agreements <sup>306</sup> -Employee (minority) -Undeclared work common (for personal and household services, e.g. care services and cleaning)	-Self-employed	No

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<sup>305</sup> Economically dependent persons enjoy protection against unfair dismissal, minimum notification periods for dismissals, protection of their income in return of their services, which should be comparable to the wages that are paid to employees on the basis of the collective agreements, and limited liability for damages.

<sup>306</sup> Work performed outside of regular employment

### Annex III: Examples of policy developments in Member States regarding platform work

Type of policy development	Year, month	Description
<b>AUSTRIA</b>		
Collective agreements and other forms of worker organization	2018 October	The Transnational Federation of Couriers was founded, representing people working through platforms across Europe. Its aim is to improve the working conditions of workers in the platform economy.
Collective agreements and other forms of worker organization	2020 January	Social partners agreed on the first collective agreement for bicycle couriers who have an employment contract with a traditional company and those who have an employment contract with a platform. With the agreement now they must receive a monthly gross wage of EUR 1,506, additional holiday and Christmas remunerations, the customary additional 13th and 14th months' pay, the option to work only four days a week, and an additional compensation of EUR 0.14 per kilometer when couriers use their own bicycle. <sup>307</sup> Those who work as independent contractors, are not eligible for the conditions under this collective agreement.
Collective agreements and other forms of worker organization	2021 January	Social partners agreed on the collective agreement for all drivers in passenger transport who have an employment contract with any traditional company and those who have an employment contract with a platform. With the agreement now they must receive a monthly gross wage between EUR 1.604,10 and EUR 2.756,70, depending on working experience and occupation group. In addition, employed drivers are entitled to holiday and Christmas allowances, each amounting to one gross monthly salary. The agreement regulates employed drivers' working time, including the weekly maximum of 40 hours, resting periods and additionally regulates overtime and work on weekends and holidays. <sup>308</sup> Those who work as independent contractors, are not eligible for the conditions under this collective agreement.
<b>BELGIUM</b>		
Legislation	2018-2020	Legislated the Act of a tax threshold of EUR 6,130 per year, under which employees can have an additional income from digital platforms, from work for non-commercial associations, and from small non-professional jobs for other citizens. For this additional income, there are no income taxes or social security contributions required. The Constitutional Court overturned this tax scheme and it was abolished in the end of 2020 and since 2021 the services provided through recognized electronic platforms will be taxed at a tax rate of 20%. <sup>309</sup>
<b>BULGARIA</b>		
Legislation		In Bulgaria, a third category of workers exists under the concept of

<sup>307</sup> Digital Platform Observatory (2020). Austrian collective agreement for couriers. Retrieved from: <https://digitalplatformobservatory.org/initiative/austrian-collective-agreement-for-couriers/>

<sup>308</sup> Austria. Collective Agreement Passenger Transportation. Available at:

<https://www.kollektivvertrag.at/kv/personenbeforderungsgewerbe-mit-pkw-taxi-arb>

<sup>309</sup> Maertens, P. (2020). Circular letter on the taxation regime of the collaborative economy: Impact of the decision of the Constitutional Court. Retrieved from: <https://news.pwc.be/circular-letter-on-the-taxation-regime-of-the-collaborative-economy-impact-of-the-decision-of-the-constitutional-court/>

		‘contractors’ and they fall under the scope of general social insurance legislation, as employees and self-employed. Bulgarian labour law also stipulates that if a contract with an independent service provider conceals an actual employment relationship, the contract will be classified as an employment relationship with all legal consequences for the parties in this regard. <sup>310</sup> No court cases have yet been raised to reclassify people working through platforms.
Labour Inspectorate and other administrators	2015	The Commission for the Protection of Competition (CPC) in Bulgaria after investigations into Uber, prompted by protest led by trade unions and local taxi services, declared that the platform has been engaging in unfair competition. CPC fined Uber for such activity for EUR 25,532 and an additional EUR 25,532 for failing to provide information requested during the investigation. <sup>311</sup> The fines came together with a ban on Uber’s operations in Bulgaria and the ban was confirmed by the Supreme Administrative Court. <sup>312</sup>
<b>CROATIA</b>		
Legislation		Croatia is one of the countries with a subcategory for employment status, which applies to people working through platforms who can work under a ‘contract for services’. In this case, they are not considered self-employed and pay pension contributions at half the rate set for self-employed workers. <sup>313</sup>
<b>CZECH REPUBLIC</b>		
Legislation	2017 May	After considering the challenges brought by digital platforms the government developed a National Action Plan (Work 4.0). It has 4 priorities: Regulation of impact of technological changes on demand on labour force and employment; Support of further specialised education; Adjustment of labour market within the context of technological changes; Regulation of impact of technological changes on selected social aspects. <sup>314</sup> The last priority includes revising the Labour Code to improve OSH and working conditions for those working from home and also to address the mental and physical health elements in platform work. The action plan has been approved by the Government. <sup>315</sup>
Labour Inspectorate and other administrators	2018	A memorandum between government and Uber was signed, representing the key initiative related to digital labour platforms. It commits the company to apply the rules governing the taxi sector and includes a data sharing provisions for the tax collection purposes. The authorities, including those in charge of labour inspection, apparently accept that the company operates on the basis of self-employment. <sup>316</sup>

<sup>310</sup> Kabatliyska, V. & Todorova, M. (2020). Employment and employee benefits in Bulgaria: Overview. Practicallaw. Thomsonreuters. Retrieved from: <https://uk.practicallaw.thomsonreuters.com/8-503-3652? IrTS=20171205150500174&amp;transitionType=Default&amp;contextData=%28sc.Default%29&amp;firstPage=tr ue>

<sup>311</sup> Markova, E. (2016). Bulgaria: Supreme Court shuts down smartphone car service Uber. Eurofound. Retrieved from: <https://www.eurofound.europa.eu/publications/article/2016/bulgaria-supreme-court-shuts-down-smartphone-car-service-uber>

<sup>312</sup> Markova, E. (2016).

<sup>313</sup> Eurofound (2018). Platform work: Employment status, employment rights and social protection. Retrieved from: <https://www.eurofound.europa.eu/mk/data/platform-economy/dossiers/employment-status>

<sup>314</sup> Garben, S. (2017). Protecting Workers in the Online Platform Economy: An overview of regulatory and policy developments in the EU. Publications Office of the European Union. Retrieved from: <https://osha.europa.eu/en/publications/protecting-workers-online-platform-economy-overview-regulatory-and-policy-developments, 70>

<sup>315</sup> Ibid.

<sup>316</sup> Drahokoupil, Jan (2021). European Centre of Expertise (ECE) in the field of labour law, employment and labour market policies: Czechia. Luxembourg: Publications Office of the European Union, 2021.

DENMARK		
Legislation	2017 October	The Danish government set out 22 proposals concerning taxation in the sharing economy, working conditions, and rules and responsibilities for workers, clients, and platforms. <sup>317</sup> The government aims to set up an online portal for specific information provided by the authorities regarding platforms. It is planned to have online reporting of revenue in order to lower taxes on income generated through providing accommodation or transportation via platforms. Proposals also include taking measures against grey areas existing in legislation and focus on expanding the knowledge base for people working through platforms regarding unemployment insurance funds and job centres on the rules for unemployment benefits. <sup>318</sup>
Legislation	2018 May	The strategy set out in 2017 translated into a political agreement between the government and social democrats on better conditions for growth in the platform economy. The agreement led to the establishment of the Council for Sharing Economy dedicated for social dialogue with the social partners and the industry, which will advise the Minister of Business on developments in the sharing and platform economy. <sup>319</sup>
Legislation	2018 July	A new unemployment insurance scheme came into force, whereby rights are accrued depending on activities rather than on contractual arrangement. This makes Denmark one of the countries in which the government tried to decouple welfare protection from the employment relationship after the rise of atypical forms of employment.
Collective agreements and other forms of worker organization	2018	The Voocali accession agreement negotiated in 2018. <sup>320</sup> Voocali.com is an interpretation platform company which offers interpretation services to public and private entities. <sup>321</sup> The agreement entails that interpreters, who are employees, are provided with all the rights of the Sectoral Collective Agreement for White Collar Workers in Trade, Knowledge and Service. The parties also agreed to conclude a special collective agreement for freelance interpreters at Voocali. The agreement entails that freelance interpreters receive a guaranteed fee agreed to in the collective agreement with HK Privat, transportation compensation, a no-show fee in event of cancellation, a requirement of objective reasons for being excluded from the platform, registration of taxes for freelancers without a Business Registration Number, no restrictions with regards to carrying out assignments outside of Voocali.com, and data portability to take their user ratings with them.
Collective	2018	Collective agreement between the trade union 3F and platform for

<sup>317</sup> See summary at: <https://www.linkedin.com/pulse/danish-governments-sharing-economy-strategy-english-michael-bugaj/>

<sup>318</sup> Eurofound. (2020). Platform economy initiatives. Retrieved from: <https://www.eurofound.europa.eu/data/platform-economy/initiatives#industrialaction>

<sup>319</sup> OECD. (2019). Policy Responses to New Forms of Work. Retrieved from: [https://www.oecd-ilibrary.org/social-issues-migration-health/policy-responses-to-new-forms-of-work\\_0763f1b7-en](https://www.oecd-ilibrary.org/social-issues-migration-health/policy-responses-to-new-forms-of-work_0763f1b7-en)

<sup>320</sup> The accession agreement is available in Danish at: <https://www.hk.dk/-/media/dokumenter/raad-og-stoette-v2/freelancer/erklringvoocalihkprivatendelig.pdf?la=da&hash=F220F50F58285F3F4681F9AE6A81E2E716EF953C>. Accessed 28 July 2020.

<sup>321</sup> Munkholm (2021), Collective Agreements and Social Security Protection for Non-Standard Workers and Particularly for Platform Workers: The Danish Experience, Chapter 7, Ulrich Becker, Olga Chesalina (Ed.) Social Law 4.0, New Approaches for Ensuring and Financing Social Security in the Digital Age, 1. Edition, p. 194. Available at: <https://doi.org/10.5771/9783748912002-171>

agreements and other forms of worker organization	signed in April, entered into force in August.	cleaning services Hilfr.dk. The agreement ensured employee status for the workers, the minimum hourly rate (EUR 19) and set a welfare supplement (EUR 3) which the worker uses for sickness, retirement, holidays etc. <sup>322</sup> The company committed to making these workers employees and bearing their financial risk for their work. The agreement also stipulates the need for the platform to report income to the tax authorities. <sup>323</sup> In 2019, the parties began evaluating the agreement and renegotiations are still in place.
Legislation	2020 September	The Danish government put forward a legislative proposal wishing <i>inter alia</i> to reaffirm the incentive to become self-employed and to improve the pay compensation – beyond maternity and parental benefits – during maternity and parental leave. The proposal is thought to ensure that self-employed (including people working through platforms) would have equal access to social protection related to childbirth and care (as workers who are classified as employed do). Moreover, it guarantees that self-employed would also be entitled to compensation from the equalisation scheme. Therefore, people working through platforms would have greater financial security to, for example, cover the fixed expenses of their business while on maternity and parental leave. The proposal is not yet adopted.
Legislation	2020 May	Statutory consolidated act no. 674 of 25 May 2020 on the working environment. The responsibility of monitoring daily and weekly rest periods of people working through platforms in Denmark lies with the employer, and the Danish Working Environment Authority supervises their compliance. The authority can fine employers for not fulfilling their obligations according to the Working Environment Act. <sup>324</sup> However, if the platform worker is self-employed, the requirements concerning daily and weekly rest periods must be fulfilled by the platform worker, if the platform worker is employed by the platform, the platform has the obligation to ensure that the platform worker is granted the required rest periods.
Labour inspectorate and other administrators	2020 August	In August 2020, the Danish Competition and Consumer Authority ('DCCA') argued that, from a competition law point of view, fixed prices among the self-employed on the Hilfr platform were perceived to create a 'price floor' harming the open price competition. The review concerning Hilfr was critical, since the platform utilised the unprecedented approach of leaving the choice of employment status to the worker. Hilfr had stipulated a minimum hourly fee for the services of both types of providers and had advertised the minimum fee for the self-employed workers on the platform, whilst the minimum fee for the employed was stated in the collective agreement with the trade union 3F. The DCCA assessed that both types of providers were in fact undertakings, which meant that those classified as employed, most likely, did not have the status of employees of Hilfr from a competition law point of view. <sup>325</sup>

<sup>322</sup> Lsøe, A. & Jesnes, K. (2020). Platform work in the Nordic models. Chapter 5. Collective agreements for platforms and workers – two cases from the Nordic countries. Retrieved from: <https://pub.norden.org/temanord2020-513/#25169>

<sup>323</sup> Eurofound. (2020). Platform economy initiatives. Retrieved from: <https://www.eurofound.europa.eu/data/platform-economy/initiatives#industrialaction>

<sup>324</sup> Statutory consolidated act no. 674 of 25 May 2020 on the working environment.

<sup>325</sup> A resume of the decision is available in English here: <https://www.en.kfst.dk/nyheder/kfst/english/decisions/20200826-commitment-decision-on-the-use-of-a-minimum-hourly-fee-hilfr/>

		The assessment of the DCCA has nevertheless been criticised as a misguided ruling. <sup>326</sup> The case was subsequently settled by Hilfr committing to ensure that those classified as employed by the platform would be entitled to the same rights as employees in relation to competition law, which originally was the intention behind the conclusion of the collective agreement with 3F. <sup>327</sup> The DCCA has accepted those commitments as satisfactory. <sup>328</sup>
Collective agreements and other forms of worker organization	2021 February	In the beginning of 2021, the Danish trade union '3F' and the employers' organization 'Dansk Erhverv' reached a national sectoral agreement for food delivery services. The agreement is valid from 2021 to 2023 and gives couriers who deliver takeaway meals a regulated wage, pension, maternity pay, holiday pay and sick pay. The food delivery platform Just Eat is the first to sign the agreement, which will take effect for all its couriers later on in the year <sup>329</sup> .
<b>ESTONIA</b>		
Legislation	2015	The Estonian Tax and Customs Board asked Uber to establish an automatic earnings declaration system for drivers with people working through platforms can opt-in to share their earnings made on Uber directly with the tax office, automatically adding this to their tax return, simplifying the burden for the worker. <sup>330</sup>
Legislation	2017 November	The Estonian Parliament amended the Public Transportation Act to regulate platform-based transportation services. The amendment requires no professional training from the platform worker, but the rideshare platforms are responsible for arranging the necessary instruction. Also as the price for a ride is calculated online, thus taxi workers on platforms are not required to have a taximeter. A taximeter is required only of taxis who provide services at a taxi stand or from the curb and must follow local price limits. <sup>331</sup>
Legislation	2018	Simplified Business Income Taxation Act reduced the tax burden for part-time and self-employed. Not explicitly but the category included people working through platforms in transport, accommodation, and food delivery sectors. Annual income up to EUR 25,000 is taxed at a 20% rate compared to the regular rate of approximately 50%. <sup>332</sup>
<b>FINLAND</b>		
Legislation	2017-2019	The Act on Transport Services has been updated with new provisions since 2017. The new additions have included preconditions for digitalisation and new business concepts in transport, and promoting competition. Its key aim is provision of customer-oriented transport services, as it removed taxi permit caps, introduce fare restrictions.
Legislation	2019	The Finnish government has initiated a family leave reform, to

<sup>326</sup> Stefano, Valerio and Nicola Countouris, 'Collective-bargaining rights for platform workers', Social Europe, 6 October 2020. Available at: <https://www.socialeurope.eu/collective-bargaining-rights-for-platform-workers>

<sup>327</sup> As part of its commitment, Hilfr sought to ensure that there is legal subordination between Freelance Hilfrs and the Super Hilfrs, and that Hilfr will bear the financial risk for Super Hilfr's cleaning work through the platform.

<sup>328</sup> Ilsoe, Anna *et al.*, 'Hilfr-aftalen – et nybrud i det danske aftalesystem', FAOS/WELMA Analysis, 2020, p. 11. Available at: [https://faos.ku.dk/pdf/Hilfr-aftalen\\_et\\_nybrud\\_i\\_det\\_danske\\_overenskomstsystem.pdf](https://faos.ku.dk/pdf/Hilfr-aftalen_et_nybrud_i_det_danske_overenskomstsystem.pdf)

<sup>329</sup> Fagbladet 3F (2021) Groundbreaking agreement: Danes can now order takeaways with a clean conscience. Available [online](#).

<sup>330</sup> Senat.fr. (n.d.). Taxation and the collaborative economy: The need for a fair, simple and unified regime. Retrieved from: <http://www2.senat.fr/rap/r16-481-2/r16-481-225.html>

<sup>331</sup> Eurofound. (2020). Platform economy initiatives. Retrieved from: <https://www.eurofound.europa.eu/data/platform-economy/initiatives#industrialaction>

<sup>332</sup> Eurofound. (2020). Platform economy initiatives. Retrieved from: <https://www.eurofound.europa.eu/data/platform-economy/initiatives#industrialaction>



		increase the duration of paid family leave in a way that gives mothers and fathers an equal quota of months. <sup>333</sup> The Federation of Finnish Entrepreneurs in the tripartite working group <sup>334</sup> is negotiating the reform has highlighted how the rigidities of the existing family leave system are challenging for people working as entrepreneurs and self-employed people working through platforms who might not be able to take the long leaves from paid work. <sup>335</sup>
Labour Inspectorate and other administrators	2020	Platform work is explicitly included in the Government Strategy for Tackling the Grey Economy and Economic Crime (2020-2023). In line with the Government Programme, the strategy aims at reviewing and clarifying the employment contracts act as well as the application practices of different authorities concerning light entrepreneurship and new forms of work. The strategy aims to improve the access of Tax authorities to financial information of companies, especially expanding the obligation of digital platform economy actors to provide information. The purpose of the efforts to combat undeclared work is to improve working conditions, promote labour market integration and facilitate social inclusion.
Actions taken by labour inspectorates and other administrators	2020 October <sup>336</sup>	A decision by the Labour Council <sup>337</sup> shed some light on the status of people working through platforms, it concluded that food couriers may be regarded as employees. The Labour Council came to a conclusion, which disclosed that algorithmic distribution of gigs (which is based on worker ratings and execution of delivery) corresponds to work performed under the employer's direction and supervision. In other words, the Labour Council perceived that the Finnish company and the app information on couriers' execution of tasks make it possible for the company to supervise couriers in a rather detailed manner. Although the Council's statements are not legally binding, they are considered as having societal importance because the Council consists of legal experts. <sup>338</sup> Further, it was the first time an authority evaluated the employment status of people working through platforms.
Collective agreements and other forms of worker organization	2018	Establishment of Justice4Couriers - a campaign by the Finish working on delivery platforms to improve the working conditions of couriers and drivers. The campaign demands repeal to pay cuts, transparent shift allocations, and break spaces for couriers and drivers, equipment compensations and insurances against illness and

<sup>333</sup> Finnish Government 'Inclusive and competent Finland – a socially, economically and ecologically sustainable society (2019). The government programme of Prime Minister Sanna Marin's Government'. Retrieved from: <https://valtioneuvosto.fi/en/marin/government-programme> ; as well as discussions in the Finnish Parliament [https://www.eduskunta.fi/FI/naineduskuntatoimii/kirjasto/aineistot/kotimainen\\_oikeus/LATI/Sivut/perhevapaaudistus.aspx](https://www.eduskunta.fi/FI/naineduskuntatoimii/kirjasto/aineistot/kotimainen_oikeus/LATI/Sivut/perhevapaaudistus.aspx)

<sup>334</sup> Ministry of health and social affairs (2020). Family leave reform aims at encouraging both parents to take family leave. Retrieved from: <https://stm.fi/en/reform-aims-to-encourage-both-parents-to-take-family-leave>

<sup>335</sup> Interview with the Lawyer of the *The Finnish Confederation of Professionals* (STTK) 16 November 2020.

<sup>336</sup> Labour Council (2020). Statement on the application of the Working Hours Act on food couriers working through Company X. Helsinki: Labour Council. Retrieved from: <https://tem.fi/documents/1410877/2191939/TN+1482-20.pdf/5334691d-7ebc-3a5c-443de79ba7578ccc/TN+1482-20.pdf?t=1602756083049>

<sup>337</sup> The Labour Council is a tripartite body that operates under the Ministry of Economic Affairs and Employment.

<sup>338</sup> There is no immediate government response to this as the government's programme made in 2019 already states the aim of revising the Employment Contract Act. It was the regional work inspection authority that made the appeal to the Labour council to evaluate the labour market status of platform workers. The Labour council statement is based on the interpretation of the current law.

		accidents, and the possibility of an employment contract. The main targets of the campaign are Foodora and Wolt. <sup>339</sup>
<b>FRANCE</b>		
Legislation	2016 August and 2018 January	Law 2016-1088 legally defined ‘electronic platforms’ by extending rights to platforms workers, such as the right to create and join a union, organize and join a strike. It granted rights to people working through platforms on labour, modernisation of social dialogue and guarantees for securing of professional careers. <sup>340</sup> In January 2018 it was updated that if the worker earns more than 13% of the annual social security ceiling (EUR 5 100) per year through the platform, the platform must cover worker’s insurance against occupational accident or illness and cover professional training or ‘validation of academic credit’ (also recognizing prior learning) of those workers, and provide a training indemnity. <sup>341</sup>
Legislation	2018 October  2019	French Law no. 2018-898 introduced a tax code for platforms. Platforms must provide their tax obligations to users and a link to the tax office’s website to their users. 2016 amendment to the Finance Act stipulates that from 2019 all online platforms (whether based in France or abroad and regardless of area of business) would be obliged to send directly the earnings of their workers to the tax authorities. <sup>342</sup>
Legislation	2019	The Bill on Transport Mobility ( <i>Loi LOM</i> ) was aimed to improve social rights and working conditions of people working through platforms in the transportation sector. Platforms can voluntarily establish a social responsibility charter with guarantees to people working through platforms such as: freedom of activity, decent income for each task, improved working conditions, transparency, prohibition of exclusivity clause and unilateral breaking of contract without compensation, and provide opportunities for career development and training. The charter must be approved by the French administration for it to have a binding legal character. <sup>343</sup>
Legislation	2018-2020	A major reform to social protection is being implemented between 2018 and 2020. It brings coverage of the self-employed under the general social protection scheme, limiting the administrative changes required if a person moves between employment and self-employment. One of the main aims is to ensure continued social security coverage throughout peoples’ careers. Other efforts to simplify payment and filing procedures were also announced, such as unifying social and tax declarations for the self-employed from 2020.
Actions taken by platforms	2017-2018	Law in 2016 which introduced the principle of social responsibility for platforms encouraged many platforms to partner with insurance companies to offer insurance policies for accident and liability protection. Uber announced a partnership with AXA in July 2017, and in May 2018 it declared that it was expanding the partnership on

<sup>339</sup> Eurofound. (2020). Platform economy initiatives. Retrieved from: <https://www.eurofound.europa.eu/data/platform-economy/initiatives#industrialaction>

<sup>340</sup> Eurofound. (2020). Platform economy initiatives. Retrieved from: <https://www.eurofound.europa.eu/data/platform-economy/initiatives#industrialaction>

<sup>341</sup> Eurofound. (2020). Platform economy initiatives. Retrieved from: <https://www.eurofound.europa.eu/data/platform-economy/initiatives#industrialaction>

<sup>342</sup> OECD. (2019). Policy Responses to New Forms of Work.

<sup>343</sup> Eurofound. (2020). Platform economy initiatives. Retrieved from: <https://www.eurofound.europa.eu/data/platform-economy/initiatives#industrialaction>

		a European scale. Deliveroo also entered into a partnership with AXA in March 2017. <sup>344</sup>
Actions taken by platforms	2019-2020	<p>Deliveroo France proposed to bear the expense of medical teleconsultation and to compensate a 25-euro fee for the purchase of protective equipment for its riders. However, this means the company passes on the responsibility to purchase such protective equipment to the worker.</p> <p>Deliveroo promised to pay a lump sum of EUR 230 for 14 days of sick leave for these riders who contracted COVID-19.<sup>345</sup> However, only workers who have made EUR 130/weekly during the last 4 weeks are eligible for this compensation.</p> <p>Such platform-led initiatives were motivated by the pressure put by CGT Uber Eats/Deliveroo Lyon trade union on the companies through strikes and campaigns throughout 2019 and 2020.</p>
<b>GERMANY</b>		
Collective Agreement	2017	German Crowdsourcing Association, several platforms and metalworkers' union (IG Metall) established a joint Ombuds Office dedicated to resolving disputes and issues between people working through platforms, customers, and platforms (those who have signed the Crowdsourcing Code of Conduct). <sup>346</sup>
Collective Agreement	April 2018	An agreement establishing an SE Works Council in Delivery Hero (which owns Foodora) was signed in Berlin with the German Food, Beverages and Catering Union, the Italian Federation of Workers of Commerce, Hotels, Canteens and Services, and the European EFFAT, (European Federation of Food, Agriculture and Tourism). The agreement specifies that each country in which the company is active must have at least one employee representative in the 'European Company' (SE) works council and the council must be provided with detailed information about the company's strategies which might impact the work organization and employee's interests. The agreement specifies that employee representatives can participate in the supervisory board, where they should be represented in equal numbers to the stakeholders and will hold the same voting rights. This agreement applies in Austria, Finland, France, Germany, Italy, Netherlands, Norway, and Sweden.
Actions taken by platforms	March 2017	Eight Germany-based platforms signed a Code of Conduct in which they agree to include local wage standards as a factor in setting prices on their platforms. First initiated by the Munich-based software testing platform <i>Testbirds</i> , it was officially supported by the German Crowdsourcing Association. <sup>347</sup>
<b>GREECE</b>		
Legislation	2017	There are no specific legal provisions aimed at preventing bogus self-employment (prevalent among people working through platforms) in Greece. However, the Greek government has implemented reforms aimed at improving the regulation of dependent self-employment. Reforms for Laws No. 3144/2003, 3846/2010, and 4387/2016 have

<sup>344</sup> Don't Gig Up! (2020). Final Report. Retrieved from: <http://www.dontgigup.eu/wp-content/uploads/2020/04/Final-Report-3.pdf>, 14

<sup>345</sup> The European Trade Union Confederation. (2020). Red card for platform abuses in the Covid-19 crisis. [etuc.org. Retrieved from: https://www.etuc.org/en/document/red-card-platform-abuses-covid-19-crisis](https://www.etuc.org/en/document/red-card-platform-abuses-covid-19-crisis)

<sup>346</sup> Eurofound. (2020). Platform economy initiatives. Retrieved from: <https://www.eurofound.europa.eu/data/platform-economy/initiatives#industrialaction>

<sup>347</sup> Garben, S. (2017), 69.

		clarified employment status and with the 2017 legislation employees and the self-employed will be covered by common rules for contribution requirements (a single rate of 20%) and benefits. <sup>348</sup> If a dependent self-employed worker has no more than two clients per year, social insurance contributions will be paid as if they were an employee. <sup>349</sup>
Legislation	2018	Adopted legislation aiming to prevent the presence of ride-sharing apps and obliging to conclude three-year contracts with taxi owners. The legislation introduces heavy fines for licensed taxi drivers, as well as for private vehicle owners, who fail to abide by the rules. <sup>350</sup>
Legislation (proposal)	2021	Currently a new law is under preparation regarding labour relations that will introduce measures for people working through platforms. With this law, two ways of collaboration for those providing their services through platforms will be recognized: dependent employment contracts or independent services/work contracts. Legal criteria will be provided for the correct classification of the workers. Most importantly, the providers of independent services would acquire similar rights to those of employees; it provides for natural persons associated with these platforms with trade union rights, rights to establish a trade union organization, negotiate and draft collective agreements and go on strike. In that way, the rights of workers on platforms would be protected, regardless of the type of contract that they are connected with the platform.
<b>HUNGARY</b>		
Legislation	2017	In response to development of the digital economy and its effect on the labour market skills, the Hungarian Government removed some restrictions towards short courses (under 30 hours) in order to have a more flexible approach towards such learning.
<b>ITALY</b>		
Legislation	2017	Italy's 'collaboratori' category was created with the purpose of improving access to social protection for those in between independent contractor and employee status. Unemployment benefit for 'collaboratori' was established in 2017, along with new protections (for both 'collaboratori' and freelance professionals) in case of 'maternity, illness or accident, including the possibility to postpone/suspend or find a suitable replacement for an activity for a client, subject to agreement with them'. <sup>351</sup>
Legislation	2018 July	The first office in Italy for understanding the issues and providing information for workers of food delivery platforms was inaugurated in Milan. The office also provides free training courses on road safety, safety at work, and basic sanitary rules for food transport.
Legislation	2019 April	Following two court cases, Region Lazio promoted the first

<sup>348</sup> Heyes, J., & Hastings, T. (2017). The Practices of Enforcement Bodies in Detecting and Preventing Bogus Self-Employment. ec.europa.eu. Retrieved from: <http://ec.europa.eu/social/BlobServlet?docId=17971&langId=en>, 18

<sup>349</sup> Social insurance contributions would be paid in a matter where one-third is paid by the 'self-employed' person and two-thirds by the employer.

<sup>350</sup> De Groen, W., Kilhoffer, Z., Lenaerts, K., Smits, I., Hauben, H., Waeyaert, W., Robin-Olivier, S. (2019). Study to gather evidence on the working conditions of platform workers. Retrieved from: [https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8280\\_103](https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8280_103)

<sup>351</sup> OECD (2019). Policy Responses to New Forms of Work. OECD Publishing, Paris. Retrieved from: <https://www.oecd.org/g20/summits/osaka/g20-policy-responses-to-new-forms-of-work-OECD-2ndEWG%20meeting.pdf>, 7

(regional)		legislative provisions in Italy concerning ‘protection and safety of digital workers’. <sup>352</sup> The Regional Law does not define the specific contractual status applicable to ‘riders’, but aimed at introducing rules for protection and safety of people working through platforms. <sup>353</sup> The law established obligations to platforms concerning safe working conditions and maternity and paternity leave. <sup>354</sup>
Legislation	2019 November	<p>The Italian Parliament converted a decree into a law which introduced a special regime for gig workers with provisions for social protection of self-employed people working on delivery platforms. The reform aimed to ensure equality of working conditions for self-employed and in permanent employment. With the new law, according to Eurofound:<sup>355</sup></p> <ul style="list-style-type: none"> <li>• The platform must provide to the worker a written employment contract containing all relevant information for working conditions and safety and health;</li> <li>• Social partners can define wages via collective bargaining, taking into account the platform model of delivery activities and working conditions;</li> <li>• In absence of collective bargaining in place for a platform, the wage cannot solely consist of a remuneration per delivery. It must have a fixed minimum wage, based on minimum wage levels established in comparable sectors by collective bargaining at national level;</li> <li>• The collective bargaining agreement must also contain clauses to remunerate night work, weekend and holiday work, and work during unfavourable weather conditions, which must be at least 10% higher than the standard pay;</li> <li>• Workers are protected by anti-discrimination legislation;</li> <li>• The platform cannot exclude workers or reduce their work opportunities as consequence of non-acceptance of delivery proposals sent by the platform;</li> <li>• Personal data must be protected;</li> <li>• Self-employed workers have guaranteed access to a social protection package, including a daily indemnity for illness, hospital stay, and a guarantee of maternity and parental leave.</li> </ul> <p>The Law came into force November 2020.</p>
Collective Action	2018 May	In Bologna a ‘Charter of fundamental digital workers’ rights within an urban setting’ was signed by the city’s mayor, 4 labour unions and by two food delivery platforms (Snam and MyMenu). The Charter sets out to ensure a minimal wage for people working through

<sup>352</sup> L&E Global. (2019). Italy: First legislative provisions regarding "riders" of the "gig economy" arrive from Region Lazio. Retrieved from: <https://knowledge.leglobal.org/italy-first-legislative-provisions-regarding-riders-of-the-gig-economy-arrive-from-region-lazio/>

<sup>353</sup> Ibid.

<sup>354</sup> Obligations are specified as follows: ‘a specific obligation to train the ‘digital worker’ in matters of health and safety at work, in particular, on ‘risks and damages deriving from the exercise of service activities and on prevention and protection procedures’; the duty to guarantee adequate ‘protection devices’ in compliance with the regulations on health and safety at work, as well as to provide for the ‘maintenance costs’ of the equipment and tools used for the service activity by ‘digital workers’; the duty to implement an insurance in favor of the ‘digital worker’ against accidents at work and occupational diseases, for damages caused to third parties during the performance of the service activity, as well as for the protection of maternity and paternity and guarantees for remuneration, mandatory ‘preventive and exhaustive information’ to be provided to the ‘digital worker’. Available at: <https://knowledge.leglobal.org/italy-first-legislative-provisions-regarding-riders-of-the-gig-economy-arrive-from-region-lazio/>

<sup>355</sup> Eurofound. (2020)

		platforms which is at least equal to workers in a similar sector, ensures compensation for holidays, bad weather, overtime, bicycle maintenance, and gives insurance for accidents during work time. The Charter also guarantees the freedom of association and the right to strike. <sup>356</sup>
Collective Action	2020 September	A collective agreement between Assodelivery, the employer organisation representing the majority of the platforms in the delivery sector, and UGL, a small Italian trade union, aimed at providing a regulation of ‘employer-organised work’, in compliance with the specific regulation of delivery and avoiding the application of statutory provisions set in the 2015-2019 reforms (for those self-employed in the delivery sector). The agreement, which specifies that riders are self-employed workers, has been contested by both the three major Italian trade union confederations (CGIL, CISL and UIL) and the Minister of Labour (Circolare no. 17 of 19 November 2020). The agreement introduced piece-rate remuneration for workers (which was contested) and had provisions on working time, access to training, tools and equipment, on predictability and transparency and health and safety of workers.
Labour Inspectorate or other administrators	2021 March	Assodelivery and the three main Italian confederations CGIL, CISL, UIL and UGL have stipulated at a national level a new experimental protocol promoted by the Ministry of Labour. This agreement is aimed at detecting and sanctioning illegal labour intermediation and labour exploitation in the food delivery sector (Article 603-bis of the Criminal Code). In an earlier protocol the platforms took the duty to implement an organizational and management model pursuant to Legislative Decree no. 231/2001 and to avoid the use of external companies to supply the requests of delivery to persons that are not directly engaged by the platform. Moreover, the protocol establishes an Observatory (‘Organismo di garanzia’) to monitor the conditions of the sector.
Actions by platforms	2021 February	Uber Eats introduced a protocol to protect the health and safety of its food delivery riders in Italy, with the provision of free helmets and other safety devices, the supply of anti-Covid-19 protective equipment and free training courses.
<b><u>LATVIA</u></b>		
Legislation	2018	The Latvian government approved regulations for providing passenger transport services, including via platforms. The rules require providers of these services to register for a special permit.
<b><u>LITHUANIA</u></b>		
Legislation	2017	Changes since 2017 have provided additional social protection to the self-employed, extending unemployment insurance, maternity benefits and sickness insurance to owners of sole proprietorships and members of business partnerships.
Legislation	2017-2018	Created a new framework for ridesharing type services. This was accomplished through amendments to the Road Transport Code. <sup>357</sup> The reform came into force in March 2018, regulating platforms such as Uber and Taxify and set an example of ridesharing law in Europe.
<b><u>LUXEMBOURG</u></b>		
Legislation	2016	Luxembourg’s Third Industrial Revolution Strategy deals broadly

<sup>356</sup> Eurofound. (2020). Platform economy initiatives. Retrieved from: <https://www.eurofound.europa.eu/data/platform-economy/initiatives#industrialaction>

<sup>357</sup> De Groen et al. (2019), 103

		with changes in the ‘world of work’ in the digital age, which includes the possibility of new platform work regulation. Including strategies to clarify employment status for people working through platforms, ensure social protection, and expand educational re-skilling and up-skilling for workers in a digitalized and automated work environment. <sup>358</sup>
<b>MALTA</b>		
Legislation		Maltese law protects self-employed workers who are in practice equivalent to employees, as the ‘Employment Status National Standard Order’, stipulates that if an employment relationship fulfils five of the eight criteria listed in the order <sup>359</sup> (e.g. depending on one person for 75% of the income in one year or using tools provided by the employer), then such an ‘employment relationship’ shall be deemed to be an ‘employment’ at law. <sup>360</sup>
<b>NETHERLANDS</b>		
Legislation	2020 January	The Committee on the Regulation of Work ( <i>Borstlap Committee</i> ) in the Netherlands has advised the government that ‘everything must focus on reducing the difference between employees, self-employed and flex workers’ <sup>361</sup> this indicated some development in legal provisions concerning platform work. For now no clear steps have been taken as the government applies existing regulations to online platform work, which entails a case-by-case determination.
Collective agreement	2018	The platform Temper (matches supply and demand in the hospitality sector) and a Dutch trade union (FNV) signed a cooperation pact which provides self-employed Temper workers with training, pensions, and insurance for one year. Later in the year the pact was extended including the removal of a fee workers paid for the platform and more training opportunities. <sup>362</sup>
Actions taken by platforms		The platform Happy Helper which matches demand and supply for cleaning services started providing its workers with trainings to improve skills in services provided, interpersonal communication and digital skills necessary for using their platform. <sup>363</sup>
Case Law	2020 July	The ADCU, a trade union for people working through platforms in the gig economy (backing three UK drivers) and the IAATW (supporting a fourth driver in Lisbon) launched a legal action in the

<sup>358</sup> Rifkin J. et al (2016). The 3rd Industrial Revolution Strategy Study for the Grand Duchy of Luxembourg. IMS, Luxembourg. Retrieved from: [https://www.troisiemerevolutionindustrielle.lu/wp-content/uploads/2016/11/TIR-Strategy-Study\\_Short.pdf](https://www.troisiemerevolutionindustrielle.lu/wp-content/uploads/2016/11/TIR-Strategy-Study_Short.pdf), 130

<sup>359</sup> A courier could be eligible for a formal employment contract if they: 1) depend on the employer for at least 75% of their income over a one-year period 2) depend on the employer to determine what work needs to be done and where 3) perform the work using equipment, tools or equipment provided by employer 4) are subject to a minimum work period established by the employer 5) cannot sub-contract his work to others as a substitute for himself 6) are integrated in the structure of the production process, the work organisation or the company’s hierarchy 7) provide a core element in the organisation and pursuit of company objectives 8) carry out similar tasks to existing employees.

<sup>360</sup> Bugeja, T. (2018). Uber And The Platform Economy – A New Hybrid Form Of Employment? - Employment and HR - Malta. Mondaq. Retrieved from: <https://www.mondaq.com/employment-litigation-tribunals/685100/uber-and-the-platform-economy-a-new-hybrid-form-of-employment>

<sup>361</sup> Commissie Regulering van Werk (2020). *In wat voor land willen wij werken? Naar een nieuw ontwerp voor de regulering van werk*. Retrieved from: <https://www.rijksoverheid.nl/documenten/rapporten/2020/01/23/rapport-in-wat-voor-land-willen-wij-werken>, 23.

<sup>362</sup> Eurofound. (2020). Platform economy initiatives. Retrieved from: <https://www.eurofound.europa.eu/data/platform-economy/initiatives#industrialaction>

<sup>363</sup> Eurofound. (2020). Platform economy initiatives. Retrieved from: <https://www.eurofound.europa.eu/data/platform-economy/initiatives#industrialaction>



		district court in Amsterdam over Uber's failure to respect the digital rights of drivers and couriers under the GDPR. <sup>364</sup> Uber has illegally blocked workers from accessing all of their personal data at work and failed to provide workers transparency to algorithmic management and control of drivers when requested to do so. This arose after Uber drivers were dismissed allegedly for fraudulent activity on Uber. The drivers denied the claims, however were not provided access to the evidence against them, nor allowed to challenge or appeal the decision to terminate. The unions claim they have evidence that Uber maintains secret driver and courier profiles which it uses to rate worker their performance with categories such as 'late arrival/missed ETA', 'negative attitude' or 'inappropriate behaviour'. <sup>365</sup>
<b><u>POLAND</u></b>		
Legislation	2016	In a report by the Commission for the Codification of Labour Law established the need to elaborate the new individual and collective Labour code in order to adapt the labour law system to the current labour and economic conditions in the country – there is a reference to the legal status of platform work. However, there has been no legislative action regarding platform work since.
<b><u>PORTUGAL</u></b>		
Legislation	2017	Changes to Law n.º 63/2013 and Law n.º 55/2017 provide workers with a speedier court decision recognising the existence of an employment relationship. In addition, employers may receive a pre-notification from the labour inspection authority to regularise a bogus self-employment relationship where one has been detected.
Legislation	2018-2019	The government passed a law which only applies to the transport sector, obliges platforms to use 'operators' as intermediaries between the platform and the drivers. According to this law, individual drivers must be contracted by these intermediate operators instead of having a contract directly with the platforms. Thus introducing an employment contract between the driver and the operator, even if the contract constitutes a different relationship. The law introduces additional material provisions on working conditions (e.g. limited working hours). Furthermore, Uber drivers, as employees, are covered by general labour and social protection legislation. The law entered in to force in 2019.
Other	2020 January	The Institute of Public Affairs has lobbied the Parliament to regulate the status of people working through platforms <sup>366</sup> who, at present, are classified as self-employed or employed under a civil law contract. <sup>367</sup>
<b><u>SLOVAKIA</u></b>		
Legislation	2018	Adopted new tax legislation obliging platforms to provide data on earned income through personal transport services and accommodation services. <sup>368</sup> The regulation has entered into force.
Legislation	2019 April	Adopted legislation which introduced a wider definition for 'dispatching services' (Platforms are not considered taxi companies but dispatchers). The new legislation abolished several requirements

<sup>364</sup> ADCU.org. (2020). Uber Drivers Take Unprecedented International Legal Action to Demand Their Data. Retrieved from: <https://www.adcu.org.uk/news-posts/uber-drivers-take-unprecedented-international-legal-action-to-demand-their-data>

<sup>365</sup> App Drivers and Couriers Union. (2020). Help protect Uber drivers from unfair & hidden algorithmic management. CrowdJustice. Retrieved from: <https://www.crowdjustice.com/case/help-protect-uber-drivers-from/>

<sup>366</sup> Interview with the Director of the Programme of Social Policy in the Institute of Public Affairs, 28 October 2020.

<sup>367</sup> Don't Gig Up! (2020), 12.

<sup>368</sup> De Groen, W. et al. (2019), 110.

		that were previously applied to the taxi business, such as the requirements to prove financial reliability, to have a proficiency test or to have a taximeter at all times. <sup>369</sup> This new definition removed most of the requirements for platform drivers that previously were applied and forced Uber to stop its operations in the country. In force since April 2019.
<b>SLOVENIA</b>		
Legislation	2020 December	Slovenian government adopted a proposal to amend the Road Transport Act <sup>370</sup> in December 2020. This Act establishes a new type of work, occasional ‘chauffeur service’ (for which a state license is now obligatory), the abolition of taximeters for taxi drivers, and that the regulation of taxi services which will be the responsibility of local communities. The government has legitimated this policy measure as an opportunity for new transport services, enabling business through advanced platforms, and more choice and lower prices for users. <sup>371</sup>
Labour Inspectorate	2014-2017	The labour inspectorate, motivated by campaigns by ZSSS trade union, sanctioned GoOpti (transportation platform) for misclassification of the employment status (classified as self-employed rather than employees). Since 2015, following the sanctions, the platform subcontracts tasks to transport companies and still does not employ the drivers. The labour inspectorate’s check in 2017 confirmed that some transport companies hire self-employed workers contrary to law.
Collective action	2019	Cooperating with other Slovenian trade unions Mladi Plus (union representing students, pupils, unemployed youth and young precarious workers since 2011) prevented Uber from entering into the country through legal action. Platforms such as Wolt, which recently started operating in Slovenia, are employing people with special student work agreements or as self-employed workers, because of that Mladi Plus took initiatives against these platforms and fights for the recognition of couriers as employees. <sup>372</sup>
<b>SPAIN</b>		
Legislation	2018 July	The Spanish government put in place a ‘Strategic Plan for Decent Work 2018-2020’ <sup>373</sup> to tackle bogus self-employment and abuses in temporary and part-time work among other issues. Two immediate action plans were launched to fight against fraud in temporary and part-time contracts.
Legislation	2018 December	Through a reform extended social protection and social security contributions to almost all self-employed, aligning their social security scheme more closely to that of employees. It increased the social contributions for the self-employed which allows better access and conditions for unemployment, also ‘coverage for occupational risks (benefits relating to accidents at work or occupational diseases), enhanced benefits for temporary disability due to sickness, improved work-life balance and maternity protection’. <sup>374</sup>

<sup>369</sup> De Groen, W. et al. (2019), 103

<sup>370</sup> Road Transport Act. Available at: <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4236> (Accessed 14 December 2020).

<sup>371</sup> Gole, Nejc, (2020). Na mizi je zakon, ki bi v Slovenijo pripeljal Uber'. Delo, 9.

<sup>372</sup> Eurofound. (2020). Platform economy initiatives. Retrieved from: <https://www.eurofound.europa.eu/data/platform-economy/initiatives#industrialaction>

<sup>373</sup> See more at:

[http://www.mites.gob.es/ficheros/ministerio/plandirector/National\\_Plan\\_for\\_decent\\_work\\_Executive\\_Summary\\_and\\_first\\_outcomes.pdf](http://www.mites.gob.es/ficheros/ministerio/plandirector/National_Plan_for_decent_work_Executive_Summary_and_first_outcomes.pdf)

<sup>374</sup> OECD (2019), 56

Legislation	2019 December	The Parliament of the Basque Country Region passed a non-binding resolution against the precarious work derived from the platform economy which promotes the regular work and the fight against the false independent contractors. <sup>375</sup>
Legislation	2021 May	The Spanish government put in place the first legislation in Europe that explicitly regulates the status of delivery workers. The ‘Riders law’ requires digital labour platforms in delivery sector to classify their couriers as employees, rather than independent contractors. The law is also introducing the right of information on algorithms. According to the new provisions, companies must provide (i) algorithm parameters, and (ii) mathematical formula that have an impact on the employment relationship with workers. <sup>376</sup>
Labour Inspectorate or other administrators	2017	The labour inspectorate of the autonomous community of Valencia concluded in December 2017 that Deliveroo riders are employees and not self-employed as the platform claims. As a result, the platform was obliged to pay around EUR 161,000 in unpaid social security contributions. <sup>377</sup>
Labour Inspectorate or other administrators	2018-2020	Developed campaigns targeted at false self-employment in platform work as part of the Labour and Social Security Inspection Strategic Plan 2018- 2020, including developing a dedicated operative procedure, providing specialised training to inspectors and implementing regional pilot programmes.
Labour Inspectorate or other administrators	2019	The Labour inspectorates of Valencia and Madrid held that workers of Deliveroo and Glovo work in conditions of subordination to the platform, something that is not compatible with the purported self-employed status of riders. <sup>378</sup>
Labour Inspectorate or other administrators	2020 October	The Spanish labour inspectorate officially registered 4,066 Amazon Flex delivery workers who worked as self-employed (which is considered fraud due to pushing workers into bogus self-employment). The ruling requires Amazon to pay over EUR 6 million to cover Social Security contributions as the workers have been illegally classified as freelancers. <sup>379</sup>
Collective agreements	September 2018	The Workers General Union (UGT) signed a manifesto of intentions with the employer organisation of car rental companies with drivers (VTC), including Cabify (a platform operating in Spain and in 10 other countries). The agreement aimed at ensuring safe working conditions for all drivers and pushing all platforms, including Uber, to join. The agreement was proof of shared intentions, but it did not set any concrete actions, besides starting a social dialogue and setting up a collective agreement negotiation table for the future. <sup>380</sup>
Collective action	2020 October	A dialogue between the Spanish Ministry of Employment, representatives of the employers (Confederation of Employers and Industries of Spain (CEOE) and Spanish Confederation of Small and Medium-Sized Enterprises (CEPYME)), trade unions (Confederation

<sup>375</sup> Beltran, I. & Ruiz, H. (2018).

<sup>376</sup> Disposición 7840 del BOE núm. 113 de 2021 (mites.gob.es).

<sup>377</sup> Stefano, V. (2018). Platform work and labour protection. Flexibility is not enough. Regulating For Globalization. Retrieved from: <http://regulatingforglobalization.com/2018/05/23/platform-work-labour-protection-flexibility-not-enough/>

<sup>378</sup> Ibid.

<sup>379</sup> Gómez, M. (2020). Spain's Labor Inspectorate forces Amazon to give 4,000 false freelancers work contracts. El Pais. Retrieved from: [https://english.elpais.com/economy\\_and\\_business/2020-10-15/spains-labor-inspectorate-forces-amazon-to-give-4000-false-freelancers-work-contracts.html](https://english.elpais.com/economy_and_business/2020-10-15/spains-labor-inspectorate-forces-amazon-to-give-4000-false-freelancers-work-contracts.html)

<sup>380</sup> Eurofound. (2020). Platform economy initiatives. Retrieved from: <https://www.eurofound.europa.eu/data/platform-economy/initiatives#industrialaction>

		of Workers' Commissions and General Union of Workers (UGT)) took place in October 2020 <sup>381</sup> to elaborate an act that will regulate platform work. This initiative started after Supreme Court's decision against Glovo which ruled that the platform was not a mere intermediary, but that there is an employment relationship between Glovo and its riders. Before this ruling, the Ministry of Employment had already announced in early 2020 the importance of regulating people working through platforms. After several claims from workers and trade unions, the new act should cover all types of platforms. <sup>382</sup>
<b>SWEDEN</b>		
Collective Agreement	2018	The transportation platform Bzzt and the Swedish Transport Workers' Union made a collective agreements which allowed Bzzt drivers to be covered by the Taxi Agreement. This coverage meant people working through platforms were given access to the same standards as traditional taxi drivers (Bzzt drivers are now offered marginal part-time contracts). <sup>383</sup>
Collective Agreement	2021 April	The delivery platform Foodora and Trafikförbundet, the Swedish Transport Workers' Union signed a collective agreement. According to the union, the agreement covers all the riders directly employed at Foodora but not the riders in the Foodora market, so called terminal workers that are employed by other companies. The coverage means increased salaries and compensation for bids during certain times; annual salary increases; compensation for maintenance of bicycles and work; clothes; pensions and insurances that are in line with Transport's other collective agreements. <sup>384</sup>
Actions taken by labour inspectorates and other administrators		The Swedish Public Employment Services started an initiative called Joblink, intended to be 'an open, neutral and common platform for all actors offering digital services such as matching, recruitment and education'. As there are so many different platforms, the PES says, Joblink aims to make it easier for jobseekers to find jobs and for platforms to find workers. It is also an effort to contribute to the 'digital ecosystem' by offering a common platform that encourages all actors (including the Public Employment Service) to share data, maximising the efficiency of matching and stimulating the creation of more digital services.

#### **Annex IV: Overview of relevant decisions by national courts or administrative bodies in EU Member States on the employment status of people working through platforms**

Date	Court/administrative body	Platform	Classification	Consequences	Instance	Appeal	Case No./link
<b>Belgium</b>							

<sup>381</sup> CCOO (2020). Las plataformas digitales deben adaptarse a la legislación laboral', CCOO, Retrieved from: [https://www.ccoo.es/noticia:522145--Las-plataformas-digitales-deben-adaptarse-a-la-legislacion-laboral&opc\\_id=8c53f4de8f8f09d2e54f19daf8d8ed95](https://www.ccoo.es/noticia:522145--Las-plataformas-digitales-deben-adaptarse-a-la-legislacion-laboral&opc_id=8c53f4de8f8f09d2e54f19daf8d8ed95)

<sup>382</sup> UGT, (2020). UGT y CCOO valoramos la reunión de la mesa de diálogo social sobre plataformas digitales', UGT, Retrieved from: <https://www.ugt.es/ugt-y-ccoo-valoramos-la-reunion-de-la-mesa-de-dialogo-social-sobre-plataformas-digitales>

<sup>383</sup> Eurofound. (2020). Platform economy initiatives. Retrieved from: <https://www.eurofound.europa.eu/data/platform-economy/initiatives#industrialaction>

<sup>384</sup> Foodora och Transport tecknar kollektivavtal | Lag & Avtal (lag-avtal.se) Foodora [EN] – Transport

12/9/2015	Office national de la sécurité sociale (ONSS) [National Social Security Office]	Uber	self-employed	drivers responsible for paying social security contributions	-	-	Legal expertise commissioned by the Secretary of State for Social Fraud
23/2/2018	Commission Administrative de règlement de la relation de travail (CRT) [Administrative Commission for the Regulation of Labour Relations]	Deliveroo	employee	reclassification for social security purposes required	1st	overruled for procedural reasons by the the Labour Court on 3/7/2019	116 – FR – 20180209
9/3/2018	Commission Administrative de règlement de la relation de travail (CRT) [Administrative Commission for the Regulation of Labour Relations]	Deliveroo	employee	reclassification for social security purposes required	1st	-	113 – FR – 20180123
16/1/2019	Tribunal de l'entreprise francophone de Bruxelles [Brussels Business Court]	Uber	self-employed	-	1st	decision on appeal by the Cour d'appel de Bruxelles of 15/1/2021 does not focus on questions of worker status	R.G. no A/18/02920
3/7/2019	Tribunal du travail francophone de Bruxelles [Brussels Labour Court]	Deliveroo	-	invalidation of the CRT's decision of 9/3/2018	2nd	final decision pending	R.G. no 18/2076/A
26/10/2020	Commission Administrative de règlement de la relation de travail (CRT) [Administrative Commission for the Regulation of Labour Relations]	Uber	employee	Uber and the Belgian Platform rider association (BPRA) must both be seen as employers	1st	appeal brought by Uber before the Brussels Labour Court, pending	187 – FR – 20200707
<b>Germany</b>							
19/9/2018	Arbeitsgericht Fulda [Fulda Labour Court]	[platform linking	self-employed	competence of the Civil	1st	upheld by the Labour Appeals	4 Ca 278/18

		bus driver and company]		Court instead of the Labour Court		Court on 14/2/2019	
14/02/2019	Landesarbeitsgericht Hessen [Hesse Labour Appeals Court]	[platform linking bus driver and company]	self-employed	competence of the Civil Court instead of the Labour Court	2nd	-	10 Ta 350/18
20/2/2019	Arbeitsgericht München [Munich Labour Court]	Roamler	self-employed	-	1st	upheld by the Labour Appeals Court on 4/12/2019	19 Ca 6915/18
4/12/2019	Landesarbeitsgericht München [Munich Labour Appeals Court]	Roamler	self-employed	-	2nd	overruled by the Federal Labour Court on 1/12/2020	8 Sa 146/19
1/12/2020	Bundesarbeitsgericht [Federal Labour Court]	Roamler	employee	referred back to 2nd instance	3rd	-	9 AZR 102/20
<b>Denmark</b>							
26/8/2020	Konkurrencerådet (Competition Council)	Hilfr	self-employed	violation of competition law by minimum pay rates	1st	-	Konkurrencerådsafgørelse den 26. august 2020
<b>Spain</b>							
2/2/2017	Juzgado Mercantil de Madrid [Madrid Commercial Court]	Blablacar	self-employed	-	1st		SJM M 6/2017
1/2018	Inspección de trabajo [Labour Inspection]	Delivero	employee	retroactive imposition of social security contributions	1st		non-published decision
2/2018	Inspección de trabajo [Labour Inspection]	Glovo	employee	retroactive imposition of social security contributions	1st		non-published decision
29/5/2018	Juzgado de lo Social de Barcelona [Barcelona Social Court]	Take Eat Easy	employee	reinstatement and retroactive entitlements in line with contract	1st		213/2018

				for indetermin ate duration			
1/6/2018	Juzgado de lo Social de Valencia [Valencia Social Court]	Delivero	employee	retroactive entitlements in line with contract for indeterminate duration	1st		244/2018
3/9/2018	Juzgado de lo Social de Madrid [Madrid Social Court]	Glovo	third category (TRADE)	-	1st		284/2018
11/1/2019	Juzgado de lo Social de Madrid [Madrid Social Court]	Glovo	third category (TRADE)	-	1st	overruled by the Madrid Appeals Court on 27/11/2019	12/2019
11/2/2019	Juzgado de lo Social de Madrid [Madrid Social Court]	Glovo	employee	reinstatement and retroactive entitlements in line with contract for indeterminate duration	1st	upheld by the Asturias Appeals Court on 25/7/2019	53/2019
20/2/2019	Juzgado de lo Social de Gijón [Gijón Social Court]	Glovo	employee	reinstatement and retroactive entitlements in line with contract for indeterminate duration	1st	upheld by the Madrid Appeals Court on 3/2/2021	61/2019
25/2/2019	Juzgado de lo Social de Oviedo [Oviedo Social Court]	Glovo	third category (TRADE)	-	1st		106/2019
3/4/2019	Juzgado de lo Social de Madrid [Madrid Social Court]	Glovo	employee	-	1st		128/2019
4/4/2019	Juzgado de lo Social de Madrid [Madrid Social Court]	Glovo	employee	reinstatement and retroactive entitlements in line with contract	1st		134/2019



				for indetermin ate duration			
4/4/2019	Juzgado de lo Social de Madrid [Madrid Social Court]	Glovo	employee	reinstatement and retroactive entitlements in line with contract for indeterminate duration	1st	upheld by the Madrid Appeals Court on 18/12/2019	130/2019
29/5/2019	Juzgado de lo Social de Barcelona [Barcelona Social Court]	Glovo	third category (TRADE)	-	1st	overruled by the Cataluña Appeals Court on 12/5/2020	202/2019
21/5/2019	Juzgado de lo Social de Barcelona [Barcelona Social Court]	Glovo	third category (TRADE)	-	1st	overruled by the Cataluña Appeals Court on 7/5/2021	205/2019
10/6/2019	Juzgado de lo Social de Valencia [Valencia Social Court]	Delivero	employee	retroactive imposition of social security contributions	1st		197/2019
11/6/2019	Juzgado de lo Social de Barcelona [Barcelona Social Court]	Delivero	employee	-	1st		193/2019
14/6/2019	Juzgado de lo Social de Salamanca [Salamanca Social Court]	Glovo	third category (TRADE)	-	1st	overruled by the Castilla Appeals Court on 7/5/2020	215/2019
22/7/2019	Juzgado de lo Social de Madrid [Madrid Social Court]	Delivero	employee	retroactive entitlements in line with contract for indeterminate duration	1st		188/2019
10/6/2019	Tribunal Superior de Justicia de Asturias [Asturias Appeals Court]	Glovo	employee	-	2nd		1818/2019
30/7/20	Juzgado de lo	Delivero	employee	-	1st		213/2019

19	Social de Barcelona [Barcelona Social Court]	o					
19/9/2019	Tribunal Superior de Justicia de Madrid [Madrid Appeals Court]	Glovo	third category (TRADE)	-	2nd	overruled by the Supreme Court on 25/9/2020	715/2019
27/11/2019	Tribunal Superior de Justicia de Madrid [Madrid Appeals Court]	Glovo	employee	reinstatement and retroactive entitlements in line with contract for indeterminate duration	2nd		1155/2019
12/11/2019	Juzgado de lo Social de Vigo [Vigo Social Court]	Glovo	third category (TRADE)	-	1st		642/2019
18/11/2019	Juzgado de lo Social de Barcelona [Barcelona Social Court]	Glovo	employee	reinstatement and retroactive entitlements in line with contract for indeterminate duration	1st		325/2019
27/11/2019	Tribunal Superior de Justicia de Madrid [Madrid Appeals Court]	Glovo	employee	-	2nd		1155/2019
18/12/2019	Tribunal Superior de Justicia de Madrid [Madrid Appeals Court]	Glovo	employee	-	2nd		714/2019
1/2020	Inspección de trabajo [Labour Inspection]	UberEats	employee	retroactive imposition of social security contributions	1st		non-published decision
17/1/2020	Tribunal Superior de Justicia de Madrid [Madrid Appeals Court]	Deliveroo	employee	-	2nd	pending appeal brought by Deliveroo before the Supreme Court	40/2020
3/2/2020	Tribunal Superior de	Glovo	employee	-	2nd		85/2020

	Justicia de Madrid [Madrid Appeals Court]						
17/2/2020	Tribunal Superior de Justicia de Castilla y León [Castilla Appeals Court]	Glovo	employee	retroactive entitlements in line with contract for indeterminate duration	2nd		992/2020
21/2/2020	Tribunal Superior de Justicia de Cataluña [Catalonia Appeals Court]	Glovo	employee	reinstatement and retroactive entitlements in line with contract for indeterminate duration	2nd		1034/2020
27/4/2020	Juzgado de lo Social de Zaragoza [Zaragoza Social Court]	Delivero	employee	retroactive imposition of social security contributions	1st		123/2020
7/5/2020	Tribunal Superior de Justicia de Cataluña [Catalonia Appeals Court]	Glovo	employee	reinstatement and retroactive entitlements in line with contract for indeterminate duration	2nd		1432/2020
12/5/2020	Tribunal Superior de Justicia de Cataluña [Catalonia Appeals Court]	Glovo	employee	-	2nd		1449/2020
11/6/2020	Tribunal Superior de Justicia de Cataluña [Catalonia Appeals Court]	Glovo	employee	-	2nd		2405/2020
16/6/2020	Tribunal Superior de Justicia de Cataluña [Catalonia Appeals Court]	Delivero	employee	-	2nd		2557/2020
7/9/2020	Juzgado de lo Social de	Delivero	employee	reinstatement and	1st		723/2020

	Barcelona [Barcelona Social Court]			retroactive entitlemen ts in line with contract for indetermin ate duration			
22/9/20 20	Tribunal Superior de Justicia de Cataluña [Catalonia Appeals Court]	Glovo	employee	-	2nd		4021/2020
23/9/20 20	Tribunal Supremo [Supreme Court]	Glovo	employee	retroactive entitlemen ts in line with contract for indetermin ate duration	3rd		4746/2019
10/2020	Inspección de trabajo [Labour Inspection]	Amazon Flex	employee	retroactive imposition of social security contributio ns	1st		non-published decision
18/11/2 020	Juzgado de lo Social de Barcelona [Barcelona Social Court]	Delivero	employee	retroactive imposition of social security contributio ns	1st		259/2020
20/11/2 020	Juzgado de lo Social de Santander [Santander Social Court]	Glovo	employee	retroactive imposition of social security contributio ns	1st		289/2020
30/11/2 020	Tribunal Superior de Justicia de Madrid [Madrid Appeals Court]	Glovo	employee	-	2nd		1052/2020
12/1/20 21	Juzgado de lo Social de Barcelona [Barcelona Social Court]	Delivero	employee	retroactive imposition of social security contributio ns	1st		not yet published
<b>France</b>							
1/6/201 5	Conseil de Prud'hommes de Paris [Paris Labour Court]	LeCab	self- employed	competenc e of the Business Court instead of Labour	1st	upheld by the Paris Appeals Court on 7/1/2016	RG n° F14/7887

				Court			
7/1/2016	Cour d'appel de Paris [Paris Appeals Court]	LeCab	self-employed	competence of the Business Court instead of Labour Court	2nd	-	RG n° 15/06489
5/9/2016	Conseil de Prud'hommes de Paris [Paris Labour Court]	Deliveroo	self-employed	-	1st	upheld by the Paris Appeals Court on 9/11/2017	RG n° F15/0164
17/11/2016	Conseil de Prud'hommes de Paris [Paris Labour Court]	Take Eat Easy	self-employed	-	1st	upheld by the Paris Appeals Court on 20/4/2017	RG n° F16-04592
14/12/2016	Tribunal des affaires de sécurité sociale (TASS) de Paris [Paris Social Security Court]	Uber	- (Social Security Administration's claim for reclassification rejected for procedural reasons)	-	1st	pending appeal brought by the URSSAF (Social Security Administration)	RG n° 16-03915
20/12/2016	Conseil de Prud'hommes de Paris [Paris Labour Court]	LeCab	employee	retroactive obligation to grant wages, reimbursement of professional expenses, overtime supplements, compensation for disguised employment	1st	upheld by the Paris Appeals Court on 13/12/2017	RG n° 14/16389
20/12/2016	Conseil de Prud'hommes de Paris [Paris Labour Court]	LeCab	employee	retroactive obligation to grant wages, reimbursement of professional expenses, overtime supplements, compensation for disguised	1st	upheld by the Paris Appeals Court on 13/12/2017	RG n° 14/11044

				employment and unlawful dismissal			
24/1/2017	Conseil de Prud'hommes de Paris [Paris Labour Court]	Take Eat Easy	self-employed	-	1st	upheld by the Paris Appeals Court on 12/10/2017	RG n° F16/00407
30/1/2017	Tribunal de commerce de Paris [Paris Business Court]	Uber	self-employed	no condemnation of Uber for unfair competition by circumventing social law	1st	decision on appeal by the Cour d'appel de Paris of 12/12/2019 (n° 17/03541) does not focus on questions of worker status	RG n° 2014054740
20/4/2017	Cour d'appel de Paris [Paris Appeals Court]	Take Eat Easy	self-employed	-	2nd	overturned by the Supreme Court on 28/11/2018	RG n° 17/00511
12/10/2017	Cour d'appel de Paris [Paris Appeals Court]	Take Eat Easy	self-employed	-	2nd	-	RG n° 17/03088
9/11/2017	Cour d'appel de Paris [Paris Appeals Court]	Deliveroo	self-employed	-	2nd	-	RG n° 16/12875
13/12/2017	Cour d'appel de Lyon [Lyon Appeals Court]	LeCab	employee	retroactive obligation to grant wages, reimbursement of professional expenses, overtime supplements, compensation for disguised employment	2nd	-	RG n° 17/00351
13/12/2017	Cour d'appel de Lyon [Lyon Appeals Court]	LeCab	employee	retroactive obligation to grant wages, reimbursement of professional expenses, overtime	2nd	-	RG n° 17/00349

				supplements, compensation for disguised employment and unlawful dismissal			
29/1/2018	Conseil de Prud'hommes de Paris [Paris Labour Court]	Uber	self-employed	-	1st	-	RG n° F16/11460
24/5/2018	Tribunal correctionnel de Lille [Lille Criminal Court]	Clic and Walk	self-employed	-	1st	overturned by the Douai Appeals Court on 4/2/2020	RG n° 16040000134
28/6/2018	Conseil de Prud'hommes de Paris [Paris Labour Court]	Uber	self-employed	-	1st	overturned by the Paris Appeals Court on 10/1/2019	RG n° 17/04674
28/11/2018	Cour de cassation [Supreme Court]	Take Eat Easy	employee	referred back to 2nd instance	3rd	-	Arrêt n°1737 (17-20.079)
10/1/2019	Cour d'appel de Paris [Paris Appeals Court]	Uber	employee	referred back to 1st instance	2nd	upheld by the Supreme Court on 28/11/2018	RG n° 18/08357
8/3/2019	Conseil de Prud'hommes de Lyon [Lyon Labour Court]	Uber	self-employed	-	1st	upheld by the Lyon Appeals Court on 16/1/2021	RG n° 19/08056
4/2/2020	Conseil de Prud'hommes de Paris [Paris Labour Court]	Deliveroo	employee	entitlements in line with employment contract of indeterminate duration; indemnity for wrongful dismissal	1st	pending appeal brought by Deliveroo	RG n° 19/07738
10/2/2020	Cour d'appel de Douai [Douai Appeals Court]	Clic and Walk	employee	criminal responsibility of the company and its manager for disguised	2nd	pending appeal brought by Clic and Walk	RG n° 19/00137

				employment, imposition of fines			
4/3/2020	Cour de cassation [Supreme Court]	Uber	employee	referred back to 2nd instance	3rd	-	Arrêt n° 374 (19-13.316)
16/1/2021	Cour d'appel de Lyon [Lyon Appeals Court]	Uber	self-employed	-	2nd		RG n° 19/08056
<b>Ireland</b>							
8/10/2018	Tax Appeals Commissioner	Domino's Pizza	employee			upheld by the High Court on 20/12/2019	23TACD2018
20/12/2019	High Court	Domino's Pizza	employee			pending appeal brought by Dominos, hearing set for 20/7/2021	IEHC 894 [2019 No. 31 R]
<b>Italy</b>							
7/5/2018	Tribunale di Torino [Turin Civil Court]	Foodora	self-employed	-	1st	overturned by the Appeals Court on 11/1/2019	RG n. 4764/2017
10/9/2018	Tribunale di Milano [Milan Civil Court]	Glovo	self-employed	-	1st	-	RG n. 6719/2017
11/1/2019	Corte di Appello di Torino [Turin Appeals Court]	Foodora	third category (lavoro etero-organizzato)	retroactive obligation to pay wages in line with the collective agreement for the logistics and freight transport sector, but no protection against unlawful dismissal	2nd	upheld (in essence) by the Supreme Court on 24/1/2020	RG n. 468/2018
24/1/2020	Corte di Cassazione [Supreme Court]	Foodora	third category (lavoro etero-organizzato)	retroactive obligation to pay wages in line with the collective agreement for the logistics	3rd	-	RG n. 11629/2019



				and freight transport sector, but no protection against unlawful dismissal			
20/11/2020	Tribunale di Palermo [Palermo Civil Court]	Glovo	employee	retroactive rights in accordance with employment contract concluded for indeterminate duration (considering applicable collective agreement); reinstatement and compensation for unlawful dismissal	1st	pending appeal brought by Glovo	RG n. 7283/2020
24/11/2020	Tribunale di Palermo [Palermo Civil Court]	Glovo	employee	retroactive rights in accordance with employment contract concluded for indeterminate duration (considering applicable collective agreement); reinstatement and compensation for unlawful dismissal	1st		RG n. 7283/2020
31/12/2020	Tribunale di Bologna [Bologna Civil Court]	Deliveroo	employee or third category (lavoro etero-organizzato)	applicability of OSH standards	1st		RG n. 2949/2019

			)				
10/1/2021	Tribunale di Firenze [Florence Civil Court]	Delivero	self-employed or third category (lavoro etero-organizzato)	non-applicability of prohibition of anti-union behaviour	1st		RG n. 2425/2020
24/2/2021	Ispettorato territoriale del lavoro di Milano [Milan Labour Inspectorate]	Just Eat, Glovo, Uber Eats, Delivero	third category (lavoro etero-organizzato)	retroactive obligation to pay wages and social security contributions; fines for violation of health and safety standards	1st	pending appeal brought by Glovo and Just Eat before the Administrative Court	Verballi di accertamento
<b>The Netherlands</b>							
23/7/2018	Rechtbank Amsterdam [Amsterdam Civil Court]	Delivero	self-employed	-	1st	-	CV EXPL 18-2673
15/1/2019	Rechtbank Amsterdam [Amsterdam Civil Court]	Delivero	employee	applicability of the collective agreement for the road transport and haulage sector (separate judgment: CV EXPL 18-14762)	1st	upheld by the Appeals Court on 16/2/2021	CV EXPL 18-14763
1/7/2019	Rechtbank Amsterdam [Amsterdam Civil Court]	Helping	self-employed	Helping to be classified as placement agency for self-employed workers and thus prohibited from charging a commission from workers	1st	pending appeal brought by the trade union before the Appeals Court	CV EXPL 18-23708
23/6/2020	Gerechtshof Amsterdam [Amsterdam]	Helping	-	plaintiff permitted to amend	2nd	-	200.268.510/01

	Appeals Court]			and extend appeal against the Amsterdam Civil Court's decision of 1/7/2019			
16/2/2021	Gerechtshof Amsterdam [Amsterdam Appeals Court]	Deliveroo	employee	-	2nd	pending appeal brought by Deliveroo before the Hoge Raad [Supreme Court]	200.261.051/01
2/2021	Inspectie Sociale Zaken en Werkgelegenheid (SZW) [Labour Inspection]	Temper	employee	Report classifying the platform as temporary work agency	1st	-	-
<b>Sweden</b>							
18/6/2018	Förvaltningsrätten i Stockholm [Stockholm Administrative Court]	Cool Company	self-employed	No responsibility of Cool Company for health and safety standards	1st	upheld by the Administrative Appeals Court on 30/10/2019	Mål nr 3944-17
30/10/2019	Kamarrätten i Stockholm [Stockholm Administrative Appeals Court]	Cool Company	self-employed	No responsibility of Cool Company for health and safety standards	2nd		Mål nr 5725-18
9/10/2020	Arbetsmiljöverket [Work Environment Authority]	TaskRunner	employee	TaskRunner obliged to comply with OSH standards	1st	-	2019/062973
13/10/2020	Arbetsmiljöverket [Work Environment Authority]	Tiptapp AB	employee	Tiptapp AB obliged to comply with OSH standards	1st	-	2020/000125